

**PUBLIC PROCUREMENT FRAUD IN MALAYSIA:  
A POLITICAL ECONOMY APPROACH**

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## ABSTRACT

This study investigates the practice of public procurement fraud in Malaysia. The aim of this research is to understand the nature and extent of the persistence of procurement fraud in the Malaysian public sector. Fraud in public procurement results in large losses of public funds which are needed by the government for delivering public services in order to build public infrastructure and facilities for healthcare and education, poverty eradication, security, defense and economic growth.

A primarily qualitative methodology is employed in this study using the political economy approach in order to understand this social phenomenon. First, documentary analysis helps identifying some possible factors for the existence of fraud in public procurement in Malaysia. Then, qualitative data from semi-structured interviews are obtained using the Snowball Sampling Method (SSM). The interviews with 40 stakeholders (regulators, professionals, politicians, academics and media actors) reveal their 'hidden' voices so as to understand public procurement fraud in Malaysia. Nevertheless, this study does not aim to make generalizations and reach concrete conclusions about this issue, but instead seeks to understand why public procurement fraud persists in Malaysia through an analysis of the subjective narratives of the stakeholders.

This research identifies several possible factors explaining why fraud in Malaysian public procurement continues to exist: (1) the prevailing power of political and economic forces, (2) complexities in the check and balance system, (3) deficiencies in procurement practices, (4) constraints on the civil servants, and (5) characteristics of the Malaysian society. The findings contribute to the body of knowledge by focusing on an unexplored area of the institutional arrangements between the state and businesses in Malaysia. The institutional arrangements between state and private sector appear to be legitimate, but they have the potential to *conceal* fraudulent practices, thus making fraud possible. Given the sensitive nature of the subject matter of this research and the fact that fraud by its nature is often concealed, it is possible that the findings have only revealed the '*tip of the iceberg*' of public procurement fraud in Malaysia.



## Table of Contents

ABSTRACT.....	3
Table of Contents .....	5
List of Tables and Figures.....	11
List of Appendices .....	12
List of Abbreviations.....	14
ACKNOWLEDGEMENTS .....	16
DEDICATION .....	19
Chapter 1 Introduction .....	22
1.0 Introduction .....	22
Pervasiveness of Fraudulent Practices .....	23
Fraud in Public Procurement.....	27
The Case for Studying Public Procurement Fraud in Malaysia .....	33
1.1 Motivations and Aims for Research.....	41
1.2 Research Questions and Research Objectives.....	43
1.3 Research Approach and Method .....	45
1.4 Summary of the Findings of the Study.....	48
1.5 Contributions of the Study .....	49
1.6 Structure of the Thesis .....	51
Chapter 2: A Literature Review .....	55
2.0 Introduction .....	55
2.1 Notion of Fraud.....	57
2.1.1 Defining Fraud .....	57
2.1.2 Various Types of Public Procurement Fraud .....	60
2.1.3 Research in Public Procurement Fraud .....	64
2.2 The Persistence of Public Procurement Fraud .....	71
2.2.1 The Nexus of Government and Business Interactions .....	73
2.2.2 Public Sector Accountability and Governance Transformation.....	77
2.2.3 The Dynamic of Institutional Arrangements.....	81
2.2.4 Opportunities in the Procurement Process .....	86
2.3 Public Procurement Fraud and Malaysia .....	90
2.3.1 Public Policy Environment.....	91
2.3.2 Classified and Secret.....	94

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2.3.3 Compliance with Rules and Regulations .....	95
2.3.4 Collaborations of Social Actors .....	97
2.4 Gaps of Interest .....	100
2.5 Summary .....	104
Chapter 3 Research Methodology .....	108
3.0 Introduction .....	108
3.1 Methodological Perspectives.....	110
3.1.1 The Philosophical Stance .....	111
3.1.2 Justification for choosing the Critical Paradigm .....	116
3.2 The Use of Political Economy Theory .....	119
3.2.1 The Dynamic of Political and Economic Institutions .....	122
3.2.2 Rational Behaviour of Economic Man.....	125
3.2.3 Public Policy Making.....	127
3.2.4 Nexus of Public-Private Interactions.....	130
3.2.5 Justification for choosing Political Economy Theory .....	132
3.3 Qualitative Research Design .....	134
3.3.1 Sampling .....	136
3.3.2 Access .....	139
3.3.3 Research Method.....	140
3.3.3.1 Documentary Sources .....	140
3.3.3.2 Semi-structured Interviews via Snowball Sampling Method (SSM) .....	142
3.4 Data Analysis: Thematic Approach .....	147
3.5 Ethical Considerations .....	152
3.6 Challenges and Limitations.....	153
3.7 Summary .....	156
Chapter 4 The Socio-Political and Economic Context of Malaysia.....	159
4.0 Introduction .....	159
4.1 The Historical Institutionalism: An Evolution .....	161
4.1.1 Feudal Society: Blind Faith and Loyalty.....	162
4.1.2 Imperialist Ideology: Exploitation of Colonial Capitalism .....	165
4.1.3 Discourse of Capitalistic Nationalism.....	169
4.2 The Political and Governmental Structures: Flaws of Check and Balance Mechanisms	171
4.2.1 The Executive: Concentration of Power .....	172

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4.2.2 The Legislative: Supreme Power of the Parliament.....	177
4.2.3 The Judicial : A Tool for Legitimization.....	180
4.3 The Economic Structures and Development: A Platform.....	188
4.3.1 Intersection of Economics and Political Capitalism: Directing Public Policy .....	189
4.3.1.1 Nurtured political business.....	190
4.3.1.2 The rampant money politics.....	195
4.3.1.3 Patronage-driven model .....	196
4.3.2 Public Finance Management .....	199
4.3.2.1 Public Procurement .....	200
4.4 Malaysian Civil Service: Public Sector Governance .....	206
4.4.1 The role of Malaysian Bureaucracy: The Implementer.....	206
4.4.2 Impairment of the Public Service Delivery.....	208
4.4.3 Towards Public Accountability.....	211
4.5 Summary .....	214
Chapter 5 Findings.....	217
5.0 Introduction.....	217
5.1 Political and Economic Institutional Arrangements.....	218
5.1.1 The Practice of Political Business.....	219
5.1.2 The Alliance of Political Power With Economic Interests.....	227
5.1.3 Direction of Public Policy .....	230
5.2 Check and Balance Mechanisms.....	236
5.2.1 Historical Legacies.....	236
5.2.2 Lack of Independence .....	238
5.2.3 (In)Effective Roles .....	241
5.2.4 Judiciary as a ‘Tool’ for a Political Party.....	243
5.2.5 Mobilizing Modes of Power.....	247
5.3 Deficiencies in Procurement Practices .....	250
5.3.1 Playing around the system.....	250
5.3.2 Lack of Evidence.....	253
5.3.3 Hegemonic Role of Ministry of Finance (MOF).....	256
5.4 Constraints of Public Officials .....	258
5.4.1 The Obedient Implementer.....	259
5.4.2 The Conflict .....	264
5.4.3 Politicization of Bureaucracy .....	266
5.5 Public Procurement Fraud within the Malaysian Society .....	270

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5.5.1 Successful Ideology of Wealth, Material goods and Money.....	270
5.5.2 Towards Institutionalization.....	275
5.6 Summary .....	279
Chapter 6 Discussion.....	283
6.0 Introduction .....	283
6.1 The Power of Political and Economic Institutions: The Prevailing Institutional Arrangements .....	285
6.1.1 The Institutional Power of the Governance Institutions.....	286
6.1.2 Historical Legacies.....	296
6.1.3 Formal and Informal Practices .....	297
6.2 Economic Actors: Rational Decisions.....	299
6.2.1 Rational for Self-Interests .....	299
6.2.2 Social Class Domination .....	302
6.2.3 Free Market Economy System .....	303
6.3 The Policymaking Environment: The Practice .....	305
6.3.1 Distribution of Income and Wealth.....	305
6.3.2 The Conflicting Role of the State.....	310
6.4 Crony Network: Business-Government Relations .....	313
6.4.1 Legitimate Activities .....	314
6.4.2 Blurred Relationships.....	317
6.5 Summary .....	322
Chapter 7 Conclusion.....	325
7.0 Introduction .....	325
7.1 Reflections on the Findings.....	327
7.1.1 Prevailing Political and Economic Structures.....	328
7.1.2 Complexities of Check and Balance Mechanisms .....	331
7.1.3 Deficiencies in Procurement Practices .....	333
7.1.4 Accountability Constraints of Public Officials .....	335
7.1.5 The Malaysian Paradox.....	337
7.2 Research Contributions .....	340
7.3 Limitations .....	350
7.4 Avenue for Future Research.....	351
7.5 Concluding Remarks .....	352



Appendices.....	356
REFERENCES.....	394

Word Count: 76,113



## List of Tables and Figures

TABLE 1.1: PRIVATISATION PROJECTS BY STATE-OWNED COMPANIES/BANK .....	36
FIGURE 1.1: THE STRUCTURE OF THE THESIS .....	51
FIGURE 2.1: THE STRUCTURE OF CHAPTER 2 .....	56
FIGURE 2.2: FRAUD IN THE PRE-CONTRACT, CONTACT AND POST-CONTRACT STAGE .62	
FIGURE 2.3: RELATIONSHIPS BETWEEN GOVERNMENT AND BUSINESS .....	73
FIGURE 3.1: THE STRUCTURE OF CHAPTER 3 .....	109
FIGURE 3.2: THE POLICY-MAKING PROCESS AND ECONOMIC CONSEQUENCES .....	128
FIGURE 3.3: QUALITATIVE RESEARCH DESIGN .....	135
TABLE 3.1: SUMMARY OF THE 5 GROUPS OF INTERVIEWEES.....	136
FIGURE 3.4: QUALITATIVE DATA ANALYSIS-THEMATIC APPROACH.....	148
FIGURE 4.1: THE STRUCTURE OF CHAPTER 4 .....	161
FIGURE 4.2: PUBLIC POLICY PROCESS IN MALAYSIA .....	175
TABLE 4.1: LIST OF HIGH-PROFILE CASES.....	182
TABLE 4.2: MALAYSIA’S GROWTH AND INFLATION INDICATORS .....	190
TABLE 4.3: MALAYSIA’S GINI COEFFICIENT ( 1979-2012).....	198
TABLE 4.4: EXTRACTED FROM FEDERAL GOVERNMENT FINANCIAL STATISTICS (2004- 2013).....	199
TABLE 4.5: MODES/TYPES OF MALAYSIAN GOVERNMENT PROCUREMENT .....	200
TABLE 4.6: LOPSIDED AGREEMENTS/ARRANGEMENTS BY THE GOVERNMENT OF MALAYSIA .....	203
FIGURE 5.1: THE STRUCTURE OF CHAPTER 5 .....	218
FIGURE 6.1: THE STRUCTURE OF CHAPTER 6 .....	285
FIGURE 7.1: THE STRUCTURE OF CHAPTER 7 .....	327

## List of Appendices

APPENDIX 2.1: VARIOUS DEFINITIONS OF FRAUD .....	358
APPENDIX 3.1: KEY PHILOSOPHICAL STANCE FOR THE CURRENT RESEARCH.....	363
APPENDIX 3.2: PARADIGM CHOICES FOR THE CURRENT RESEARCH .....	366
APPENDIX 3.3: DETAILED LIST OF INTERVIEWEES.....	370
APPENDIX 3.4: INTERVIEW GUIDE .....	372
APPENDIX 4.1: GOVERNMENT OF MALAYSIA .....	392
APPENDIX 4.2: ORGANIZATION CHART OF MINISTRY OF FINANCE, MALAYSIA.....	394



## List of Abbreviations

AASB-The Auditing and Assurance Standards Board  
ACFE-Association of Certified Fraud Examinors  
AG-Attorney General  
AGC-Attorney General Chambers  
AGD-Accountant General Department  
BRM-The Malaysia Corruption Barometer  
CEO-Chief Executive Officer  
CPI-The Corruption Perception Index  
CSA-Civil Society Actors  
CS-Chief Secretary  
ICIJ-The International Consortium of Investigative Journalists  
IIM-Institute Integrity Malaysia  
MACC-Malaysia Anti-Corruption Commission  
MBS-Modified Budget System  
MCA- Malaysian Chinese Association  
MIC- Malaysian Indian Congress  
MOF-Ministry of Finance  
NAD-National Audit Department  
NEP-New Economic Policy  
NIC-Newly Industrialized Country  
NPM-New Public Management  
OECD-The Organisation for Economic Co-operation and Development  
PAC-Public Accounts Committee  
PEMANDU-Performance Management and Delivery Unit  
PMSC-Private Military and Security Companies  
RMP-Royal Malaysian Police  
SME-Small and Medium-sized Enterprise  
SSM-Snowball Sampling Method  
UMNO- United Malays' National Organisation  
UK-United Kingdom  
US-United States  
UNDP-United Nations Development Programme



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To my beloved husband: Khairol Idzwan Abdul Khaiyom, for his sacrifices and unconditional love and for having to listen to all my tales of woe

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**So then which of the favours of your lord will you deny?**

**No matter how hard things may seem but I have faith this is all Allah's plan for me. There is always something good coming around the corner.  
ALHAMDULILLAH!**





# Chapter 1 Introduction

## 1.0 Introduction

This study investigates the underlying factors that influence the persistence of public procurement fraud in Malaysia. It focuses on fraudulent practices and corrupt activities arising from the procurement process in the context of the Malaysian public sector. Bearing in mind the sensitivity and controversial nature of the topic, this study attempts to address the political and economic influences on and the prevailing mode of power over most government purchasing in Malaysia. However, one of the difficulties in pursuing this topic is that a large part of the public procurement process is shielded with organised secrecy and it is not easily visible to the public at large. Arguably, most Malaysian governmental information and documentation is classified as ‘private’ and ‘confidential’. However, there is an increased concern by the public about the issue of accountability and good governance<sup>1</sup> since the institutional arrangements between the state and private sectors are inextricably intertwined in many government procurements. As a result, the perceptions of lack of transparency and accountability within the institutional arrangements for Malaysian government purchasing provide opportunities for and potentially enable fraudulent practices to take place. The overall perceptions of the interviewees suggest that there is a complex web of acts of collusion among politicians, political parties, top bureaucrats, private

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<sup>1</sup> Good governance is needed for directing, controlling, monitoring organizational practices, which are concerned with structure and processes to ensure an accountable and transparent decision-making practices. Governance is somehow greatly influenced by the country’s ownership structure, legal systems, cultural, customs and religious traditions and socio-political and economic environments (see N. M. Brennan & Solomon, 2008; Nahar & Zulkeppeli, 2015; Samuel, 1992; Shaoul, Stafford, & Stapleton, 2012).

entrepreneurs, the intermediaries, brokers, financiers and others in the procurement process that are possibly pursuing divergent interests.

The introduction section of this chapter discusses fraud and the pervasiveness of fraudulent practices. The discussion is followed by a review of fraud in public procurement and a justification on the selection of Malaysia as the context for this study. The chapter continues with a description of the motivations and aims for the research (section 1.1). Then, section 1.2 presents the research questions and objectives underpinning the study. This is followed by a discussion on the research approach and methodology in section 1.3. This section explains the philosophical choice for the study, the theoretical framework, the research methodology and the data analysis process and it gives information on the interviewees. Section 1.4 presents a brief description of the research findings. Succinct contributions of the study are presented in section 1.5. Finally, section 1.6 gives an overview of the remaining chapters of this thesis.

### **Pervasiveness of Fraudulent Practices**

‘Fraud’ is a provocative term that frequently conveys ideas about human interaction, institutionalised practices and a variety of public policy issues. The social construction of fraudulent practices blends into predatory and illicit behavioural issues, which are often associated with the intersection of other practices such as corruption (Doig, 2014; Sargiacomo, Ianni, D’Andreamatteo, & Servalli, 2015; Venkatesan, 2014), white collar crime (Barak, 2015; Ramamoorti, Morrison, & Koletar, 2014), bribery (Goel, Budak, & Rajh, 2014; Khoman, 2015; Li, Yao, & Ahlstrom, 2015), money laundering (Dimon, 2013; ICIJ, 2013; Oxfam, 2013), transfer pricing (de Boyrie, Pak, & Zdanowicz, 2005; Sheppard, 2012), tax evasion

(Hasseldine & Morris, 2013; Otusanya, 2011), price fixing (Pressey, Vanharanta, & Gilchrist, 2014) and misappropriation of asset (Baird & Zelin Ii, 2009; Rozaiha Ab Majid, Mohamed, Haron, Omar, & Jomitin, 2012). In spite of the presence of various practices associated with fraud activities which appear to violate laws and regulations, there is scant research in exploring fraud mechanisms which are highly effective and work within legal boundaries and can outsmart 'the system' in the pursuit of self-interests (see Bernhut, 2006; Robertson, 2006; Young, 2005).

The reporting on fraudulent activities through press coverage shows the occurrence of illicit and illegal activities such as false accounting, deception, collusion, concealment, cheating and violation of trust (see AASB, 2008; ACFE, 2012; Eskow, 2013; Ndofor, Wesley, & Priem, 2013). Examples of fraudulent practices reported by the media include a former bank employee of JP Morgan who violated the US laws; an act which ultimately cost the bank \$6 billion for distorted accounting practice in the market (BBC, 2013). In another case, a court charged the former CEO of WorldCom of fraud, conspiracy and false claims (Scharff, 2005). Media also reports on several senior executives of HTC being arrested because they stole trade secrets and falsified commission fees (Vincent, 2013). Also, there was a breach of trust by a former politician in Canada for spending the province's constituency allowance (The Canadian Press, 2013). In a high-profile case in Argentina the employees of Ralph Lauren Corporation paid bribes of \$593,000 to government officials from 2005 to 2009 for importing goods (Bloomberg, 2013). In another high-profile case, Hewlett-Packard violated the Foreign Corrupt Practices (FCPA) when its subsidiaries made improper payments of \$2 million to government officials to retain lucrative public contracts (U.S. Securities and Exchange Commission, 2014). The next case which



used the tactic of bribing government officials was discovered in Orthofix International N.V. (Orthofix) when a former employee reported that the company's executive paid bribe of \$5 million to obtain sales contracts with state owned hospitals (Overley, 2012). More recently, Wal-Mart de Mexico was alleged to have paid bribes of \$24 million to government officials for approval of a new store permits, acquired confidential information and reduced fines imposed by government agencies (Barstow, 2012; Viswanatha & Barrett, 2015). As a result, the fraud cases exposed by the media have increased public awareness and raised questions about the amount of loss due to the fraudulent practices.

Losses from fraudulent practices are large and capable of making a difference to the economic and social development of a country. In the UK, the National Fraud Authority estimated that fraud losses in the year 2013 were around £53 billion. The total losses in the public sector were £20.6 billion, enough to affect its social welfare provision (National Fraud Authority, 2013). It is also reported that US retailers suffer \$191 billion in fraud losses every year (LexisNexis, 2012). Internal employee fraud victimised 53 Australian government agencies, with losses of \$2 million in 2009 and 2010, compared to \$1.86 million in 2008 and 2009 (Lindley, Jorna, & Smith, 2012). The report on the cost of financial fraud losses in nine developed countries<sup>2</sup> for the years 2012 and 2013 shows that losses are 29% higher than those of the period of the recent financial crisis and recession, i.e., from 1997 to 2007 (Gee & Button, 2015). Arguably, losses due to fraud practices on this scale affect a country's growth in terms of infrastructure and facilities aiming to improve healthcare and education,

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<sup>2</sup> Data on fraud losses were obtained from UK, US, France, Belgium, the Netherlands, Ireland, Canada, Australia and New Zealand.

combat poverty, bolster the economy, and fund the security and defence of a country (Button, Gee, & Brooks, 2012; LexisNexis, 2012; The Huffington Post, 2012). Therefore, fraudulent and corrupt practices have severe consequences on investors, employees, customers, and the society in a globalised economy.

The effects of prevailing fraud practices on the economy of developed countries can have the same impact with those of the developing countries. For example, in Uganda the pervasiveness of embezzlement, electronic fraud, neglect of duties and unauthorized disclosure defrauded customers of huge amounts of money (Morawczynski, 2015). The Ponzi schemes, money laundering as well as tax evasion and avoidance prevail in developing countries and in emerging markets (ICIJ, 2013; Malaysia Kini, 2013b; Malaysia Today, 2013; Otusanya & Lauwo, 2012; Oxfam, 2013). In 2003 and 2012, developing countries incurred losses of \$297.4 billion and \$991.2 billion, respectively, due to illicit financial flows (Kar & Spanjers, 2014). The losses were usually regarded as flows of dirty money coming out of a developing country and being sent abroad. For the past ten years, Malaysia is among the top five exporters of illicit capital. Malaysia shows cumulative losses of unrecorded money<sup>3</sup> of \$394,869 million from year 2003 until 2012 (Kar & Spanjers, 2014). The amount of losses from fraudulent practices is such that it is likely to be detrimental to Malaysia's development and growth, especially in the public sector. Furthermore, it can be argued that these activities undermine the Malaysian government's social obligations to provide efficient, effective and value for money public service.

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<sup>3</sup> The vast majority of illicit financial outflows for the developing countries are due to trade misinvoicing either through export under-invoicing or import over-invoicing (see Kar & Spanjers, 2014).

## Fraud in Public Procurement

Notwithstanding the appeals for investigating the wide range of fraudulent activities in relation to social relations and human interactions, there appear to be limited studies about procurement fraud (Caulfield, 2014; Murray, 2014). Fraud in procurement arguably occurs at three stages: the pre-contract, contract and post contract phase of a procurement process (Mamavi, Nagati, Wehrle, & Pache, 2014; OECD, 2010). Because procurement fraud can normally occur at several points during the procurement life cycle, fraudulent activities can be easily carried out and it is a perennial problem (Burguet & Che, 2004; Davies, 1995). Fraud and corruption arising from procurement activities are regarded as ‘hidden’ crimes, which makes them hard to detect, prosecute and, thus, they are often not reported (Findlay, 2007; Robertson, 2006). Fraudulent activities in procurement suggest the existence of a vast network of collusions of various actors at the nexus of government and private sectors (Sargiacomo et al., 2015). There is indication that research on procurement does not focus on the accounting area of procurement life cycle (see Neu, Everett, & Rahaman, 2015). Further, there is a dearth of empirical research focusing on procurement fraud in public sector settings (ADB, 2014; Sargiacomo et al., 2015).

In many countries, a large portion of public funds is allocated to procure the necessary goods, services and works to deliver public services. According to Organisation for Economic Co-operation and Development (OECD), public procurement accounts for 15% of Gross Domestic Product (GDP) in OECD countries<sup>4</sup> and the percentage is higher in many non-OECD countries (OECD,

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<sup>4</sup> OECD countries originally signed the Convention on the Organisation for Economic Co-operation and Development. The organisation aims to assist governments for their prosperity so as to combat poverty and achieve economic growth and financial stability. Among others, members are the UK, the

2007a). As most governments are the largest spender of goods and services in the world, fraud in government purchasing can make a significant impact upon the economic, social, political policy making, and upon the benefits of the public at large (Ghedini Ralha & Sarmiento Silva, 2012; Matthew, Patrick, & Denise, 2013). In 2014, the World Bank reported 10,838 government procurement contracts from various regions with a total value of \$12.8 billion. Overall, procurement transactions under the World Bank projects include 2,764 contracts with a value of \$3.5 billion (Africa), 1,567 contracts with a value of \$2.2 billion (East Asia and Pacific), 1,547 contracts with a value of \$2.9 billion (Europe and Central Asia), 2,960 contracts with a value of \$1.3 billion (Latin America and Caribbean), 448 contracts with a value of \$0.38 billion (Middle East and North Africa) and 1,552 contracts with a value of \$2.6 billion (South Asia) (World Bank, 2014). Because of the large amount of money spent by governments for the acquisition of goods and services in the market, fraud and corruption in government procurement requires considerable scrutiny and has increased the pressure to ensure accountable and transparent procurement practices (see Neu, Everett, & Rahaman, 2014; Sikka & Lehman, 2015).

Public procurement is a major economic activity for many countries; thus, the prevalence of fraud in public procurement can be considerably damaging for those countries (Cram, 2011; Singh, 1999). The World Bank estimated \$200 billion of bribe spent by developed and developing countries to secure public procurement bids annually (World Bank, 2004). According to the World Economic Forum in 2005, the frequency of bribery in public procurement was as follows: OECD (15%), East Asia-

NIC (15%), East Asia developing (58%), South Asia (70%), Sub-Saharan Africa (60%), Former Soviet Union (50%) and Latin America (58%) (OECD, 2008b). Alternatively, Raymond (2008) suggests that procurement-related corruption is a more serious problem in developing countries rather than in developed ones. He claims that social practices operate in specific cultural contexts and peculiar practices may not be easily constrained when they are already normalised in a particular society. At the same time, mass poverty and limited economic freedom, the pervasiveness of corruption, and poor enforcement can have a dampening effect on developing countries (Nwabuzor, 2005). Consequently, public procurement fraud reduces the limited resource of public funds to benefit citizens in social services, national defence, homeland security and natural disaster relief (Lander, Kimball, & Martyn, 2008).

Research on fraud and corruption related to public procurement transactions can offer a broader understanding of the power relations embedded in specific social and political contexts (see Breit, Lennerfors, & Olaison, 2015; Matechak, 2002). A systemic and organised institutional arrangement of power relations and its effect on how power is created, maintained and transformed may be able to conceal fraud and corrupt activities in the public office (Global Integrity, 2014; Hellman, Jones, & Kaufmann, 2000; Hessami, 2014). Public sector fraud may perpetually generate the negative perception that public sector officials and/or politicians make policy and spending decisions in favour of certain groups, industries or suppliers for private gain (Doig, 2011). A report by U.S. Government in the year 1988 on military procurements showed that there were cases of conflict of interest among powerful

government procurement officials, exercised nepotism,<sup>5</sup> favouritism, and other forms of corruption in the public procurement system (M. Chwastiak, 1998). Grindle (1996) asserts that fraud and corruption activities “*stimulated the rapid expansion of the politics of cronyism, rent seeking, and corruption that further undermined faith in the system*” (p.78). As a result, corrupted officials may negatively affect the accountability, transparency and public interests in the government institutional structure (E. Brown & Cloke, 2005).

Fraud in public procurement is closely associated with the government’s policymaking for the distribution of public funds. In implementing public policy and public service delivery in particular in a free market economy system, fraudulent practices and corrupt activities may be influenced by underlying tensions and conflicts in the public office (Raymond, 2008; Tremblay, 2012). Raymond (2008) highlights several governance issues such as public accountability, transparency, value for money and professional work ethics, as key principles underpinning government purchasing. However, to some extent, government resource allocations creates opportunities for profit seeking and private appropriation of national wealth, which is perhaps facilitated by the neoliberal capitalism ideology of privatisation, deregulation and trade investment (Morales, Gendron, & Guénin-Paracini, 2014; Tan, 2012).

Fraud and corruption in public procurement shows linkages between several actors and divergent interests in government purchasing. For instance, a study by Hawkins

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<sup>5</sup> Nepotism is the practice of securing or influencing a contract or job in favour of the relatives or friends of powerful actors (Eicher, 2009).

*et al.*, (2011), Søreide (2002) and Rose-Ackerman (1999) revealed that public procurement practices are intermingled with political discretion and that there is interdependence of political, bureaucrats, and business actors. Consequently, it was noted that fraud in public procurement is designed to serve narrow self-interests which are profit oriented (see David Seth Jones, 2013).

There is an increased attention to the interactions between government and private entrepreneurs, which engage in fraud and corruption in procurement (Khoman, 2015; Neu et al., 2014). A complex range of immoral and unethical acts of behaviour in government purchasing involves bribery and kickback actions, rent-seeking activities, cronyism, collusion, favouritism, cartels, monopoly, nepotism, and patronage system. Johnston (2005) has classified a 'syndrome to corruption' as factors of likelihood for corruption as follows: (1) Influence Markets, (2) Elite Cartels, (3) Oligarchs and Clans, and (4) Official Moguls. The exchange relations between government and private sectors are institutionally enabled and allowable as economic behaviour and collective business actions in procurement (Andrews, Esteve, & Ysa, 2015). Thus, various wrongdoings are assumed to be 'normal' practices (see Ashforth & Anand, 2003; Ashforth, Gioia, Robinson, & TreviÑO, 2008), because the government-business transactions may also act as catalyst for state and political capture through lobbying practices, political funding and finance political party during election. Therefore, a corrupt network of relationships between interconnected players in public procurement may suggest lack of transparency and accountability landscape, which creates governance challenges to public officials (Miettinen & Poutvaara, 2015; Never, 2015; Sargiacomo et al., 2015).

A number of cases have shown how misallocation of public fund is associated with fraudulent and corrupt practices in public procurement (Miroslav, Miloš, Velimir, Božo, & Đorđe, 2014; Newman, 2012; PwC EU Services, 2011). One such case shows that there has been an increase of military procurement prices in the UK because of fraudulent activities, misconduct, mismanagement and misallocation of public resources (Plymouth Herald, 2012). In a high-profile case in Malaysia, there were alleged misappropriations of fund, mismanagement and unauthorised contracts by the CEO of Perwaja amounting to hundreds and millions of ringgit with a claim that his actions had the full support and were conducted under the directions of the highest political figure in the country (Malaysia Today, 2015; Norwani, Mohamad, & Chek, 2011). The above examples illustrate a combination of mismanagement, collusion and theft from actors in the form of breach of trust and the manipulation of the power given to them because of the key positions they hold. Arguably, the lack of transparency and accountability in the public office creates opportunities for fraud and corrupt practices to thrive which compromise public accountability, transparency and governance framework (see Priemus, 2004; Warren, 1974).

This study examines the persistent of procurement fraud in the Malaysian public sector. The aim of this thesis is to understand the factors that influence to the persistence of fraud; these factors are influenced and shaped by the larger institutional framework in which they are embedded and in which they operate.

The following section justifies the choice of Malaysia as the context of this study.



## **The Case for Studying Public Procurement Fraud in Malaysia**

This thesis aims to explore the nature and extent of fraud in public procurement by focusing on its prolongation within the established governance system in Malaysia. A series of public procurement scandals within Malaysia's public sector is inevitably embedded within the socio-political and economic context involved with different stakeholders (Hwang, 2003; Kamal, 2012; D. Leong, 2014). For example, there was a high-profile case of a chairman (a husband to a prominent politician) in Malaysia alleged to have misused and misappropriated funds of RM 50 million soft loans given by the federal government by buying a luxury car, two plots of land and holiday packages (Kamal, 2012; The Star, 2012a). In another high-profile procurement fraud case, a former transport minister was allegedly responsible for the overpriced land purchased for RM129.5 billion for Port Klang Free Zone's project (Baharom, 2012; Ming, 2012). A study by William Case (1994) shows that the long tenure of the ruling party enables the government to intervene in the economy and promote patronage networks to secure lucrative contracts and licences for their political members. In relation to the promotion of state patronage in the form of government contracts, licenses and development grants, Teh (2002) describes the prevailing nature of 'money politics' in Malaysia. Finally, KPMG's report on Fraud, Bribery and Corruption Survey in the year 2013 revealed that most businesses think that bribery and corruption are important strategies for business survival in Malaysia (KPMG Malaysia, 2013). Generally, there is alleged manipulation, mismanagement and theft within the public procurement practice in Malaysia (The Malaysian Insider, 2013a). It is profoundly noted that fraudulent practices and corrupt activities in Malaysian public procurement appear to be embedded in the governance of Malaysian public sector and the activities of corrupt politicians, business elites, bureaucrats or public

officials (Gomez & Jomo, 1997; Siddiquee, 2010). Malaysia is a particularly interesting case worthy of studying public procurement fraud for the following reasons.

First, Malaysia is predominantly a traditional Islamic state, with a multicultural and multi-ethnic background. Because of that, and because of her colonial experience, Malaysia is a nation culturally distinctive from Western ones.<sup>6</sup> The transformation and evolution of its structural attributes and its economic growth development in a fundamentally different socio-culturally setting (Teik, 2012; Yoong, Mui, & Heong, 2007), makes it a valuable setting for investigating and understanding fraudulent practices in public entities. The motivation behind investigating public procurement fraud in Malaysia comes from the fact that it is a setting with distinctive cultural features<sup>7</sup>, ideologies, religion, practices, customs, ethical values as well as a different socio-political and economic context.

Second, in its pursuit of economic growth and development, Malaysia offers distinctive elements for investigating fraud and corruption in public procurement because of the existence of large operational and development budgets for public service delivery (Ministry of Finance, 2011). Large operational and development budgets for government projects and contracts are on the increase as prevalent forces

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<sup>6</sup> The population in Malaysia comprises 60% *Bumiputera*, which is the indigenous peoples, 27% of Chinese ethnic community, 7% from the India community and around 6% from other ethnic communities. All communities are free to practice their religion, customs, and they are free to have education and rights as Malaysians according to the Malaysian Constitution (see A. Harding, 2012; V. T. King, 2012; Loh, 2011; Sundaram & Hui, 2014).

<sup>7</sup> Here we refer, for example, to differences from Western cultures in terms of different identities, different ways of learning and thinking, different languages, spiritual values and behavioural attitudes, among others.

of economic globalisation in Malaysia (Nambiar, 2014),<sup>8</sup> which have intended and unintended consequences for the country. For example, the transformation of the private sector for the provision of public services has opened up opportunities for wealth creation and capital. Gomez (2007) highlights that the government's intervention through state-owned companies in the form of privatisation has given business people incentives to acquire political influence in order to achieve favourable policy outcomes. The formulation and implementation of public policy legitimizes state intervention in the market and the increase of public sector investment (Welsh & Chin, 2013). It is in this context that the profit motive orientation affects the annual budget, in particular the budget for public procurement<sup>9</sup> for Malaysia's development and growth (such as public infrastructure, education, healthcare, defence and security).

Studies by Gomez and Jomo (1997) as well as J. Tan (2008) highlight the privatisation strategy followed for the 'creation' of state-owned public enterprises, which they argue has generally increased public service spending for government expenditure, resulting in inefficient economy, high costs, less productivity and limited creativity and innovation. Indeed, some of the (non)performance of the privatisation projects are as follows.

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<sup>8</sup> The economic globalisation in Malaysia is underpinned by the neoliberal agenda of privatisation, deregulation and trade investment which have offered a competitive ideology (K. S. Jomo, 2003).

<sup>9</sup> This is generally evident in public-private partnerships which have been increasing the Malaysian federal government expenditure with RM151 million in 2010, RM180 million in 2011 and RM181 million in 2012 (Ministry of Finance, 2011).

**Table 1.1: Privatisation Projects by State-Owned Companies/Bank**

<b>Year</b>	<b>Privatised Projects by State-owned Companies</b>	<b>Wastages / and Losses of Public Funds (RM)</b>	<b>Action by the State</b>	<b>Status</b>	<b>References</b>
2015	1Malaysia Development Berhad	2.6 billion	The government explained that the money debited into a personal account of the premier leader was a political donation	Alleged mismanagement of the company's fund. Investigation by the authorities was conducted. However, there was no prosecution as the Attorney General confirmed there was no violation of law in that case	The Malaysian Insider (2015a), J. Ng (2015), The Malaysian Insider (2015c), Hookway and Fernandez (2015)
2011	National Feedlot Corporation	250 million	Despite the company's failure to finish the project and its misuse of public fund, the project was given to another company to continue the project	Closed case as there was no evidence of abuse of power in rewarding the government contract	The Star (2012a), Kamal (2012), S. Teoh (2012a), Utusan Online (2012)
2000	Indah Water Konsortium (IWK)	300 million	Restructuring of sewerage tariffs by providing support loans of RM925 million. The government was reluctant to impose penalties for	The company faced difficulties because of non-payment of sewerage bills from the public, thus making them unviable and suffering losses. This	J. Y. Lee (2012), Jeff Tan (2008), RocketKini (2014b)

			non-payment and to increase sewerage charges	privatisation project provided opportunity for monopoly rents from sewerage charges and it appears to be a politically sensitive issue	
1987	Renong Berhad	25 billion	Debt restructuring and the rewarding of a highly profitable highway toll contract	The company suffered financial failure, financial crisis and malpractices but no action was taken. The state continued to support the company to survive in the market.	RocketKini (2014a); Tharmaratnam (2000), Searle (1999), Wain (2009), Hua (2010), Pura (1998)
1983	<i>Bumiputera</i> Malaysian Finance (BMF)	2.5 billion	Bailout with \$1 billion capital injection.	Only two directors were jailed by the Hong Kong authorities. No other state officials were charged.	Joe (2009), S. Singh (2010), Khalid (2014)

**Source:** Current Study

Despite the non-performance of privatisation projects due to mismanagement, malpractices and cases of unviability in state-owned companies, the Malaysian state continues to provide its assistance and support under the pretext of the *national interest*. Gomez (1997) and Gomez and Sundaram (1999) critically emphasize the loss of public funds to ‘save’ most of the public enterprise through bailouts, capital injections, capital controls and debt restructuring even though the state-owned companies may be involved in acts of mismanagement and abuse of power. It is

important to realize that under the pretext of saving the public enterprise, the resoluteness shown by the Malaysian state to save certain companies can also be viewed as suspicious in that it helps politically-connected companies, and as a result, no one is held accountable for the mammoth losses of public funds (E.T. Gomez, 2002; Johnson & Mitton, 2003). As a result, the wide spread occurrence of fraud and corruption phenomena related to procurement raises serious questions in relation to the pursuit of Malaysia's policy objectives, which have been undermined by the global and domestic institutional pressures in favour of the various interests of politicians, political party, public officials, and business leaders (Cross & Stuart, 2006; Sundaram & Hui, 2010).

Third, despite the government's effort to reduce fraud and corruption in Malaysia by taking various initiatives through the government's transformation plan (Kapeli & Mohamed, 2015; Pemandu, 2009), Malaysians feel that the country faces an 'integrity' crisis because of the lack of total transparency and accountability. For example, the Fraud, Bribery and Corruption Survey 2013 revealed that 90% of business organisations considered bribe and corruption to play a prominent role in the conduct of business in Malaysia (KPMG Malaysia, 2013). The Malaysia Corruption Barometer (BRM) 2014 indicated that only 24% of the participants believe that corruption is not a problem with corruption increasing and becoming prevalent with more cases of bribery so as to 'speed things up'. The survey also revealed that Malaysians believe political institutions are the most corrupt form of organizations, followed by the police force and public services. On top of that, the 'alarming' position of Malaysia in relation to its public sector corruption and, in particular, bribery activities is reported in the Corruption Perception Index (CPI) 2014 which

shows that Malaysia is now ranked 50<sup>th</sup> among 175 countries worldwide with a score of 52 (on a scale from 0-highly corrupt to 100-very clean) (Transparency International, 2014). Although, Malaysia has been able to improve her ranking from 2013 (Malaysia was ranked 53<sup>th</sup> with a score of 50), the position of Malaysia in this ranking does not offer a comprehensive and conclusive picture of the corruption problem in Malaysia. Thus, there is a need to understand the underlying causes of the persistence of fraud and corruption in the country.

Finally, this study considers the governance of Malaysia's public procurement practices. Inevitably, the relationship between the state and private sectors has promoted a political business model, which is allowable in most government purchasing. Within this context, the accumulation of capital and wealth creation are nurtured by the state for the distribution of rents through government contracts, licenses, subsidies, privatised projects, and allocation of shares (Gomez, 2009; Sundaram & Hui, 2010). Notably, the Malaysian developmental state actively promotes wealth and capital so as to develop entrepreneurial activities in the country (Gomez, 2009). Sundaram and Hui (2014) argue that the Malaysian development policy has been influenced by, and has, in turn, influenced economic distribution and public finance. Sundaram and Hui (2014) believe that this is the result of resilient federation and the ruling coalition, which, to some extent, advocates 'patron' and 'client' relationships in many operational practices. For this reason, when 'patron' and 'client' relationships are promoted in procurement practices, rent-seeking, state capture and money politics flourish in Malaysia (Searle, 1999; Tan, 2015). This study seeks to understand how the influence of politicians, top bureaucrats and

business elites through using the power embedded in the state machinery affects the dynamics of policymaking and policy implementation in procurement practices.

An understanding of the extent of procurement fraud in the Malaysian public sector is important for several reasons. First, this study aims to locate procurement fraud practices within a broad political economy framework, thus emphasizing the important interplay between the political, social and economic spheres in Malaysia.<sup>10</sup>

In particular, this thesis aims to address fraudulent practices and corruption related to procurement which do not only violate the law, but also those immoral and unethical acts of behaviour in government purchasing that are not necessarily illegal or unlawful but are nevertheless socially amiss and detrimental to the public at large.

Second, there appear to be few studies on procurement fraud in the public sector settings (W. S. Hui, Othman, Omar, Rahman, & Haron, 2011; Ishak & Said, 2015), a gap that this study aims to fill. Third, this research considers the legitimate framework of business-government relations. It seems that the web of crony networks embedded in public procurement practices requires further investigation. Fourth, by adopting a political economy approach, this study also acknowledges the significant roles of other actors in the conduct of fraud practices in public procurement. These include the conflicting role of the developmental state (Malaysian state) which formulates laws and legislation to curb fraud and corruption but also wants to attract capital for wealth and profit maximization. Finally, this study seeks to examine the institutionalised power relations in the governance of the Malaysian public sector.

Thus, perhaps this study can shed light on the possible misconduct practices of the

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<sup>10</sup> Considering that contemporary literature tends to focus on Western countries, it would be useful to determine the nature and extent of public procurement fraud in Malaysia which has a different socio-political, economic and cultural setting from the Western societies.



powerful actors and institutions acting in various political and business spheres of Malaysian society (see Abidin & Ahmad, 2007; Gomez & Jomo, 1997; Malaysia Kini, 2010; Welsh & Chin, 2013).

In considering the above issues, this thesis provides an alternative and much needed perspective in understanding the continuity of public procurement fraud in Malaysia. Having considered the rationale for studying fraud in public procurement, the following section outlines the motivations and aims of the research.

## **1.1 Motivations and Aims for Research**

This study has been influenced by my own experience in inspecting and monitoring procurement issues in the Malaysian public sector for more than a decade. My job as a public auditor<sup>11</sup> involves closely monitoring, investigating and reporting on findings of fraud issues regarding procurement practices in Malaysia. My observations would suggest that public procurement is prone to fraud and corruption activities, which have led to substantial losses of public funds and have badly affected public service delivery. Furthermore, the problem is very difficult to address because investigation of its persistent nature is difficult to conduct. Despite a variety of policies, administrative rules, laws, instruction manuals, hierarchical structures, the custody of invoices, records and contracts (Adham & Siwar, 2012; Ministry of Finance, 1997), it

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<sup>11</sup> A public auditor works mainly in a government department to ensure compliance of laws, rules and regulations which are set up for government agencies. Among the duties of public auditors are to plan, execute and complete audit work; identify any ineffective, inefficient and inadequate internal controls, management and accounting procedures; to give recommendations to improve flaws and lack of internal control. For the context of this research it is important to note that I am a public auditor who works for the National Audit Department, Malaysia to ensure the highest accountability and good control mechanisms for all government operations, projects and for the effectiveness of the delivery system (National Audit Department, 2012)

seems that the internal controls, surveillance systems and procurement procedures that have been established in the Malaysian public sector are somehow unable to curb fraudulent and corrupt activities within procurement practices. This is possibly because the networks of power and the legitimacy of the state and private sectors are inevitable in many government procurement practices (Ashari, 2013; Othman, Zakaria, Nordin, Shahidan, & Jusoff, 2010). As a result, fraud and corruption issues would very frequently come up in my own audit findings and supervision (see Berita Semasa, 2009; National Audit Department, 2010, 2011).

From my experience, I have always encountered problematic issues when reporting fraud and corruption related matters. Many questions have arisen that begged for answers. I decided to undertake this study so as to understand why fraud endures in public office, how it manages to persist for so long, whether or not check and balance mechanisms which are established in Malaysia are able to curb fraudulent and corrupt practices, what factors limit the investigation and prosecution of the wrongdoers so as to secure their conviction, why we cannot identify the perpetrators and hold them accountable, to what extent the subservient Malaysian public officer and the bureaucratic hierarchy of power can be held responsible for the wrongdoings in the public office, and if social, cultural and political factors influence public procurement fraud in Malaysia.

I am aware that there are many challenges in the investigation of fraud and corruption, which is a complex and provocative social phenomenon, in a developing country like Malaysia. Nevertheless, even though there are difficulties in conducting

research of this nature, its aim is to gain insight into fundamental forces that ensure the durability and persistence of procurement fraud in the Malaysian public sector.

The next section presents the underpinning research questions and the research objectives.

## 1.2 Research Questions and Research Objectives

The study focuses on the nature and extent of public procurement fraud in Malaysia, its development, the institutional prevailing power structure and arrangements, the practices of social networks and governance mechanisms, the deficient areas of procurement practices, constraints and the conflicting role of the civil servant and the peculiarities of the Malaysian society in relation to fraud and corruption issues. This study aims to answer the following primary research question:

**Why does procurement fraud persist in the Malaysian public sector?** The objective is to investigate the possible factors accountable for the durability of procurement fraud in the Malaysian public sector. Answering this research question requires an understanding of the nature and extent of public procurement fraud in Malaysia. This is achieved by taking into consideration the evidence from documentary analysis and the accounts of the ‘hidden voices’ from the main stakeholders.<sup>12</sup> Answering this question provides a tremendous richness and depth to this study because it takes into account what the main stakeholders have to say about this matter and, in doing so, sense can be made of certain social practices.

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<sup>12</sup> There are five groups of interviewees that act as the main stakeholders. These are public procurement officers, public professionals, politicians, academics and media actors (see Chapter 3).

In order to answer the primary research question, the study also provides five narrower sub-research questions as follows:

Sub-research Question 1: *To what extent political and economic institutional arrangements contributed to public procurement fraud in Malaysia?* This research question examines the political and economic forces that influence procurement fraud in the public office. The objectives are to evaluate the prevailing power structure of political and economic institutions in Malaysia and whether or not they support the prolongation of fraudulent practices in public procurement. In order to address this question, one needs also to address the institutionalised power structure of political and economic institutions in rewarding government contracts. This study also examines the nexus of public-private relations for most government purchasing. Lastly, this research question analyses the public procurement policy framework that perhaps complicates procurement practices in the public office.

Sub-research Question 2: *Why do check and balance mechanisms fail to work to curb fraudulent practices in the Malaysia public sector?* This research question aims to review the governance system in Malaysian public sector in order to restrain fraudulent practices. This question narrows down the research to the elements of check and balance framework as ways to promote public accountability and transparency in procurement practices.

Sub-research Question 3: *What are the deficiencies in procurement practices in the Malaysia public sector that are linked to procurement fraud?* This domain of enquiry explores the spectrum of opportunities for fraudulent practices and corrupt behaviour

within the procurement process in the public office. The objective is to uncover any institutional deficiencies that perhaps facilitate lack of transparency of practices in government purchasing.

Sub-research Question 4: *To what extent the accountability constraints of the Malaysian public officers preserved fraudulent practices in procurement?* This question constructs an argument on the pressure and the restrained forces accompanying the exercising of public accountability by the civil servants. This research question aims to examine the possible environment that results in the creation of the conflicting role of the Malaysian civil servant in delivering public services.

Sub-research Question 5: *What are the peculiarities of the Malaysian society in relation to fraud and corruption phenomenon?* The objective here is to discuss the factors associated with the development of fraud and corruption in the context of the Malaysian culture. This research question investigates the distinctiveness of institutional and structural arrangements within the Malaysian society that perhaps provide fertile ground for fraud and corrupt activities.

The next section discusses the research approach and method adopted in the study.

### **1.3 Research Approach and Method**

In order to address the research questions, this study primarily uses a qualitative methodology (see Chapter 3). This research uses the understanding of the

construction of meaning-making and making sense of action, views and perspectives by relying on the experience, interpretation and understanding of social actors (Denzin & Lincoln, 2013). The justification for this choice of methodology comes from my own philosophical assumptions, on how I perceive the world; this reflects the ontology, epistemology, human nature and the use of ideographic ideology (see section 3.1). This study critically examines the nature and the extent of public procurement fraud within the context of promoting a better society. Nevertheless, although the study seeks an understanding of the nature and extent of public procurement fraud in Malaysia, it does not aim to make generalisations and draw firm conclusions regarding the social phenomenon. There is no 'objective' truth out there to find, as this study is merely a search for an understanding of this social practice in the light of the subjective narratives perspectives of the stakeholders. In addition, through a critical examination, this study also challenges and criticizes the modes of prevailing social institutional arrangements in Malaysia.

This study employs the political economy approach as its theoretical framework. The framework uses four pillars to help understand fraud in public procurement in Malaysia as follows: (1) the dynamic of political and economic institutions, (2) the rational behaviour of economic man, (3) public policy environment and (4) the nexus of government and business interactions (see section 3.2). Political economy theory benefits this study by offering an interdisciplinary account, which addresses the complexity of the subject under study (Acosta & Pettit, 2013; Antinori, 2012).

Understanding public procurement fraud in Malaysia was sought by obtaining the views and perspectives of 40 prominent stakeholders; 13 procurement officers, 13 professionals, 5 politicians, 4 academics and 5 media actors (see Chapter 3).

Two qualitative research methods are employed in this study: documentary analysis and semi-structured interviews conducted by using the Snowball Sampling Method (SSM) to locate the interviewees. The reflections from the documentary analysis aid the interpretation of the social phenomenon. Documentary analysis also facilitates the process of forming relevant themes and coding contents which are similar (or not) to the interview data (G. A. Bowen, 2009). At the same time, semi-structured interviews provide fertile ground for a variety of ideas to take into consideration for the understanding public procurement fraud in Malaysia.

The analysis of data is consolidated by following a thematic approach. Guest, MacQueen, and Namey (2012) outline a flexible thematic analysis that searches for themes or patterns. This study uses a process that involves 6 stages of data analysis process: (1) familiarization of data; (2) generating of initial codes; (3) themes and subthemes inquiry; (4) scrutiny of themes and subthemes; (5) clarification of themes; and (6) reporting the analysis (see section 3.4)

The following section gives a brief overview of the findings of the study.

## 1.4 Summary of the Findings of the Study

The current study found that public procurement fraud in Malaysia occurs because of several factors. The important findings of the thesis are outlined below.

- 1) It seems that public procurement fraud in Malaysia benefits from prevailing political and economic forces, which are the result of institutional arrangements of a political business model in relation to its procurement practices, the bed-fellows relationship between the state and private capitalists, the prolonged incumbent ruling coalition and its supremacy and the direction of public policy as an avenue to gain access to government rents, contracts and projects.
- 2) It appears that the complexities of the governance system related to check and balance mechanisms involving the three pillars of institutions established in Malaysia (i.e., the Legislative, the Executive and the Judiciary branch as stipulated under the Malaysian Constitution) result in the system having only little success in curbing fraud and corrupt practices within the government procurement. The findings show an institutional decline for check and balance apparatus that suggests that it is hard to achieve accountable and transparent procurement practices.
- 3) It is shown that there are various ways in which the misuse of power creates opportunities to commit fraud and corruption in the Malaysian public sector. Likewise, it seems that the deficiencies of procurement practices aid the continuity of fraud in public procurement.



- 4) It seems that the conflicting role of the Malaysian civil servants can in fact function in inefficient contexts in ways that make fraud and corruption more likely to occur. Instead of having public accountability and transparency in procurement practices, it seems that the civil servants' 'fear' of and 'obedience' towards their superior *silences* them; this, in turn, results in the non-disclosure of the wrongdoings in the public office.
  
- 5) The current study shows that the idea of transforming Malaysia has embraced the 'successful ideology' promoted by the ruling government. It appears that the promulgated idea of being successful (e.g., people who have money and enjoy a luxurious life, people who have higher social status, people who are respectable) supports the institutionalization of fraud and corruption practices for the transformation of the Malaysian society. It is argued that fraud and corruption have tainted Islamic values, they clash with norms and ethical behaviour, and can be considered socially 'unfair'; all these are the result of the need for creation of wealth and accumulation of capital, which is usually justified on the grounds of the good of the country and the national interest.

Section 1.5 briefly discusses the contributions of this study.

## **1.5 Contributions of the Study**

The study contributes in a number of ways to the body of knowledge of the field. The major areas of contribution are the following.

- (1) From a theoretical perspective, the study investigates the nature and extent of the persistent nature of public procurement fraud in Malaysia through the lens of political economy approach. The study provides insights into the prevailing power relations of political and economic institutions, the rational interest of the economic man for rewarding government contracts, the taken-for-granted aspects of governance in public policy mechanisms for fraud and corruption related to procurement, and the problematic crony network of blurred relationships of government organizations and private entrepreneurs (see detail in section 7.2)
- (2) This research contributes to research on accountability and governance in the public sector by revealing weaknesses and inefficiencies of check and balance mechanisms that have been established in order to curb fraud and corruption in Malaysia public procurement. Thus, the thesis indirectly asks for and promotes the improvement of the governance system in the country in order to combat the corrupt practices, as well as the immoral and unethical behaviour in the public procurement practices.
- (3) The study contributes to the literature by acquiring empirical evidence from a developing country, where managerial implications are also significant contributions in such a context.
- (4) What is more, a paper and a poster reporting on the findings of this thesis underwent a peer review process and were then presented at the 15<sup>th</sup> European Conference on eGovernment ECEG 2015 at University of Portsmouth, UK on

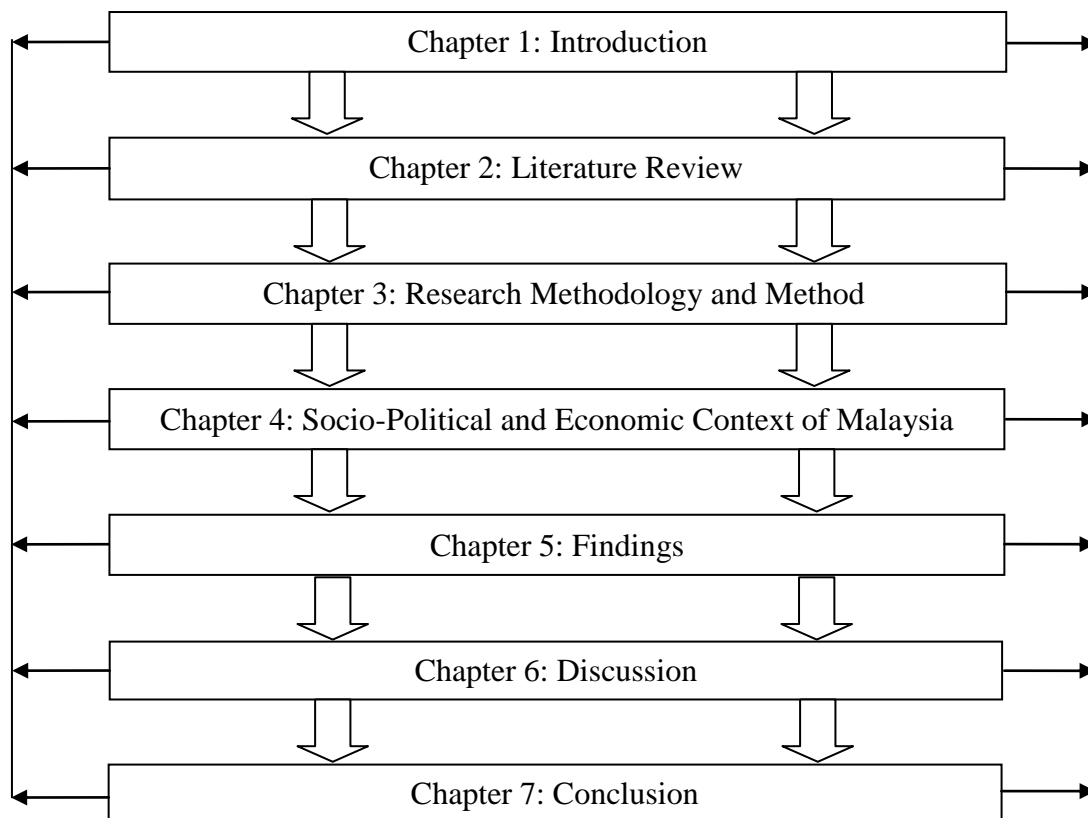
18-19 June 2015. My paper received the Best PhD paper award in that conference. Consequently, my paper was also published in the Journal of e-Government Volume 13 Issue 2, 2015 with the title of ‘e-Procurement: A Tool to Mitigate Public Procurement Fraud in Malaysia?’.

Further details of these contributions are offered in Chapter 7 (section 7.2). The structure of the thesis is presented in the next section.

## 1.6 Structure of the Thesis

There are seven chapters in this thesis. Each chapter is presented with an explanation of its direction and a summary of its contents. The thesis’ structure is as follows.

**Figure 1.1: The Structure of the Thesis**



Chapter 2 presents a review of the literature on the conceptualization of fraud in general and, specifically, in relation to public procurement fraud. The chapter reviews key themes and issues related to the persistence factor of procurement fraud in public sector settings. This chapter also identifies the main sites of procurement fraud in relation to Malaysia, as the focus of the study, as well as the gaps of the current academic literature.

Chapter 3 is concerned with the research methodology and method underpinning the current study. It draws from the researcher's fundamental philosophical assumptions adopted in the study and it critically examines the current institutional structure and arrangements to investigate social phenomenon. In this chapter, the merits of using the lens of political economy theory are discussed and the use of qualitative methodology of documentary analysis and semi-structured interviews is argued for.

Chapter 4 presents a discussion on the country's social and economic development. The chapter sheds light on historical institutionalism, political and government structures, the economic structure and development, the transformation aspects of the Malaysian society and the Malaysian public sector. The documentary analysis indicated the need to review the socio-political and economic context of Malaysia in order to show how they affect the persistence of fraud in public procurement.

Chapter 5 discusses the semi-structured interview data that comprise the views and perceptions of the 40 stakeholders who were interviewed. It concentrates on the views given regarding the nature and extent of public procurement fraud in Malaysia. The findings are thematically divided based on the research questions (see section 1.2).

Chapter 6 summarises the research findings in the context of the theoretical framework outlined in Chapter 3. It considers the potential explanations for the persistent nature of fraudulent practices in the Malaysian public sector.

Chapter 7 concludes the study by providing reflections on the findings by addressing each research question. This chapter also discusses the contributions of the study, highlights its limitations, suggests future research and provides concluding remarks.



## Chapter 2: A Literature Review

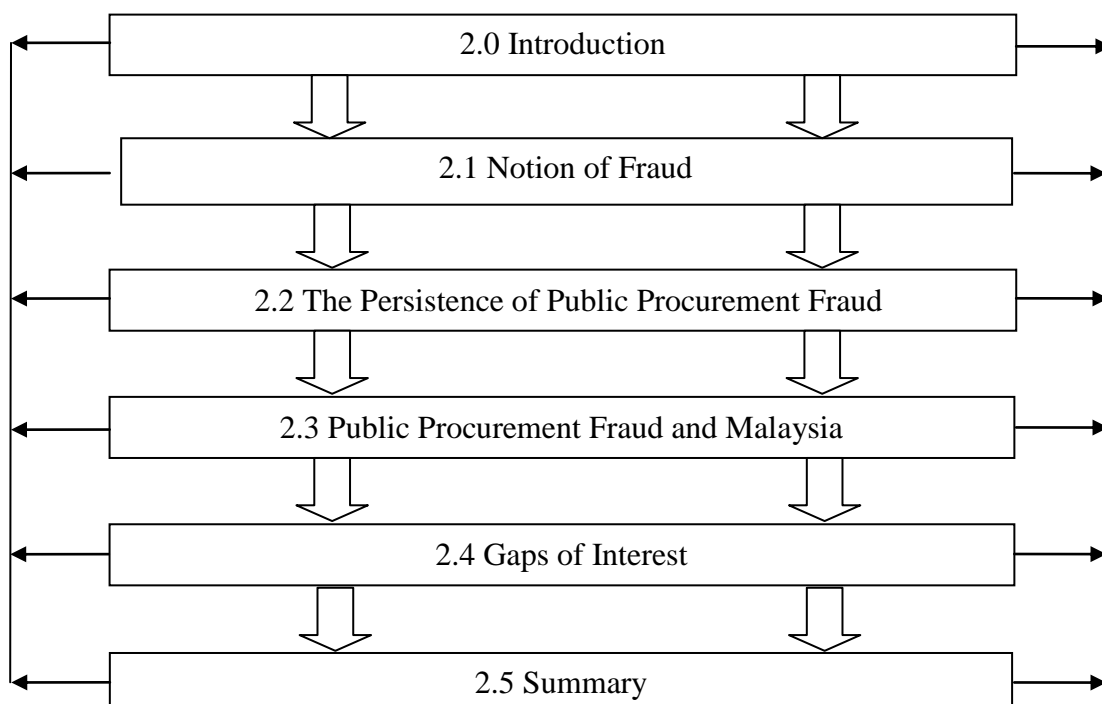
### 2.0 Introduction

The aim of this thesis is to discuss and understand the persistence of public procurement fraud in Malaysia. This chapter aims to discuss and offer the reader some critical insights into the literature on fraud in public procurement. It identifies the main areas of investigation which are absent from the current academic literature. This chapter provides a general review of fraud in public procurement in both developed and developing countries, and particularly focuses on Malaysia as the context of this study. The review identifies the key trends and themes, which will inform this study. Thus, the review helps in developing a basis for the methodological framework of this study, which is discussed in Chapter 3.

This chapter is divided into 5 sections (see Figure 2.1). Section 2.1 provides a detailed review of the notion and conceptualization of fraud by exploring various definitions of fraud (Coleman, 2006; Doig, 2011). The section then reviews various types of public procurement fraud as the main investigation of the current study (Deloitte, 2012; OECD, 2010). This is followed by a discussion on public procurement fraud from various disciplinary viewpoints. As discussed in Chapter 1, activities of procurement represent a huge fraction of total economic activity (Gee & Button, 2015; OECD, 2013). According to Khi V. Thai (2009), procurement activities are involved with the act of acquiring, buying goods, services or works from an external party. Dimitri, Piga, and Spagnolo (2006), on the other hand, particularly highlight a complex procurement process, which entails the pre-contract, contract and

post-contract stage of the procurement life cycle. This chapter continues the literature review with Section 2.2 addressing the existing research on public procurement fraud. The assessments from the existing research provide the possible reasons for the opportunities for public procurement fraud to take place. The examination shows the relationship between public and private organizations in relation to the creation of wealth and capital (Kenny & Søreide, 2008; Prechel, 2003); public sector reform (Heinrich, Lynn Jr, & Milward, 2010; Mir & Rahaman, 2007); deficient governance institutions (Iyoha & Oyerinde, 2010) and the opportunities arising in a procurement process (Caulfield, 2014; Lansing & Burkard, 1991; Tabuena, 2010). Section 2.3 examines public procurement fraud and Malaysia, which is the context of the current study. Section 2.4 highlights the gaps in our knowledge of public procurement fraud, which this study has identified and aims to fill. Finally, section 2.5 provides a succinct summary of the key themes of each section.

**Figure 2.1: The Structure of Chapter 2**





## 2.1 Notion of Fraud

Fraud is often labelled as malaise, illegal behaviour, misconduct, cheating, swindling, trickery, dishonesty, deception, double-dealing, manipulation, treachery, chicanery, skulduggery, imposture, embezzlement, shadow activities, funny business, crookedness, hanky-panky, shenanigans, camouflage, betrayal and illegal practices (Calavita & Pontell, 1991; Carmichael, 1974; HM Revenue & Customs Press Office, 2013; Levi, 1987; Pawlowski, 2001). As illustrated in Chapter 1, losses due to fraudulent practices are increasing and have a detrimental impact on society (Ball, 2009; Froud, Johal, Papazian, & Williams, 2004; Ladd, 2010). Despite the wide concern and awareness of the growing number of occurrences of fraud worldwide, it is noted that most studies focus mainly on fraud in Western countries (Doig, Johnson, & Levi, 2001; Kerler & Killough, 2009; Prechel & Morris, 2010; Punch, 1996). In other words, there is lack of research that locates and discusses fraud in developing countries (P. A. Bowen, Edwards, & Cattell, 2012; Doig, Watt, & Williams, 2007), and in Malaysia in particular (A. A. Aziz, Nor, & Ahmad, 2010; Chin-Hong, Sze-Ling, & Entebang, 2009); the latter being the focus of this study.

### 2.1.1 Defining Fraud

The study of fraud is an area of research that has been approached and theorized in various ways by different disciplines (C. Albrecht, Holland, Malagueño, Dolan, & Tzafirir, 2014; Gee & Button, 2015; Ramamoorti et al., 2014). Yet, research so far lacks in showing examples of fraud that are not necessarily illegal or unlawful (i.e., not breaking any rules and regulations) but are immoral, socially amiss and which have detrimental effects on others (Kramer, Michalowski, & Kauzlarich, 2002; Michalowski & Kramer, 2006; Quinney, 2003). The current study, in particular, takes

some aspects of fraud, such as deception or violating trust, which are not necessarily illegal or unlawful, but do clash with social norms and expectations, as part of the basis for the study. Therefore, it is necessary to explore different interpretations and expressions of fraud, its meaning and the variations in its definition as a basis for the understanding of fraud.

At a very broad level, the Oxford Dictionary (2013) defines fraud as a wrongful or criminal deception intended for financial or personal benefits. The Accounting Dictionary (2013) offers a more refined definition of fraud as dishonest and deceptive action, either by stating what is false or by concealing what is true, in order to mislead and deceive a person. Alternatively, Doig (2006) as well as Duffield and Grabosky (2001) somewhat integrate the above definitions and define fraud as a crime violating trust by intentionally misrepresenting a material fact to the victim through deception and, thus, causing considerable loss. In short, fraud is generally defined as breaking the law and/or violating a regulatory framework for financial advantages.

There are competing perspectives on the understanding of fraud (see Appendix 2.1). Further analysis of the fraud literature involves the role of the law in defining fraud (M. D. Green, 1943; Ormerod, 2007), fraud as a crime (e.g., white collar crime) in the area of criminology and sociology (Sutherland, 1945; Tappan, 1947; R. P. Tillman, Henry N., 1992), fraud in the accounting and auditing field (AICPA, 2002; Rezaee, 2005), fraud as deviance, an illegal act and misconduct from the management and governance's perspectives (Baucus & Near, 1991; Greve, Palmer, & Pozner, 2010), and fraud as violating ethical and moral values (T. M. Jones, 1991). There is an almost endless array of interpretations of fraud in the literature; this is perhaps due to

the many competing disciplines that have been preoccupied with understanding the nature of fraud.

Doig (2006) states that there are various definitions of fraud because most of the attention of the scholars is given to the process of fraud. At the same time, Jones (2011) asserts that it is impossible to provide a comprehensive description for fraud because of the inconsistencies and the scattered views expressed through various disciplinary traditions and empirical studies. It has been observed that there is difficulty in proving intent and the underlying motive behind fraud. Specifically, blurred definitions of fraud create a thin line that separates right from wrong, which arguably makes fraud perennial (Greve et al., 2010). Following this, many instances of wrongful conduct, specifically conducted by the elites, fall within the legitimate purview of law even though they are unethical and immoral (Barak, 2015). Ormerod (2007) claims that failure to demonstrate the element of fraud in court – because intent and underlying motive are not easily proven in court - can have serious consequences on the fraudster's conviction and the latter may easily get away with it. Finally, the task of giving an exact definition of fraud is a daunting one as it is rather a complex concept of a usually successfully hidden crime, which is hard to detect, prosecute and it is rarely reported; this results in the fraudster believing that they can escape from being caught and/or will not be detected and prosecuted (Brytting, Minogue, & Morino, 2011).

The range of perspectives used to understand the nature of fraudulent practices may provide insightful views on understanding fraud. The latter provide a basis for the current study which suggests that (1) fraud is not only committed through violation of

law and is not necessarily illegal (Baer, 2008; Button, 2011), but (2) it needs to be understood within the context of breaching and clashing the norms, ethical values and beliefs of a community (Boyce, 2014; Weiskopf & Willmott, 2013), (3) and/or is socially amiss. Examples include misusing one's position in giving government contracts, abuse of power for personal gain under the pretext of the development of the country, which is done at the expense of the society, and decisions that are legally acceptable (not violating rules and regulations) but which, in reality, incur losses to the community, whether financial or non-financial. As a result, the current study sees fraud as a violation of legal restrictions, laws and regulations, or as any behaviour or action which is not considered illegal, but it is morally wrong and based on unethical decisions, and thus it is socially amiss.

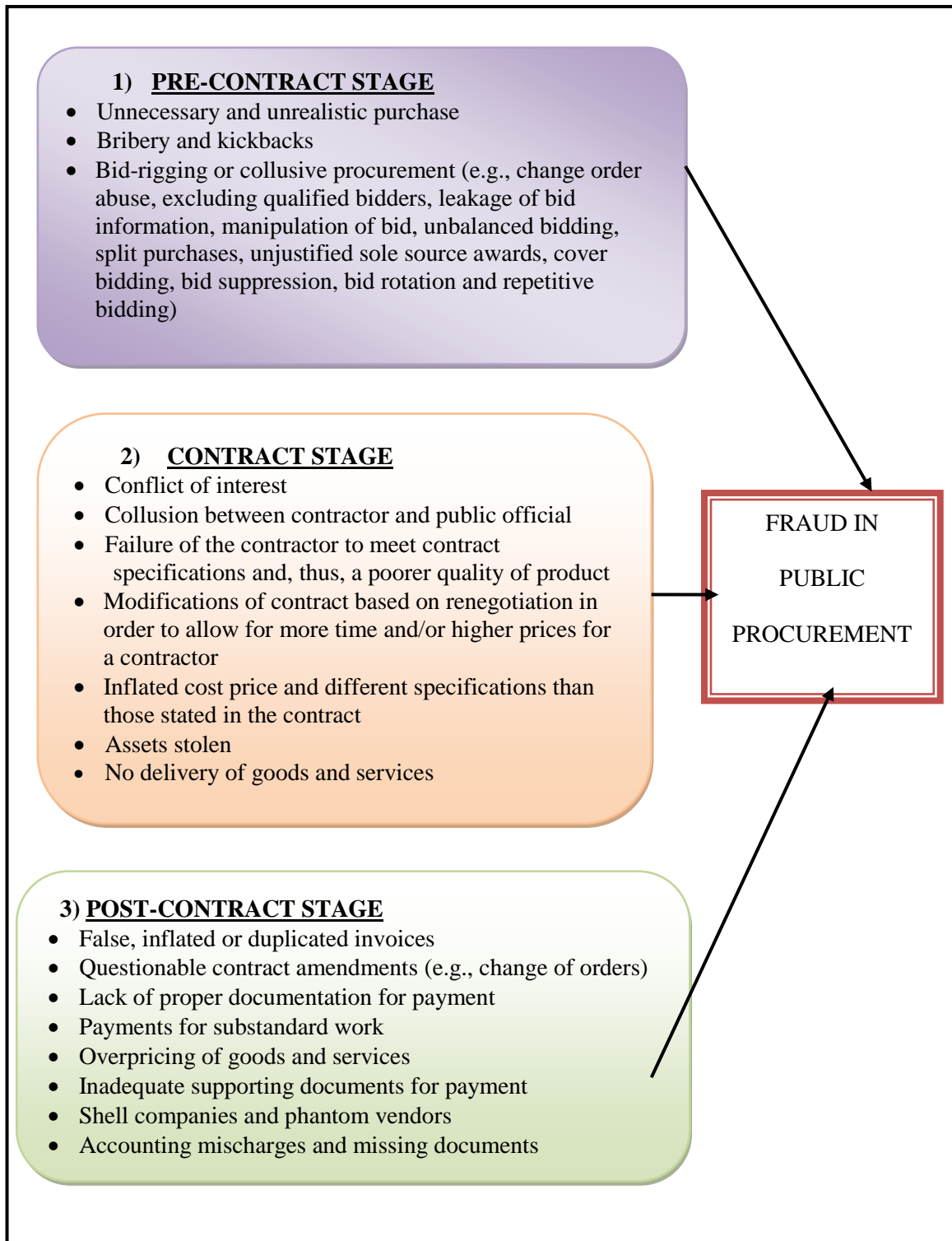
The coming sections discuss various types of public procurement fraud and the extant literature on this social phenomenon.

### **2.1.2 Various Types of Public Procurement Fraud**

The increased attention to fraud and corruption related to procurement in public settings has often been implicated in losses of public money (Accountancy, 2011; OECD, 2010). The nature of public procurement fraud as depicted in the existing literature offers several perspectives on the matter. First, fraud is embedded within the complexity of the procurement process (OECD, 2007a). Researchers have suggested that the complex system of procurement process at pre-contract, contract and post-contract phase can open up opportunities for fraud and corruption (ADB, 2014; Caulfield, 2014). Second, fraud in procurement is a hidden crime which is difficult to detect, prosecute and, thus, it is rarely reported, which makes it perennial (Deloitte, 2012). For example, fraud in public procurement is hard to detect when it is

justifiable through formulation and implementation of the procurement policy. Some researchers have suggested that fraud and corruption are prevalent because they are closely related with state capture, rent-seeking behaviour, patronage system and many other human interactions (Johnston, 2005; Tabuena, 2010; Transparency International, 2006). Lastly, procurement fraud arguably exists because of the possibility of arrangements between several actors engaging in collusive actions (Lambert-Mogiliansky & Sonin, 2006). Yet, within the accounting area of the procurement life cycle, fraud in public procurement appears to be under-researched (Caulfield, 2014; Heggstad, Isaksen, & Frøystad, 2010). This section aims to list various types of fraud in public procurement in the pre-contract, contract and post-contract stage. As explained further in figure 2.2, the list is not exhaustive.

**Figure 2.2: Fraud in the pre-contract, contract and post-contract stage**



**Source:** Adapted from ACFE (2012), ADB (2014), Deloitte (2012); OECD (2010)

Fraud schemes in the pre-contract stage suggest that abuse can occur at the very beginning of the procurement process through bribery and kickbacks for unnecessary and unrealistic purchases (Burguet & Che, 2004; Venkatesan, 2014) and through bid-rigging and collusive activities between corrupt actors (Johnston, 2005; OECD, 2010; Khi V. Thai, 2009). Next, fraud and corruption in the contract stage<sup>13</sup> exists because there is no longer a competitive bidding process but a bilateral negotiation between state officials and the winning bidder. The opportunities arise when the negotiation process provide opportunities of deliverables of poor quality and at inflated prices (de Brux, 2010; Mizoguchi & Van Quyen, 2014). Finally, fraud in the post-contract stage<sup>14</sup> occurs in relation to contract management through conspiracies of multiple players for false and duplicate invoices, lack of proper documentation, overpricing of goods and services, inadequate supporting documents for payment, shell companies and phantom vendors, accounting mischarges and missing documents, and by receiving bribes or kickback in the process (Davies, 1995; Deloitte, 2012; Doig, 2012; OECD, 2007a; Ziegenfuss, 1996).

This section does not aim to discuss in detail the many types of fraud that generally exist at the three broad phases, i.e., pre-contract, contract and post-contract stage of procurement process. Fraud phenomenon in public procurement is often linked to corrupt activities, such as conflict of interest, bribery, kickback and bid-rigging (Guile, 2012, Jonathan M. Karpoff *et al.*, 1999). Fraud in public procurement may

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<sup>13</sup> Fraud schemes in the contract stage involve conflict of interest, collusion, failure to meet specifications, poor quality, higher prices, theft and no delivery (de Brux, 2010; Deloitte, 2012; Demski & Magee, 1992; Grødeland & Aasland, 2011).

<sup>14</sup> Bose (2004) and C. Bliss and Di Tella (1997) have drawn attention to the ability of bureaucrats to abuse their power in exchange for bribes. Kanter (2008) reported that a contractor defrauded £297,600 for over-pricing claims and another vendor cheated the UK government out of £367,500 with a false time sheet. At the same time, shell companies in India are used as a separate entity to disguise and conceal fraudulent transaction (D. Singh, 2010).

involve elements of asset misappropriation either by theft of cash or inventory (Weber, Kurke, & Pentico, 2003; Ziegenfuss, 1996), misuse of assets for private gain (Treisman, 2000) or false claims (Action Fraud, n.d.).

### **2.1.3 Research in Public Procurement Fraud**

Public procurement fraud has been investigated and discussed in many fields, such as accounting, auditing, law, criminology, sociology, business ethics, political economy, organization studies and governance. Here, the aim is not to summarize all these discussions, but to explore previous research and locate various gaps in the existing literature.

The accounting and auditing literature research on fraud suggests that fraudulent practices occur somewhere in the procurement process (Caulfield, 2014; Matthew et al., 2013). Research on government procurement fraud argues that the complex system of procurement process at pre-contract, contract and post-contract stage provide the opportunity for committing various types of procurement fraud (Deloitte, 2012; Heggstad et al., 2010; OECD, 2007b).<sup>15</sup> For instance, the OECD's report gives significant examples of domestic cartels associated with bid rigging or collusive practices that are very difficult to detect as most procurement documentation and information is usually secret and, therefore, offers scarce opportunities for the study of fraud from an accounting perspective (Demski & Magee, 1992; Neu et al., 2015; Khi V. Thai, 2009). While the existing literature tends to focus on procurement fraud

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<sup>15</sup> There are various procurement fraud schemes in government purchasing. These are bribery, gratuity, kickbacks, split purchases, leaking of acquisition data, change order abuse, bid manipulation, bid-rigging, unjustified sole source, unnecessary purchases, purchases for personal/resale, conflict of interest, market sharing, bid-rotation, bid-suppression, defective pricing, fraudulent cost, false claims, inflated price, multiple claims, defective quality, manipulation of delivery, and false statement/certification among others (Caulfield, 2014; Matthew et al., 2013).



schemes, it also links the fight to prevent fraud in public procurement through monitoring and compliance mechanisms.

For example, the current literature emphasizes the role of internal control and monitoring practices in the procurement process (Bartle & Korosec, 2003; Neu et al., 2014). The fight against corruption has been illustrated in the recent studies of Neu et al. (2015), Sikka and Lehman (2015) and Sargiacomo et al. (2015).<sup>16</sup> These scholars argue that limitations in the effectiveness and completeness of internal control systems mean that they are unable to curb fraud and corruption in government procurement, especially when there are collusive networks of powerful actors within the institutional power structure. Therefore, fighting fraud and corruption in the context of public procurement requires considerable institutional attention to strengthen the accountable and transparent practices in awarding public contracts (Grødeland & Aasland, 2011; Iyoha & Oyerinde, 2010). It is noted that the majority of the accounting and auditing studies that focussed on understanding the fight to prevent fraud in public procurement are mostly concentrated on Western countries (Coram, Ferguson, & Moroney, 2008; Lander et al., 2008). There are, however, few studies in the context of developing countries, like Malaysia, for example.

Besides studies that focussed on the fight to prevent fraud and corruption in public procurement through effectiveness of internal control system as described within accounting and auditing research, law and criminology studies often discuss the

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<sup>16</sup> Sargiacomo et al. (2015), for example, show how corruption and fraud cases in Italian government procurement involve a vast web of corrupt politicians, businessmen and bureaucrats. The reformulation of anti-corruption policies and several institutions in Italy can somehow easily be manipulated by the powerful groups in order to work with and around the system.

limited chances to bring culprits to the court (DeSouza, 1985; Fickey, 2009; Ormerod, 2007). Although there are numerous civil and criminal laws which enable the state to punish defrauders, Otusanya (2012) explains that prosecution for many fraud cases is difficult, especially when powerful elites are involved. While fraudulent acts have constrained transparent and accountable bidding process, in many cases the court has primarily stringent requirements for evidence and thus they are unable to obtain conviction for fraudulent behaviour, especially for abuse of power (Button et al., 2012; Petrucelli, 2012; Singh, 1999). The existing literature rarely focuses on the illegal, unethical, deviant activities or crimes of respectable and powerful people (Barak, 2015; Goldstraw-White, 2012).<sup>17</sup> There is still shortage of research on the crimes or practices of the powerful people, which are more harmful and bring systemic forms of damage (see Doig, 2011; Whyte, 2009).

Irrespective of many appeals for investigating and drawing attention to public procurement fraud in accounting and auditing literature and law and criminology studies, the existing sociology literature in general describes how ethical conducts are used as self-guidelines for making decisions whether to indulge in fraudulent and corrupt acts of behaviour (Kaptein, 2008; Kulik, O'Fallon, & Salimath, 2008; Meisel, 2008). Despite the publicity and increased attention given to the decline of ethical conducts in many fraud scandals and accounting failures (Froud et al., 2004; Linsley & Shrives, 2009), it is noted that sociology literature emphasizes the values, attitudes and behaviour of various social actors and groups, the social organization, culture and

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<sup>17</sup> Comparatively little scholarly attention has been given to fraud and corrupt practices conducted by politicians, governments, corporations, and capitalist businessmen (see Button et al., 2012). The current study considers fraud and corrupt practices committed at the interplay of organizational and institutional network of the powerful groups. The crimes committed by the powerful groups are sometimes not necessarily illegal or unlawful, but they are immoral and socially amiss within the context of Malaysia's public procurement.

social change relations. For example, there are studies in the literature which address misconducts through misuse of position in government agencies (McC Campbell & Rood, 1997), the prevalent values of moral schemes (Ntayi, Ngoboka, & Kakooza, 2013), attitudes of favourable and preferential procurement treatment (Berrios, 2006) and opportunistic behaviour within the procurement life cycle (Hawkins, Gravier, & Powley, 2011) in most procurement practices. The complexity of misusing one's position as illustrated by McC Campbell and Rood (1997) sheds light on the rampant unethical acts of behaviour in government purchasing. The distinctive misconduct in the form of favourable and preferential treatment in many government contracts through social change relations have often provided opportunities for the fraudster to engage in fraud and corruption practices (Berrios, 2006).

Next, it is important to note that the dynamic nature of fraud and corruption in the literature of political economy invariably involves mathematical and econometric models that mostly follow conventions of economic analysis (Clarke & Xu, 2004; Kingston, 2007; Mougeot & Naegelen, 2005). The statistical analysis, however, seems incapable of addressing the complex social ramifications of fraud in public procurement (see C. R. Baker & Bettner, 1997).

The existing political economy literature, in particular, indicates institutional arrangements for and influences in the making of corrupt agreements in exchange for bribes in the pursuit of personal enrichment (Auriol & Blanc, 2009; Lambsdorff, 2002). Corrupt deals often lead to bribery, collusion, cronyism or favouritism. For instance, Lambsdorff (2002) illustrates the mutually constituted relations between corrupt actors to make corrupt deals through 'camouflaged' legal procurement

agreements and to conceal<sup>18</sup> contractual corrupt relationships and the transactions between corrupt actors. Moreover, the existing political economy literature perceptively discussed acts of preferential treatment as discrimination in procurement practices (Evenett & Hoekman, 2005; Mougeot & Naegelen, 2005). The existing literature has increasingly showed that the formation of a protectionist policy through preferential treatment in government purchasing is likely to be characterised by crony capitalism, lobbying practices, state capture, and rent-seeking activities that involve distribution of rent by the state (Clarke & Xu, 2004; D. C. Kang, 2002; Seim & Søreide, 2009). In subscribing to the same notion, studies by Bjorvatn and Søreide (2005), Turnovec (1999) and Hessami (2014) suggest that the creation of rent by the state for profit making and wealth accumulation appropriated by capitalist actors has also created licit and illicit ways for people to indulge into fraud and corruption.

Joseph Stiglitz (2002) points out that:

*“Perhaps the most serious concern with privatisation,<sup>19</sup> as it has so often been practiced, is corruption...Not surprisingly the rigged privatisation process was designed to maximize the amount government ministers could appropriate for themselves not the amount that would accrue to the government’s treasury let alone the overall efficiency of the economy”* (p.58).

Previous research into political economy also points out to the dynamics of influence from powerful corrupt actors and their close relationships that enable them to sustain their status quo in public procurement regimes (Boehm & Olaya, 2006; Hellman et al., 2000; Pesic, 2007). Hellman et al. (2000) describe the practices of state capture<sup>20</sup>

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<sup>18</sup> The concealment of corrupt deals promotes a high degree of secrecy, limited transparency, institutional power structure of hierarchical interactions and the reformation of social structure (Kingston, 2007, 2008).

<sup>19</sup> The neoliberal logic of privatisation, deregulation and trade investment embraced by the public sector institutions has only led to private appropriation of national wealth (Turnovec, 1999).

<sup>20</sup> The phenomenon of systemic state capture has driven politicians of political parties to abuse their power over rewarding government contracts in order to return the political favours of the powerful business elites. Such capture may include contributing money to election campaigns, sponsoring media

which expose the ambiguity of public procurement process because of political discretion and the interdependence among political, bureaucrats, and business actors which constrain accountable and transparent procurement practices. Further analysis on the insights gained from the existing political economy literature addresses the structure of power among political and economic actors (Dastidar & Mukherjee, 2014). It importantly lays a foundation for understanding the influence of the embeddedness of power relations for investigating fraud and corruption in public procurement and public policy arrangements; these have been discussed in many studies in the literature in the West (Bernhagen, 2007; Glaeser, 2001; Matechak, 2002). Yet, insights of entrenched institutional arrangements<sup>21</sup> into how societies and states create and maintain distinct ways of structuring a public procurement regime need to be explored from the perspective of Malaysia. Further, there are very few studies which analyse whether public procurement fraud is shaped and created by the systemic institutional elements that are link to the patterns of close relationships between corrupt actors (Gayton, 2004).

A further analysis of public procurement fraud in the existing literature shows that there are emerging issues in the governance literature, particularly when focusing on how public sector institutions manage, control and are held accountable through public policy implementation and public service delivery (S. P. Osborne, 2010;

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campaigns, donating money legally or illegally. The state capture is manifested by lobbying practices as an effort to influence policy processes so as to favour their private interests (see Fuller, 2006; Hellman et al., 2000; Yakovlev & Zhuravskaya, 2006).

<sup>21</sup> The complex ramifications of fraud in the Malaysian public procurement are socially constructed and embedded in a particular socio-economic and political context that takes into account Malaysia's historical dimension, power relations, businesses, and the role of the state. Alvensson and Willmott (2012) argue that these complex ramifications can be critically examined in order to explore various questions and conditions in relation to the reproduction and transformation of society by criticizing the status quo concerning unequal power relations in which an individual or powerful group advance their interests (Held, 1980) (see Chapter 3).

Tremblay, 2012). The existing literature generally discusses the exercise of accountability mechanisms of public sector organisations (Matthews, 2005; McDonald, 2008). It has been noted that there is a lack of research in linking the governance mechanisms with the emergence of public procurement fraud in various public organisations (Lindskog, Brege, & Brehmer, 2010). Furthermore, there is little exploration on the moral choices and ethical concerns of the government officials regarding their support of the governing principles of public procurement (Raymond, 2008).

From the governance perspective approach, some scholars have paid attention to the fact that reforms<sup>22</sup> have inevitably affected how a government allocates its resources for public spending (Aberbach & Rockman, 2001; Hood & Peters, 2004). Yet, these reforms may be undermined by fraudulent and corruption practices in the context of public procurement (David S. Jones, 2007b; Morales et al., 2014; Tan, 2012). For instance, David Seth Jones (2013) shows that the reformation of the procurement system in the Philippines is constrained due to the:

*'elite capture of the government and bureaucracy by a powerful network of business leaders from well-established landed families, who have close links with the political establishment; and ...a long-established culture of informal influence in the Philippine state bureaucracy (what may be termed the informal bureaucracy), which has been used to maximum effect by the elite network of business leaders'.* (p.375)

Finally, governance research is more likely to acknowledge the collaborative relationship of public and private spheres (Shaoul et al., 2012; M. Smith, Mathur, & Skelcher, 2006). It is in the context of public-private interactions that fraud and

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<sup>22</sup> The proliferation of public sector reforms has been discussed in the governance's literature. The idea is to improve the efficiency and effectiveness of public offices of New Public Management (NPM) through privatisation, de-regulation or trade investment.

corruption in public procurement needs to be addressed as it explores how practices, norms, values and processes might lead to fraud and corrupt practices (Gellér, 2009). Gellér (2009) argues that the influence of an environmental framework of cultures, behaviour, motivations and preferences affects the decision-making process which may evade oversight mechanisms. Many evidence is needed to support why oversight mechanisms (e.g., check and balance mechanisms) do not work despite the various rules and regulations in place within a procurement process. Any investigation on public procurement fraud needs to focus on public-private activities and how they interlink.

This section has examined the notion of fraud by discussing studies in the existing literature on defining fraud, the various types of public procurement fraud and the extant literature about this social phenomenon. Rather than positioning fraud in public procurement in relation to previous research, the next section discusses why public procurement fraud continues to exist; this is one of the main questions addressed in the current study.

## **2.2 The Persistence of Public Procurement Fraud**

Inevitably, the acquisition of goods and/or services at the best possible value is profoundly influenced by both public and private organisations. The interactions between the state and private capitalists in the process of obtaining and procuring goods and services sometimes involve an opaque procurement process (Kühn & Sherman, 2014). Tabuena (2010) describes how a complicated procurement process at the nexus of government and businesses has created opportunities for fraud and

corruption activities and has given an unfair advantage or rewards to the fraudsters. Caulfield (2014) suggests that fraudsters are able to manipulate opportunities arising in procurement procedures and interactions between state officials and entrepreneurs. On the one hand, Priemus (2004) and Dastidar and Mukherjee (2014) observe bribery, kick-backs, price-fixing, conflict of interest, bid-rigging, manipulation of price, collusion and many other activities in government procurement. On the other hand, other studies have indicated that fraud and corruption in public procurement is closely related with rent-seeking behaviour, the prevalence of state capture by private interest, and abusive of power within institutional contexts (Hessami, 2014; Kenny & Søreide, 2008). Therefore, public procurement fraud often succeeds at the nexus of the public and private sector (Asquer, 2011; Priemus, 2004).

This section aims to illustrate the persistence of fraud in public procurement in both developed and developing countries by discussing the intertwined relationship between public and private institutional arrangements and the collusive actions of multiple social actors with common interests. Section 2.2.1 concentrates on the dynamic power of government and business relationship that plays a role in public procurement fraud. The section shows the outcome of the role played by the state and business in procurement activities by using their economic and political power. Section 2.2.2 discusses public sector accountability and governance transformation. The section shows how powerful groups are able to secure government contracts, licences and subsidies for example through public policy mechanisms. Section 2.2.3 examines the dynamics of institutional arrangements, which are unable to curb fraudulent practices in procurement. This section suggests that the volatile institutional capacity has provided an opportunity for fraud and corruption. Lastly,

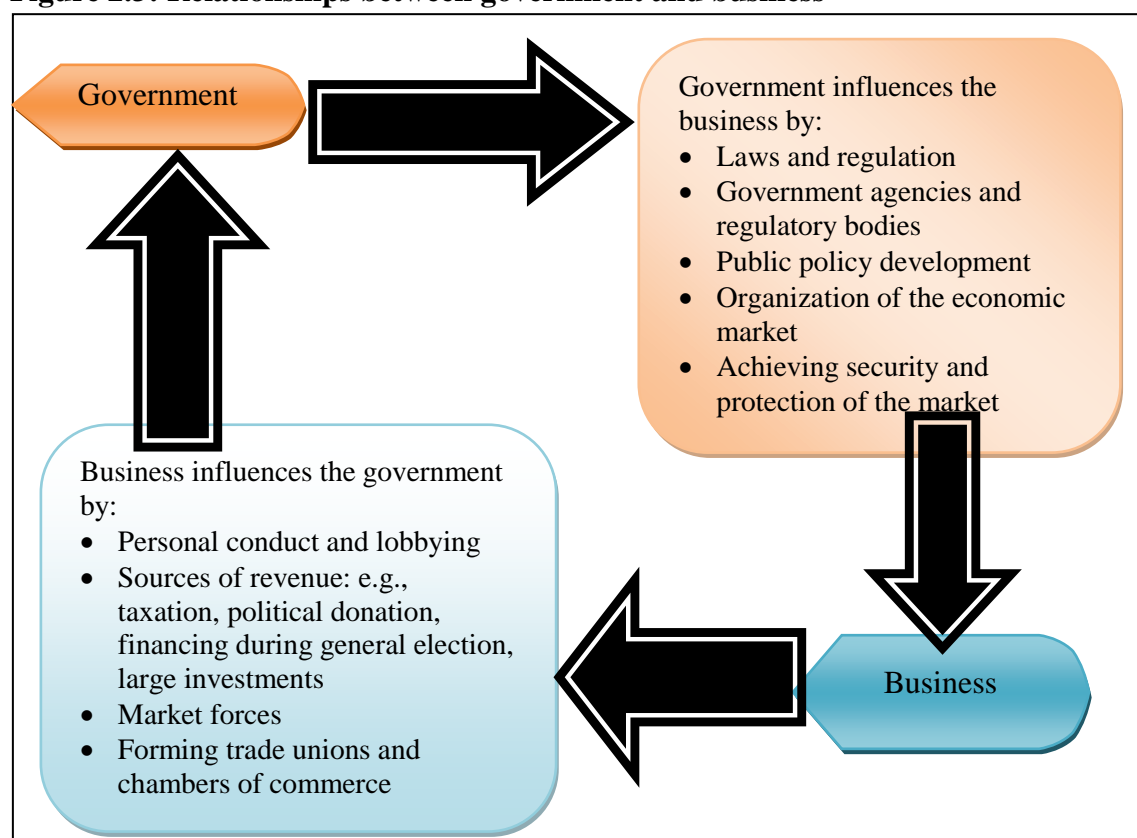


section 2.2.4 explores the opportunities existing in procurement process, which facilitate fraud and enable corrupt acts of behaviour. Such opportunities arguably create a dysfunctional procurement process environment and a drive for personal enrichment and fulfilment of private interests.

### 2.2.1 The Nexus of Government and Business Interactions

In many government purchases, it is argued that there is an undeniable relationship between public and private organisations (Tirole, 1986). The negotiation for government spending between two parties (e.g., government and businesses) may provide a motivation for businessmen and/or state officials to maximize profits and create opportunities to engage in fraudulent practices. Figure 2.3 highlights the interconnections between private and public relationships.

**Figure 2.3: Relationships between government and business**



**Source:** Adopted from <http://www.edunote.info/2012/12/government-and-business-organizations.html>

The above diagram shows the relationship between government and business. It suggests that the two are interconnected, complementing and dependent on each other. Various scholars have described how both government and business institutions can affect and influence institutional arrangements (Chomsky, 1999; Schneider, 1998). Schneider (1998) affirms that the elusive synergy between business and government has accelerated development and growth. The existing literature attempts to explain that close connections between government and business institutions have established considerable political and economic power (see Korten, 2001). The examination of institutional power structure offers rich insights into this matter, but it is frequently located in economically advanced countries. Comparatively, some studies in the literature claim that the webs of public-private ties in many developing countries need to be explored within their peculiarity of historical development, socio-political, economic and cultural contexts (Gould & Amaro-Reyes, 1983; Woo-Cumings, 1999). From the diagram, it is apparent that the role of the state<sup>23</sup> is closely linked with the influence of business by formulating rules and regulations, and by making policymaking decisions. The state also has a role to play in ensuring security; they must develop initiatives to raise revenues, and provide a range of social services. As a result, their role helps to maintain the state's legitimacy by asserting the latter's economic influence and control.

On the other hand, businesses seek to gain influence over the government by providing tax revenues, political donations, financing during general elections, large investments in return for the provision of public services. The important arguments

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<sup>23</sup> The institutions of the state are all 'public' institutions and include 'the government' and legislature, the courts, the civil service, the army, the police, the church, and state-owned public agencies (Dean, 1989; Dunleavy & O'Leary, 1987; Jessop, 1990; Pablo, Javier, Carlos, & Crawford, 2009).

that have been raised from the current literature about the relationships between government and business are examined in relation to the close collaboration or structural intersections among political and economic actors (Andrews et al., 2015). It is observed that their close relationship may provide both state officials and businesspeople with opportunities for personal gains from entering into procurement transactions in the context of the existing institutional relationships. In other words, both social actors (in government and private sector) may exploit the institutional relationships to their personal benefit (McCampbell & Rood, 1997). Consequently, certain social actors who seek to maximize profits and personal gains might result in carrying out fraudulent activities.

A number of studies on the nexus of business-government relationship attempt to explore a range of conceptions related to fraud and corruption in public procurement. Some scholars have identified that bribery and kickback activities<sup>24</sup> are commonly conducted in order to seal a government contract (Matechak, 2002; OECD, 2008b; Vaughan, 1982). For example, Vaughan (1982) has shown that activities of bribery are necessary to ensure licensing, inspection and contract relations at the resource exchange between government agencies and business firms. Recently scholars have argued that the recipient of bribery and kickback money can be: public officials, ministers, politicians, and political parties with common interests (Neu et al., 2014; OECD, 2010). Studies on rational decisions of the economic man to indulge in fraud and corruption in government purchasing between state and non-state actors illustrate

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<sup>24</sup> The bribe and kickback values need not be in the form of money/cash but in the form of any benefits received with the intention to influence the rewarding decisions.

the interplay of collusive practices<sup>25</sup> for exchanging favours (M. Chwastiak, 1998; Grødeland & Aasland, 2011), bid rigging (Davies, 1995), and conflict of interest cases<sup>26</sup> (Deloitte, 2012; Lambsdorff, 2002; Rose-Ackerman, 1999). Therefore, it is important to realize that the nexus of government and business seems to have benefitted from the influence exerted by and/or from the interference from power relationships in rewarding government contracts. As Hawkins et al. (2011) put it,

*'Government procurement has increased the interaction between public and private sectors, making both private and public parties more vulnerable to corruption'. (p.567)*

In relation to the network of power relationships in government purchasing, the practice of government-business transactions has to some extent created a patron-client network in allocating public resources. Recent scholars have disclosed that rent-seeking activities aim to make economic gains from the government (Asquer, 2011; Hessami, 2014). Correspondingly, Asquer (2011) illustrates that rent-seeking behaviour of multiple actors in a network has undermined liberalization and regulatory reforms in Italy. Subsequently, rents are secured and distributed by politicians with power in government offices. In framing rent-seeking activities in this way, some studies believe that these activities correspond with the concept of cronyism<sup>27</sup> and favouritism (Matechak, 2002; U.S Government, 1988), cartels

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<sup>25</sup> Collusion is manifested when a public official is willing to cooperate with other corrupt actors by undermining his role as a government official and failing to disclose having such interests. Collusion may result in inflated prices or higher prices bid-rigging, fixed pricing and many others as responding to incentives to influence or interfere with the rewarding of a contract and for a large infusion of money (Lambert-Mogiliansky & Sonin, 2006; Porter & Zona, 1993).

<sup>26</sup> A conflict of interest exists when state officials have financial concerns in a contract. For example, a procurement officer knows someone who is very close to them – a spouse or other family members who work for the company, a politician who has a majority share for that company or state officials frequently accepting gifts from the company.

<sup>27</sup> Cronyism exists when two parties have a close relationship because of mutual acquaintances and social interactions in order to benefit each other. Crony capitalism is conducted among businesses,

(OECD, 2008a; Priemus, 2004), nepotism (Islam, 2004), patronage system<sup>28</sup> (Fraser et al., 2006; Jeff Tan, 2008), monopoly<sup>29</sup> (Rose–Ackerman, 2008; O. E. Williamson, 1976) and oligopoly<sup>30</sup> (Luo, 2005). In some cases, the exercise of patron-client network has demonstrated clientelism<sup>31</sup> and patrimonialism<sup>32</sup> alongside with the practice of political business.

The next section considers the accountability and governance transformations for more transparency and value for money in public procurement.

### 2.2.2 Public Sector Accountability and Governance Transformation

Fraud in public procurement evades transparency and accountability (OECD, 2013; Søreide, 2002). The modernisation programmes enacted through the reform of public sector governance seem to have increased efficiency, transparency and accountability especially in the public sector (Brewer, Choi, & Walker, 2008; Mansor & Ariffin,

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politicians and public officials as an ethical breach of the principles of the market economy (Chomsky, 1999). For example, a politician who has been sponsored by business leaders for a political campaign will award government contracts to their sponsors or supporters. This is important to maintain their political survival (Garza, 2012).

<sup>28</sup> A patronage system is the support, encouragement, privilege, or financial aid given by a relevant organization. A patronage system, however, is likely to exhibit opportunism behaviour by social actors so as to enrich themselves and their family (Fraser, Zhang, & Derashid, 2006; Gomez & Jomo, 1997).

<sup>29</sup> Monopoly exists when there is a domination of the market by a single entity. That is to say, a single enterprise is the only supplier of a particular commodity. The main elements in monopoly are: lack of economic competition to produce goods or services and a lack of viable substitute of goods.

<sup>30</sup> An oligopoly is a market form in which a market or industry is dominated by a small number of sellers (the oligopolists; e.g., the ruling elites). Oligopolies result from various forms of collusion which reduce competition and lead to higher prices for consumers.

<sup>31</sup> The term clientelism refers to a pattern of social exchange and power between patrons (particularly the ruling elite), normally top ranking bureaucrats, such as the political master, public officials and clients (business elites). The clients normally offer financial and electoral support, political donations or personal gifts. In return, the ruling elite, as a politician, abuses their power and role to influence government decisions in favour of the clients (Stokes, Dunning, Nazareno, & Brusco, 2013).

<sup>32</sup> Patrimonialism is a form of governance and personal ties (for example, leaders and their subordinates). It is argued that with patrimonialism the power relation of the leader is so strong that official duties are defined not by rules and regulations but by their personal loyalties. For example, Kelman and Hamilton (1989) highlight the crimes of obedience by the subordinates who only follow orders/instructions of their superior as obedience towards authority.

2015; Siddiquee, 2006b). The current study, however, argues that the modernisation programmes through the reforms of public sector governance can also become the site where fraudulent and corrupt activities are carried out. Consequently, it is noted that there is lack of studies in linking fraud and corruption activities and the transformation of the public sector to increase its accountability, curb fraud and corruption and improve government effectiveness (Apaza, 2009; Brewer et al., 2008; David Seth Jones, 2013).

There are increased concerns in the existing literature in relation to the need to reform public sector governance, especially in public policy mechanisms, as a way to improve the public sector (Heinrich et al., 2010; D. Osborne & Gaebler, 1992). Scholars have discussed the public sector transformation as a way of improving the governance system by modernising the public office (Heinrich et al., 2010; Mir & Rahaman, 2007). Others suggest the private sector's 'ethos' of competition, of being profit-oriented towards a market-based approach and driven to create wealth and capital for maximizing revenues, are values which are regarded as 'dysfunctional' and 'defective' in the private sector, and which are then transferred to public organisations (Broadbent & Guthrie, 2008; Humphrey & Miller, 2012). Further analysis on public sector reforms with private sector involvement illustrates regulatory failures of institutional structures (Kessides, 2004; D. Parker & Kirkpatrick, 2005) and lack of accountability and transparency (Lapsley, 2009; Samaratunge, Alam, & Teicher, 2008). Interestingly, fraud and corruption in public procurement may arise at the same time as the transformation of the public sector by providing opportunities for fraudulent and corrupt behaviours, thus 'camouflaging' the intention to improve accountability, transparency and governance (David Seth

Jones, 2013; Priemus, 2004; Tan, 2012). It is important to argue that the assumptions of the superiority of the business sector to the public sector have recently become the dominant principles in the adoption of policies and reforms in the socio-political and economic context of public governance (Ezzamel & Willmott, 1993; Potter, 1994). This has influenced many of government procurement policies as a modernisation reforms for allocation and distribution of resources (Adham & Siwar, 2012).

Given the variety of considerable transformations, the New Public Management (NPM) is favoured and allows for more managerial private intervention in procurement processes. In light of this, there has been a considerable debate about the ambiguity of the public sector's transformation via the neo-liberal logic of privatisation,<sup>33</sup> de-regulation and trade investment (Andrew, 2007; E. Brown & Cloke, 2005; Chomsky, 1999). Harvey (2005) and Arestis and Sawyer (2005) argue that rapid changes conducted by neoliberal capitalism<sup>34</sup> have transformed both the economy and the state into 'entrepreneurial subjects' (e.g., transfer of ownership from the public to private sector). In another study, Bjorvatn and Søreide (2005) reveal that privatisation has allowed for more corrupt acts when market reforms through neoliberal ideology contribute to economic inefficiencies with corruption and market concentration. It can be argued that procurement activities in a neoliberal

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<sup>33</sup> The changes in market reform (e.g., privatisation) do not necessarily lead to improved competition and efficiency. For example, Turnovec (1999) demonstrates that rapid privatisation in Czech Republic was an illusion as privatisation has only led private appropriation of national wealth. He concluded that such reasonable action allowed the formation of corrupt collusions among other actors within a state capitalism.

<sup>34</sup> Neoliberal policies and programs have been orchestrated by a whole range of agencies, such as the International Monetary Fund, United Nations, OECD and World Bank, with international audiences rather than domestic ones (Cammack, 2003; Scholte, 1997). It has been argued that the same policies and programs have advocated the use of foreign investment as an economic development strategy, but it is a form of exploitation and extraction that curtails or distorts economic growth, particularly in developing countries (see O.M. Bakre, 2010; Kehl, 2009; Otusanya, 2011).

economy allow profit seeking<sup>35</sup> to dominate the economy as well as the social and political life. As can be seen from current literature, a number of studies have suggested that the market reforms advocated by many governments for its public service delivery may also foster fraud and corruption activities (O.M. Bakre, 2010; Schwartz, 2008). It is argued that empirical research on examining market reforms in Malaysia is diverse and remains unsystematic (see Demery & Demery, 1991; C. Lee, 2012). There is, however, little empirical work on market reforms in Malaysia considering their negative impact (e.g., fraud and corruption) on the Malaysian society (Haque, 2002; Siddiquee, 2006b).

Finally, while some studies may have examined public procurement policy, it appears that lobbying practices<sup>36</sup> influence the regulation of public policy in serving private business interests rather than the citizens (Schepers, 2010). Some scholars emphasise the power of powerful vested interests to influence public policy making (Dharmapala & Hines Jr., 2007; Kehl, 2009). Auriol (2006) specifically argues that regulatory capture by the ruling elites in the public procurement framework has increased bribe money as ‘facilitation payments’ in order to win a contract. Auriol (2006) further emphasizes that those facilitation payments and bribery have led political parties and their leaders to finance campaigns and personal accounts, and that in return they are expected to engage in corrupt activities in the process of

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<sup>35</sup> Despite the market reforms of privatization, deregulation and trade investment, the competing form of capitalist globalization is closely associated with profit making and wealth creation (Boyce, 2008).

<sup>36</sup> Business leaders are normally associated with the lobbying process, which aims to influence public authorities to take into account particular vested interests through, for example, large investment in a political party. This is done by a great variety of actors i.e., by other governments, by other decentralized public bodies and authorities and by private interests, such as those of companies, trade unions and other civil society organizations (Schepers, 2010).



awarding of government contracts and the like.<sup>37</sup> It is imperative to notice the work of several scholars that have reviewed lobbying and money politics practices, which affect the rewarding of government contracts (Campos & Giovannoni, 2007; Korten, 2001; Teh, 2002). It is thus becoming increasingly difficult to ignore the importance of development of public procurement policy, when public procurement fraud and corruption are related to policy outcomes being implemented in favour of special interest groups (Auriol, 2006).

The next section examines the dynamic of institutional arrangements that facilitate fraud in public procurement.

### **2.2.3 The Dynamic of Institutional Arrangements**

Political and economic arrangements are among the important ways of curbing and prohibiting fraud and corruption in public procurement. Dimitri et al. (2006) perceptively state that any institutional environment deficiencies that are entrenched in a procurement regime, such as lack of monitoring mechanisms may result in lack of transparency, accountability and governance in procurement process. As a result, allocations of public resources from government contracts may favour the selected few at the expense of the wider society (Hellman et al., 2000; Khoman, 2015). The embeddedness of public procurement fraud is closely associated with the institutional setting of formal and informal practices, which nurture a particular culture, social norms and moral values at the interaction of human relations (see Sargiacomo et al., 2015). However, there is still a lack of research in investigating fraud in public

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<sup>37</sup> It is said that public policy agenda is used to serve the vested interests of powerful groups within the institutional and organizational structure of government (March & Olsen, 1984; Rose & Miller, 1992).

procurement in relation to the norms, rules, procedures and routines, which direct and constrain human interactions (Guile, 2012; Lansing & Burkard, 1991).

Some studies have reviewed the historical institutions' authoritarian governance of coercion and consent to their colonies (Mann, 1986; Migdal, 1988). Chiriyankandath (2008) proposes that the pattern of colonial rule of patronage and patron-client relations and the entrenched legacy of autocratic government distribute power and resources unevenly among groups. In this way, opportunities and motivations for fraud and corruption in public procurement are created. As Adrian Leftwich (2008) puts it, "*Colonial rule commonly built on, extended, and institutionalized patron-client relations, from top to bottom*" (p.222). Subscribing to a similar view, Malaysia's legacy of colonialism (e.g., its legacy of British, Portuguese, Dutch and Japanese colonialism) especially its legacy of British colonial experience has shaped, created and influenced Malaysia's institutionalised power structure, values and social order (M. Abdullah, 1965; Milner, 2002). As a result, fraud in public procurement is the result of the historical institutionalism of the institutional power, which continues to exist in public bureaucracy in modern societies.

A strong institutional power<sup>38</sup> is embraced by the local ruling elites as influential groups (W. Case, 1994; Stokke, 1998). The powerful groups seek to remain powerful and maintain the status quo by nurturing the procurement system that favours

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<sup>38</sup> Through the myriads of networks, powerful groups with strong power relations are able to engage in fraud and corruption in public procurement at the arrangements of institutional contexts and relations. For example, Migdal, Kohli, and Shue (1994) have studied state power and social forces in the third world. They argue that the prevailing domination and transformation in the third world requires a more balanced study on state-society analysis. Whyte (2009) focuses on the crimes of the powerful – by state institutions, business elites and corporations. By capturing all check and balance institutions (e.g., judicial institutions), the concentration of power and implementation of laws work in favour of political elites.

cronyism, favouritism, rent-seeking activities, bribery, fraud and corruption activities (Bjorvatn & Søreide, 2005; Hessami, 2014). The design of procurement rules and regulations is created in such a way so as to dictate transparency, accountability and value for money for various government projects and contracts. However, the same institutional frameworks can be put aside to award unmerited companies contracts in exchange for bribes. Although the procurement rules and regulations are not violated, those perpetrators are able to manipulate the procurement process by abusing power for private gains (see Gray & Kaufmann, 1998; Kaufmann & Siegelbaum, 1997). Most importantly, it is noted that Malaysia's procurement system is established by the existing institutional environment, which nurtures the practices of money politics, patronage and political business (Tan, 2015). In that sense, Tan (2015) explains that,

*'...powerful economic interests typically seeking to influence the allocation of rents through state capture, money politics in Malaysia refer to the political capture of the state by politicians and bureaucrats, with the allocation of rents initially controlled by an autonomous state, and subsequently by political parties and individual political leaders'. (p.201)*

Next, a volatile institution is also influenced by the politicization of state bureaucrats.<sup>39</sup> Aмоса (2008) reveals that the politicization of bureaucracy is a condition in which a political ruler uses the civil service to benefit their narrow political interests. The approach taken by the ruling elites as guiding principles in the appointment and promotion of public servants encourages loyalty and threatens the impartiality and neutrality principle. This influences public policy formulation and implementation,<sup>40</sup> the establishment of rules and regulations, public service delivery,

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<sup>39</sup> The consequence of this phenomenon, however, makes the civil servants to always take a cue from their political master, and thus they perhaps are inefficient, ineffective and unfair when providing social services (Hart & Wille, 2012).

<sup>40</sup> For example, in formulating public policy, there is a tradition of 'stronger politicians, and weaker bureaucrats' or 'weak politicians, strong bureaucrats' (Bowornwathana & Poocharoen, 2010). The former indicates manifestation of power and control of politics over bureaucrats of the state machine.

oversights and accountability mechanisms aiming to restrain fraud and corruption in public procurement process (see Crane, 2013). Rothstein (2012) asserts that overreaching degrees of patronage, clientelism and corruption in allocating and distributing public resources are normally at the discretion of the political ruler. On the one hand, political hegemony is governed by various government agencies in distributing rents and public resources (Dahlstrom, 2012). On the other hand, procurement officers follow rules and regulations stipulated within the procurement process. On the contrary, Grødeland and Aasland (2011) report that procurement officers just obey unreasonable or unjust laws in the procurement system so as to return favours to local elite's contacts. The multiple factors deriving from the politicization of state bureaucrats result in conflict of interest on part of the civil servants in discharging their responsibility and accountability when handling public funds (Christensen, 2010). Therefore, one can say that the institutional arrangements within the politicization of the civil service threaten their professionalism and 'contaminate' the function of public service delivery (Simmonds, 1985) .

A study by Colombatto (2003) shows that the institutional arrangements exemplify the traditions of rational and understandable reaction towards corrupt behaviours. Colombatto (2003) argues that there is tolerance of corrupt behaviour when '*authority is abused and the constraints [are] violated*' (p.363). Ashforth and Anand (2003), on the other hand, argue that wrongdoings are institutionalized when corrupt decisions and actions are embedded in structures, processes and routinized. As social structure

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Bowornwathana and Poocharoen (2010) and Woo-Cumings (1999) suggest that the power of bureaucrats is reduced particularly in developmental states as the political master constantly builds empires and they struggle to survive within the state machinery. The latter (i.e., weak politicians and strong bureaucrats) occurs when high level bureaucrats are able to be policy strategists responsible for policy making, for recreating, redesigning, evaluating and supervising the operational matters without so much interference of politicians.

and individuals are mutually reinforcing each other, a culture of misconduct can be developed as *'the way things are done'* in the organization (Greve et al., 2010). Thus, fraud and corrupt actions continue to undermine public procurement practice.

Lastly, it is important to realize that the dynamic of institutional arrangements influences the systemic nature of fraud and corruption in public procurement fraud, which means that there is a need to improve institutions. Government procurement requires transparent transactions, value for money and more accountability practices (Erridge & Nondi, 1994; Matechak, 2002). However, these procurement principles cannot be applied if fraud and corruption in public procurement practices become entrenched in various government agencies. For example, P. A. Bowen et al. (2012), Rooney (2007) and Nwabuzor (2005) provide evidence that it is common and seems normal to pay and accept bribes to seal a government contract. The decay in moral values and corrupted societal norms in procurement practices further reinforces inefficiencies in various government departments (Hawkins et al., 2011; McCampbell & Rood, 1997). Stefes (2007) rightly points out that,

*'Systemic corruption is characterized by extensive corrupt activities such as bribery, extortion, and embezzlement, ranging from petty to grand corruption... ..Moreover, systemic corruption is characterized by the presence of rules and norms (institutions) that are commonly known and adhered to by most officials and citizens most of the time. These institutions are informal insofar as they are neither explicitly codified nor externally enforced. Nevertheless, they powerfully shape the interests and strategies of public officials and citizens'.* (p.7)

While considerable efforts have been made to understand fraud and corruption, the systemic and institutionalised nature of fraudulent and corrupt practices has largely remained unexplored (Colombatto, 2003; Gabbioneta, Greenwood, Mazzola, &

Minoja, 2011, 2013; Stefes, 2008). This is also true in relation to Malaysia, which is the context of the current study.

#### **2.2.4 Opportunities in the Procurement Process**

The prevention of fraud and corruption within government procurement has been regarded as an essential element to ensure transparency, accountability and value for money (Doig, 2012; Miroslav et al., 2014; National Fraud Authority, 2011). The existing literature has discussed and suggested various measures for reforming and improving the procurement system. Some studies emphasize internal controls structure and monitoring practices (Araujo, 2013; Ghedini Ralha & Sarmiento Silva, 2012). In this context, various mechanisms have been established to limit the opportunities for fraud in government purchasing activities. Among others, governance mechanisms for curbing fraud and corruption practices are associated with improving internal control system (Carmichael, 1974; Coxson, 2009; Neu et al., 2014), board composition (Beasley, 1996; Quinn & Jones, 1995) and auditing practices (Makkawi & Schick, 2003). However, deficiencies in the institutional environment have created substantial opportunities for abuse in the procurement process and the evasion of rules and regulations and exploitation of weaknesses in the monitoring mechanisms (see Iyoha & Oyerinde, 2010).

There are opportunities to abuse or manipulate the procurement process because of the complexities and opaqueness of procurement processes and procedures, thus public procurement officials seek to exploit deficiencies in the government acquisition system. (Ashari, 2013; Trepte, 2004). Because of their specialised role, there is a possibility that many procurement officials know better than anyone does how to manipulate the procurement system. Lambsdorff (2002) describes how corrupt

actors are continuously making corrupt deals in any kind of government contractual relationship. Lambsdorff (2002) further argues that many government contracts require a process of exchanging goods and services between government agencies and private sector. Thus, a government contract might end up with a mutually corrupt agreement. On the other hand, Bose (2004) illustrates the bureaucratic delays in many government agencies. The potentials for bribe-taking practices are great because of the lengthy processes and delays in getting the appropriate government services. In order to speed up the government process, the public officials may use their power to demand for 'speed money' in exchange for government normal processing (Marjit, Mukherjee, & Mukherjee, 2000). Thus, a core element of abuse of power by state officials seems to be camouflaged within the procurement process. Therefore, opportunism arises via the misuse of one's position by mutual understanding and by promising favourable treatments to others (see McCampbell & Rood, 1997; Mizoguchi & Van Quyen, 2014).

There are many opportunities in public procurement system for misuse or abuse of a government position for fulfilling private interests and making personal gain, thus violating the public trust due to unethical behaviour or misconduct in government purchasing (McCampbell & Rood, 1997; Wensink & Vet, 2013). McCampbell and Rood (1997), in particular, affirm the rampant unethical behaviour in government purchasing. The opportunities arise when both government officers and contractors tend to exploit close relationships for their personal gain. The authors shed light on the violation of ethical codes by government officers who closely interact with contractors for private gains and who are mostly never prosecuted. McCampbell and Rood (1997) show,

*'that private gains are never fully reprimanded....the violators were able to stay in their jobs, receive benefits, and most did not have a mark on their permanent record'* (p.1114).

On top of the worrying trend of misuse of one's position and misconduct behaviour in government procurement, it is also noted that there is difficulty in proving intent to commit fraud and corruption in public procurement and thus culprits are not punished (G. Lewis & Bajari, 2011). It should also be noted that opportunities arise when fraud in public procurement goes undetected, unreported and unmeasured (ADB, 2014; Matechak, 2002). This is especially so when the corrupt activities are arranged by politicians, entrepreneurs and bureaucrats in public sector procurement, thereby making it difficult to detect and report a network of systemic corruption generally shrouded in secrecy (see Neu, Everett, & Rahaman, 2013).

Lastly, opportunities in the procurement process to indulge in fraud and corruption arise when most government procurement documentation is secretive and not publicly available thus allowing for collusion. Information in procurement documentation can be used by corrupt actors to collude with a contractor to win a contract (Della Porta & Vannucci, 2007; OECD, 2010; Porter & Zona, 1993). A study by Della Porta and Vannucci (2007) in Italy discloses the payment of bribes to win government contracts by entrepreneurs, something that is facilitated by close friendships and political contacts. The corrupt practices cannot be easily revealed or exposed as the '*clean hands*' investigation outcomes led the inquiries to the judiciary, politicians, business elites and bureaucrats. It is important to realize that in Malaysia those who reveal secrets of government documentation can be punished by law, thus this may aid in the 'concealment' of fraudulent and corrupt practices (Khan, 2014; Malaysia Kini, 2016).



In other words, the ‘concealment’ of government documentation especially that related to sensitive issues in public procurement leave a lot of room for abuse, especially when bureaucrats act at the discretion of their political bosses (Christensen, 2010). Thus, the imperative of secrecy in public procurement transactions makes the latter more vulnerable to fraud and corrupt behaviour. Therefore, one can say that the existence and requirement of confidential information in procurement documentation may contribute to the persistence of public procurement fraud.

It is important to point out in this section the possible reasons for the persistence of public procurement fraud as follows. First, there is an undeniable relationship between government and business in any procurement transaction (Kettl, 2010). While the interactions at the nexus of government and business are inevitable for government purchasing, the same platform can be used by corrupt actors to engage in fraud and corruption (Luo, 2005). Second, the legitimization of new governance and accountability mechanisms through New Public Management with the neoliberal logic of privatisation, deregulation and trade liberalization may serve the collaboration and coordination of various actors (at both the international and the local levels) (Lauwo & Otusanya, 2014). However, the governance and accountability mechanisms may have been weakened by taking various opportunities for fraudulent practices while implementing New Public Management programs in the public sector (Iyoha & Oyerinde, 2010; Morales et al., 2014). This has raised further questions on the accountability, transparency and efficiency of public procurement and this is what motivates the current study. Third, the arrangements of institutions and the actions of social agents may both constrain and contribute to public procurement fraud. Fraud may flourish because of institutional arrangements (Appolloni & Nshombo, 2013).

Lastly, opportunistic acts of behaviour in the procurement process may have constrained transparent and accountable government purchasing (Compte, Lambert-Mogiliansky, & Verdier, 2005).

The following sections discuss the literature on public procurement fraud in relation to Malaysia.

### **2.3 Public Procurement Fraud and Malaysia**

The previous section concentrated on defining fraud, the various types of public procurement fraud and on the extant literature (section 2.1). The factors that enable public procurement fraud persist are examined in section 2.2. This section discusses the distinctiveness of fraudulent practices within Malaysia's procurement practices.

There is an increasing number of studies on investigating fraud in Malaysia from various perspectives. In the broadest perspective, fraud research in Malaysia commonly refers to the fraud triangle model<sup>41</sup> within the accounting and auditing domain (Hasnana, Rahman, & Mahenthirana, 2008; Moyes, Young, & Din, 2013), financial statement manipulation (Christopher & Brady James, 2009; Nahariah Jaffar, Salleh, Iskandar, & Haron, 2008), fraud prevention mechanisms (N. Jaffar, Salleh, Mohd Iskandar, & Haron, 2006; Nahariah Jaffar et al., 2011; Sanusi, Marjuni, Mohamed, Johari, & Sari, 2014), effective monitoring and enforcement to improve governance (Nelson, 2012; Rachagan & Kuppusamy, 2013; Sadique, Roudaki, Clark,

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<sup>41</sup> In general, the fraud triangle model offers opportunity, pressure and rationalization elements which have broadly served as an aid for anti-fraud community known as red flags indicators (C. C. Albrecht, Albrecht, & Dunn, 2000; Malcolm, Normah Haji, Syed Iskandar Zulkarnain Sayd, & Ithnahaini, 2005); risk assessments (Nahariah Jaffar, Haron, Iskandar, & Salleh, 2011; LaSalle, 2007); and fraud prevention (Dorminey, Fleming, Kranacher, & Riley Jr, 2010, 2012; Peterson & Zikmund, 2004).

& Alias, 2010); and ethical considerations (Adil, Muhamad, Yaakub, & Ishak, 2010; Rozaiha Abd Majid, Mohamed, & Mahmud, 2010; Saeed, Ahmed, & Mukhtar, 2001). Although there are many studies focusing on understanding fraudulent practices in Malaysia, very few studies place fraud within the accounting domain of public procurement. The existing literature typically addresses Malaysia's government procurement regime and its transformations (Adham & Siwar, 2012; Stolfi & Murniati, 2014). Notably, the persistent nature of fraud within Malaysia's procurement regime has raised questions about the accountable and transparent practices in the public sector governance (W. S. Hui et al., 2011; Othman, Zakaria, et al., 2010; Stolfi & Murniati, 2014). Despite the economic transformation that Malaysia has undergone, there are some questionable procurement practices that may undermine key principles<sup>42</sup> in the Malaysian government procurement.

### 2.3.1 Public Policy Environment

The Malaysian government undertook an affirmative action policy to strengthen its domestic industry and restructure the wealth among its multi-racial community in order to create a level playing field for all private domestic entrepreneurs (Ministry of Finance, 1995). The reform of Malaysia's government procurement, as described by Adham and Siwar (2012), is conducted through initiatives and strategies<sup>43</sup> of affirmative action based on its public policy. In order to ensure business opportunities for wealth creation and capital, there are policies in Malaysia's procurement framework to '*set asides, preferential margins and quota restrictions*', especially for

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<sup>42</sup> The Malaysian government aims to pursue effective public procurement with the principles of public accountability, transparent, value for money, open and fair competition, and fair dealing (Adham & Siwar, 2012; Ministry of Finance, 2013).

<sup>43</sup> In order to improve the Malaysian government purchasing, various actions have been taken to provide direction for its procurement practices, such as Malaysian Plan, Government Transformation Program (GTP), Economic Transformation Program (ETP), and the New Economic Model (NEM) (Pemandu, 2011).

the indigenous community (David S. Jones, 2007b, p.12). For that reason, all government agencies are required to procure supplies, goods and services from domestic sources while international tenders are limited. Therefore, open competition bidding and equal access is explicitly curtailed in Malaysian procurement regime (David S. Jones, 2007b; Stolfi & Murniati, 2014).

The policy paper by Stolfi and Murniati (2014) talks about transparency and competitiveness in Malaysia's public procurement system when exercising its *Bumiputera* preferences, and suggests benefiting from the European public procurement mechanisms. Although the policy paper encourages open competition and transparent practices in public procurement, there is no empirical evidence on the success of improving the competitiveness and transparency of Malaysia's procurement system. On the other hand, the Minister of Finance in Malaysia has obliged all government documentation to have at least 3 quotations from companies to bid any government projects and encourages surveying the cost based on market research (see Ministry of Finance, 2013). Moreover, a study by Stolfi and Murniati (2014) raises questions on the suitability of adopting the European procurement system as there is no '*one size fits all*' concept to improve transparency in procurement system (Trepte, 2004). After all, to pursue an accountable and transparent procurement practices, one needs take into consideration the dynamic nature of different socio-political cultural settings and economic development, like Malaysia for example (Embong, 2008; Siddiquee, 2006a).

W. S. Hui et al. (2011) discuss the Malaysian procurement regime by focusing on six main themes.<sup>44</sup> The study casts light on the prevailing issues of accountability, transparency, corruption, integrity and cronyism that exist in public procurement system as experienced by procurement officers and contractors. Most interviewees suggest conducting frequent checks as to avoid the '*Ali Baba*'<sup>45</sup> contractors during a procurement process. While the affirmative policy of favouring the indigenous aims to make the *Malay* capitalists competitive in the market, to some extent, the policy has encouraged the abuse of the system by using '*Ali Baba*' deals (R.S. Milne & Mauzy, 1999). Hence, the study of W. S. Hui et al. (2011) does not describe how a political and economic powerful group is able to shape and influence fraud and corrupt activities within procurement practices.

It is noted that Malaysia's public policy mechanisms have demonstrated constant conflicts between the wider social and political pressures within the dynamic of power, political and transformational routines and practices (Abdul Aziz, Jaafar, & Hussin, 2007; Adhikari, Derashid, & Zhang, 2006). Yet very little is known about precisely how public policy mechanisms contribute to the persistence of public procurement fraud in Malaysia.

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<sup>44</sup> These are: (1) transparency, (2) procurement policies and procedures and their implementation, (3) personnel involved in the procurement system, (4) estimation/budget/pricing, (5) professionalism and ethics, and (6) timeliness.

<sup>45</sup> The '*Ali Baba*' concept in Malaysian procurement practices is perennial. The concept allows the Malay contractors to get government contracts based on affirmative policy pursued by the Malaysian government which sub-contracts the project to non-*Bumiputera* companies. The benefits of the policy, however, are not gained; instead 'quick' money is earned from the profits by giving unfair advantages to certain contractors (Crouch, 1996; R.S. Milne & Mauzy, 1999).

### 2.3.2 Classified and Secret

The Malaysian Official Secrets Act 1972 endorsed the prohibition of the dissemination of information classified as official secrets (Law of Malaysia, 1972).<sup>46</sup>

The Act explicitly states that official secrets include cabinet documents, records of decisions and deliberations including those of the Cabinet committees and any other official document, information and material. Dissemination of classified government documentation is a criminal offence with a maximum penalty of seven years imprisonment (Liu, 2015). Procurement documentation in the public office is explicitly classified and the information is often not freely and easily available. Because the dissemination of classified information may implicate criminal conviction, the discharge of private and confidential information in the Malaysian public sector can also be open to abuse.

Opportunities to engage in fraud and corruption in public procurement arise when most of the procurement process is shrouded in secrecy (David S. Jones, 2007a). Malaysian procurement practices including processing, evaluating, justifying and selecting contractors are not disclosed and/or open to public scrutiny. It seems there is lack of transparency for procurement documentations by classifying them as 'private' and 'confidential' documents where document tenders, bids and other relevant information are not published apart from the contract award decisions which are only made public (W. S. Hui et al., 2011). Consequently, lack of transparency in selecting a contractor may provide opportunities to select particular companies that are favoured by or closely connected with certain people (Gomez, Saravanamuthu, & Momamad, 2013). Under the cloak of secrecy, manipulation and abuse in

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<sup>46</sup> According to Official Secret Act 1972, all Malaysian government documentation is classified ranging from 'restricted' to 'top secret'.

procurement practices may contribute to the persistence of fraud and corruption activities in the public office.

Cross and Stuart (2006) examine fundamental arrangements in the sensitive area of preferences of Malaysian procurement affirmative policy. The study acknowledges the sensitive developmental policies which have the aim of improving the economic strength of the *Malay* community. Yet, some areas require attention in order to improve the transparency of Malaysian procurement practices, including the need for the government to balance its procurement contract decisions for privacy and for the public's need for information.

Generally, however, there is not much consideration for the link of the lack of transparency due to little access or secretive of government information in Malaysia in the literature.

### **2.3.3 Compliance with Rules and Regulations**

As a central procurement authority, the Ministry of Finance (MOF) is responsible to watch over the procurement policy and implementation, review and improve procurement rules and regulations, draft relevant bidding documentations, advertise significant tenders, and monitor compliance to the rules (Ministry of Finance, 2013).

While the legal and procedural procurement framework has been well-regulated in Malaysia by the MOF (Ministry of Finance, 1997), the institutional deficiencies may contribute to the shortcoming of its procurement practices. The MOF's function serves the needs of the Minister of Finance who, at the same time, holds the position of the Prime Minister of the country. The expanded power of the Prime Minister, who is also the Minister of Finance, means that nobody checks or control his power (O. K.

Beng, 2013; Hutchinson, 2014). In particular, in the endorsement of direct negotiation contracts,<sup>47</sup> the absence of check and balance mechanisms offers opportunities for abuse of power.

There are some restrictions in the law that can hinder punishment for abuse in the Malaysian procurement regime. According to Public Officers (Conduct and Discipline) Regulations 2002, public officials are required to declare conflict of interest cases or potential interest if they believe they can affect discussions and decision making of a specific tender (Bernama, 2014). It seems that by declaring their interest,<sup>48</sup> state officials can avoid punishment and conviction because they have declared their interest as required by regulations and there is no law or legislation that can explicitly link this with abuse of power (Malaysian Anti-Corruption Commission, 2012). In other words, the declaration of cases of conflict of interest is used to 'safeguard' those in a powerful position in the public office with vested interests. Given that link however, to what extent the declaration of interest will not interfere in the evaluation of the tender and the decisions to select the contractor is open to question. It can also be argued that even state officials declare their interest accordingly; they may be involved in a contract discussion.

By examining the effect of internal control procedures on fraud incidents in government agencies, Sanusi et al. (2014) found that management can override the internal control system and/or collude with and as part of a corrupt network to

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<sup>47</sup> MOF is the only procurement authority that can approve applications for direct negotiation in the country.

<sup>48</sup> The declaration of interest is to prevent public officials from using their public position for their personal and private advantage.



commit fraud and corruption. The study supports the empirical research by Neu et al. (2015), Neu et al. (2014) and Sikka and Lehman (2015) that internal control may not be able to limit and curb fraud and corruption in government procurement. Given the lack of the effectiveness of rules and regulations to limit fraud and corruption in government purchasing, there is still limited research into examining the shortcomings of the monitoring mechanisms in order to restrict public procurement fraud in Malaysia (Sanusi et al., 2014).

#### **2.3.4 Collaborations of Social Actors**

While there are many studies that examine the importance of structural collaborations between legitimate interactions between business and politics (see Gomez & Sundaram, 1999; Gomez, 2013), there are fewer studies on business and politics that focus on the persistence of fraud in Malaysia public procurement. Most fraud and corruption activities in government procurement occur at the nexus of government-business interactions and suggest the existence of cronyism and favouritism (Gul, 2006; Johnson & Mitton, 2003), money politics (William Case, 2013; Pua, 2011), lobbying practices (Soong, 2010), state capture (Gomez, 2009; Gomez, 2012b; Vithiatharan & Gomez, 2014), opportunities for patronage (Ebrahim, Girma, Shah, & Williams, 2014; Johansson, 2014), and rent-seeking behaviour (Searle, 1999; Tan, 2012). Specifically, rent-seeking activities flourish in the context of ersatz capitalism in capturing rents from the Malaysian state. The ersatz capitalism concept (entrepreneurially weak because of cronyism) emerged when government and business leaders contributed to economic growth and economic activities through intensive state intervention in the allocation capital and wealth of the country. Yet, ersatz capitalism has the political goal to generate a class of domestic industrial entrepreneurs, who are closely connected to those in power through cronyism and the

promotion of patronage networks (see K. S. Jomo, 2005; Nicolas J. White, 2004). As Searle (1999) puts it,

*'Rents generally arise through state intervention in the economy, interventions that allegedly distort market processes and create opportunities for rents. It is argued that the existence of such rents encourages corrupt or unproductive profit-seeking behaviour (to capture such rents) and that rents in turn usually lead to monopoly situations'* (p.11).

Eventually, rewarding state-rents to selected companies that are linked to the families and friends of state officials are part of the web of collusive practices among politicians, political party, top bureaucrats, and business elites (W. S. Hui et al., 2011; Wain, 2009).

Despite the collusive corrupt network in public procurement fraud, there are difficulties in defining and punishing crimes in which the powerful are engaged (see Michalowski & Kramer, 2006). Michalowski and Kramer (2006) further argue that wrongdoings committed by those holding a powerful position are hard to detect and prosecute because of their social status and reputable position in the society. Therefore, more complex action is required in order to bring them (powerful actors) to justice (Doig, 2011). Furthermore, this can become more difficult as L. Lim (2014) has argued, since the exposure of powerful groups, involving corrupt government leaders, parliamentarians, and reputable business leaders can be politically damaging.

In examining corruption in the construction industry, Nordin, Takim, and Nawawi (2013) relate a large number of stakeholders in a complex contractual structure engaging in corrupt activities. Nordin et al. (2013) illustrate that behavioural factors lead to the desire and intentions of the corrupt actors to indulge in illicit human

behaviour. Thus, the desire and intentions to engage in corrupt practices have provided a motivation factor to engage in corrupt acts, such as paying bribes, demanding of bribes and dishonest dealings, tend to arise when there are collaborations that diverge from the normal duties to serve the public, violate ethical and moral values in delivering public services (Nordin et al., 2013).

In a different study, Othman, Zakaria, et al. (2010) acknowledges that the system of Malaysia's procurement practices is open to potential abuse and mismanagement and that this can lead to fraud and corruption. Case studies demonstrated by Othman, Zakaria, et al. (2010) showed that the excessive collusive human intervention in procurement process has the potential to increase the chances for the system to become open to abuse, profiteering and corruption. The study concluded that the weak system of check and balance mechanisms has created numerous loopholes within procurement process, which results to losses of public funds.

There are limited studies in Malaysia addressing practices that are not necessarily illegal or unlawful but they are in fact and corrupt activities at the nexus of public and private interactions in the context of government purchasing. It is said that public and private interactions provide an opportunity site for (un) accountable and (non) transparent acts committed by the powerful groups (Vithiatharan & Gomez, 2014). Thus, this has raised concerns about the interface of accountability at public-private domains (N. B. A. Bakar, Saleh, & Mohamad, 2011; Rodan & Hughes, 2014) and the network of the powerful actors to collude and get involved in wrongdoings (Gomez & Sundaram, 1999; Wain, 2009).

All things considered in relation to the nature of public procurement fraud in Malaysia point to its distinctiveness when it comes to (1) public policy framework, (2) government documentation as classified and secret, (3) procurement practices that comply with rules and regulations, and (4) the powerful collaborations of business and politics.

In light of the above studies, the next section identifies the gaps in the current academic literature that this study wishes to fill.

## **2.4 Gaps of Interest**

The literature review has shown that there are gaps in the existing literature in relation to understanding why public procurement fraud persists in the Malaysian public sector. The debates lead to an attempt to understand the conceptualization of fraud and the position of the current study in understanding fraud. Despite the fact that the existing literature suggests that there are various views about fraud, there are few studies that examine fraud that is not necessarily illegal or unlawful, but that is socially amiss and brings detrimental effects to public at large (Kramer et al., 2002; Quinney, 2003). P. Green and Ward (2004) have clarified that some social practices may not be against the law, but they have ‘negative’ effects on the welfare of citizens. Within this context, it is noted that there is dearth of research investigating behaviour that is immoral but legal, in particular in the context of rewarding government contracts in Malaysia (Searle, 1999). Those practices should not be disconnected from the economic and political spheres they occur in since such behaviour is

intrinsically nurtured by particular social contexts and values (Hessami, 2014; D. Kang, 2002).

While there is an increasing number of studies examining the phenomenon of fraud, there is less exploration about fraud within the procurement context (Blundo, 2006; Khi V Thai, 2001). The literature on procurement has emphasized that the complexity of the procurement process is susceptible to fraud and corruption practices (Heggstad et al., 2010). Furthermore, despite the public sector being the ‘biggest’ spender in the world, there is still a lack of research examining fraud in procurement within the public sector (Guile, 2012). Questions have been raised regarding the complexity, secrecy, rules, norms, customs and habits embedded in the public procurement process. This includes the collective actions that lead to collusion, collaboration between corrupt actors, and opportunity for bribery as well as inducement for rewarding government contracts (Burguet & Che, 2004; Pressey et al., 2014; Rooney, 2007). Furthermore, the rewarding of secret payments is somewhat a neglected issue in public procurement practices (OECD, 2008a). What is more, the emergence of public procurement fraud in a developing countries has seldom been addressed (ADB, 2014; Snell, 2006). Research in public procurement fraud in a different historical, socio-political, cultural, economic setting like that of Malaysia seems to be warranted (Ariffin, 2011; Ashari, 2013).

Provided that the existing literature suggests government and business interactions are inevitable in any government contract, there is lack of research investigating the political power of business and vested interests in rewarding government contracts (McCarthy, 2013; Murray, 2009). Although the relationship between public and

private organisations in many government contracts is legitimate, the blurred institutional environment in which business and policymakers interact has tainted the public procurement policy and process (Grødeland & Aasland, 2011). This blurred dimension seems to suggest the possibility for a crony capitalism system within public policy mechanisms that favours political connected economic agents by rewarding many government contracts as rents,<sup>49</sup> subsidies, license, permits and loans (see Haber, 2002; Nicolas J. White, 2004). It is within this context that fraud and corruption in Malaysian public procurement are influenced in the form of state patronage. This form of state patronage in the nature of political business has been justified because *'the best way to create Malay capitalists is to distribute rents to those most capable of generating wealth'* (E.T. Gomez, 2002, p.83).

In the context of public policymaking, the opportunities for fraud and corruption in government purchasing permits rent seeking activities as well as the possibility of earning and distributing rents among cronies (Embong, 2012; Edmund Terence Gomez, 2002). Consequently, the platform of government-business relations<sup>50</sup> is confined only to those with vested interests at the expense of other societal interests. Seemingly, the interaction between government and business institutions has persistently facilitated fraud and corruption within public procurement process through state and regulatory capture (Dobovsek, 2012; World Bank, 2004). Despite the legitimate institutionalised dimension of the integration of business elites and

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<sup>49</sup> It is somehow said that selective rent distribution can also facilitate growth by promoting greater industrialization and diversification of economy (Gomez, 2012a; Tan, 2012).

<sup>50</sup> Generally, another body of literature has drawn attention to government and entrepreneurs' connections (Hawkins et al., 2011; Matthew et al., 2013; McCarthy, 2013; World Bank, 2013). This body of literature also discusses rent-seeking behaviour, crony capitalism, conflict of interest, collusion and bribery in exchange of favours.

policymakers, there is still a dearth of research to link the broader picture of public-private interactions and public procurement fraud in Malaysia.

The gaps of interest for the current study specifically involve the networking between powerful political and economic actors who collaborate in public procurement fraud in Malaysia. The consequences of public-private exchanges in society, the structural relationships between politics, capitals, administration and society are, needless to say, diverse and complex (B. G. Peters, 2010). Deliberately, the relationship between powerful agents enables legitimate institutions to interact with social actors for fraudulent and corrupt acts of behaviour (Gomez, 2009). Finally, Campos and Giovannoni (2007) make the important point that procurement public policy making and its implementation are often in the hands of powerful groups from political and economic institutions.

Similarly, Murray (2009) argues that the influence of politicians on public procurement policy is pervasive. The author further claims that there are many facets to the interplay of institutional power structure of politicians and procurement managers in public procurement strategy and management. Yet, when analysing power relation within a state's machinery and frauds in procurement (e.g., price-fixing cartels) many previous studies have focused on Western countries (Pressey et al., 2014). Very few studies focus on the institutional power of developmental states in exploring public procurement fraud, such as Malaysia.

Finally, fraud and corruption are difficult to study by nature. This is because fraud and corrupt activities are normally hidden and secret. This study seeks to explore the

potential spaces for secrecy that exist in institutional regulations, classification of procurement documentations, acts to conceal and hide fraudulent transactions and criminal collusive of powerful networks (see Neu, Everett, Rahaman, & Martinez, 2013). The prevailing understanding of the collusive networks, which endure and are institutionalised in public procurement practices, is examined in the current study. The lack of knowledge in understanding the nature and extent of fraud and corruption related to procurement is tremendously challenging, as most interviewees do not want to draw attention to it and its investigation tends to undermine the public's faith and trust in government (Burke, 2011). The public sector settings illustrated in the study are indeed not easy sets to approach or work with for research purposes. It is ironic that the public sector settings which are those that are most difficult to study are also the very settings where it is important to understand how fraud in public procurement actually works. This reality adds yet another dimension to Murray (2015)'s claim that we need to better understand the complexities of public procurement fraud practices. The next section concludes with a summary.

## 2.5 Summary

This chapter has provided an overview of the existing literature on public procurement fraud. Specifically, it has identified the gaps in the current academic literature specific for the current research that this study aims to fill (see section 2.4).

Some contextualization of the notion of fraud is presented in order to examine various competing definitions of fraud (AICPA, 2002; Greve et al., 2010; Kaptein, 2008; R. Tillman & Pontell, 1992; Tullo, 2006). The current study portrays fraud involving



misconduct that does or does not violate laws and regulations; in the latter case it deviates from ethical and moral values and it is detrimental to the public at large. The literature also highlights the various types of public procurement fraud (Caulfield, 2014; PwC EU Services, 2011). Various distinctive features of fraud in public procurement indicate an opaque procurement life cycle (OECD, 2007a; Tabuena, 2010), a hidden crime that is difficult to detect, prosecute and one that it is rarely reported, because it is sometimes associated with rent-seeking activities, patronage system and cronyism (Deloitte, 2012; Johnston, 2005) as well as one that operates at the peculiar conjuncture of particular and varying features of social structures and patterns of engagements of economic agents (David Seth Jones, 2013; Lambert-Mogiliansky & Sonin, 2006).

The chapter then summarises the key elements on the persistence of public procurement fraud. The themes focus on government-business interactions (Matechak, 2002; McCampbell & Rood, 1997), public sector transformations (Auriol & Blanc, 2009; Bjorvatn & Søreide, 2005; Morales et al., 2014), the institutional arrangements (W. Case, 2004; L. Y. Lim & Stern, 2002; Nwabuzor, 2005) and opportunities arising in the procurement process (Trepte, 2005). The gaps in the existing literature demonstrate the need for the current study (as described in section 2.4).

A review of current empirical research discusses the fraudulent practices within the governance of Malaysian public procurement. The distinctiveness of fraud in Malaysia's procurement practices has to do with the prolonged nature of fraud and corruption in public policy mechanisms, classification of procurement

documentations as secret, compliance with administrative rules and collusive powerful networks seeking for capital and wealth.

The review of literature provides some basis for developing the theoretical framework discussed in the next chapter.



## Chapter 3 Research Methodology

### 3.0 Introduction

This chapter discusses the methodology employed to meet the objectives identified in chapter one. The literature review (see Chapter 2) discusses the significance of previous studies in both developed and developing countries. This chapter lays out the methodology employed in this thesis in order to investigate public procurement fraud in Malaysia and provides details of the approach taken in pursuing the investigation.<sup>51</sup>

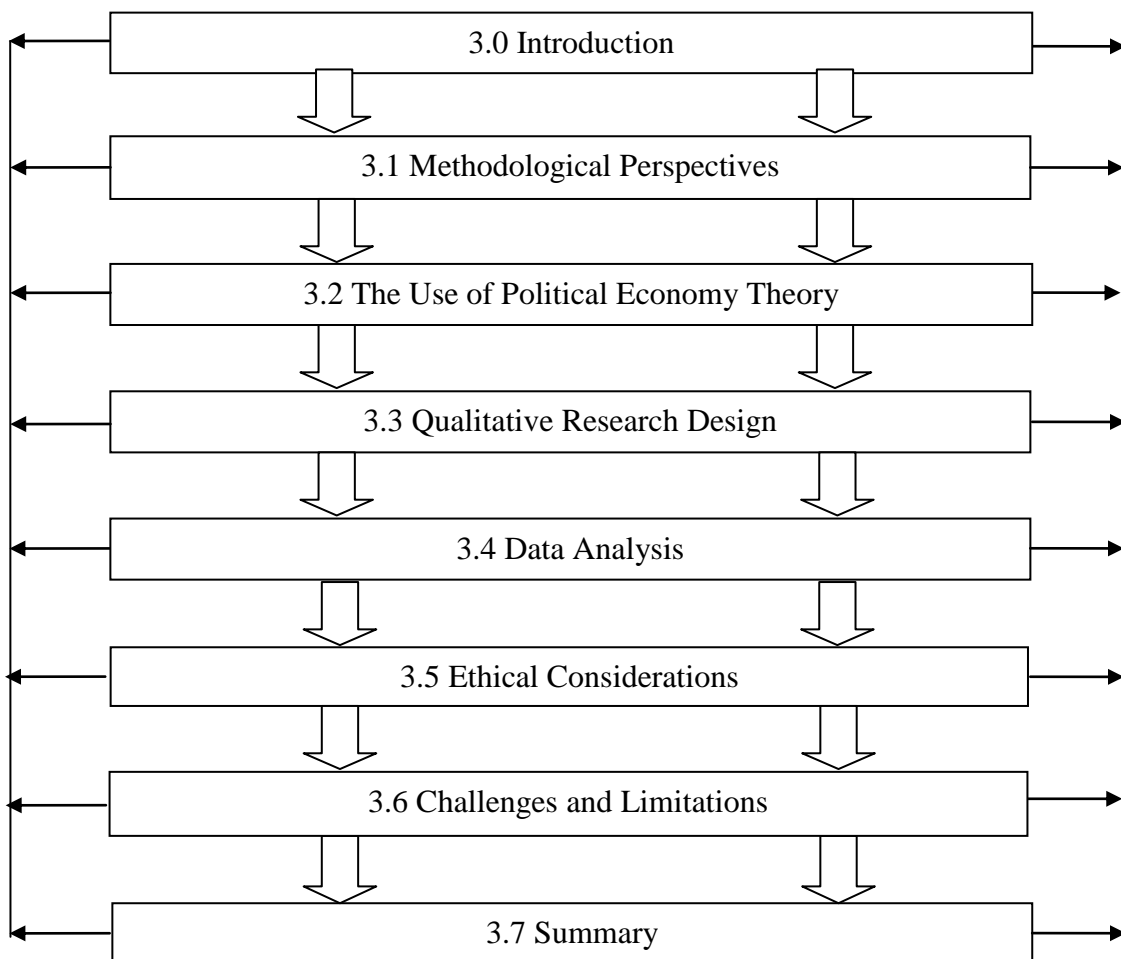
To develop a meaningful methodological framework, this chapter is divided into seven sections (see Figure 3.1). The chapter begins with an overview of the philosophical stance and research paradigm underpinning the study (section 3.1). This study promotes a critical reflection of a political ideological and social phenomenon embedded in the particular settings within Malaysia, as the context of the current study. There is then a discussion of the choice and use of political economy theory as the theoretical framework (section 3.2). Specifically, the political economy approach is able to articulate the interconnection of political and economic institutions, the rational interests of economic man, public policy disputes and human activity at the nexus of public-private interactions.

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<sup>51</sup> The chapter does not seek to develop a new paradigm in sociology, politics or philosophy. Instead, the intention is to develop methodological tools by borrowing from the existing literature so as to guide the researcher to understand the broader social forces that shape fraudulent practices in the Malaysian public procurement.

The chapter continues with a discussion of the qualitative research design (section 3.3). This section provides details on the sampling methods, issues of data access, discusses the research method of documentary analysis and the semi-structured interviews, which were collected through the Snowball Sampling Method (SSM). The efficient use of SSM for this study is discussed at length in section 3.3.3.2. Section 3.4 describes the data analysis, which was conducted following a thematic approach with six stages of analysis. Section 3.5 talks about ethics while section 3.6 discusses the challenges as well as limitations of this study. Lastly, section 3.7 presents a summary of the chapter.

**Figure 3.1: The Structure of Chapter 3**



### 3.1 Methodological Perspectives

In recent years, a considerable body of scholarly attention has been given to the expansion of public procurement fraud, predominantly in mainstream Western countries (Caulfield, 2014; Dorn, Levi, & White, 2008; Hessami, 2014). Some researchers, however, argue that all social practices are institutionalised within the social context and values which are connected to the historical experience and routine practices based on the culture, ideology, beliefs system as well as language and organization where they operate (O.M. Bakre, 2004; Otusanya, 2011; Singh, 1999). As O.M. Bakre (2004) argues, this also applies when investigating social practices in developing countries,

*'In the specific case of developing countries.....research can better be conducted by adopting frameworks<sup>52</sup> that account for local history and the nesting of these histories within the complex social structures that encompass these continuous socio-political and economic realities'. (p.3)*

Within that context, there is little exploration of the occurrence of procurement fraud in the public sector and little research on whether the governance of the public sector encourages such practices, especially in a developing country like Malaysia. The current study follows O.M. Bakre (2004)'s advice and is carried out from a particular point of view that takes into account the historical development, socio-political and economic conditions of Malaysia.

This section discusses the methodology employed in the current research. First, the philosophical stance I take in order to investigate the social phenomenon is discussed

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<sup>52</sup> The framework encompasses particular views held by the researcher based on their belief regarding the nature of reality of the social world (ontology), how they can best understand the knowledge (epistemology), in relation to their understanding the connection between human beings and their environment (human nature), and what informs the process of investigation (methodology).

and, subsequently, the paradigm underpinning the study is described. Then, justification of the paradigm choice is given.

### 3.1.1 The Philosophical Stance

A philosophical direction is important for a researcher as it helps to recognise which design will work or fail to work; consequently, one can find a suitable design for one's research or create a new one (Easterby-Smith, Thorpe, & Lowe, 1991). This research specifically assumes that social actors are part of the social world that exists due to the interactions and actions of human beings. It is within this context that this study is closely connected with the social relations of human actors and their relevance to history and natural environment (see Skocpol, 1987). Therefore, the current study advocates a qualitative research approach based on the methodological stance of particular conceptualisation of ontology,<sup>53</sup> epistemology,<sup>54</sup> human nature<sup>55</sup> and methodology<sup>56</sup> in its investigation of public procurement fraud in Malaysia (see Appendix 3.1).

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<sup>53</sup> J. Ritchie, Lewis, Nicholls, and Ormston (2014) and Bailey (2007) suggest that ontology is concerned with the reality nature of the social world that needs to be investigated. This position brings a researcher to acknowledge whether reality is objective, hard, real and independent from the actor in social life or whether reality is subjectively constructed. Besides, in a very broad term, social science has been shaped by two overarching ontological positions: realism (as objectivist ontology) and idealism (as subjectivist ontology) (J. Ritchie et al., 2014).

<sup>54</sup> An epistemological assumption is important for any research in order to ask questions about knowledge and to reflect on how knowledge is acquired. With the previous assistance of an ontological position, a researcher needs to locate their epistemological stands in the view of knowledge.

<sup>55</sup> Assumptions about the human nature emphasize the connection between human beings and their environment. Hopper and Powell (1985) distinguish between people's behaviour and experience which can be completely determined and constrained by their external environment and people who can be seen as independent and free-willed, capable of creating their own environment.

<sup>56</sup> Methodology is often seen as a tool-kit for any researcher to investigate social phenomenon. According to Burrell and Morgan (1979), "*each one has important consequences for the way in which one attempts to investigate and obtain 'knowledge' about the social world*" (p.2). They further explain that methodological standpoints are closely connected with the three sets of assumptions (ontology, epistemology and human nature) by adopting either a nomothetic or an ideographic approach.

The position of ontology adopted for this socially constructed research advocates subjectivist ontology based on various elements. First, this research shows that human beings' behaviour or/and actions are closely connected with the influential social structures surrounding them (Chua, 1986). Second, the current study assumes that reality is not some kind of an objective, independent and external reality, but it is rather determined by the subjective experiences and perceptions of people as individual consciousness (Corbin & Strauss, 2008; Hopper & Powell, 1985). Finally, individual consciousness<sup>57</sup> typically emphasizes how human ideas, especially beliefs and values systems that have created and shaped society, are socially constructed.

The epistemological position on acquiring knowledge for the current study employs anti-positivism for the following reasons. First, the current study focuses on people's interactions in relation to how socio-political and economic contexts, cultural and historical elements have shaped public procurement fraud in Malaysia. The current study examines how political and economic groups acquire wealth by using legitimate power relations. Arguably, the social phenomenon and its complexity is embedded in complex human relations and is shaped by dynamic interrelations between institutional structures and social actors in a particular society (O.M. Bakre, 2004; Johnston, 2005). For this reason, positivist approach that uses scientific testing in order to show patterns, causal relationships and make generalisations whether to accept or reject hypotheses perhaps has limited capacity to explain social phenomenon which is embedded in complex human relations (C. R. Baker & Bettner, 1997; Chua, 1986). It is important to note that this study shows on the subjectivity of

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<sup>57</sup> This is pointed out by Hopper and Powell (1985) who claim that any individual consciousness is "*simply [made] of concepts and labels created by people to help them understand reality and negotiate a shared conception of its nature with others*" (p.431).



action and understanding of public procurement fraud practices in Malaysia that is shaped by the complex relationships between social actors and institutional structures.

As Chua (1986) argues:

*'Mainstream accounting is grounded in a common set of philosophical assumptions about knowledge, the empirical world, and the relationship between theory and practice. This particular world-view, with its emphasis on hypothetico-deductivism and technical control, possesses certain strengths but has restricted the range of problems studied and the use of research methods'* (p.601).

Second, the study acknowledges human interactions through subjective interpretations with other actors in creating, modifying and interpreting the world (Chua, 2005). In understanding the creation and shaping of the social construction reality of a social phenomenon, this study demonstrates the use of routine language, which is based on the day-to-day individual experience. In order to understand people's working lives and organizational involvement in social practices, the current empirical research draws on the perceptions, actions and stories from the interviewees (Watson, 2009). In understanding the nature and extent of public procurement fraud in Malaysia, the current study uses political economy theory by emphasising the integrating economic and political forces that show interdependence of the two in contemporary globalization (Held, 1984). The use of the political economy approach seeks to apply a series of evolving institutions in response to iterative individual process in (re)creating and (re)producing fraudulent practices (see detailed in section 3.2). Specifically, the interaction of political and economic systems shows the coexistence between structure and agency framework within institutions and public policy (Banks & Hanushek, 1995). Therefore, within the structure-agency framework, the political economy theory also provides insights on conscious decision making of individual and collective behaviour based on continuous sense making, interpretation

and interactions and social relations and how these dynamics interrelations further construct and (re)construct public procurement fraud in Malaysia.

Third, this study employed some elements of critical paradigm for its methodological approaches in conducting the research. First, critical approach is interested in gaining insights into the relationship of social practice and context (Cooper & Hopper, 1987). This is because social practices are often embedded in a particular socio-economic, cultural and political context. It is from this context, critical paradigm can articulate the interaction between context and social practices, when the context influences and is reflected in social practices and vice versa (Alvesson & Willmott, 2012). Next, Deetz (1996) opined that the discourse of critical studies put emphasis on the relevance of historical analysis. It is argued that critical approach is historically constituted which directs on *“how a particular social order came to be what it is, and how it is likely to change over time”*(Orlikowski & Baroudi, 1991, p.20). Thus, the historical analysis brings upon changes and its emancipation of historical experience in the analysis of social phenomenon. Finally, Chua (2005) reveals that critical paradigm is attempt to critique the status quo of existing social system by *“criticism of oppression and exploitation and the struggle for a better society”* (Kellner, 1990, p.22). This paradigm brings this research in critiquing the status quo concerning unequal power relations and transformation of the socio-political and economic circumstances, which reflects powerful individual and groups to advance their own self-interest and goals (see Hopper & Powell, 1985; Roslender, 1992). Thus, it is important to point out that this research does not only aim to understand the social phenomenon, but it also aims to challenge the status quo for a better society based on

revealing the hidden nature of power relationships in society which is commensurate with the critical paradigm (see detailed in section 3.1.2).

Lastly, this study shows interactive linkages between the researcher and the social phenomenon under study. Thus, there is no distance between the involvement of the researcher and that which is being researched (Cunliffe, 2010).

The view of human nature stance adopted here sees human beings as the voluntary controllers of their environment (see Gallhofer, Haslam, & Yonekura, 2013). In other words, the individual decision making to engage in fraudulent practices is constrained and restrained by interactions of divergence interests, within the creation of an autonomous and voluntarily environment. It seems that the particular patterns and behaviour of fraud in the Malaysia public sector entail institutionalised relationships between social positions and practices. Overall, the human nature stance for the current research is that humans create their own environment voluntarily by possessing 'free will' and by being 'value biased' (Hatch & Yanow, 2003).

Lastly, the methodology adopted in the current research is used as a tool-kit to set directions<sup>58</sup> within an ideographic approach in order to investigate public procurement fraud in Malaysia. By exploring and understanding the interpretation of personal opinions and human meaning-making in the context of personal experiences (Tobi, 2013), the ideographic approach is able to make sense of the hidden voices and

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<sup>58</sup> Firstly, the three sets of assumptions (ontology, epistemology and human nature) need to be early identified in order to set the 'tone' of the study (Burrell & Morgan, 1979). Secondly, this research pursues the ideographic approach in order to get 'inside' a subject and employ their background and life experience in the sense-making of fraudulent and corruption practices as socially constructed in the Malaysian public sector.

the unrecorded stories of the interviewees. In other words, the methodology adopted for the current research helps reveal how people's interpretation of their day-to-day job routine provide meanings and significance to the study. In order to gain access to such unrecorded stories and concealed events in relation to public procurement fraud in Malaysia, face-to-face, video conferencing via Skype and email semi-structured interviews are conducted. Furthermore, this research also analyses documents to better understand public procurement in Malaysia.

The next section discusses the paradigm choices made for the study.

### **3.1.2 Justification for choosing the Critical Paradigm**

Research grounded in a critical paradigm works as a whole framework<sup>59</sup> of beliefs, concepts, values and methods that guide a researcher to an inquiry (Guba & Lincoln, 1994; Laughlin, 1995). In order to understand the social world and the phenomenon, the critical paradigm influences the researcher's beliefs and practices for investigating social problems and constructing them. This section aims to give justification for choosing the critical paradigm for the current study.<sup>60</sup>

This study follows a critical paradigm<sup>61</sup> based on the following justification. (1)

There are a few empirical studies on the nature and magnitude of public procurement

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<sup>59</sup> It is important for every social researcher to take a particular stance on how they view the world and in what way they best understand the world.

<sup>60</sup> See Appendix 3.2 for a summary of the research paradigm.

<sup>61</sup> Research grounded in critical theory draws on many assumptions as an interpretive approach, which acknowledges that reality is constructed by the subjective experiences of individuals through the interactions of human shared meanings, interpretations, and the construction of a cultural and social reality (Lapan, Quartaroli, & Rieme, 2012). Critical theory is a school of thought from the Institute for Social Research in Frankfurt. It is generally a social theory oriented toward criticizing the status quo and aiming to change and transform society in a progressive way.

which adopt a critical approach<sup>62</sup> (Chwastiak, 1998, Dorn *et al.*, 2008) in both developed and developing countries and in Malaysia particularly.

(2) The critical approach is interested in gaining insights into the relationship of social practice<sup>63</sup> and context (Alvesson & Willmott, 2012). It is able to address the socio-political, economic, and cultural context in understanding the nature and extent of public procurement fraud in Malaysia by articulating the interaction between context and social practices when the context influences and is reflected in the social practices and vice versa. This approach recognises the interactive links of structure and agency framework, as social actors are interconnected with society, institutional structures and social relations of human affairs (Marsh, 2010).

(3) The critical paradigm pays particular attention to the historical analysis, as the latter helps to create and reproduce social practices towards a transformation of the society (Burrell & Morgan, 1979). The historical analysis is able to evaluate the inheritance of governance process of colonialism in political and economic institutions that has (re)constructed and (re)created the reality of society at the intersection of structural contexts and human experiences (see Wijewardena & Yapa, 1998). This study addresses the colonial influence on the governance of the

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<sup>62</sup> As Held (1980) puts it, “...the aim (of critical theory) as being to lay the foundation for an exploration, in an interdisciplinary research context, of questions concerning the conditions which make possible the reproduction and transformation of society, the meaning of culture, and the relation between the individual, society and nature (...). The critical theorists believe that through an examination of contemporary social and political issues they could contribute to a critique of ideology and to the development of a non-authoritarian and non-bureaucratic politics” (p.16).

<sup>63</sup> This is because social practices are often embedded in a particular socio-economic, cultural and political context. It is noted that this study focuses on the dynamic characteristics of the socio-political, economic context that takes into account the history, power relations of business elites, politicians and public officials. The critical paradigm is indeed crucial for reminding the researcher that the reality of a social phenomenon cannot be studied in isolation of its context wherein it operates (see Hopwood, 1983).

Malaysian public sector in exercising their legitimacy for capital accumulation and maximization of profits. Thus, the critical paradigm shows the relevance of historical analysis in demonstrating how social order came to be what it is.

(4) The critical paradigm lays great emphasis on criticizing the political and social status quo with the aim of transforming society for the better (Held, 1980).<sup>64</sup> The aim of this study is to address with a critical reflection of the status quo in the Malaysian society. In particular, this critique concerns the unequal power relations<sup>65</sup> and transformation of the socio-political and economic circumstances, which reflect powerful individuals and groups who advance their interests and goals.

(5) The critical approach focuses on the ways power is embedded in the structure of society (Pyne, 2005). It is from a critical perspective that one is able to explore where power is concentrated and institutionalized through formal and informal social networks. This view is often reflected in the power struggles and domination games exercised between classes which suggest ingrained structural conflicts within a society and through social practices (Held, 1980). The power structure is clearly acknowledged in this paradigm in relation to how individuals are permitted to change themselves and how the institutional structures and society as a whole show unequal power structures and an unequal distribution of resources.

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<sup>64</sup> Specifically, this approach provides a radical and critical context, tensions and dynamics formation of capitalism (Calhoun & Karaganis, 2006; Roslender, 2006). Further, the critical approach seeks to be emancipatory and to eliminate alienation and domination by bringing about social changes in contemporary society (Burrell & Morgan, 1979; Dillard, Rigsby, & Goodman, 2004).

<sup>65</sup> It is concerned with the exercise of the authority in power (e.g., the state) by enabling fraudulent practices through unjust use of force, authority and societal norms (Galbraith, 2004).

(6) The critical perspective provides a potentially more useful way of exploring the sources on inequality<sup>66</sup> and oppression resulted by the exploitation in contemporary society (Kellner, 1990). Critical theory asserts the existence of exploitation of human beings in allocating resources, in particular from public procurement funds. This kind of exploitation in public procurement fraud in Malaysia involves maximizing profits for business capitalists and it operates at the expense of society. Therefore, my role as a critical researcher is to reveal the inequality, oppression and exploitation in the system of public procurement practices in Malaysia.

Based on the above discussion, it is argued that the critical paradigm is appropriate for investigating public procurement fraud in Malaysia and for describing, explaining and evaluating deep-seated structural problems, criticizing the status quo and for addressing contradictions in society.

The next section presents the theoretical framework of this study.

### **3.2 The Use of Political Economy Theory**

When understanding a social phenomenon, one has to bear in mind that there are considerable dynamic features of the social system that exert influence on human activity while the individual helps to (re)produce and (re)create the social system.

Within that context, political economy theory<sup>67</sup> lays the foundation for the theoretical

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<sup>66</sup> The critical paradigm can be used to expose structural inequalities and to raise critical consciousness so as to question the dominant cultural, political and social domains (Rabinow, 1991). It addresses the unequal allocation of public procurement to the most powerful groups (Nicholas J. White, 2004).

<sup>67</sup> Political economic theory originated between the fourteenth and eighteenth centuries to provide the expressions of individual entrepreneur behaviour for pursuing their private interests. The emerging

conceptual and normative analysis. In his classic treatise of 1776, Adam Smith revealed the involvement of state affairs in defining political economy as follows:

*'Political economy, considered as a branch of the science of a statesman or legislator, proposes two distinct objects: first to provide a plentiful revenue or subsistence for the people, or more properly to enable them to provide such a revenue or subsistence for themselves; and secondly, to supply the state or commonwealth with a revenue sufficient for the public services. It proposes to enrich both the people and the sovereignty.'* (cited in Nurmi, 2006, p.1)

In a broader term, the main features of political economy theory are as follows. Political economy theory is concerned with power and authority in dynamic features of political and economic institutions. Dean (1989) asserts that political economy focuses on economic and political power relations in the hands of private individuals or of the state. The theory can be used as a powerful tool to search for explanations of the power structure of social and economic relationships, attitudes and change (G. Brennan & Pettit, 1993).

Political economy draws attention to political forces (states, institutions, individual actors, etc.), which have shaped the systems through economic forces (power of collective markets and individuals) in order to understand political, social and economic life (Nurmi, 2006). In particular, L. M. Hui and Canak (1981) demonstrate the complex interactions of economic and political forces in Malaysian and how institutions develop in different social and economic systems, such as capitalism.

Political economy theory considers that the appropriation of wealth is subtle and undertaken by a rational and narrowly self-interested economic actor (G. Peters,

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market economy has encouraged individuals to emancipate themselves from the social constraints of the church and the feudal state (Alt & Shepsle, 1990).



Pierre, & Stoker, 2010). However, the narrow self-interest may result in moral concerns in social conflicts, unequal relationships between actors and in exploitation in society (Boyd-Barrett, 1995). As described by McPherson (1984), there is a role of morality in economic life as a limit on wealth self-seeking.

Next, the study of political economy is primarily concerned with public policy making in allocating public funds (Caruso, Scartascini, & Tommasi, 2015). Pablo et al. (2009) argue that the action of government in public policy making in allocating public funds is to maintain the status quo.

Finally, following the formulation of public policy, political economy theory reveals the relationship between government and business organizations. From this context, Ciepley (2013) shows that state officials and business elites continue to build coalitions, negotiate, build consensus, and bargain to generate new policies, legislation and institutions so as to secure political support and remain in power. Thus, it is important to note that political economy analysis is an interdisciplinary discipline, which addresses the complexity of the world in understanding social phenomenon and change.

For the purpose of this study, some elements of political economy theory are employed in examining public procurement fraud in Malaysia as follows: (1) the dynamic of institutions; (2) rational decisions of an economic man; (3) public policy making and (4) the nexus of public-private interactions.

### 3.2.1 The Dynamic of Political and Economic Institutions

Political economy theory is applied to power relations of market and government as political and economic institutions in the context of neo-liberal capitalism (see B. Clark, 1998). Within a capitalist economy, the production of wealth and the distribution of power structures is influenced by the pressures of global forces and embraced by the local institutional and governance framework (Wan, 2008). Hence, political and economic institutions have relatively (re)created and (re)invented enduring power relations; as a result, these power relations have been entrenched in the socio-political and economic structure of the nation states. As Elliott (1978) and Voytko (1981) suggest, the exercise of a prevailing power structure, according to the political economy approach, cannot solely be achieved without the participation of both institutions.<sup>68</sup>

Hence, by the distribution of power relations, it is argued that public procurement fraud has emerged within the dynamic nature and forces of the institutional arrangement between politics and economics (see Hessami, 2014; Tabuena, 2010). Despite those arrangements, a strong interaction of power relations between politics and economic forces continue to influence the possibility of occurrence of public procurement fraud (OECD, 2008b; PwC EU Services, 2011).

A study by Dastidar and Mukherjee (2014) argues that the distribution of power relations within procurement process is able to affect the resources of power to

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<sup>68</sup> That is to say that the analysis of structure and agency within political and economic approach does not separate the distinctive features of politics and economics in a social science research.

engage in fraud and corruption and, in turn, affect the distribution of resources in society by securing accumulation of capital and wealth.

Next, the investigation of historical development is an important feature in political economy theory in order to identify the process of embedding capital accumulation and profit maximization (Boehmer, 2005; Cohn, 1996; Lange, 2009). A number of studies highlight the historical experience that seeks to explore the diversity of the human experience and interactions, in shaping and creating political and economic processes in a society. Notably, Boehmer (2005), Cohn (1996) and Lange (2009) disclose that the lingering ties of colonialism demonstrate material exchange for goods and services. That is the exchange of capital accumulation and profits occurs between the imperial forces and the colonial country. The ties eventually further contribute to an advanced accumulation of capital, crisis and conflict in exercising the legitimacy of interest, and expansion of power and wealth of the capitalist class (McVey, 1995; Wan, 2008). Thus, nurtured historical institutionalism continues to exercise influence in spheres such as legitimacy of interest, law making, regulation and expansion of power and wealth in many colonial countries (Owolabi M. Bakre, 2005). Having this in mind, this study considers some elements of the historical analysis of Malaysia's feudal system, colonialism and capitalist ideology (see Chapter four).

Finally, by using the political economy theory the analysis of political and economic institutions considers the creation of formal and informal practices which are embedded in institutions in generating mutual shared understandings for formulating particular cultural and social norms and moral values (Hofstede, Neuijen, Ohayv, &

Sanders, 1990; Islam, 2004). It is argued that the exercise of formal and informal rules, monitoring and enforcement mechanisms, the behaviour of the social actors and their operating and meaning-making procedures within which individuals and groups operate and interact with each other help to create and shape social practices (Hollingsworth & Boyer, 1998). For example, embedding money culture in a system encourages amoral and greed behaviour in the pursuit of wealth and power. As Young (2003) puts it in his book, *Moral Capitalism*,

*‘There are times when we may sell our souls to gain what money promises in the way of power and license. ... Money enables us to do what we want. ... Money provides us with discretionary power, easing our ability to turn people and their needs to use’.* (p.136-137)

Here, the same institutional governance framework and the actions of social actors both act as constraints and enabling factors influencing the persistence of public procurement fraud. For example, there are existing rules and regulations to curb fraud and corruption in public procurement in Malaysia (Ishak & Said, 2015). Yet, the effort to combat fraudulent and corrupt behaviour is hindered when an individual can undertake an action which might be regarded as amoral or ‘corrupt’, but it is within legal boundaries and hence they cannot be subject to legal action. In fact, a study by W. E. Baker and Faulkner (2003) shows that fraudulent acts are committed in or by a legitimate business through social attributes, behaviour and social network of people. As suggest by Dwivedi (1967), *“An unethical act in one culture may be socially acceptable in another”* (p.245). Following this, the political economy approach provides an understanding of the relationship of how prevalent interests, cultural traits, moral values and belief systems within the institutionalised instruments (re)create and (re)produce social practices. These discursive elements are further explained in the subsequent chapters (Chapter 4 until Chapter 6).

### 3.2.2 Rational Behaviour of Economic Man

Political economy theory assumes a heterogeneity of interests held by political and economic actors as the *homo economicus* (Acosta & Pettit, 2013).<sup>69</sup> In this context, A. Levine (1989) and Selgin and White (1994) highlight the rational behaviour of capitalist economic man as the ‘invisible hand’ as demonstrated in political economy theory. Given the individual interests in the pursuit of wealth accumulation, Adam Smith indicated in the Theory of Moral Sentiments that the invisible hand<sup>70</sup> aims to maximize profits. The classical political economy literature assumes that individual (private capitalists) attempting to maximize their own wealth will also be optimal in which societal wealth is also maximized. In contrast, J. Stiglitz (2006) provides evidence that when there are flaws and inefficiencies in the working of the free market then appropriation of wealth often leads to high levels of inequality,<sup>71</sup> characterised by exploitation and domination in both developed and developing countries. He further argues that

*‘those controlling the natural resource wealth use that wealth to maintain their economic and political power...The distribution of wealth is not determined by a careful balancing of equity-efficient trade-offs...or by reference to principles of social justice; rather, it is the result of naked power. Wealth generates power, the power that enables the ruling class to maintain that wealth’.* (p.137)

Therefore, the assumption of heterogeneity of interests exercised within a political economy approach may enable gaining insights into the degree of preferences of capitalist groups that continue to affect the transformation of institutional structures

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<sup>69</sup> It is also known as the basic constituent of economic man; a “*desire to possess wealth*” (cited in Persky, 1995: 223).

<sup>70</sup> The invisible hand of the market is a metaphor used by Adam Smith when describing the self-regulating behaviour of the market place (Thornton, 2009).

<sup>71</sup> Political economic analysis is appropriate for examining the distribution of power and wealth between different groups and individuals in relation to fraudulent practices in the Malaysian public service. This theory can also show inequality in the distribution of public resources and abusive of power in public offices.

and social forces through an analysis of the behaviour of various actors (Besley & Burgess, 2002).

Next, political economy theory is concerned with the rational behaviour of an economic man which provides the possibility of inequality and exploitation that are often associated with class conflict or class struggle (N. Poulantzas, 1996; Nicos Poulantzas & O'Hagan, 1973). In the context of the current study, political economy theory can also show how the decisions by the rational behaviour of an economic man may lead to inequality in the distribution of public resources and abuse of power in public offices (Khalid, 2014). The rational behaviour somehow reflects “*status, security, creativity, sociability and a concern for social reproduction*” which clearly provide motivation to maximize wealth and accumulation of capital in a political economy analysis (Persky, 1995, p.229-230). N. Poulantzas (1996), in particular, shows that inequality brings tension and antagonism in society due to competing socioeconomic interests and desires by which people are grouped in hierarchical social categories. Despite various government assistants in distributing public contract and resources to the majority group in Malaysia (the *Malays* group), Shukry (2014) and Faizli (2014) reported that the *Malay* community remains the largest group with the highest poverty rate. There is a high income disparity and the gap between rich and poor is relatively increasing in Malaysian society (see Chapter 4). Therefore, a political economy analysis is perhaps an effective approach for understanding inequality, oppression, exploitation of social class because it allows for the interaction of political and economic processes in a society (see Moncrieffe & Luttrell, 2005; UKAid, 2010).

Lastly, the intentions of economic man to possess wealth and pursue their self-interests, are in a sense as a flaw implementation of the free market economy (D. S. Brown, Touchton, & Whitford, 2011; Chomsky, 1999). Adam Smith in the Theory of Moral Sentiments says:

*'Every individual...neither intends to promote the public interest, nor knows how much he is promoting...he intends only his own security; and by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as many other cases, led by an invisible hand to promote an end which has no part of his intention'.* (184-185, cited in Persky, 1989: 196)

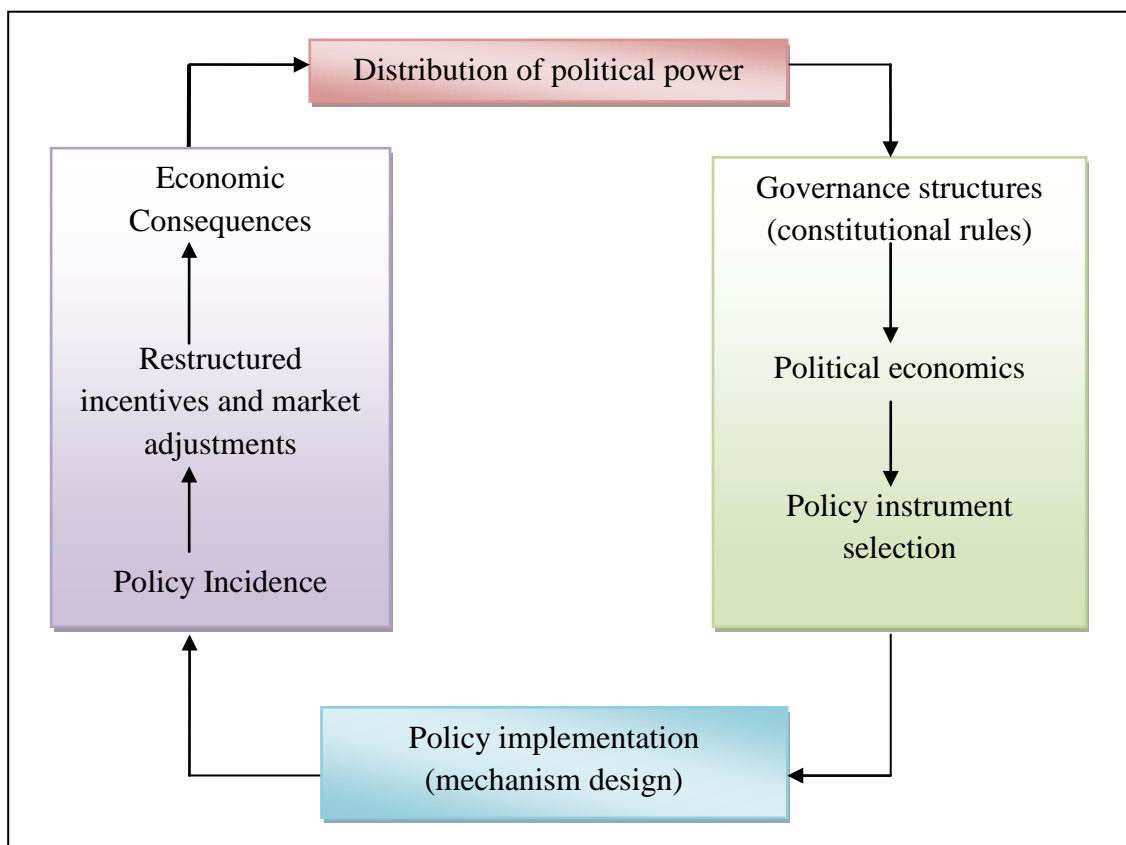
Cragg (2000) argues that a self-interested pursuit of wealth does not necessarily benefit the wider society. The rational interest of economic man is helpful in analysing the intention of political and economic actors within the Malaysian public sector by showing the legitimate and (il)legitimate interests held by powerful groups in allocating and distributing of public resources (Aeria, 2013). Given the element of the rational interest of economic man, political economy analysis considerably reflects on how powerful groups have nurtured rent-seeking activities, conflict of interest elements and cronyism to distribute government projects, licences, contracts, funding and privatised projects (see Gomez, 2012a; K. S. Jomo, 2005). The self-pursuit of wealth as a rational behaviour may lead to or encourage fraud and corrupt practices, which may lead to financial crisis and predatory practices. Thus, this would somehow reflect the prevailing nature of the self-interest economic man to pursue capital and wealth (see Morales et al., 2014; Sikka, 2013).

### **3.2.3 Public Policy Making**

Political economy theory is best applied when considering public policy making for distributing public resources (D. P. Levine, 1995; Rausser, Swinnen, & Zusman, 2011). According to this line of thought, Caporaso and Levine (1992) connect

political economy analysis with public policy elements. They argue for a deeper understanding of the distribution of political power through policy implementation in redistribution of income and wealth. Within this context, this study shows the prominent role played by the Malaysian state to further advance partisan practices for accumulating capital through state-led intervention in the policy making environment. Following this, Rausser *et al.* (2011) describe the policy-making process and economic consequences accounts from political economy theory as shown in Figure 3.2:

**Figure 3.2: The policy-making process and economic consequences**



**Source:** Adopted from Rausser *et al.* (2011)



As the above diagram shows, the distribution of political power over the allocation of resources in employing scarce resources among competing goals (the box at the top of the diagram) is reflected in economic and governance structures in public policy making. On the one hand, pragmatic preferences of capital are embedded by governance structures through a compromising and bargaining process among stakeholders and state officials (the right box of the diagram) (McLeay, Ordelheide, & Young, 2004). At this point, political economy analysis arguably seeks to explain the conjuncture of selection and implementation of a policy instrument that secures private interests for capitalists (Beeson, 2001). Next, the box at the bottom of the diagram represents the policy implementation<sup>72</sup> resulting from the rational choices of state officials, which are mutually dependent upon politics and economics (Ruigrok, 1995). On the other hand, the assessment of policy choices within the market institutions (the left box of the diagram) is generally measured in terms of both economic growth and the distribution of income and wealth among vested interests<sup>73</sup> (Dymski & Elliot, 1989). Thus, the economic consequences of efficiency, growth and stability of private property lead to the distribution of power (the top box of the diagram). With the conceptualization of policy-making processes and economic consequences, the political economy theory considers approaches on the formation of power structures, which sustain and transform the socio-economic and political contexts.

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<sup>72</sup> The argument has both intended and unintended consequences, because the vast majority of public policy is typically characterized by winners and losers (Christensen, 2010). In other words, some groups or sections of the society may suffer the burden of public policies, whilst others may reap the benefits.

<sup>73</sup> From this perspective, restructuring incentives and market adjustments is seen as aligning with the interest groups of coalition formation. In that sense, policy making processes employ a mechanism to achieve national interests advocated by a privileged elite interaction among bureaucrats, politicians, business leaders and the like with enduring power relations (Adrian Leftwich, 1995).

Next, political economy analysis inevitably explores the contrasting views of the role<sup>74</sup> of the state and its involvement in public life (Gill, 2003). The lens of political economy is able to highlight the complexity and structural constraints on accountable and transparent procurement practices by the state.<sup>75</sup> In order to protect private interests, the dependence of the state on capital<sup>76</sup> has placed control over and captured government structures (Khoman, 2015). Yet, the state is also responsible for creating conditions to secure development, growth and security through law and order (A. Leftwich, 2008). In that case, the state-society and state-capital relationships have been considered in understanding the activities of conflict and they involve many contradictions and deepening structural actions of crisis in a society<sup>77</sup> (A. Leftwich, 2000).

### 3.2.4 Nexus of Public-Private Interactions

Political economic theory postulates a deeper understanding of legitimate public and private interactions (and their relation) which have been transformed, and continue to be transformed, by the development of capitalist societies (Caporaso & Levine, 1992). Moreover, this theory shows a pragmatic way of studying the reciprocal

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<sup>74</sup> Arguably, the emergence of the state is associated with securing and protecting the collective interests of private accumulation process for individual, profit-seeking capitalists (Mosley, 1982). The Malaysian state is a developmental state. A developmental state involves state intervention for development and growth (Embong, 2012). Therefore, political economy theory also considers the sources and conflict faced by the Malaysian state in cases where they greatly influence the market through distribution of public resources.

<sup>75</sup> For many years, the state was the institutionalised instrument with a diversity of interests, preferences and shared values, which was involved in exploitation, domination and in promoting private interest and thus became involved in transformation and production of society (see Otusanya, 2012).

<sup>76</sup> Comparatively, there are greater incentives for attracting capital via public-private and state market intervention. Those incentives aim to maintain the state's status quo and legitimacy. As a result, one can say that there is a structural crisis and constraints on the conflicted role of the state between seeking capital from questionable business practices and sustaining the economy (Johansson, 2014; Sundaram & Hui, 2014).

<sup>77</sup> The state and state capacities arguably possess enduring power structures constructed by political maneuvering and economic rationality, which continue to influence and shape individuals' actions and behaviour.

relationship of a close alignment between government and business. As mentioned before, a political economic analysis is routinely associated with political and economic power between businesses and public policy design and formulation. By pretending<sup>78</sup> that business interests are different from those of the government, capitalist businessmen (including politicians who are also businessmen) are able to maximize their profits using the state machinery (Searle, 1999; Tátrai, 2015). Searle (1999), in particular, argues for new alignments that have been formed between politics, the bureaucracy and business, and shows that the

*'(...) boundaries between politics and businesses became blurred as the government sought to enlarge Malay ownership and promote a new Malay capitalist' (p.55).*

Within that context, the 'blurred' interaction between politics, the state, business and the economic have facilitated a more intimate and productive relationship between the state and the *Malay* and Chinese elites (Tan, 2015). At some point, the legitimate public-private spheres offer opportunities for wrongdoings and misappropriation, such as fraud, corruption, rent-seeking, cronyism, patronage, and favouritism (de Kadt & Simkins, 2013; Hessami, 2014).

Finally, the mutually reinforcing interaction between public and private spheres is generally associated with the trajectory of wealth and power at the intersection of public and private domains (Froud et al., 2004). For example, the catalyst of political business practice, as illustrated by Kuzio (2014), Ciepley (2013) and Sargiacomo et al. (2015), is a web of a powerful group of individual interests of private capitalists. The links for the web mark a source of patronage for the well-connected

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<sup>78</sup> It is also said that a government is a tool of business when businessmen use government power (government machinery) to maximize their profits.

businessperson. It is in this context that political economic analysis increasingly offers a dynamic mechanism for studying money politics, political funding and campaigns, and vibrant elements of 'ersatz capitalism' or true 'productive' capitalism (Ebrahim et al., 2014; Nicholas J. White, 2004). Thus, the pursuit of capital accumulation and wealth creation inevitable goes to the heart of public-private nexus.

### **3.2.5 Justification for choosing Political Economy Theory**

Based on the above discussion, political economy theory offers a flexible lens through which to investigate the persistence of public procurement fraud in Malaysia as follows. First, a political economic analysis is concerned with two conceptually distinct societal subsystems: the political and the economic context (J. Williamson, 1994). Political economy analysis assigns a central role to the enduring power structure of historical, socio-political and economic institutions, which have been embedded into informal and formal practices where morality, imbued values, and customs are institutionalised.

Second, the invisible hand of the *homo economicus* (the economic man) plays a role in political economy approach (Aydinonat, 2008; Kennedy, 2009). Adam Smith in his Theory of Moral Sentiments assumes that the rational behaviour of economic man is to maximize profits and wealth, and in turn, to benefit all members of society. This study challenges that notion, as the invisible hand in the Malaysian public sector may serves only to enrich state officials and their families (Berthelsen, 2012; Khalid, 2014). Political economy theory demonstrates the decision sense making of the economic man in the Malaysian public procurement practices.

Third, for understanding the enduring power of political and economic institutions and rational sense making in public procurement practices (see section 3.2.1 and 3.2.2), the practices in public policy making are also employed in political economy theory. Ping (2008) argues that the institutionalization of the policymaking process<sup>79</sup> in Malaysia is created by the state intervening in the economy. The Malaysia state intervention, however, also creates a platform for patron-client relationships and rent-seeking activities (N. R. W. Abdullah, 2008). Political economy analysis is a powerful tool to provide distinctive characteristics of many contradictions and antagonism of the state for capital accumulation at the nexus of political power and economic institutional mechanisms (Gomez et al., 2013; Kehl, 2009). Thus, political economy provides this context by providing insights into public policy environment in Malaysia.

Finally, to understand public procurement fraud in Malaysia, it is important to focus on interaction of government and business in government purchasing. Political economy theory sheds light on how business elites and state officials manoeuvre the government procurement practices through 'legitimate' means. Political economy indeed helps to explain the undeniable relationship of government-business because the Malaysian state has strongly encouraged the practice of exchanging goods and services with the private sectors to develop the country. Thus, the same site used for interactions between government and business may provide opportunity for possible

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<sup>79</sup> In some ways, Rodan and Jayasuriya (2009) propose that internal and external pressures are manoeuvring the architecture of public policy by power relations of the developmental state. Evans (1989) and Adrian Leftwich (1995), on the other hand, show an expansion of power and coordination of networks in developmental state containing a combination of state and non-state actors. This, in turn, has deeply implicated the state's structure to be influenced by and heavily dependent on political and economic capitalist elites and inevitably correspond with western input for its allocation of resources (A. Leftwich, 2008).

fraudulent and corrupt actions (Gomez & Jomo, 1997). In fact, an alliance between big business and high-ranking state officials<sup>80</sup> has already emerged from the business-government relations. Haque (1998) demonstrates that,

*'The legalization and intensification of public-private partnerships may lead to more scandalous relationships between public bureaucracies and business enterprise, and thus affect bureaucratic integrity and accountability'. (p.366)*

Thus, it is important to realize that political economy theory seems as a suitable approach to understand public procurement fraud in Malaysia by addressing the dynamic characteristics of institutions or the role of powerful social actors that frame public and private entities as well as also the changing and inevitable role of the state in global contexts.

The next section describes the qualitative research design employed in the current study.

### **3.3 Qualitative Research Design**

The aim of this research is to investigate the possible reasons<sup>81</sup> for the persistence of public procurement fraud in Malaysia. Because the subject under study is sensitive and controversial, the choice of a qualitative research design is crucial for producing reliable and insightful social research (Denzin & Lincoln, 2013). The selection of an appropriate research design is made after one defines the research problems, formulates clear research objectives and research questions and generates the

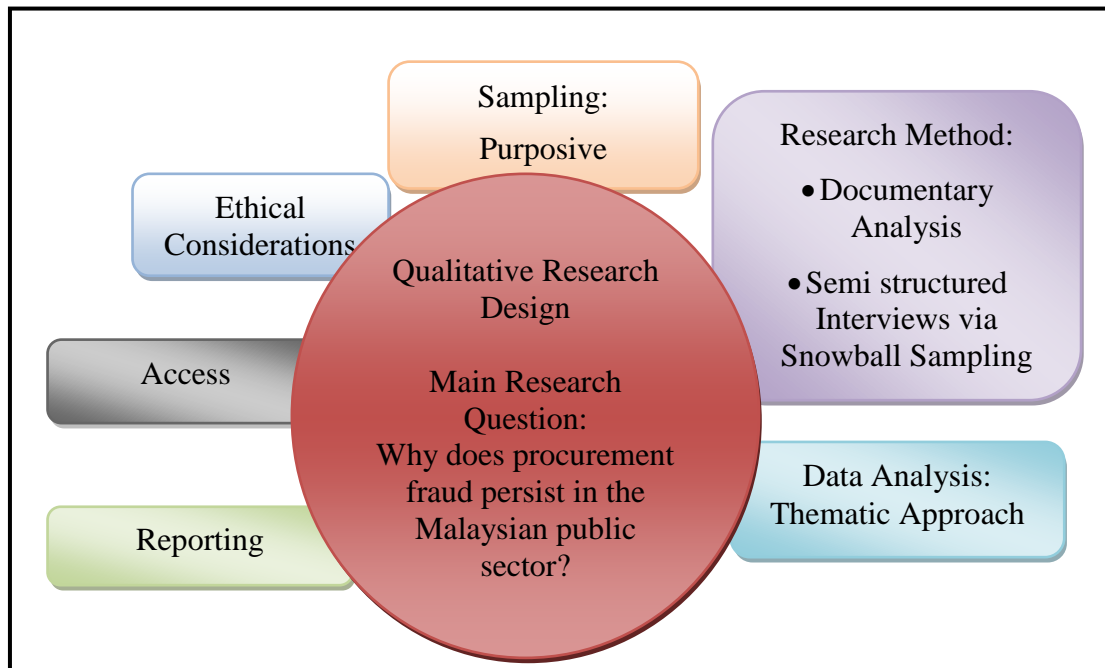
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<sup>80</sup> From this view, the capacity of the Malaysian state officials to legitimate their interest and to make laws and regulations somehow detaches them from moral considerations for more narrowly economic objectives (K. Jomo, 2000).

<sup>81</sup> Apart from the main research questions (see Chapter 1), there are also 5 sub-questions to be addressed.

theoretical framework from the literature review and review of current issues (see Bailey, 2007; J. Ritchie et al., 2014). The research design of this study (see figure 3.3) should also manage to gain a high degree of trust from the interviewees.

**Figure 3.3: Qualitative Research Design**



**Source:** Current Study

Since this research seeks to explore the complex social and behavioural phenomenon of public procurement fraud in Malaysia, it is important to highlight that the findings and results derived from the study are not to be considered as the only underlying causes and explanations. Rather the views and opinions of the interviewees portray their personal experience and individual consciousness about fraudulent practices within Malaysian procurement practices. Further, the perspectives expressed by the interviewees should not be seen as a mutual view from all members of a group (especially procurement officers and professionals) in order to understand the social phenomenon. In other words, this qualitative research does not aim to make

generalizations about the persistence of public procurement fraud in Malaysia, but it can be used as an influential study for understanding the nature and extent of fraudulent practices in the Malaysian public sector.

### 3.3.1 Sampling

In order to explore the views of the interviewees (see Appendix 3.3 for a detailed list of interviewees), this study employed semi-structured interviews via Snowball Sampling Method (SSM). The views selected were based on purposive sampling<sup>82</sup> (see L. Cohen, Manion, & Morrison, 2007). The groups interviewed represent the key stakeholders for the subject enquiry. Their subjective views and perspectives about the social inquiry have been examined in order to collect evidence about the persistence of fraud in the Malaysian public sector. The interviewees provide a range of meanings, beliefs, experiences and views on the matter. Below a brief description of the 5 participant groups is given.

**Table 3.1: Summary of the 5 Groups of Interviewees**

No.	Coded Name	Method	Duration
<b><i>Group 1: 13 Regulators (Public Procurement Officers)</i></b>			
	R1 - R13	Face-to-face and Email Interviews	32 to 119 minutes
<b><i>Group 2: 13 Public Professionals-PP (Public Auditors and Enforcement Officers)</i></b>			
	PP1 - PP13	Face-to-face and Email Interviews	42 to 136 minutes
<b><i>Group 3: 5 Politicians-P</i></b>			
	P1 - P5	Face-to-face Interviews	39 to 73 minutes
<b><i>Group 4: 4 Media Actors-M</i></b>			
	M1 - M4	Face-to-face and Skype Interviews	37 to 161 minutes
<b><i>Group 5: 5 Academics-A</i></b>			
	A1 - A5	Face-to-face and Skype Interviews	33 to 98 minutes

**Source:** The fieldwork

<sup>82</sup> Purposive sampling is able to provide 'rich' information and data set that link to the phenomenon under study. The sample is typically selected based on its distinctive characteristics and its conceptual significance for understanding social practices (Holliday, 2007; Myers, 2009).



The main views on the persistence of public procurement fraud in Malaysia were derived from Group 1 (13 regulators: public procurement officers) and Group 2 (13 public professionals: public auditors and enforcement officers). On the one hand, the regulator's groups consisted of public procurement officers who handle procurement process and issues on a daily basis. On the other hand, the public professionals' group plays a significant role in preventing procurement fraud to ensure the implementation of public accountability. There are important reasons for choosing regulators and professionals to be the main interviewees for the study. (1) Public procurement officers play a critical role in evaluating documentation of government contracts as their everyday professional work. Procurement officers face considerable risk at their posts as they are possibility sometimes pressurized to obey the instructions and demands of a higher authority when rewarding a government contract. (2) Public professionals (e.g., public auditors and enforcement officers) face the risks when they need to perform risk assessment procedure for providing a reasonable basis for identifying and assessing the risks of fraud and corruption (see Colon, 2015). The views of professionals were sought on their role in monitoring and detecting public procurement fraud practices. Besides, they require appropriate skills, competency and professionalism to heighten the scrutiny of the independence of public professionals to detect fraud and corruption in public procurement. (3) These interviewees have worked in the Malaysian public sector for minimum of 5 years and up to 30 years. With such long-term experience in the procurement department, their skill and knowledge on procurement practices in Malaysia are extensive. Therefore, their subjective views on public procurement fraud in Malaysia is what is required to investigate the social inquiry.

The politicians<sup>83</sup> were interviewed since there is little understanding of politicians' view even though they are considered among the main stakeholder in procurement policy (Murray, 2009). As described by Murray (2009), the influence of politicians on public procurement policy is pervasive. The elected politicians (or ex-politicians) were asked about their decision making process (at the higher level) when delivering their responsibilities. The politicians also have a wide range of knowledge about the historical development of the socio-economic and political context of social practices in Malaysia.

On the other hand, the media actors and academics selected were able to map the social phenomenon because of their critical role in influencing the shape of governance in Malaysia. The former represented journalists that were specifically accustomed to interviewing and uncovering information about fraud and corruption issues (e.g., a journalist who works at the Court reporting fraud and corruption news). The latter (academics) did research on particular distinctive aspects of Malaysia's political economy. By studying their work and research, I was able to locate many significant themes and patterns in understanding the (re)creation and (re)shaping of social practices. They are also known as 'experts' in their field and in particular in observing the construction of fraudulent and corruption behaviour in Malaysia. The willingness of my interviewees to be interviewed and share their experiences and memories about the social inquiry was the most valuable contribution for the thesis.

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<sup>83</sup> The former Prime Minister agreed to see me for an interview. It was not easy to gain his acceptance, as I needed to submit a supporting letter laying out the purpose of my research and the reason of choosing him as one of my interviewees. The letter had to be detailed and convincing. Despite his tight schedule (he still holds many posts in the Malaysian's administration), I was given the opportunity to interview him for approximately 40 minutes at Putrajaya, Malaysia.

Therefore, there is a rich variation in relation to how these 40 interviewees understand, perceive, and/or experience the phenomenon under study.

### **3.3.2 Access**

Gaining access to conduct the interview sessions was a challenging task and there was lack of response from the main group of interviewees: regulators and public professionals due to the sensitivity of the topic. I began to search for my interviewees early and started to contact them (through email and phone) after receiving ethical clearance from the university. Since the beginning of the fieldwork, I have been trying to get in touch with various politicians, media and journalists through phone, emails and social networking. Unfortunately, none of them responded to my requests.

After this unsuccessful attempt, for the second attempt, I used my contacts, friends and social networking in securing access. This time I was more successful, even though many of those who initially responded positively refused to be interviewed after reviewing the interview guide. The reason of their refusal was that the topic was deemed too sensitive and it may have threatened their positions in the public offices. They were afraid of violating the Official Secretive Act 1972 by exposing secret and confidential information of the Malaysian government. Nevertheless, this second attempt provided me with more interviewees and a motivation to conduct more interviews.

Finally, after getting the permission from some more interviewees to interview in the second attempt, it was through recommendations of those interviewees (during my second attempt) that I was able to get access to the rest of my interviewees. By using

the Snowball Sample Method (SSM) (see section 3.3.3.2), I was more successful in securing the interviews needed for this study.

The interviews lasted from 32 to 161 minutes. All interviews were recorded after getting the interviewees' consent. However, some interviewees were reluctant to discuss some questions as they were afraid this might jeopardized their job. Most of the interview sessions were conducted in their offices, though some interviewees preferred having the interview sessions at their house or at a café. None of my interviewees requested to see my transcript nor did I promise to give it to them. However, I continuously reminded them of the anonymity and confidentiality of their particulars and details (e.g., name, positions, the office), including any publication of my findings.

### **3.3.3 Research Method**

The study of public procurement fraud in Malaysia was pursued using two research methods: (1) documentary sources as secondary evidence, and (2) semi-structured interviews as primary evidence. However, it is important to note that although the main source of data is the semi-structured interviews, secondary data is also important to understand the issue under study. The research methods are explained as below.

#### **3.3.3.1 Documentary Sources**

This study focused on the contextual dimension of the phenomenon such as the institutional, historical and cultural elements that have shaped social practices and on any behaviour that is related to this phenomenon. The documentary sources offers input on the identification of possible reasons, actions and how these link with each other in relation to this social phenomenon (Bryman & Bell, 2011).

The first stage of the documentary analysis aimed at a broader understanding of historical development issues as well as socio-economic and political issues that relate to fraud and corruption practices in Malaysia. The identification and relevant sources of information for the documentary analysis focus on issues surrounding the theoretical framework selected for the study (see section 3.2), and any emerged themes related to the study. As documentary analysis generates a broader understanding about the subject inquiry, it provides a good preparation for the interviews. The use of documentary analysis (see section 3.4) has identified some patterns and themes in order to describe the social phenomenon (G. A. Bowen, 2009).

The second stage of the documentary analysis was established after conducting the interview sessions. Documentary analysis can also consult secondary sources of evidence. According to Bailey (2007), only relevant document need to be extracted so as to understand the social phenomenon under study. At this stage, reviewing secondary sources of evidence was paramount for cross validating the data from the interview sessions. Within that context, the secondary data is used to verify, confirm and/or modify the findings from the primary sources (Lapan, Quartaroli, & Riemer, 2012). Thus, the publicly available data is used as an instrument to understand and verify the understanding of a social phenomenon.

Hence, the document evidence involved publicly available data such as government reports and websites (e.g., budgets, Malaysian Plan Book), government documents (e.g., Acts, Court conjunctions, circulars), books, speeches, journal articles, newspaper clippings, blogs, magazines, presentations, and corporate websites. Because of the sensitivity of the topic, many sources of documentary analysis

comprised newspaper clippings, magazines and websites. Yet, the secondary data chosen originated from reliable sources of information pertaining to fraud and corruption issues. These reliable sources have to do with issues concerning relations surrounding public procurement practices, and discussions with interviewees. Therefore, one can say that the information gained from publicly available data can be used to confirm, validate, support or oppose findings for understanding and verification purposes.

### **3.3.3.2 Semi-structured Interviews via Snowball Sampling Method (SSM)**

Interviews can be used to explore the opinions, practices, understandings and motivations of individual interviewees and offer possible explanations of the subject matter (Legard, Keegan, & Ward, 2011; Tobi, 2013). This study employs semi-structured interviews in order to understand the social world through personal accounts and narratives with justifications as follows. First, a semi-structured interview offers an open structure of questions which are normally prepared in advance in a framework of themes, but which are open to probe and the researcher can change the sequence of the questions and follow up particular areas that need further explanations (Bryman & Bell, 2011). Consequently, semi-structured interviews allow new ideas/questions to be pursued when the researcher feels appropriate to do so within a fairly open framework. Second, because it is a two way communication,<sup>84</sup> a semi-structured interview format can ‘ease’ the interview process by creating a more relaxed atmosphere (Saunders, Lewis, & Thornhill, 2009). Hence, it gives the interviewee the platform to express their views freely regarding their

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<sup>84</sup> One important feature of this interview method is that it enables both the interviewer and interviewee to build good rapport by exchanging questions, answers and views regarding the topic. A good rapport appear to be the most useful way of gaining the trust and interest of the interviewee (Denzin & Lincoln, 2013).

everyday experience and knowledge. Finally, a semi-structured interview involves exploratory discussions by answering the “what”, “how” and “why” questions and through the understanding of individual circumstances, views, opinions, experiences and decision making (Bryman & Bell, 2011). Indeed, semi-structured interviews can help researchers develop a thorough understanding of the topic of interest. Nevertheless, the collection of rich data should end once data saturation is achieved<sup>85</sup> (Easterby-Smith et al., 1991).

The interview guide for the five different groups of participants (i.e. regulators, professionals, politicians, media actors and academics) was devised based on an examination of the role that the 5 groups of participants have in the construction of public procurement fraud in Malaysia. Justifications for employing semi-structured interviews for purposive sampling were selected based on its distinctive characteristics in contextualizing social practices as explained in detailed in section 3.3.1: Sampling. As highlighted by J. Ritchie et al. (2014), purposive sampling is able to confirm that all main stakeholders relevant to the study are taken into consideration and ensuring diversity of views and perspectives is maintained within each relevant group so as to provide rich evidence and information that link to the social phenomenon. As a result, the current study employed Snowball Sampling Method (SSM) for its semi-structured interviews (see detailed in section 3.3.3.2).

The interview guide (see Appendix 3.4) was developed using certain scenarios or situations so that the participants could easily engage and identify with the interview

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<sup>85</sup> Data saturation happens when interviewees do not offer new information or provide additional insights.

sessions. This was to improve the validity of the responses gathered from participants when answering the study's research questions. Legard et al. (2011) address the importance of qualitative interview designs in seeking to make an association with participants' experience and viewpoints of particular topics. With some modifications or extensions of particular scenarios for particular interviewee groups the interview guide was more suited to determining the possible factors for the persistence of fraud in Malaysian public procurement.

In this study, semi-structured interviews took the form of email interviews, video-conferencing interviews through Skype and face-to-face interviews. Email interviews were employed in order to gain a wider access to interviewees and save time for the transcriptions (Meho, 2006). Unfortunately, there were not enough respondents replying to my emails. After this unsuccessful attempt through email interviews, I turned to videoconference interviews through Skype and face-to-face interviews.

In relation to the videoconference interviews through Skype and face-to-face interviews, the current research used the Snowball Sampling Method (SSM),<sup>86</sup> also known as chain-referral sampling. This technique involves asking people who have already been interviewed to recommend other people who are suitable to answer the interview questions (J. Ritchie et al., 2014). Christopoulos (2009) illustrates that with the SSM, one uses the social networks of the interviewees to expand the researcher's potential interviewees. As the current study is sensitive and involves conflict environments, SSM is a useful research strategy to access and interview groups of

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<sup>86</sup> The snowballing method played an important role in finding other relevant interviewees.



interviewees. Nevertheless, the effectiveness of the SSM for the current study was explained as follows.

(1) SSM is useful when conducted in conflict environments (N. Cohen & Arieli, 2011). There is a paucity of research conducted in a conflict environment that is challenging due to sensitive and controversial issues, and lack of trust given to the researcher (J. A. Clark, 2006; Romano, 2006). As the current research is investigating public procurement fraud, there is possibility for the research to expose conflict and a politically sensitive matter in the country. The current study encountered many aspects and challenges where public conflict is a dominant feature: research on conflict-related issues, internal security, and the possibility of political oppression, secrecy and confidentiality. This can be seen from the difficulty in getting data access and gaining the trust of the interviewees as well as difficulties in the analysis, interpretation and presentation of the data. Thus, the SSM provides a different dimension of research technique in investigating a conflicting social phenomenon.

(2) SSM serves the need of studying a population that is hidden or hard to reach for research purposes (Petersen & Valdez, 2005; Valdez & Kaplan, 1998). In this study, the population is not hidden but hard to reach for a researcher. The inaccessibility was due to the social and political status of the interviewees, especially the procurement officers in various government departments. Because of the high degree of bureaucracy, sensitivity and confidentiality of government procurement documentations, SSM is an effective method for this study.

(3) Given the complexities of my research and there is certain sensitivity issues about the subject matter, SSM helped me demonstrate a high level of trust by also remaining truthful and visible on my research topic. My dual role as a researcher and a Malaysian public official provided me with an opportunity to unveil and explore the hidden and silent voices of the public officials in relation to this sensitive topic. The confidence and trust I was given by my interviewees was mainly due to my knowledge and exposure as a public official myself. It is critical for the research to establish pleasant and cooperative interactions with my interviewees. SSM is possibly useful in enlarging the pool of potential interviewees by increasing the level of trust through the introduction of other potential interviewees by people they know (Christopoulos, 2009).

(4) After being trusted to be introduced to other potential interviewees (the introduction part was the most important element in SSM), I ensured maximum sensitivity towards all my interviewees. First, I assured the privacy of my interviewees' personal particulars (name, positions, office) was to be respected. Second, the interviewees were not obliged to expose any sensitive government information that could affect Malaysia's national interest. Finally, bearing in mind that the sensitivity of fraud and corruption issues may affect my interviewees' mood and emotions, I always adopted a warm, pleasant and sympathetic tone of voice and body language.

(5) Lastly, the SSM gives one the opportunity to adopt an empathetic approach towards the interviewees (N. Cohen & Arieli, 2011). The reflexivity and credibility

gained from being part of the system, makes me<sup>87</sup> more understanding to as well as emotionally involved with their situation as public officials. Since I showed that I understand their position, most of my interviewees were willing to share their experience and views about public procurement fraud in Malaysia. Showing empathy proved invaluable approach for conducting research in this sensitive area.

The next section discusses the use of thematic analysis for this study.

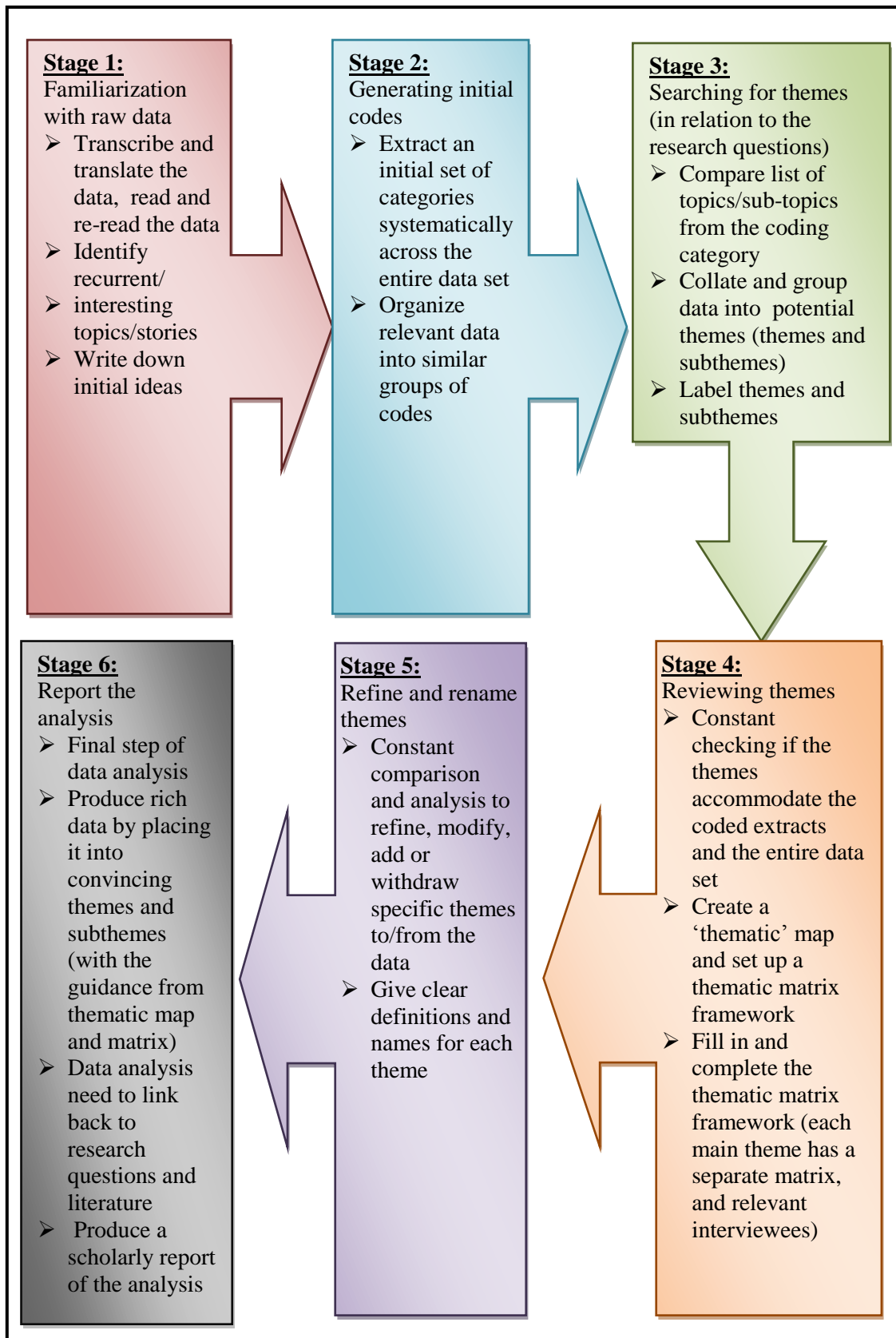
### **3.4 Data Analysis: Thematic Approach**

The data collected from the interviews was analysed using the thematic approach (Braun & Clarke, 2006; Bryman & Bell, 2011; Guest et al., 2012; Thorpe & Holt, 2008). Guest et al. (2012) describe thematic analysis as the most common technique to analyse rich data by coding and developing it in a thematic way. Braun and Clarke (2006) highlight the flexibility of thematic analysis in becoming familiar with the data, generating initial codes with a template and representing it in a theme identified within the textual data. The flexibility of thematic analysis lies in the fact that one is able to modify, add to or withdraw from the template or coding something as one reads and interprets the text (Saldaña, 2009). Thus, new themes can be established that were not captured at the beginning of the data analysis process (Thorpe & Holt, 2008). The data analysis for the current study was as follows:

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<sup>87</sup> I currently work as a public auditor of the National Audit Department, Malaysia while doing my PhD at University of Essex, UK. I have served various government agencies during the 15 years of my service in the Malaysian government.

**Figure 3.4: Qualitative Data Analysis-Thematic Approach**



**Source:** Adopted and Modified from Braun and Clarke (2006)

Following the principle of thematic analysis as described in stage 1 to 6 (see figure 3.4), data analysis for the current study started with familiarization of data in **stage 1**, which involved transcribing, translating, reading and re-reading the data several times. This data was used for listening again, and for checking and correcting the transcripts which helped to increase the robustness and reliability of the analysis (J. Ritchie et al., 2014). The participants' answers were reviewed separately on an individual basis. To avoid losing data, all interview transcriptions were also copied from the digital tape recorder to my laptop's hard disk as well as to another hard disk as a backup. The objective in this stage that 1 was to become immersed and intimately familiar with my interview data. At this stage, I underlined all repeating words from the transcription and noted ideas and potential coding schemes. After that, I made a list of all the repeating words, which in essence involved the initial interesting topics or stories and the main ideas expressed by interviewees (Holliday, 2007).

**Stage 2** involved generating initial codes based on 5 groups of interviewees (i.e., procurement officers, professionals, politicians, media actors and academics). This phase involved generating labels and codes that were possibly relevant to answering the research question. The codes and labels were extracted and collated for a later stage of analysis (if necessary). **Stage 3** involved examining the labels and codes that were extracted in stage 2. The codes were grouped together to identify significant broader patterns as a possible theme (Saldaña, 2009). At this stage, it involved the comparison and contrast of the list of topics and sub-topics as potential themes and sub-themes.

Then, at **stage 4**, the data was analysed by reviewing the (potential) themes identified and by continuously<sup>88</sup> checking their relevance in order to answer the research question. The review of the themes was typically refined and this offers for a more flexible method to split, combine or withdraw the themes (Guest et al., 2012). Using the thematic approach, the data under the themes were grouped together according to common meanings, which emerged during the analysis of the data. In fact, other themes might need to be broken down into separate themes for validity of individual themes in relation to the data set (Easterby-Smith et al., 1991). In addition, there should be clear and distinctions between themes. For example, expressions about public procurement practices were collected from participant's experience and their views/opinions about procurement process. After the data was coded into relevant themes, this stage provided an opportunity for creating a 'thematic' map and a matrix framework. It is pertinent to note that the usage of a thematic map and matrix framework was useful as it helped me to make a note of any missing details, linking elements and see the bigger picture of the 'story'. For example, the thematic map was used in order to have a complete picture of all the major themes and sub-themes. After that, by listing the major themes and sub-themes, I created a matrix framework and carefully filled in the data from the answers of each interviewee. Saldaña (2009) suggests that coding the data into themes is very crucial in social research, which is highly subjective, in order to determine ideas and concepts as relevant findings from the participant's answers.

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<sup>88</sup> As the analytical process developed, the initial template or rough ideas that had been identified before was modified by the addition of new multiple sub-themes that emerged during the categorisation process; this shows the flexibility thematic analysis (P. A. Bowen et al., 2012; Guest et al., 2012).

At **stage 5**, my data analysis continued by defining and renaming themes. This phase started when I was satisfied with the data that put into the thematic map and matrix framework. However, detailed analyses for each individual theme were conducted in order for me to fit them into the broader overall story of public procurement fraud practices. For example, the main themes were political and economic forces influencing public procurement fraud in Malaysia. Through a detailed analysis, the data provided sub-themes about the practice of political business in Malaysia's procurement process, the inevitable relationship between government and private sector and public procurement environment in Malaysia (see Chapter 5). As suggested by Braun and Clarke (2006), themes and sub-themes provided from the data must be related to the research questions as it is useful to have a structure in order to understand a large and complex story and the meanings within the data. In refining and renaming themes, I always made comparisons and analysis of the data by working on the focus and scope of each theme. The process of modifying, adding or splitting specific themes was carried out in order to decide on an informative name for each theme. It is important to note that although common themes and sub-themes were established from the interviewees' answers, each expression was unique and distinctive as a social constructivism of reality (P. L. Berger & Luckmann, 1967).

The final stage, i.e., **stage 6**, was the last rigorous thematic approach taken to analyze my data and produce an analysis of the findings. This phase involved the careful act of weaving together the analytical narrative and data extracts in order to contextualize the analysis so that it related back to my research questions and the broader theoretical assumptions of this thesis.

The thematic analysis of the 40 interviews has helped to ‘unpack’ the hidden and silent voices of my participants in relation to procurement fraud in Malaysia. There are 5 themes (and sub-themes, as explained in Chapter 5) aiming to answer the research questions. The next section discusses the ethical issues of this study.

### **3.5 Ethical Considerations**

Ethical considerations are crucial for a research investigating a complex, sensitive and controversial social practice. This is because ethical arrangements promote trust, accountability, mutual respect and fairness between the researcher and the interviewees (Eriksson & Kovalainen, 2011). Ethical considerations for the current study involved the following. (1) I have an approved ethical form from my institution to conduct this study. This form was a legally binding form for the researcher to adhere to the code of conduct of research. (2) I gained the consent from my interviewees to participate in this research in every interview session (some consents were recorded). (3) In every interview session, I highlighted the anonymity and confidentiality of the interview by assuring them that I would not be specific when referring to them in my work and I would not reveal any of their details (e.g., name, position, office). This research would not have been successful without such clear terms on anonymity and confidentiality. (4) My interview recording, interview transcript and interview notes are in a safe place and can be accessed only by me. There are no details of my interviewees in my recording tapes, interview notes and transcript.

The challenges faced and limitations of this research are described in the next section.



### 3.6 Challenges and Limitations

This research aims to understand the persistence of public procurement fraud in Malaysia from the viewpoints of 5 main stakeholders (regulators, professionals, politicians, academics and journalists). The understanding gained by acquiring and studying these views, however, did not aim to make generalizations about social practices, but rather to value those specific views and opinions. It is vital to note that the opinions and the findings derived from the perceptions expressed by my interviewees are from their own views and they are based on their personal experiences and positions. Thus, their opinions are not meant to be representative of all stakeholders (e.g., procurement officers, professionals, politicians, media actors and academics) related to public procurement fraud practices in Malaysia. What is more, there must be an open approach, which takes into account the fact that opinions and views may change over time according to social transformation in any society.

Inevitably, I cannot separate myself as a researcher from my interviewees.<sup>89</sup> However, as a qualitative interviewer I was only supposed to listen, digest and comprehend their answer (Denzin & Lincoln, 2013). During the interview sessions, I was not allowed to make any assumptions from or judgements on the knowledge and exposure I have had as a public official. I only displayed my interests and remained inquisitive so as to ‘unpack’ public procurement fraud in Malaysia from the views and perspectives of my interviewees. This research acknowledges the values, beliefs and experiences of both the researcher and interviewees. As a person who was born, raised, has worked and lived in the country, I cannot marginalise my own judgment,

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<sup>89</sup> This has been explained when discussing my philosophical stance in section 3.1.1.

beliefs, cultural traits, understanding and wide experience of the system of the Malaysian public sector. The particular range of views, experience and outcomes give robust reliability and validity to a qualitative research (J. Lewis & Ritchie, 2011).

There are some challenges for and limitations of this study. (1) This study investigates a sensitive and controversial issue: public procurement fraud. This research is regarded as politically sensitive which may or may not affect the potential interviewees.<sup>90</sup> It produces a fear of 'exposure' as well as lack of trust in researcher. The atmosphere of distrust made it difficult for me to secure access for interviews. However, by remaining truthful about the objective of the current study and assured my interviewees of the maximum anonymity and confidentiality of the interview (e.g., by not revealing any information of the interviewees' details), interviewees were willing to share their personal experience and views in relation to procurement fraud in Malaysia during the interview sessions. On the other hand, documentary evidence collected in the current study were fruitful in providing confirmation and validation to support and/or withdraw themes in relation to issues pertaining to social practices.

(2) Despite being a challenging task for me to find and approach willing interviewees to discuss a very sensitive topic, the use of personal contacts and networking secured me some interview sessions to start with. Then, the SSM made it possible to get more interviewees and gain their trust by being recommended to them. There is no doubt that the SSM was a useful and efficient way to generate responsiveness (Goodman, 1961; Heckathorn, 1997).

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<sup>90</sup> Therefore, interviewees may be afraid of any (bad) consequences for them or their family.

(3) Working in the Malaysian public sector has offered me a significant advantage in undertaking the current study. Before each interview, I needed to explain that I am a public officer myself, from the National Audit Department Malaysia. I always assured my interviewees that I was aware of and understood all applicable Acts and the atmosphere working as Malaysian public officials. Most importantly, in each interview I did my best to convince my interviewees that the interview sessions were only for research purposes and were strictly confidential. Because of my explanations and empathetic approach, the interviewees sometimes assumed and took for granted that I knew everything in all public procurement issues. I constantly needed to encourage them to share their experience and views about the social phenomenon in their own words.

(4) As this research was mostly related with government agencies, I could not have avoided the 'red tape', bureaucracy circumstances and protocol when contacting the potential interviewees. Sometimes, I had to wait for a whole day outside the office only to secure an interview (an interview that I sometimes did not manage to secure), I was put on hold for most of the time on the phone and many appointments were cancelled at the last minute. My meetings were most of the times postponed, and stopped even half way through interview. They would just ask me to come back later to continue the interview, something that, needless to say, never happened.

(5) There were also some logistical challenges when I need to travel a long way from one government agency to another one, or towards places agreed by the interviewees which I was not familiar with. The travelling was exhausting. For me to be in an area that was not familiar was also quite dangerous and intimidating. Hence, if the

interview was also cancelled at the very last minute or was stopped suddenly, the research became more complicated and limited.

(6) Lastly, most of the interview sessions were conducted in the Malay language,<sup>91</sup> which is of the language used by most government officers. As I wanted to make the interview session as ‘easy’ and ‘comfortable’ as possible, I let my interviewees tell their story in their most familiar language. Therefore, I also needed to transcribe and translate the interviews in English, something that was time consuming.

A summary of this chapter is presented below.

### **3.7 Summary**

This chapter discussed the methodology employed for the scientific investigation of public procurement fraud in Malaysia. This chapter has considered the research methodology and methods underpinning this study.

The core philosophical assumptions were outlined. This study assumed subjectivist ontology, according to which, reality is based on individual consciousness by shared meanings and conceptions through human interactions and activity. With its beliefs on social constructivism epistemology, the current study focuses on and trusts in the meaning-making or personal experience, feelings and views through constructed shared meanings and realities by human actions and experience.

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<sup>91</sup> Some interviews were delivered in English, but, most of the time, people would switch between the two languages (Malay and English).

No effort has been made to search for any objective ‘truth’, as this study is merely a search for an understanding of public procurement fraud practices in light of the stakeholders’ perspectives. This study believes that human actors are able to create their environment, autonomously and on their free will. The analysis in this study has been conducted by ‘getting inside’ of the interviewees by making sense and giving voice to their story. Justification for choosing critical paradigm was also offered.

From the lens of political economy approach, this study aims to analyse the dynamic institutional arrangements of political and economic institutions. First, taking into account the prevailing nature of power relations, historical institutions and the embeddedness of formal and informal practices results in an insightful analysis for understanding the possible factors influencing public procurement fraud practices in Malaysia. Second, the rational behaviour of economic man is illustrated through diverse interests and personal desires to possess wealth and private enrichment. Third, public policy environment sheds light on the distribution of political power through policy implementation as well as on the conflicting role of the state. Lastly, the theoretical framework chosen for the study shows the relationship between public and private interactions.

A qualitative research design was employed for the current study. There were 5 groups of interviewees for the research (40 interviewees in total: 13 regulators, 13 professionals, 5 politicians, 4 academics and 5 media actors). In this study, an understanding of the perspectives of the main stakeholders is sought in order to aid the investigation of the practice of public procurement fraud in Malaysia. Semi-structured interviews via Snowball Sampling Method (SSM) were used to collect data

for the study. The researcher perceptively accepts and values the subjective views, opinions and beliefs as one of prime important contributions offered by the stakeholders. Documentary evidence aids the understanding of the social phenomenon and adds a contextual dimension to the study of public procurement fraud.

Data analysis is formulated through a thematic approach in 6 stages: (1) familiarization of data, (2) generating initial codes, (3) searching for themes and subthemes, (4) reviewing themes, (5) refining and renaming themes and (6) reporting the analysis. This is very crucial to see a 'bigger' picture of public procurement fraud in Malaysia.

Ethical arrangements are sought because the research is directly involved with human interviewees. Ethical considerations are important to ensure benefits and minimise the risk of harm for both the researcher and the interviewees. Some challenges and limitations were also outlined in this chapter.

The following two chapters focus on the socio-political and economic characteristics of Malaysia (Chapter 4) and on the analysis of findings (Chapter 5).

## **Chapter 4 The Socio-Political and Economic Context of Malaysia**

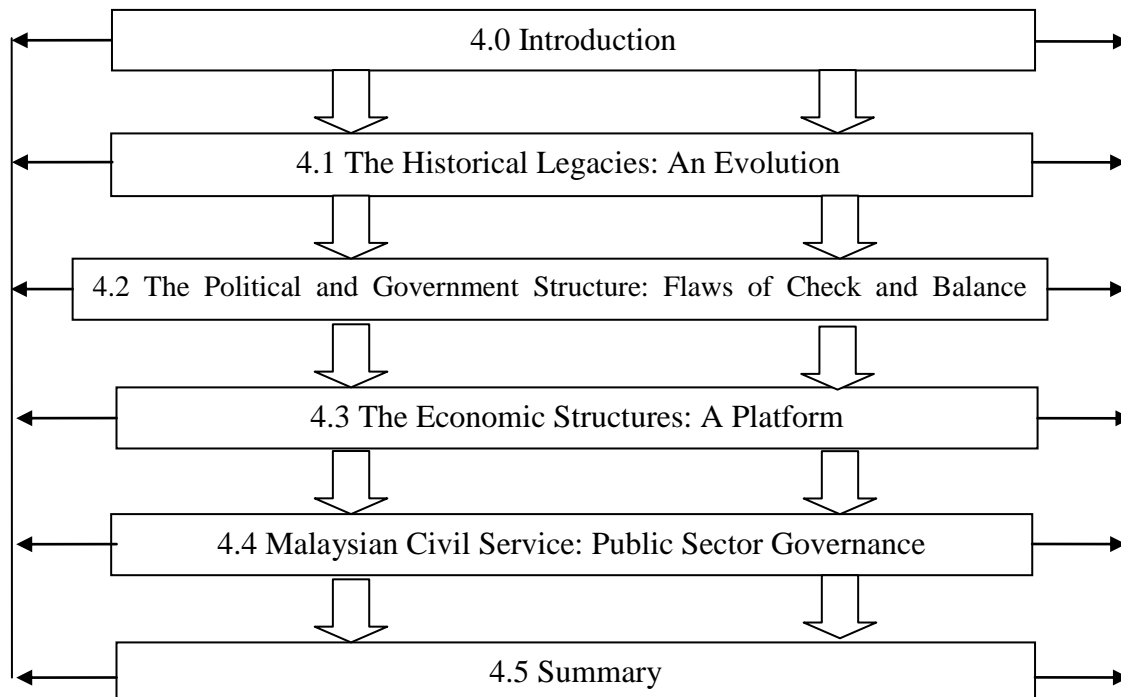
### **4.0 Introduction**

The literature reviews in Chapter 2 were concerned primarily with the distinctive nature of procurement process that gives opportunities for fraudulent activities. In that sense, the embeddedness of public procurement fraud needs to be explored in the settings of the particular socio-political, economic and legal environments where it is exercised. Chapter 3 has discussed the political economy approach to provide a basis for understanding the enduring social relationships between political and economic elites and the institutional structure, particular that of the Malaysian society. This chapter examines the influence of global and local forces, which have shaped the historical development, socio-political, economic context of Malaysia, in framing the persistence of public procurement fraud through secondary data as documentary evidence. As described in Chapter 3, documentary evidence were pursued in order to understand the contextualized settings of institutional, historical, socio-economic and political issues that relate to fraud and corruption practices in Malaysia. The use of secondary sources also aided the process of verification, confirmation, and/or modification of the findings from the primary sources (Lapan, Quartaroli, & Rieme, 2012). Documentary analysis illustrated in this chapter, which paid attention to fraud and corruption in practices in Malaysia, was conducted by obtaining publicly available data as follows: books, journal articles, newspaper clippings, government reports and activity, blogs and websites, speeches, magazines presentations and corporate websites.

This chapter argues that the entrenchment of public procurement fraud in Malaysia was influenced by its historical legacies, the flaws in check and balance mechanisms in political and governmental structures, the prevalent desire for capital and wealth facilitated by the economic structure, and the prevailing professional and obedient nature of Malaysian public officials. There are strong values and practices, which constitute a cultural and institutional frame that can help in understanding what facilitates public procurement fraud practices.

This chapter is divided into five sections (see figure 4.1). Section 4.1 provides insights into how the historical legacies of feudal society, colonialism and capitalistic nationalism to some extent justify oppression, exploitation, and fraudulent practices. Next, section 4.2 illustrates the political and government structure, which, to some extent, contributes to pervasiveness of public procurement fraud in Malaysia due to the complexity of the check and balance system to work and the concentration of power in the hands of the Cabinet. Section 4.3 examines how the economy structure is used as a platform for enabling fraud within the state's apparatus. Section 4.4 reviews the professional and obedient nature of Malaysian public officials. It describes their role as implementers who are being tainted by the pressure and demands of political masters when performing their duties. Section 4.5 concludes the chapter with a summary.



**Figure 4.1: The Structure of Chapter 4**

## 4.1 The Historical Institutionalism: An Evolution

*'History is our myth, our story, our dream of reality, grounded in the context of the past but created to inform the future.'*  
(Archibald, 1999, p.66)

The understanding of history is essential in order to understand human affairs (Southgate, 2005). Historical legacies are important because they account for the ways societies construct and reconstruct themselves over time. Corfield (2008) argues that studying history matters is inescapable, as it helps to understand the polity of a society with complex structures, traditions and practices of the past as living histories. Also, Jordanova (2006) reflects on 'historical narratives' from the past and legacies to understand the roots of society. This section aims to explain three relevant issues within the Malaysian historical context: (1) the crystallisation of Malay feudal

society, (2) the encroachment of an imperialist ideology of colonial capitalism, and (3) the Malaysian society's sentiments on capitalistic nationalism. This chapter is useful to contextualize the evolution of historical institutionalism and characteristics that might play a role in public procurement fraud practices in Malaysia. The following subsection considers the feudal society in relation to the concepts of blind faith and loyalty.

#### **4.1.1 Feudal Society: Loyalty**

The enduring legacy of the feudal system in Malaya (Malaysia's name before independence in 1957) is evident in the Malay society today.<sup>92</sup> The great Malay Annals<sup>93</sup> emphasised the feudal concept in relation to the elite or ruling class as a traditional hierarchy of the institution of the ruler. The ruling hierarchy symbolically reminded one's position and status (Shaharuddin Maaruf, 2014). As a result, many elements from feudal system have become part of Malay values and principles.

The first legacy of feudal culture is the attribution of an absolute and arbitrary power to the King and the ruling elite. The Malay ruling class is portrayed at the supreme position with the highest power and status of an authoritarian rule (Shellabear, 1975). Authoritarian characteristics have allowed the ruling class to maintain their status quo and be concerned only with matters that best served their vested interests. Huizinga (1972) discussed how the ruling elites always ensure the highest profits and financial

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<sup>92</sup> The feudal system is a power structure in which a King and the ruling elites rule in an uncontrolled way and they act a social order. It is an authoritarian legacy in which there is a link between power, position and wealth. The feudal society legitimated legal and military arbitrary power through the virtues of nobility and pledge of loyalty between the ruler and his subjects. See Bloch (1962) and Huizinga (1972).

<sup>93</sup> The manuscript of the Malay Annals originally titled *Sulalatus Salatin* – Genealogy of Kings was translated and is located in various countries. The text provided insights into a system of values and ideas during the days of feudalism in the traditional Malay society, which occurred sometime between the 15<sup>th</sup> and 16<sup>th</sup> centuries. See Gin (2009), A. H. Omar (2014) and Shellabear (1975).

gain for them from the allocation of resources of the country's wealth. By using their power and position<sup>94</sup> and by dominating their subjects, the ruling elite is able to amass great wealth. For example, a noble always protects their subjects who are always submissive to any instructions and orders given to them. Also, there is an unquestionable obedience to the ruling elite in exchange of protection, even if the ruling elite members are 'cruel and evil' (Shellabear, 1975). As a result, strong cultures of loyalty between the ruler and their subjects have been entrenched in Malaysian polity up to the present day.

The second relevant heritage from the feudal values has to do with the creation of social class based on one's power and rank. Bloch (1962) illustrates that one's position depends mainly on impressing their superior (i.e., the royal elites) by pledges of loyalty and faith. In this way, the ruling elites cultivate further inequality, greed, arrogance and power to influence. Nevertheless, the question of exploitation and social justice has never been raised by the subjects (Huizinga, 1972). The subjects cannot challenge the supremacy<sup>95</sup> of the ruling elites because this would mean disloyalty and treason. As the saying goes, '*It is the Malay custom never to commit treason*' (Shaharuddin Maaruf, 2014, p.15). Therefore, loyalty and fidelity have instilled wrong beliefs and ideas in the Malaysian society.

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<sup>94</sup> The exploitation of the elite is portrayed in many traditional institutions in the Malay society. For example, the chief can easily extort revenues from the common among Malay peasants. The teacher and martial arts instructor have seized the non-Malays possessions if they do not bribe and pay them compensation. The masses cannot simply resent and are kept in misery.

<sup>95</sup> It is taboo in the Malay feudal society to question and criticize the highest authority of their actions, decisions, commands, punishments, rewards, or prohibitions towards their subjects. It has been observed that 'Daulat'(hail) and 'Tullah'(bad omen) become an essential part of the institution of the ruler in the Malay feudal social structure (A. Harding, 1996).

One aspect of the procurement process in this era involves exchanging materials or supplies between the traders, merchants and ruling elites. Buying and selling activities at the Malacca port<sup>96</sup> among traders have involved and tolerated acts of opportunism, bribery and extortion by ruling elites and their followers. For example, the merchants/traders are expected to give gifts to the King and the ruling elites as customs and, in return, they will be protected by a prevailing power structure and connections. Otherwise, they will be harassed; their shop will be destroyed and demolished. At the same time, procurement activities conducted by the subjects include obtaining land, equipment and revenue.<sup>97</sup> The subjects must give 1/3 of what the land produces as tax to the ruling elites.<sup>98</sup> Failure to do so makes them bond-slaves to the King and they need to serve him with unquestioned loyalty (Yoong et al., 2007).

Opportunities for extortion, bribery and crime (e.g., force and coercion to pay high taxes) are always welcomed by the ruling elites (M. Abdullah, 1965; Shellabear, 1975). Scholars have documented that the powerful groups and their followers are commonly protected by the concept of feudal loyalty or fidelity (M. Abdullah, 1965; Gullick, 1958; Shellabear, 1975). These groups can behave as they wish even if that involves committing wrongdoings, and no action is taken against them. This means

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<sup>96</sup> Trading activities emerged for international trade of export-related products in the Malacca Straits. The buying and selling activities made the Straits Settlements free-trade Malacca ports as a centre of a trading network (B. Harrison, 1955) The golden age of Malaya as the world mercantile trade meant a significant growth of capital through trading activities between the Chinese, the Arabs and the Indians (M. Abdullah, 1965).

<sup>97</sup> For example, the powerful group can give land to the common people on certain conditions. A strict order from the King may instruct them to use the land to its maximum potential (e.g., by growing plants, paddy (rice) or fruits).

<sup>98</sup> The Malay peasants lived in extreme poverty. The ruling elites and their followers would take any surplus from the land to pay the taxes. Most of the time, the Malay peasants could not produce much, even for their own consumption. During the feudal era, the people had no choice but to accept injustice and inhumanities without much resistance or contestation.

that patronage and protection mechanisms of the traditional feudal system have encouraged the moral decay of the Malay rulers. Thus, oppression, inequality, injustice, cruelty and the fierceness of the Malay rulers are deeply embedded into the norms of the Malaysian society (Shahrudin Maaruf, 2014). The next section considers the encroachment of colonial imperialist power.

#### **4.1.2 Imperialist Ideology: Exploitation of Colonial Capitalism**

The importance of the Malacca port is one of the reasons that imperialist powers<sup>99</sup> have always been interested in Malaysia. Malaysia experienced 446 years of colonialism by three European powers: the Portuguese (1511-1641), the Dutch (1641-1824) and the British (1786-1941), as well as one Asian power, the Japanese (1941-1945). The last colonial power invaded the Malaya was the British when they returned to continue their rule (1945-1957) until the country gained independence in 1957. Malaya was considered a valuable colony. The colonial practices aimed to create wealth and maximization of profits by exploiting their colony lands for the benefit of the imperial powers (Harper, 1999; Milner, 2002). The colonial masters brought the capitalism ideology, which champions wealth creation, profit maximizations, capitalist industry, and, at the same time, they have shaped and created in this way an institutionalised power structure, values and social order in the colonial land and governance (M. Abdullah, 1965).

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<sup>99</sup> There are various reasons for the imperialist power's interest to Malaya. First, the geographical position of the Malacca port was of fundamental significance for an open trade route to India, China and the Far East. Second, there was a clear inability of the Malacca Sultanate to manage their constituent as a number of Malay kingdoms began fighting each other. Third, the Malaya was disadvantaged with an advanced military equipment and lack of political support from other imperialists' power. Lastly, Malaya was rich in natural resources (e.g., tin, rubber, mineral resources). The colony of Malaya subsequently served the needs and interests of the colonial ideology. See J. M. Lee (1967), Hirschman (1986), Kheng (1994), Aljunied (2012) and N.J. White (2004).

The imperialist ideology was supported by the Malay feudal ruling class. Amoroso (2014) points out that the legitimisation of the British power was generally supported by the Malays elites because it helped maintaining their status quo.<sup>100</sup> The traditionalistic nationalism was secured by the imperialists through preserving the Malay society in its traditional form – from rural politically ignorant, obedient and submissive subjects to the aristocrats and the royal Malay elites (Harper, 2001; J. M. Lee, 1967). On the other hand, the virtue of blind loyalty and obedience towards authority by the Malay peasants has resulted in them accepting and allowing the influence of British imperialism of coercion and consent. An influential study by Emerson in the early 19<sup>th</sup> century shows that Western imperialism has contributed to a direct and an indirect rule by the colonial regimes (Emerson, 1937).<sup>101</sup> In this context, the British rule in Malaya was based on the system of indirect rule for advancing their imperialism.<sup>102</sup> The system of indirect rule in a way gave a platform to the British to assume the role of a *protector* of the Malay sovereignty from many aspects of the traditional society (Harper, 1999).

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<sup>100</sup> The feudal Malay elites were given material rewards (e.g., regular allowances), large quarters, lovely titles and business ventures because they cooperated with the British. The interests of the Malay aristocracy and traditional elites were taken care of and the children of the Malay aristocracy were educated in prestigious, high-status schools. For example, only the ruling elites were able to go to ‘selected’ English schools during that time. The other commoners did not have that opportunity.

<sup>101</sup> The former (direct rule) shows that the imperial power acquired political control and governed the colonists by a colonial central government. The latter (indirect rule) shows a dependency on the imperialist power as a ‘protector’ and ‘advisor’ to govern the colony.

<sup>102</sup> The British imperialist power applied an indirect rule as a transition from the feudal Malay rulers to British rule during the colonial period. The indirect rule gives the conditions of a protected dependency, which is more acceptable by the original races, rather than direct hegemony that may provoke contestations and fights in the Malaya. The British ‘advisory’ and ‘friendly’ role could guide, reshape and preserve the positions of the traditional elites. See Suwannathat-Pian (2009), Yaakop (2010), Emerson (1937) and Harper (1999) for related discussions.

The British employed the ‘*divide and rule*’ ideology to control Malaya (Abraham., 1997).<sup>103</sup> The British imperialist power transformed the historical, socio-political, economic, cultural and other social structural variables of Malaya as follows. First, the British rule expanded its colonial capitalism to exploit the foreign lands for the best interest of the colonial government (J. M. Lee, 1967). According to William Case (1996), the impetus of colonial capitalism for greater wealth and profit was ‘enjoyed’ by the elite regimes. Being in favour of capitalism, the Malay elites were continuously indifferent to the prevalence of poverty and the problems of the masses. Second, the racial polarisation<sup>104</sup> during the British rule was exploited and led to class conflicts because of the intrusion of the industrialised world seeking raw materials, opportunities for investment and free trade. Consequently, the British colonial capitalism protected the imperialists’ economic interest through accumulated profits and capital from Malaya and from the influx of foreign labour. The exercise of power by the British rule promoted domination and social class exploitation. It was allowed as long as the revenues and huge profits were generated and sent to the shareholders in England (Hirschman, 1986).

Thirdly, the legacy of public administration of the civil service from the British colonial rule especially in relation to public health, education, and public works has

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<sup>103</sup> In many British colonies, the colonial ruler applied the ‘*divide and rule*’ approach by separating possible enemies so as to challenge their power. The idea is to maintain the status quo by maintaining the power structure without much improvement made for each party. The strategy also aimed to control allocation of funds and resources that could benefit the colonial master.

<sup>104</sup> The consolidation of British rule has created a setting of various institutional structures to serve their needs and interests. For example, a large number of labourers from China and India were imported to work at the rubber plantations and the tin mining for the capitalists. The Malay peasants remained complacent about an indolent and non-capitalistic within the Malay traditional image. Nevertheless, the Chinese showed a greater interest in leaving their peasants and feudalistic lives for accumulation of capital in the Malaya.

shaped the Malaysian public sector until today. The British camouflaged governing<sup>105</sup> of Malaya by preserving the Malay traditional elements but, at the same time, they instilled the capitalism ideology as necessary for a modern and efficient colony. Milner (2002), in particular, discusses political interventions during the colonial rule through dynamic interactions of the government and business interests for the formation of a modern society. The colonial rule continued to offer the opportunities of economic activities under the patronage<sup>106</sup> of British imperialism. Lastly, the hypocrisy of British colonial rule involved an enhanced autocratic government of a 'close administration', which seems to have worked towards public policy formulation and implementation. The secretive operations and this 'close administration' have pursued the interests, rights and privileges of well-connected groups with the British rulers even after independence. As mentioned by Z. H. Ahmad (1986),

*'... 'close administration' [...was] a legacy of British colonial rule. The powers and coverage of the bureaucracy are extensive and has made Malaysia a 'closely administered state' [...]. This close administration, to an extent, provides a political setting with advantages for the post-colonial governing elite'.* (p.24)

As a result, the colonial patterns continue in the form of a coercive and control mechanism which has relied on the support of local ruling elites, with a commitment to protect the predominantly imperialist interests in Malaya (C. B. N. Chin, 2000; Sundaram & Hui, 2010). The next subsection discusses the discourse of capitalistic

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<sup>105</sup> Amoroso (2014) reflected on British's good governance through coercion and consent, when their business partner is persuaded to invest in Malaya so as to make profit.

<sup>106</sup> For instance, foreign investors were given the best lands in the Malaya at nominal rates with minimum restrictions. In addition, the liberal labour policy ensured the subsidized supply of labour in plantations, mining, services and trade. Subsequently, a reliable infrastructure, such as roads and railways, was provided by the colonial government as incentives for capitalist investors. The British rule helped to create wealth and capital for themselves and their cronies. The British imperialist power never committed themselves for the economic betterment and early political emancipation of their colonial masses. See Emerson (1937), Allen (1970), Yoong et al. (2007), Andaya and Andaya (2001), Lange (2009).



nationalism and how it has contributed to the structural transformation of the Malay society.

### 4.1.3 Discourse of Capitalistic Nationalism

Colonial capitalism has inspired the Malay ruling elites to interact and work with each other socially, politically and economically so as to improve their well-being. Antagonism, however, between the Malay ruling elites and the colonial master was created with a gradual decline in the power of rulers and their autonomy which was the result of various ‘friendly’ treaties between the Malay ruling elites and the colonial master (Gin, 2009). William Case (1996) and Harper (1999) reveal that under the influence of the ideology of capitalism, the Malay ruling elites started to demand more from the colonial master. As a result, the Malay ruling elites were willing to do whatever it took to gain independence, including compromising the Malays’ hegemony. Thus, an influential urban segment of the Malay elite started working towards that direction. This is how the concept of capitalistic nationalism<sup>107</sup> emerged (A. Harding, 1996; Shaharuddin Maaruf, 2014).

The establishment of the Malayan Union sparked the sentiment of Malay nationalism.<sup>108</sup> The Malay nationalism focused on the Malay anticolonial resistance by protecting three main elements as ‘Malayness’: religion (Islam), language (Malay)

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<sup>107</sup> A. Harding (2012) explains that the essence of independence on the 31<sup>st</sup> of August, 1957 was, as referred to in the Malaysian Constitution, ‘a system of principles, rules and practices of a legal or quasi-legal, binding, nature that frame political action and public decision-making’ (A. Harding, 2012, p.3). From such legal binding, capitalistic nationalism shows the compromises made by Malays and non-Malays on a number of issues in relation to giving up on the *Malay* hegemony (*Ketuanan Melayu*).

<sup>108</sup> *Malay* nationalist sentiments emerged when the British proposed a Malayan Union in 1946 something that showed a decline of the power and sovereignty of the *Malay* ruler. This also meant that they would give citizenship status to the immigrants coming to Malaya. The *Malays* feared that they would ‘lose’ their power and voice in their own country and thus started becoming politically conscious and developed sentiments and the desire to become independent.

and royalty (Malay rulers) (A. Harding, 2012). Harding (2012) presents a broader contextual analysis on the precondition of united and defensible positions from all races as the essence of the independence in 1957 through *bargaining*<sup>109</sup> of the binding rule in the Constitution. The ideology of colonial capitalism has influenced the Malay ruling elites in favour of the capitalistic nationalism of wealth creation and capital for Malay survival in their own land. As a result, the Malay capitalism is advocated by encouraging patronage and giving preferential treatment to ensure the survival and progress of the indigenous people (*Bumiputeras*) (Mahathir Mohamad, 2008).

In conclusion, it is obvious that historically the Malaysian society was built on the acceptance of authoritarian ruling elites by favouring a blind loyalty and fidelity of the *Malays* towards those in power (Shaharuddin Maaruf, 2014; Noor, 2002). Next, the encroachment of imperialist power of coercion and consent was legitimated through the protection of the *Malay* feudalism and reformation for entrenched individualism and material wealth for pervasive industrialization in the capitalist economy (N.J. White, 2004; Yoong et al., 2007). Finally, it seems then that the colonial capitalism ideology has motivated the *Malay* ruling elites towards the discourse of capitalistic nationalism through patronage and preferential treatments. The next section shows the riddle of Malaysian capitalism as championed by the

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<sup>109</sup> Malaysia is mainly occupied by its indigenous people (*Bumiputera*-the sons of the soil). The *Bumiputera* groups are divided into the native '*Malays*' and other *Bumiputera*. The influx of foreign immigrants during the colonial rule has greatly affected the racial composition in Malaysia. In order for Malaya to gain independence, the *Malays* and non-*Malays* had to cooperate together by compromising and closing the inequality and economic gap between the races. By giving up their Malay hegemony (including citizenship, education, democracy and resolving issues), the non-*Malays* would give assistance to impoverish the 'backward' *Malays* for the sake of unity and equity. A 'social contract' agreement was made by the country's founding fathers in the Malaysian constitution. It refers to a *quid pro quo* trade-off through Articles 14 until 18 of the Constitution, pertaining to the granting of citizenship to other races in Malaya (particularly Chinese and Indian). In return, Article 153 grants the *Malays* 'special rights' and 'privileges' in order to achieve independence from the British.

nationalist party-United *Malays* National Organisation (UMNO) which has influenced the socio-political, economic and government structures in Malaysia.

## 4.2 The Political and Governmental Structures: Flaws of Check and Balance Mechanisms

The roots of colonialism in the political and government structures in Malaysia are shown through the embodied Westminster-type constitutional ideas and traditions towards a federal government (R. N. A. R. Omar, 2012).<sup>110</sup> The Westminster-style model, as the system of government, represents the Head of State-the *Yang di-Pertuan Agong* or King as a constitutional monarch. Under the King,<sup>111</sup> there are the three branches of government: the executive, the legislative and the judiciary (see Appendix 4.1). Theoretically, the check and balance mechanisms should be effective when these three pillars of institutions play their intended role and there is separation of powers, with neither institution holding too much power in order to achieve government accountability. Aun (1978) argues that the exercise of power on the part of these institutions involves checking each other's role and functions as well as being separated from each other. However, the ideology of working independently and no institution holding too much power actually aid the continuity of state power and authoritarian governance (William Case, 2010a; Munro-Kua, 1996).

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<sup>110</sup> The Malaysian constitution has formally divided the federal and the state powers in governing their territory. Although neither the Federation nor the States would be able to trespass each other's boundaries, the federal structure in Malaysia proclaimed some legislative functions for uniformity; see Aun (1978), Faruqi (1987) and Trindade and Lee (1986).

<sup>111</sup> The King or *Yang di-Pertuan Agong* as a constitutional head of federation is selected through a rotation system among the Malay rulers. The selection and removing of the King is conducted by following the recommendation of a Conference of Rulers, which has existed since 1948. The Conference has the right to be consulted about judicial appointments and act on the advice of the Prime Minister and grants pardon in his role as the fountain of justice. Moreover, the King needs to give his consent before certain laws can pass. The King also has a role in legislation affecting the special position of the Malays and the legitimate interests of the other races. The rulers in each state remain the Heads of Islam, accompanied by his Chief Minister with the advice of the State Executive Council.

The section begins by discussing the all-powerful executive.

#### **4.2.1 The Executive: Concentration of Power**

The power of the executive is legally stated in the Malaysian Constitution. For instance, Article 43 attributed a Westminster-style parliamentary executive as an ‘advisor’ to the King. The executive member is headed by the Prime Minister<sup>112</sup> (PM) and the Cabinet member is appointed by the Prime Minister and collectively responsible for any decisions of capitalist developmental public policy (Abdul Aziz, 2002). The ideology and beliefs of cabinet collective responsibility mean cabinet confidentiality and cabinet solidarity. The former means that debates and discussions of the cabinet members are secret. The cabinet members are strictly forbidden to reveal the content of the discussions and decisions. The latter emphasizes the unity and collective agreement of the cabinet members. It also aims to show a continuous support and loyalty to the Prime Minister. Thus, the legislative process accelerates the decision-making policy and collectively benefits the political party (Masum, 2012). By pursuing state development<sup>113</sup> capitalism, the Cabinet is able to create and maintain policies for the benefits of the country in order to achieve economic growth. The executive of developmental state autonomy is explained in this section by

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<sup>112</sup> The King, under article 43(2) of the Malaysian Constitution, can appoint the Prime Minister to head the Cabinet committee. Both the Prime Minister and the Cabinet members are appointed based on the dominant political party in the House of Representatives. The power of the Prime Minister is great because he is able to control the dominant political party at the Parliament and exercise the executive power via the Cabinet. Therefore, he is responsible for the Federal government and indirectly controls most of the State in Malaysia. The Prime Minister is indeed the most powerful person by having legitimate power from the Constitution, and support from all angles: the Rulers, the Parliament, the Executive and the Judiciary and ultimately the Malaysian citizens.

<sup>113</sup> An influential scholar provides eight characteristics of the developmental state in Malaysia: (1) prevailing state intervention in the economy, (2) development-oriented nationalism by the Malaysian elite controlling the state, (3) a state that maintains law and order to ensure social peace and political stability, (4) expert and capable state bureaucracy of an administrative elite, (5) continuous chart of development policies and strategies, (6) an efficient and powerful planning agency, (7) willingness and capacity to learn from others, and (8) encouragement of public-private intervention (Embong, 2008).

focusing on: (1) the authoritarian administration, (2) the public policy formulation and (3) the (in)effectiveness of government agencies.

First, the incumbency of authoritarian administration in exercising the executive power has contributed to the developmental state capacity. Several scholars who have reviewed the authoritarian elite's regimes in Malaysia suggest that the state is able to maintain political stability and, at the same time, bring about development and material wealth to the people (Hutchinson, 2014; Munro-Kua, 1996; Slater, 2003). It seems that the fact that the Malaysian cabinet has been in power since independence (year 1957) has eased the developmental strategies and progress. Undoubtedly, the overwhelming power acquired by the state profoundly embodied the transfer of governance from the centre of political power to the executive (Slater, 2003). In other words, the same political party, by holding the position of the ruling elites since the independence, leads the executive branch: the Cabinet. The Cabinet is able to shift the legislative power (as to enact, amend and withdraw any bills in the Parliament) into the hands of the executive which is headed by the Prime Minister (H. K. Leong, 2001b). Thus, it appears that the long incumbency of an authoritarian administration has eased the capability of the developmental state – via the Cabinet – to plan, formulate, coordinate and implement the decisions for any government policy.

Second, the formulation of public policy in Malaysia (see table 4.1) shows a highly bureaucratic process stemming primarily from the Prime Minister's Department and the Ministry of Finance, which are headed by the same person.<sup>114</sup> When it comes to

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<sup>114</sup> Since 1998, the year of financial crisis, , the Prime Minister (Mahathir Mohamad –the 4<sup>th</sup> Prime Minister) has held the first and second most important post to administer the country. The former

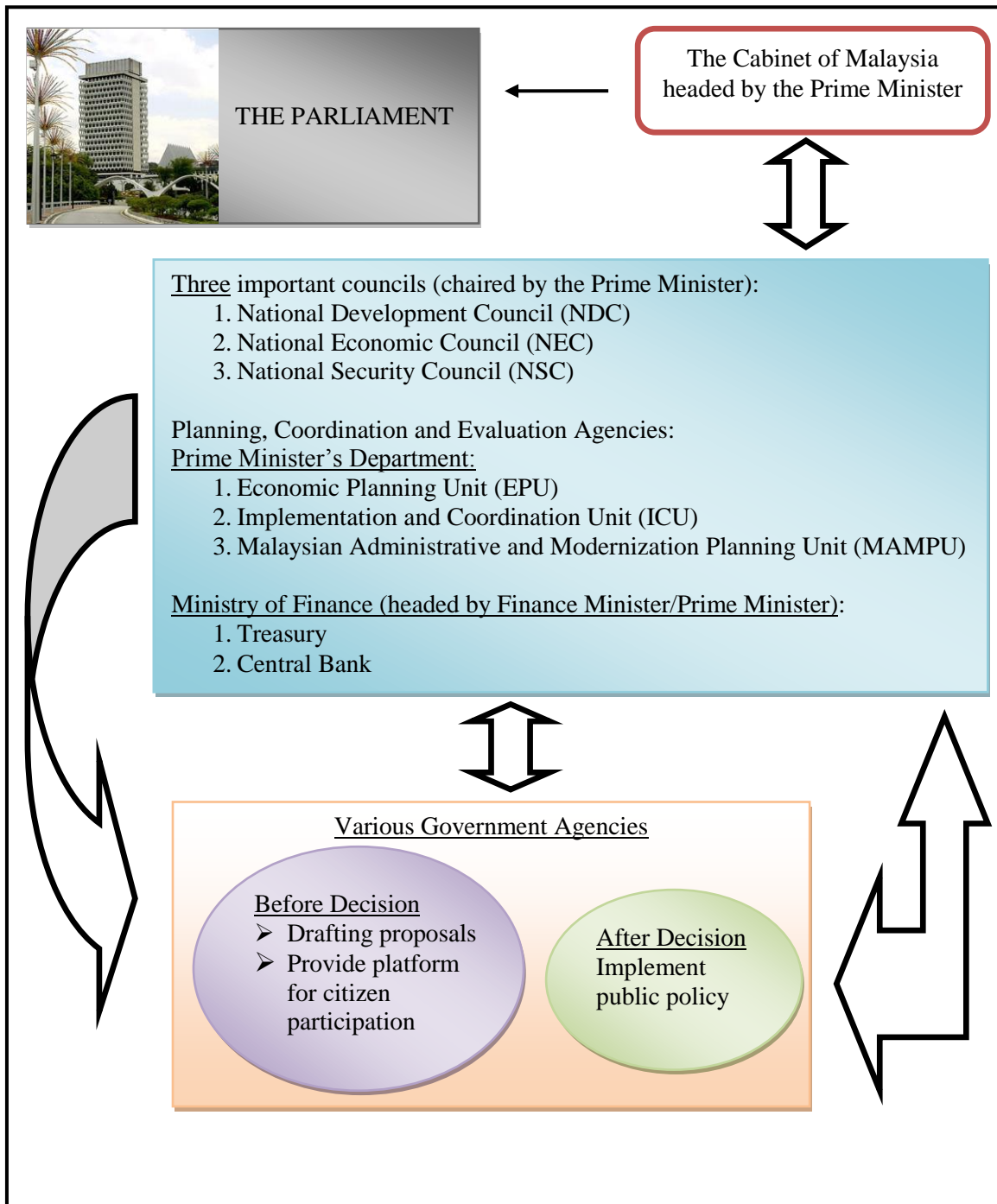
mobilizing public policy, getting consent from the Prime Minister is unavoidable. By acquiring both positions, the Prime Minister is able to use the state apparatus to make decisions about and implement public policies. H. K. Leong (2001b) acknowledges that the Prime Minister has gained ‘unchallenged’ legitimate power under the Malaysian Constitution to formulate and make decisions about government policies. A pervasive culture of centralization of power in the hands of the Prime Minister might suggest for the inability for a devolution of power in Malaysia’s governance system (O. K. Beng, 2013).<sup>115</sup> The government agencies are only seen as ‘implementers’ of public policies. Hence, a structured centralised bureaucratic process of formulation and implementation of public policies is entrusted to the Chief Secretary (CS) Malaysia, as the Head of the Civil Service.

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indicates his role as the Prime Minister and the latter provides him with the role of the Finance Minister.

<sup>115</sup> Although various government agencies have submitted policy proposals, the formulation and any decision-making in relation to public policies depends on the power of the Cabinet committee.

**Figure 4.2: Public Policy Process in Malaysia**



**Source:** Website of Economic Planning Unit, Prime Minister's Department, Malaysia

Lastly, the government agencies are not efficient enough to eradicate fraud and corruption in Malaysia (Siddiquee, 2006a). To start with, it is believed that there is no

independence of the related agencies because, to some extent, they have to take into consideration, the views of the Prime Minister's partisans.<sup>116</sup> Strong advice by the Prime Minister for such appointment seems to influence any activities or decisions to curb fraud and corruption within the public offices. Second, the placements of all related government agencies are under the authorization of the Prime Minister's Department. Again, it goes back to the absolute discretion of executive action (see [www.pmo.gov.my](http://www.pmo.gov.my)). This major structural flaw makes it almost impossible for any government agency to investigate high-level fraud and corruption involving ministers and senior officials without getting any clearance from the Prime Minister (Netto, 2003). Lastly, the head of the civil service in Malaysia is the Chief Secretary who ensures smooth implementation of the decisions of the Cabinet (F. Hamid, 2013).<sup>117</sup> This has fused his role both as a civil servant to deliver public services and his duty towards his political master (A. S. b. Ahmad, Mansor, & Ahmad, 2003). Therefore, one can say that the 'gatekeeper' agencies which are supposed to monitor and check for fraud, corruption and malpractices are continuously 'unplugged' under the regime of the all-powerful executive power (William Case, 2013).

The next section examines the legislative branch as a supreme power of the Parliament.

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<sup>116</sup> The mandate for supervisory and anti-corruption agencies to exercise their duties is stipulated in the Malaysian Constitution. Among other responsible government agencies are the Malaysian Anti-Corruption Commission (MACC), Royal Malaysian Police (RMP), Attorney General Chambers (AGC), National Audit Department (NAD), Institute of Integrity Malaysia (IIM) as well as other compliance and monitoring departments.

<sup>117</sup> Despite the 'honorable' role, the Chief Secretary, also the secretary of the Cabinet, is headed by the Prime Minister.



#### 4.2.2 The Legislative: Supreme Power of the Parliament

Firstly, political power has been widely dominated by the Alliance Party since 1955.<sup>118</sup> The political institution as the ‘world’s longest ruling coalition’ remained powerful with no or very few obstacles in its way of assuming supreme power in the political system (Milner, 2002). William Case (2011), for example, specifically addresses the practice of electoral authoritarianism in Malaysia. Electoral authoritarianism shows resistance to giving up the approach of ‘divide and rule’ adopted by the governing coalition. The governing coalitions have maintained their hegemony with the majority or two-third of the seats in the House of Representatives since independence. Marzuki Mohamad (2007) provides evidence<sup>119</sup> on how law and legal coercion within the legislative sphere has been used by the government as a tool for political control and as a way to restrain conflict. Such institutionalised system demonstrates a reluctance to change, and the idea to curb fraud, corruption, to increase public accountability and transparency in particular through legislative means has fallen short of public expectations (Siddiquee, 2005; Welsh, 2013a).

Secondly, the entrenched political hierarchy of the dominant coalition system, which has been in place since independence, simply makes the Parliament a rubber stamp, whose role is to endorse the decisions made by the Cabinet.<sup>120</sup> The domination of the ruling party in Malaysia has made the political system ‘hegemonic’ and allows the

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<sup>118</sup> The Alliance Party was founded in 1952 as a political coalition aiming for independence. The party consists of the ruling elites from three main races in Malaya: UMNO-United Malays National Organisation, MCA-Malaysian Chinese Association and MIC-Malaysian Indian Congress.

<sup>119</sup> He shows a proliferation of ensuring that vested interest are protected by the continuity of the status quo and the institutionalisation of the supreme power to suppress democracy.

<sup>120</sup> Proposed bills are rarely discussed in the House of Representatives at length and this is highly advantageous for the ruling party. The ruling party exercises its absolute power in the Parliament by reading and debating hastily and uses its majority to pass a bill. Harding (2012) also notes that the Senate would avoid any constitutional deadlock and would cater for whatever decisions made by the House of Representatives.

governing coalition *'to make the Parliament as a mere 'rubber-stamp''* (Yaakob, Kadir, & Jusoff, 2009, p.53). This is supported by the studies of Siddiquee (2005) and H. K. Leong (2001b) who argue that in Malaysia the Parliament is no more than a rubber stamp in the hands of the Cabinet. In fact, Siddiquee (2005) states that the Parliament no longer performs the legislative function effectively but it is rather a rubber-stamp institution that gives legitimacy to government policies. On the other hand, Zachariah (2014b) criticizes the fact that the parliamentary opposition finds it difficult to hold the government accountable for the current situation as any corrections or amendments<sup>121</sup> for bills that are proposed and cases of various issues being raised were being merely ignored or rejected (Abd Aziz, 2001; L. H. Hai, 2002). Moreover, a Parliamentary Committee<sup>122</sup> system is not fully implemented and is greatly ineffective in getting feedback from other stakeholders (Abdul Aziz, 2002). The Public Accounts Committee<sup>123</sup> (PAC), on the other hand, has a role to play in check and balance mechanisms. However, the independence and accountability<sup>124</sup> of PAC is questioned when the committee has been continuously headed by the same ruling party since independence. Thus, it goes back to the first problem, the

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<sup>121</sup> Research by a professor of law and legal advisor in Malaysia, Professor Dr Shad Saleem Faruqi, provides evidence that from 1991 to 1995, 80% of the bills were passed without a comma or a full stop being amended by the House of Representatives.

<sup>122</sup> The function of the Parliamentary Committee system is to provide feedback to the government on the proposed bills in the Parliament. The members are elected from an intended specialist in the area for that bill and by considering all interests involved (e.g., civil society groups, scholars or any affected party). However, since independence, the Select Committee procedures have only been applied around six times in the Parliament.

<sup>123</sup> Within the legislative function, PAC is responsible to examine (1) if public funds were used in accordance with the laws and purposes endorsed by the budget, (2) any accounting of administrative bodies and other associations that handle public funds, (3) the Auditor's General Report, and (4) any other matters that need further scrutiny or close inspection (Samsudin & Mohamed, 2009).

<sup>124</sup> By having legislative power, the PAC is responsible for supervising the efficiency, effectiveness, integrity and accountability of governmental financial activities.

Parliament just '*signs, approves and puts a chop*' on the executive decisions (Z. Ahmad & Phang, 2005, p.2).

Finally, the political structural apparatus is not able to check the executive branch of the government. First, the concept of warlords<sup>125</sup> resembles the political system which has been nurtured in Malaysian politics (The Malaysian Insider, 2013b). The warlord culture is deeply rooted in the political structure. Shi-ian (2014) claims that massive wealth and capital by the warlords are shared with their followers so as to retain their loyalty. Second, the prevalence of money politics<sup>126</sup> has become rampant. Money politics have been discussed by Teh (2002). He distinguishes two elements in money politics: political funding by prominent business leaders and the buying of supporters or votes (e.g., money, gifts and contracts) during election time. As the 'mother of corruption', money politics has dampened the economic growth in Malaysia by allocating resources for political patronage. Third, political business breeds political patronage in Malaysia. Gomez and Sundaram (1999) provide a critical evaluation on patronage for regulatory capture and rent seeking activities. The authors link greater state intervention in resource allocation with the promotion of a 'legitimate' relationship between business acumen and powerful politicians using the state apparatus. Thus, the relationship between business and government is reflected by,

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<sup>125</sup> Warlords enjoy the election support and loyalty of their voters. They are also known as the 'godfather' because they do everything for their supporters, especially in a rural area. A warlord must always ensure a close relationship with their subjects, helping them to get a job or study at reputable schools/university. This culture has been deeply ingrained into the voters. Thus, this culture is manipulated for fame, money and power (Tay, 2012; The Malaysian Insider, 2013b).

<sup>126</sup> The excessive wealth of politicians and their families can also be linked to money politics. There are various alleged cases in Malaysia showing donations by a prominent businessperson in order to sponsor a political party and, to some extent, lavish the members of the politicians' family as well with money, assets, and allowances. None of the alleged cases of sponsoring and funding politicians have been brought to justice as it is accepted as legal and legitimate (Jong, 2014; Sen, 2012b; Swiss Info, 2012; The Star, 2012b).

*'Malaysia's system of political patronage, in which well-connected tycoons are favoured for state contracts, has long been viewed as a breeding ground for corruption'.* (Tarrant & Hamid, 2008)

From the above discussions, the political structure in Malaysia might not allow an efficient system of accountability because of the following factors: (1) the culture of warlord to maintain support base, (2) rampant money politics, and (3) political patronage. As a result, it appears that the legislative apparatus in Malaysia does not play its role in enforcing and effectively checking on the government and it does not act as a watchdog on the functions of the executive. Therefore, the legislative spheres have, to some extent, contributed to the pervasiveness and persistence of public procurement fraud in Malaysia.

Next, we discuss the selective prosecution legitimated by the judiciary branch.

#### **4.2.3 The Judicial : A Tool for Legitimization**

*'The primary duty of judiciary was to act as a sentinel for the Constitution, and to protect it from legislative and executive attack'*  
(R.S. Milne & Mauzy, 1999, p.46)

The innate power of the Malaysian judiciary is tainted when judicial independence is threatened because it is mostly subjected to an extensive executive influence (Yatim, 1995). First, it is said that the judiciary is not independent and that its members implement 'selective prosecution' and have 'double standards' when deciding which case can be brought to court. While many analysts have noted that there has been a widespread recognition of the problem of Malaysia's legal system, no measures have been taken to improve the legal system (A. J. Harding, 1990; Soon, 2013; Yin, 2014). For example, there have been serious allegations against V. K. Lingam, a powerful

and well-connected lawyer, with evidence taken from a video clip, that he was involved in a conspiracy to fix judicial appointments of top judges that are apparently '*in favour*' of the governing coalition (Anbalagan, 2015b). A Royal Commission has been set up to investigate the allegation and the Commission found sufficient evidence of serious misconduct on part of Lingam in the video clip. The Royal Commission also confirmed that there was a gross interference with the administration of justice which affected judicial integrity, but the case only appeared to be 'morally wrong' but was somehow legally right (Jo-Ann, 2009; MalaysiaKini, 2007). As a result, the case was dismissed because it seems that there was not enough evidence or any specific law that can charge Lingam (Lin, 2009). Although the Malaysian government has taken further action by barring V.K. Lingam from practicing law as he was found guilty of professional misconduct on a scandal of the appointment of top judge (Anbalagan, 2014a), the 'Lingam's video-clip' scandal seems to have raise questions on the integrity of the judiciary in Malaysia. On the other hand, a report by Freedom House reveals a common arbitrariness of the Malaysian institution of the judiciary: a political structure motivated by an extensive executive influence (Freedom House, 2014). Ironically, it seems that justice is in jeopardy when the court decides that those who are guilty of a crime (normally those in power or those having close connections with those in power) are not to be charged, but in most cases they are to be set free instead (Sarawak Report, 2012a). In addition, interpretation and implementation of law depends on proof and evidence where the latter might be subject to manipulation and fraud. With inadequate evidence, there is the possibility for the exercise and abuse of power and conflict of interests may get entangled in many judicial processes and the real culprit is not

convicted.<sup>127</sup> Diane K. Mauzy (1992) talks about the corrosion of checks on the executive power by the judicial branch, when the judicial is perceived as an ‘apolitical institution’ which ‘chooses’ and ‘picks’ its court cases. Examples of high-profile cases (i.e., cases that normally involve those in power) in Malaysia are as follows:

**Table 4.1: List of High-profile Cases**

Year	High-Profile Cases	Accountable Actors	Fraud and Corruption/ wrongdoings	Court Decisions	References
2013	State of Sarawak	Chief Minister of Sarawak	Alleged to have received kickbacks from private companies to grant timber and plantation licenses - also known as timber corruption	This was investigated by the enforcement agency, but the Chief Minister of Sarawak was never charged in the court due to insufficient evidence to be brought to court	Free Malaysia Today (2015), Hunt (2014), Chong (2013), Tawie (2013), Global Witness (2013)
2010	State of Selangor	The former Chief Minister of Selangor	Illegally obtained two plots of land below their market value	Guilty and convicted: one year imprisonment	Malaysia Kini (2010), Malaysia Kini (2013a),

<sup>127</sup> For example, due to the complexity of law, there was inadequate evidence to proceed with a case against a prominent politician, and the charges were withdrawn (e.g., see *Lim Guang Eng v Public Prosecutor* [1998] 3 M.L.J. 14). Despite of such verdict, an opposition politician criticized the injustice of the current judiciary system. In return, he was charged for sedition under the Sedition Act 1948, been fined and imprisoned. Next, the ex-Deputy Prime Minister was removed from the Cabinet in 1998 and jailed for corruption and sodomy. An interesting judicial process which claimed to be politically motivated prosecution has ‘awaken’ the Malaysian society about ‘a setback for democracy’(Ooi, 2015). From this ex-deputy PM’s case, the Malaysian society now dares to question and challenge the decisions by the government. As expected, those (opposition party leaders and civil society) who dared question and criticize publicly the latest conviction upon him (year February 2015) are charged with sedition (Hunt, 2015). See also Kamal (2012), Mustafa (2012), AR and Darwis (2013).

				NOTE: This particular case was not acquitted because it was alleged that the former Chief Minister was 'punished' for not winning the Selangor State in general election in 2008.	Anbalagan (2014b), Berita Semasa (2008)
2011	National Feedlot Corporation	Managing Director-Chief Executive Chairman	Alleged breach of trust by misappropriating/misusing RM250 millions of public funds	Discharged and Acquitted : The Attorney General withdrew all charges against the Managing Director, without reasons	The Star (2012a), Kamal (2012), Utusan Online (2012), Anbalagan (2015c), Bernama (2015a), Yen (2015)
2012	State of Sabah	Chief Minister of Sabah	Alleged to have accepted kickbacks (RM40 million) for timber license	He was not brought to court as the enforcement agency found no elements of corruption - this was regarded as legitimate political donation for the ruling party	Queville To (2013), Sarawak Report (2012b), Chooi (2012b), Darwis and Chia (2012), Izwan (2012a)
2011	Ministry of	Minister and	Alleged	Two	Pua (2012),

	Defence	prominent business leader	kickbacks of purchase of submarine and murder	policemen were first convicted for the murder and later acquitted by the court but nothing was done about the alleged kickbacks from arm purchases	Shankar (2011), Shukry (2012a), Sen (2012c), Iskandar, Chooi, and Darwis (2012), Zunar (2013)
2004	Ministry of Land and Cooperative	Minister	Corruption on sales of shares	Discharged and Acquitted: The prosecution failed to establish prima facie case against the Minister	Malaysia Kini (2010), BBC News (2004); Norwani et al. (2011)
2002	Malaysian Airline System	Managing Director	Losses of more than RM8 billion due to mismanagement	Settlement outside the court	Norwani <i>et al.</i> (2011), Anand (2015); M. Z. Ibrahim (2012)
2002	Port Klang Free Zone	Ministers	Deception in relation to and manipulation of land price	Acquitted and discharged: The defence raised reasonable doubts about all charges. The court said that the Minister cannot be held responsible for any mistake or misleading	I. Lim (2013a), I. Lim (2013b), Ming (2012), Pua (2011), S. Teoh (2012b), D. Leong (2014)



				information prepared by the public officials	
1995	Perwaja Steel Berhad	Chief Executive Officer	Dishonestly made an unauthorised payment	Acquitted and Discharged: The prosecution failed to establish prima facie case against the CEO due to failure to bring two material witnesses for the case	Khair, Haniffa, Hudaibc, and Karim (2015), Malaysia Today (2015), Wain (2009)

**Source:** Current Study

Ironically, the judiciary is the last avenue (in other words, the last institution) to check the power of the executive. However, it is possible that the judicial power in Malaysia has been restricted and it is unable to curb the actions of the executive. For instance, the Malaysian judicial crisis in year 1988 revealed the law of the courts is tampered with the granting powers of absolute discretion and it is not free of control by the executive arm of government. In the judicial crisis 1988, there was a bold and independent decision by the ex-Lord President-Tun Salleh Abas that contravened the ruling parties. However, he and other judges were sacked and removed by the Prime Minister (M. S. Abas, 1989; A. J. Harding, 1990). Consequently, S. Abas (1990) suggests that in cases of constitutional amendment the legislature rather than the courts can determine the extent of the court's jurisdiction. This means that the Parliament can undertake a limited or prohibited judicial review (Soon, 2013). Another amendment allows the Parliament to permit the Attorney General (AG) to

determine which court will hear a particular case, or transfer a case from one court to another court which shows that executive powers are not subject to any judicial review (H. K. Leong, 2001b). Conversely, A. J. Harding (1990) points out that the Attorney-General (AG) has implicit control on instructing the courts in relation to what cases to hear and which court to use, and it assumes responsibility for judicial assignments and transfers. It seems that executive power on the judiciary branch is by far the most devastating impairment of check and balance systems in Malaysia (Koh, 2012a; B. Teoh, 2013). The administration of real justice is increasingly undermined by the paramount power of the Attorney General of Malaysia (Siang, 2013).

Second, the power to dispense justice through the Attorney General (AG) Malaysia works as follows. Firstly, the AG is the principal legal advisor of the government. This means he is the one who gives legal advice and recommendations to the Cabinet in relation to making decisions, including formulating public policies. Moreover, the AG has the power of the Public Prosecutor of the government (see [www.agc.gov.my](http://www.agc.gov.my)). Any decisions<sup>128</sup> to either prosecute or not prosecute someone are made solely by him after all other enforcement and monitoring agencies submit their investigation papers on any fraud, corruption and malpractices in the public office (J. Chin & Welsh, 2013). It is important to point out that the appointment of the AG by the King is subjected to the advice of the Prime Minister. That means that it appears that the judicial appointments made by the executive branch, result in an indirect check on the judicial power (F. A. Aziz & Yi, 2007; MalaysiaKini, 2007). The question that needs to be asked, however, is whether the AG's role as an advisor to the Cabinet or as the

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<sup>128</sup> The preparation of a judicial process (e.g., fabrication of evidence) for an offence is exercised at Attorney General's discretion, to constitute, conduct or discontinue any proceedings.

country's prosecutor is not redundant and does not impair the judicial independence when making court decisions (Yin, 2014).

Finally, the erosion of the judicial branch seems to be prevalent when any critique on the judicial process and verdicts is being punished (Devaraj, 2015). It seems to be the case that if anybody dares to criticise or comment on the legal or judiciary process, they may be captured and brought to court for trial under stipulated act (The International Bar Association, The ICJ Centre for the Independence of Judges and Lawyers, The Commonwealth Lawyer's Association, & The Union Internationale des Avocats, 2000).<sup>129</sup> It is of great concern when it appears that the citizens are not supposed to criticise the Judiciary or the state publicly (Hunt, 2015; Lavendran, 2013). For example, there are many cases for which the current government used the Sedition Act 1948 through the Judiciary to convict and charge those which seemed to have 'conspired' to topple the government, or expressed anything that seemed to have a 'seditious' tendency that can upset the harmony of the country (Lavendran, 2013; Suaram, 2015). Thus, it seemed that the judicial branch has been used to some extent as a 'tool' to legitimize those cases in which the governing coalition has an interest since its independence is compromised.

Overall, the three pillars of institutions hardly work as check and balance mechanisms. First, it appears that the concentration of power of executive branch is centralised in the Prime Minister's office. It seems that the executive branch has been altered in such a way that the centre of political power has shifted entirely and

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<sup>129</sup> For example the Sedition Act 1948, Official Secret Act 1972, Police Act and the Emergency Ordinance Act (Public Order and Prevention of Crime).

expanded (The International Bar Association et al., 2000). It is also important to note that there is no separation of power between the executive and the legislative branch and perhaps their role as check and balance mechanisms are mixed (H. K. Leong, 2001a). Second, it is possible that the legislative power of Parliament is reduced to its role as a 'rubber stamp' (Yaakob et al., 2009). There is seems to be a blend of legislative and executive roles. It might be suggested that the political structure in Malaysia does not allow an accountable and transparent governance system, thus, it can be assumed that the legislative branch is not a true legislative body as it is not able to 'check' the executive branch (Loh, 2013; Muzaffar, 2015). Finally, it was perceived that there is a lack of independence of the judiciary branch (Abd Aziz, 2001). It seems that the judiciary has, to some extent, been used to legitimate the extensive executive influence in the courts (L. H. Hai, 2002; Yatim, 1995). Thus, it might be the case that the executive branch who has full control on the two-third majority in legislative is also able to 'selectively prosecute' any court cases to support their interests (The Malays Mail, 2014; Vinod, 2013a).

The next section examines the Malaysia's economic structure.

### **4.3 The Economic Environment and Development: A Platform**

It is important to point out that Malaysia's economic structure has grappled with a feudal economic system of exploitation, oppression and inequality in resource allocation (see section 4.1). At the same time, the capitalist ideology of the colonial powers involved exploiting their colony's economic resources and plundering the country's wealth; all these have transformed Malaysia's economic policy. The 'multifaceted' economic exploitation as shown by Tajuddin (2014) indicates the

largest economic growth on the hands of imperialist foreign investors and the ruling elites of government machinery. The racial riots in 1969<sup>130</sup> constitute a starting point for structural transformation and public policies by economic and political capitalists (K. S. Jomo, 1990). Therefore, this section sheds light on the fact that public policy is heavily influenced by political and economic elites and public finance management. As a result, that influence seems to weaken the public procurement system and provide opportunity for public procurement fraud in Malaysia.

#### **4.3.1 Intersection of Economics and Political Capitalism: Directing Public Policy**

The upsurge of Malaysian capitalists embarked after the government decided to play a prominent role in the implementation of ‘interventionist policies’ and ‘market coordination’ (R Rasiah & Shari, 2001). An economic framework was created as an avenue in championing affirmative action programmes to legitimize the prevailing state intervention with an enlargement of the public sector expenditure for redistribution of wealth and eradication of poverty.<sup>131</sup> The pillar of economic institutions accounts for a prime ministerial role (as Prime Minister and Finance Minister) to reform Malaysia from an agricultural traditional based economy to an industrialised economy (Ariff, 2008). However, Malaysia shows a ‘volatile’ economic growth as follows:

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<sup>130</sup> On 13 May 1969, Malaysia experienced racial riots for the first time due to the dissatisfaction of the *Malays* in relation to social inequalities, increased unemployment rate and ethnic social class division between the *Malays* and the Chinese. The Chinese are perceived to be in control of the large portion of the economic wealth in Malaysia compared to the *Malays*, who are the indigenous people, the son of the land or son of the oil, of the country. Thus, the racial clashes provided strong justification for the government to work towards the economic prosperity of the *Malays* through an affirmative action policy-New Economic Policy (NEP). See Mahathir Mohamad (2008), Huat (2010), R. S. Milne (1986), Bruton (1992), and Zubedy (2013b).

<sup>131</sup> Malaysia’s economic policies as follows: (1) New Economic Policy-NEP (1971-1990), National Development Policy-NDP (1991-2000), National Vision Policy (2001-2010), New Economic Model (2011-until now).

**Table 4.2: Malaysia's Growth and Inflation Indicators**

Year	GDP growth*	CPI Inflation*
1971-1980	7.5	5.9
1981-1990	6.0	3.8
1991-1997	9.2	3.6
1998-2005	5.3	1.9
2006	5.6	3.6
2007	6.3	2.0
2008	4.8	5.4
2009	-1.5	0.6
2010	7.4	1.7
2011	5.2	3.2
2012	5.6	1.9
2013	4.7	2.09
2014	5.8	3.15

**Source:** Ministry of Finance, Malaysia, *Economic Report*, various issues.

Notes \* - % per annum

This section aims to examine the direction of economic policy through the avenue of Malaysian economic structure in the context of: (1) political business, (2) money politics, and (3) patronage-driven model.

#### 4.3.1.1 Nurtured political business

Malaysian capitalism is organized as a political business practice with a strong state intervention. Gomez (1994) explains that the Malaysian politicians are allowed to run their own business or to run a business on behalf of a political party. The growing number of political capitalists have been studied by Searle (1999) and Gomez and Sundaram (1999) who focus on politicians who became businessmen and UMNO's<sup>132</sup> proxy capitalists who also became businessmen. They further argue that development of political capitalists shows significant dependence on state patronage. The networks of patronage also offer opportunities to non-*Bumiputera* companies, those who have close relationship of the government, the ruling elites and political party. Thus,

<sup>132</sup> UMNO stands for UMNO-United Malays National Organisation, a dominant political party in Malaysia since independence.

political and economic institutions are intertwined and transactions and dealings between the state, the dominant political party and various businesses can be conducted legally.

For example, there is a dynamic systematic structure for wealth creation and capital accumulation by manoeuvring the state's apparatus through: (1) the setup of public sector ownership and control of business enterprises by offering government funding, licenses, procurement contracts and privatised projects, (2) the allocation of funds, concessions and loans from government-controlled banks and other financial institutions, and (3) capital control to curb financial speculators and the global financial turmoil (E.T. Gomez, 2002). Generally, the existence of political business is totally legitimate and allowable in Malaysia's governance structure. This is because the public policy formulation is used by the ruling elites to help the *Malays* and improve the *Malays'* social wellbeing. Therefore, the implementation of public policy although clearly advocating a political patronage system, it is acceptable as long it is also used to stimulate growth to the country.

Open market liberalization is important to attract foreign direct investment to Malaysia. The push for a neo-liberal ideology, however, is carefully selected by the Malaysian state to protect its local infant industries while also induce competition. According to Salleh and Osman (1982), the policy indicates strong protection, subsidisation of capital, imposed rigid controls on competitors in the domestic market and the introduction of other incentives. In doing so, the state develops a strong capital for local companies, especially the *Bumiputera* companies, and improves agriculture facilities (Bruton, 1992). This is important as the economic policy has

significantly helped to alleviate poverty and income inequality especially in relation to encouraging entrepreneur *Bumiputera* through tariffs, quotas, price controls, farm and land subsidies and the awarding government contracts. Therefore, the sanction of economic policy by a greater political and bureaucratic control is regarded as legitimate for restructuring society and eliminating poverty in Malaysia.

Further, Searle (1999) argues for a competing paradigm for entrepreneurial spirit<sup>133</sup> of Malaysian capitalism. Comparatively, Milner, Embong, and Tham (2014) discuss how ‘supremacy’ and ‘long-term incumbency’ which are ideologically constructed by political leaders are accepted by the public; otherwise people would not have voted for the same political alliance since independence. Scholars have demonstrated the consequences of Malaysia’s government long-term incumbency’, a practice particularly underpinned by democratic electoral regimes (William Case, 2011; Doner, Ritchie, & Slater, 2005; Slater, 2003). William Case (2011) demonstrated the dynamic of electoral authoritarian regimes in Malaysia, which have resulted in institutional concentration and perpetuated the existence of cohesive elites. William Case (2011) further argues that the governing elites coalition appears to have fused with the state apparatus through public policy and regulated patronage flows. In addition, B. K. Ritchie (2005) illustrates that the way Malaysia’s coalitions politics *‘often drove illiberal government intervention in the economy to correct ethnically based economic inequality, create national heavy industries, and favour politically well-connected entrepreneurs’* (p.745). As a result, one cannot deny that a prolonged concentration of executive power in Malaysia appears to implicate things, which

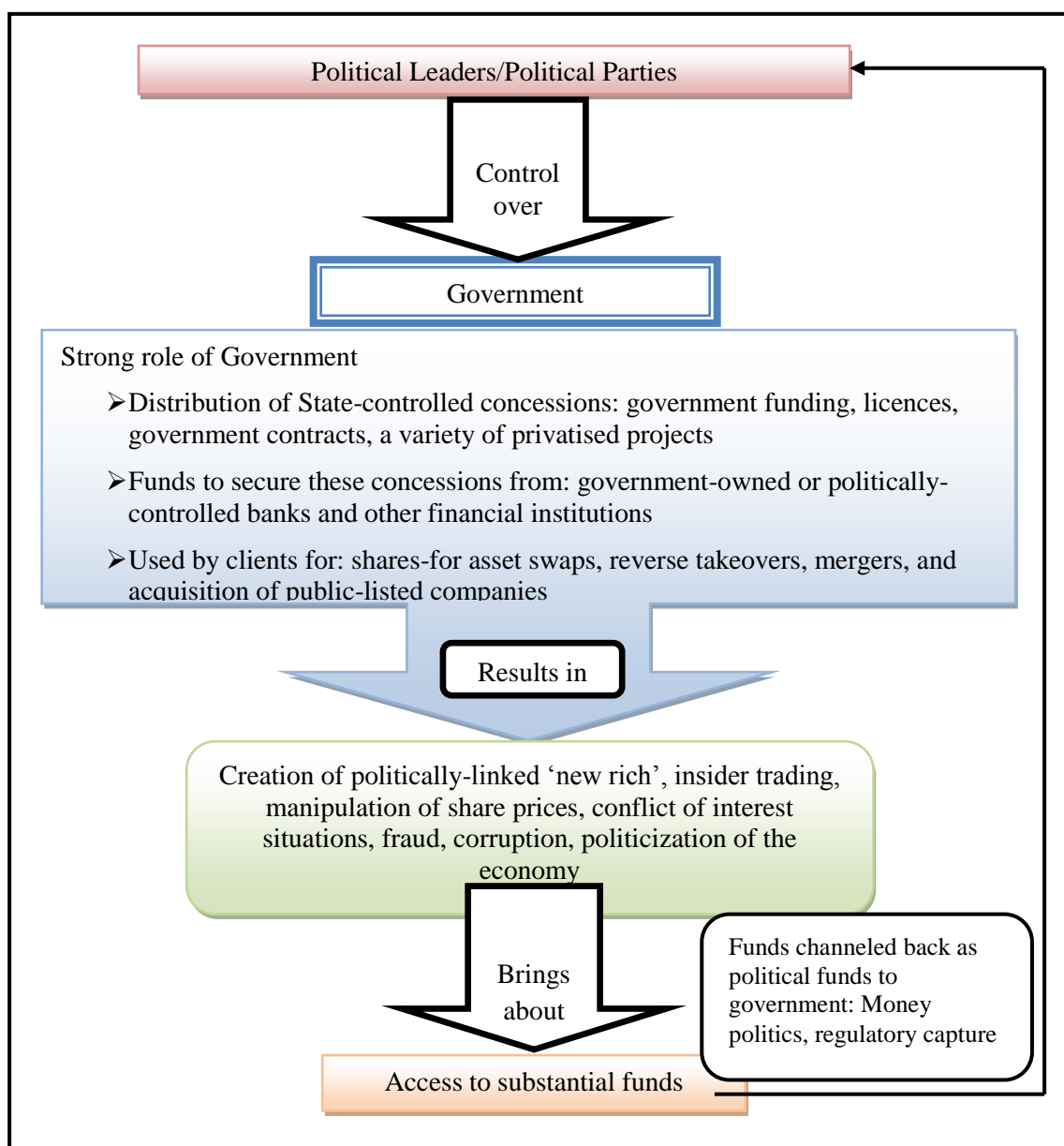
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<sup>133</sup> This relates to whether Malaysian capitalists are real capitalist entrepreneurs (productive capitalists) or merely depend on ersatz capitalism (rent-seekers).



seems to coerce and control decisions made by political and economic elites<sup>134</sup> to be implemented by government agencies, especially through the practice of political business, which favour politically well-connected entrepreneurs. A model of the practice of political business is adopted and modified in figure 4.3.

Figure 4.3: Model of the Practice of Political Business



**Source:** Adopted and modified from Edmund Terence Gomez (2002).

<sup>134</sup> The influence can be assumed as influence by the 'invisible hands' as portray in political economy theory.

Looking at the model of the practice of political business as illustrated above, the Malaysian state is willing to venture into a commercial and industrial enterprise with a ‘*government-in-business*’ strategy enterprise to breed a ‘new’ class, the *Bumiputera* entrepreneurs (C. Lee, 2012). State ownership<sup>135</sup> and control in the corporate sector or financial institutions demonstrate a nexus of political and economic institutions as ‘bed-fellows’. The role of government-controlled banks and other financial institutions is to provide funds and loans to ease many business leaders (including politicians) and this is seemed in the vested interests of politicians (Gomez, 2009). These are the Arab Malaysian group, RHB group, Hong Leong Bank, CIMB Bank, SME Bank and many others. These institutions are promoting *Bumiputera* capital by “*securing funds on favourable terms to generate growth, particularly through acquisitions, contributing to the rise of huge enterprise within a relatively short period*” (Edmund Terence Gomez, 2002, p.5).

This means that opportunities might arise for abuse, manipulation, fraud and a high-level of corruption with politicians who seem to abuse their power and position to interfere and influence the resource allocation and benefit party members, families, and closely-connected companies with whom they have common interests (Gomez & Jomo, 1997; Khair et al., 2015; J. Ng, 2015). For instance, the privatisation scandals of mismanagement, fraud and corrupt practices, huge debts and many others only resulted in the ‘bail-out’ and rescue approach implemented by the government who used public money to do so. Some scholars provide evidence that the restrictions of

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<sup>135</sup> Many public institutions have been established to help and promote business for the *Malays*’ economic prosperity since the New Economic Policy (NEP). Among others: MARA-*Majlis Amanah Rakyat*, FELDA-the Federal Land Development Authority), RIDA-Rural and Industrial Development Authority, PERNAS-*Perbadanan Nasional Berhad*, UDA-Urban Development Authority, SMIDEC-Small Medium Industries. Regional development authorities: MADA-Muda Agriculture Development Authority. There is also the SEDC-State Economic Development Corporation in every state.

capital flow by the government in 1998 were made to protect cronyism regimes, bailouts and provide support to favoured firms (Johnson, Kochhar, Mitton, & Tamirisa, 2006; Johnson & Mitton, 2003). In particular, in relation to capital control Jomo observed that,

*'[capital control mechanism] has been abused by certain powerfully-connected business interests, not only to secure publicly funded bailouts at public expense, consolidate and extend their corporate domination...Capital controls have been part of a package focused on saving friends of the regime, usually at the public's expense'.* (K.S Jomo, 2001, p.215)

Therefore, it appears that public policy in Malaysia has been directed by the state and well-connected businessmen because of money in politics (Gomez, 2012a).

#### **4.3.1.2 The rampant money politics**

The intertwined relationship of economics with political institutions is what creates money politics (R.S. Milne & Mauzy, 1999; Teh, 2002). The practice of money politics creates opportunities for fraud, bribery and corruption as it is acceptable for politics and business to mix. For instance, licit and illicit campaign funds are treated as a political donation, which is legal in Malaysia. What is more, a political donation is never disclosed to public scrutiny and this opens up opportunities for abuse (Chen, 2014). The predicament of such practices has tainted 'noble' political sentiments: strive for race, religion and for one's country (M. A. S. Aziz, 2011). Moreover, business leaders with vested interests continue to lobby the politicians and 'capture' the regulatory of public offices to secure rents from the state through resources allocation by the interference of politicians to business and their interactions with business leaders (Teh, 2002; Waythamoorthy, 2013). The culture is deeply rooted in the Malaysian society, as also viewed by an ex-political leader,

*'....candidates begin to bribe delegates with money and gifts. As there is competition among candidates, the bribes increase in value...A person's quality of work or*

*capabilities are not the basis for his nomination. The basis for supporting him is the value for the bribe that he is willing to hand out'* (Mahathir Mohamad, 1996, cited in Ghazali, 2004, p.55).

In the end, the rampant culture of money politics in Malaysia has created a vicious circle that involves returning the favours through business contracts, licence, permits and others, when a political leader wins the election (Tan, 2015). Consequently, there is possibility that the rampant money politics seems to support the patronage-driven model within the economic structure implemented in Malaysia.

#### **4.3.1.3 Patronage-driven model**<sup>136</sup>

The endorsement of affirmative actions in Malaysia's economic policy has resulted in 'legitimate' relations between politics and business which seems to suggest for a patronage-driven model (M. Cohen & Arkhipov, 2013; Nambiar, 2014). On one hand, Gomez (1997) and Hamayotsu (2004) talk about politicians who hold positions in the public office and who might gain access and interfere with the distribution of large sums of funds, contracts, projects, permits, shares, stock-market and others. On the other hand, it appears that the political business ties tend to distribute selective rents that seems to help in promoting industrialization and diversification of the economy in the global market place (Hamayotsu, 2004; Nicholas J. White, 2004). This seems to be highlighted in a study by White (2004a), which argues for the wide spread of crony capitalism. The study notes that the crony capitalism concept is based on the relationship between the state, and the 'selective few' favoured entrepreneurs, regardless of race. There is a possibility for a 'patronage network' which uses the state apparatus portrayed as inevitable for a diversified pattern of economic growth (Jeff Tan, 2008). Thus, it appears that the state has created opportunities for rent-

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<sup>136</sup> Patronage-driven model is seen as a business style model, advocated within the Malaysian market, for allocating and distributing rents among businessmen (see Adhikari et al., 2006; Fraser et al., 2006; Gomez & Sundaram, 1999; Gomez, 2012a).

seeking activities between political and economic spheres through legitimate means with the aim of economic growth (Gomez & Sundaram, 1999; Siddiquee, 2010).

It is possible that the patronage business style of allocating and distributing rents in Malaysia is appreciated among its network, which seems to open up new opportunities for wealth accumulation, while the benefits of state economic contracts and protection are channelled to individuals, groups and companies closely connected with the ruling coalition (Gomez, 2012a; Nicholas J. White, 2004).<sup>137</sup> Searle (1999) clarifies that these ‘selective few’ businessmen might have built a political-business complex for ersatz rent-seekers and/or true productive capitalists, from politicians and bureaucrats to people who are both politicians and businessmen. Consequently, the boundaries between politics and business seem to become increasingly blurred. As observed by Jomo (cited in Teh, 2002, p.339),

*‘In fact, it is openly acknowledged that business interests now influence politics more than ever before in recent Malaysian history. For instance, at the last general assembly of UMNO, the dominant partner in the ruling coalition, about half of the delegates were businessman’.*

However, despite being championed by the governing coalition that the economic policy is to help the *Bumiputera* economically, it appears that there are various complaints and grievance on part of the public in relation to the rising cost of living, the deterioration of purchasing power, the low monthly salaries and the wider income gap which lead to inequality (Chooi, 2013; Faizli, 2014; Meng, 2013). The income disparity in Malaysia is shown below:

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<sup>137</sup> The rents are appreciated among three groups: (1) *Bumiputera* political-businessman, (2) *Bumiputera* non-political businessman, and (3) non-*Bumiputera* businessman (other races) (see Gomez, 2012a).

**Table 4.3: Malaysia's Gini Coefficient ( 1979-2012)<sup>138</sup>**

Year	Gini Coefficient
1970	0.513
1974	0.530
1976	0.557
1979	0.505
1984	0.483
1987	0.456
1989	0.442
1992	0.459
1995	0.456
1997	0.459
1999	0.443
2002	0.461
2004	0.462
2007	0.441
2009	0.441
2012	0.431

**Source:** Website of Economic Planning Unit, Prime Minister Department, Malaysia.

The gap<sup>139</sup> between the rich and poor has been consistently increasing for 20 years and many Malaysians live below or at the poverty line. It seems that only those in position and power own the wealth in Malaysia. The practice of affirmative action for Malaysia's economic policy has likely, in turn, promoted and is entrenched with various forms of practices: rent-seeking and patronage (K. S. Jomo, 2005; Tay, 2012), fraud (R.S. Milne & Mauzy, 1999), corruption (Fuller, 2006), cartel like collusion (Ghee, 2013; Hunt, 2014), cronyism (Johnson et al., 2006), favouritism (Netto, 2003) and money politics (Gomez & Jomo, 1997). The above practices raise questions on

<sup>138</sup> The Gini index measures the dispersion of incomes between the richest and the poorest in an economy, with 0 meaning perfect equality, and 100 being maximum inequality.

<sup>139</sup> The World Databank shows that Malaysia ranks among the 39 most unequal in distribution of wealth country in the world with a Gini of 46.2 in year 2002 (Lincoln, 2011). Malaysia is the third most unequal nation in Asia, which means that there is a big gap between the very rich and the poor (Faizli, 2014). The Household Income Survey shows that the top earners in Malaysia have increased their wealth and capital accumulation from 50% in 1990 to 50.5% in 1999 and 51.2% in 2004. Comparatively the poorest of the country, who mainly consist of the *Malays* and *Bumiputera*, continue to show a decrease from 14.5% in 1990 to 14% in 1999 to 13.4% in 2004 (Department of Statistics, 2012).

the transparency and accountability of public spending within the state's apparatus, as discussed in the following subsection.

### 4.3.2 Public Finance Management

The Accountant General's Department (AGD) of Malaysia is a financial authority which consolidates the federal government accounts positioned under the Treasury of Malaysia and which directly reports to the Ministry of Finance (MOF) (see Appendix 4.3). The state officials at all levels act (1) at the decision-making level-politicians and top bureaucrats and (2) implementer level-civil servant at all posts. They need to assure that the financial position of the public sector complies with the rules and regulations<sup>140</sup> to endorse decisive policies, programs and activities. Under the federal account, the expenditure for acquisition of products and services is mainly accounted under the development expenditure as distribution of projects, contracts and programs in delivering public services (Government of Malaysia, 2013). Below is the federal government of development expenditure statistics for 2004-2013:

**Table 4.4: Extracted from Federal Government Financial Statistics (2004-2013)**

Year	Development Expenditure (RM)
2004	28,864,000
2005	30,534,000
2006	35,807,000
2007	40,565,000
2008	42,847,000
2009	49,515,000
2010	52,791,000
2011	46,416,000
2012	46,932,000
2013	42,210,000

**Source:** Website of Accountant General's Department, Malaysia

<sup>140</sup> Among others: Financial Procedure Act 1957 (revised 1972), Ministerial Functions 1969, Government Contract Act 1949, Delegation of Powers Act 1956, Treasury Instructions, Treasury Circular Letters, Treasury Circulars, Treasury Instruction Letters, Federal Central Contract Circulars, Guidelines and Manuals.

One cannot deny that there is big business involved in government procurement. The following examination on public procurement helps to explain the possibility for the persistence of public procurement fraud in Malaysia.

#### 4.3.2.1 Public Procurement

Malaysia's government procurement regime for supplies, services and works aims to support government programmes by achieving value for money through petty cash, direct purchase, quotation, tender (open and close), federal central contracts, requisition, communal work, consulting services, the use of contract from other ministries/departments, procurement through technical department, and direct negotiation (see Table 4.5).

**Table 4.5: Modes/Types of Malaysian Government Procurement**

No.	Modes/Types of Malaysian Government Procurement	Endorsed by Treasury, Ministry of Finance (MOF)
1.	Petty Cash	<ul style="list-style-type: none"> <li>- Treasury Circular Letter No.2 Year 2002: Amendments to the Treasury Order 97 (D) and User Limit Amount Petty Cash.</li> <li>- Treasury Order 2008.</li> </ul>
2.	Direct Purchase	<ul style="list-style-type: none"> <li>- Treasury Circular Letter No.12 Year 2007: Limit Values and Conditions for Direct Purchase Supplies and Services.</li> <li>- Treasury Order 2008.</li> </ul>
3.	Quotation	<ul style="list-style-type: none"> <li>- Treasury Circular Letter No.5 Year 2009: Changes Limit Values and Procurement Management Procedures on Quotation.</li> </ul>
4.	Tender (open and close)	<ul style="list-style-type: none"> <li>- Treasury Circular Letter No.5 Year 2007: Government Procurement Management Procedure in Tender.</li> </ul>
5.	Federal Central Contracts	<ul style="list-style-type: none"> <li>- Treasury Circular Letter No.5 Year 2007: Government Procurement Management Procedure in Tender.</li> <li>- Treasury Order 2008</li> </ul>
6.	Requisition	<ul style="list-style-type: none"> <li>- Treasury Order 2008</li> </ul>



7.	Communal Work	- Treasury Circular Letter No.4 Year 2004 : Implementation of Small Projects in Communal Work - Treasury Order 2008
8.	Consulting Services	- Treasury Circular Letter No.8 Year 2006: Procurement Regulations for Consulting Services - Treasury Circular Letter No.8 Year 2007: Appointing Authority and Approval Cost of Consulting Services
9.	The use of contract from other ministries/departments	- Treasury Order 2008
10.	Procurement through technical department	- Treasury Circular Letter No.3 Year 2006: Implementation Projects Worth More Than not RM5 Million for Non- Technical Department.
11.	Direct Negotiation	- Treasury Directive Letter 17 April 2002: Letter of Guidelines of Application for Direct Negotiation Procurement. - Treasury Directive Letter 26 March 26 2008 : Acquisition Price Negotiation Approved in Direct Negotiation Procurement

**Source:** Website of Ministry of Finance, Malaysia.

Despite various rules and regulations for the acquisition of supply, services and works for many government departments in Malaysia, various procurement practices in the Malaysia public sector exhibit the following characteristics. First, there is a preferential treatment<sup>141</sup> of locally produced goods especially benefiting *Bumiputera* companies. Rather than this protectionist policy aiming to help the *Bumiputera* companies, Searle (1999) voices concerns about whether those who run *Bumiputera* companies are ‘real-capitalists entrepreneurs’ who are willing to compete for a quality product, or whether they are only ‘rent-seekers’ advocating ersatz-capitalism

<sup>141</sup> For instance, government procurement policy states, among others, that supply, services and works must be made locally and it also restricts purchase of import products and it involves preferential treatments to *Bumiputera* companies especially in relation to work contracts (Ministry of Finance, 2013).

and the promotion of patronage networks. The Ministry of Finance, which is the main economic institution in Malaysia, appears to 'allow' such system and embraces the concept of 'selective competition', which is deeply embedded within the procurement process (Berthelsen, 2013). One of the existing and allowable concepts characterizing Malaysia's public procurement is the 'Ali-Baba system', according to which the *Bumiputera* companies are merely a front for businesses which are in fact run by the Chinese (Koya, 2013). It appears that many *Bumiputera* companies might take advantage of the opportunity to deliver government contracts. There is the possibility that the preferential treatment practiced in Malaysia procurement practices might not be working properly because there are indications that *Malay* companies would prefer to be an 'ersatz capitalism' entrepreneur<sup>142</sup> as an easy way to become rich and successful (K. S. Jomo, 2005; Searle, 1999). Yet, to date there is no empirical research or study that has been conducted in order to explore the preferences of creating Malay entrepreneurs.

Second, one might form the impression that such partisan policy has advanced a patronage system to promote or protect vested interests. In return, crony capitalism might be employed, favouritism and patronage system seems to be preferred, fraud and corruption,<sup>143</sup> nepotism, and many others practices that contaminate public procurement process flourish (Malaysiakini, 2010; Zubedy, 2013a). The privatisation policy, for example, was abused so as to 'bail-out' and rescue political 'cronies' from

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<sup>142</sup> This is because mostly the Malay companies are believed to qualify for the preferential treatment in Malaysian procurement practices and they believe that the Malaysian government always assists the 'race-merit' policy.

<sup>143</sup> In particular, on direct negotiation contract, the negotiation is shrouded in secrecy and the procurement process is not against any law (Lian, 2012). However, the arrangement of procurement process is constructed in such a way that the lack of transparency and 'malpractices' are hidden. This leads to further abuse of power, fraud and corruption activities, and enriches the well-connected few at the expense of the public (K. Jomo, 2000; Nicholas J. White, 2004).

bankruptcy. Pua (2011) criticized monopoly water privatisation as being implemented “without required regulation, [with] profit-making entities seek to maximize profits, even if it means offering declining quality of services” (p.89). As a result, it appears that the untying system of patronage and rent-seeking behaviour is deeply entrenched in the Malaysian social, political and economic scene causing massive leakages of money and, at the same time, protecting crony business interests (Nain, 2013; Pua, 2011).

Third, it is argued that the possibility for the prevalent abuse of power and corruption might allow for lopsided agreements, which do not protect the public’s interest, but only provide additional profits to the businesses (Lian, 2011; Mok, 2013). Many analysts have criticized that those agreements might have a lopsided element because the agreement might lack transparency as such contracts are normally secret and are rarely open to public scrutiny (Backman, 2008; Lian, 2011; Searle, 1999). While such ‘sweetheart deals’ are agreed-upon, nobody takes the responsibility of such lop-sided agreements (P. Lee, 2011). Below are some lopsided agreements/arrangements made by the Government of Malaysia:

**Table 4.6: Lopsided Agreements/Arrangements by the Government of Malaysia**

<b>Year</b>	<b>Projects/Contracts</b>	<b>Beneficial Parties</b>	<b>Lopsided Element</b>	<b>References</b>
Late 1980’s	Purchasing Power Agreement (PPAs) Concession-type	Independent Power Producers (IPP)	Any extra cost of the price of the fuel is passed on to the customer. Buying electricity from the IPP with higher	Lee (2011), Lian (2011), Meng (2013)

			prices	
1990's	Toll Concession Agreement	Highway Companies	Toll rate hikes although the firms have recovered their initial investments	Searle (1999), Pura (1998), Mok (2013)
2008	Malaysia's carmaker decided to sell of MV Augusta's share	MV Augusta-an Italian Company	Sold MV Augusta's share with a loss of RM 500 million	Eng (2008), Pua (2011)
2012	Concession on Automated Enforcement System Meng (2013)(AES)	Former: A.T.E.S Sdn. Bhd. and Bina Tegap Sdn. Bhd. Now: AES Solutions Sdn. Bhd.	Unreasonable traffic summons issued to the public.	Meng (2013), Zachariah (2014a), Sen (2012a)
2013	Lease Rate (Hire) Taxis System -Taxis Permits	Selected Permit Taxi's Companies	The monopoly contract was given for 'selective' taxi permits companies. The lease payment (for hiring a taxi) is too high and unreasonable. But most taxi drivers do not have any choice but need to bear the cost	Chan (2015), Vinod (2013b)

**Source:** Current Study

Finally, failure to deliver government contracts as stipulated by the agreement is not punitive enough for the businessmen. According to Ministry of Finance, several

disciplinary actions<sup>144</sup> can be taken against contractors and consultants for incompetence in delivering government procurement or projects. Yet, as Nain (2013) seems to suggest, such punitive and disciplinary actions are hardly taken by the current government.

For the most part discussed in this section, the economic structure and development in Malaysia is likely used as a platform for political and economic powerful elites to gain market access, something that they presently portray as a ‘heroic’ sentiment (especially for the *Bumiputera*) for bigger state intervention. It is possible that the dynamic power of political and economic institutions in the form of ‘government in business strategy’ might be the ‘influential’ factor towards directing public policy through the likely nurturing of political business, money politics and the patronage-driven model (K. S. Jomo, 1990; R Rasiah & Shari, 2001; Yusoff, Hasan, & Jalil, 2000). Thus, there are possibly ample opportunities for fraud and corruption in public procurement, because of the existence of patronage system and crony capitalism in distributing resources. Consequently, while the various rules and regulations for government procurement that are in place are aimed for greater accountability and to promote strong governance in the public sector, they appeared to be tainted by the astute individuals in the public office which manipulate the procurement system. The following section highlights the professionalism of Malaysian civil service that works towards the preservation of fraud in public procurement.

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<sup>144</sup> First, the company violates registration requirements through falsification, amending information, manipulation of *Bumiputera* status, and others. Second, there are the offences which range from violating the terms of the tender/contract by falsification, withdrawal, rejecting offer, colluding for fixing prices to failure to commit contract obligation (late delivery, failure to supply/services or/and with quality, failed to meet specifications and others). Finally, there are those companies with criminal offences and civil liability.

## 4.4 Malaysian Civil Service: Public Sector Governance

The professionalism of the Malaysian public service is a legacy from the period of feudalism, from colonial times and the period after the independence. It is believed that such legacy and bureaucratic patterns embraced an embedded state autonomy at the interaction between the state and market forces (A. S. b. Ahmad et al., 2003). That is to say, such synergy is fruitful for Malaysia's public governance of 'New Public Management (NPM)<sup>145</sup> and for its public management reform. Yet, by implementing a NPM-style governance, Polidano (1999) questions the public accountability and its appropriateness of its adoption in the developing country. This section examines the role of Malaysia's public service, the impairability of the public service delivery for public accountability.

### 4.4.1 The role of Malaysian Bureaucracy: The Implementer

The Malaysian public administration is largely a legacy of the British colonial model of public service (Wilkinson, 1972). The pattern of Malaysian public administration need to be understood within its context, as Tilman puts it,

*“Contemporary Malayan bureaucracy must be viewed as a product of the total Malayan environment, for its development has been influenced by the culture, history, and politics of Hinduised, Islam, colonial and independent Malaya”* (1964, cited in A. S. b. Ahmad et al., 2003, p.7).

The Malaysian public administration has played a vital role in economic and social development of the country. First, the civil servant is required to deliver administrative and regulatory services. According to Razak School of Government

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<sup>145</sup> New Public Management ideology is closely associated with neo-liberal ideology for privatization, deregulation and trade liberalization. The idea is to improve public sector performance and make it more efficient and effective with results-based management. The mantra of NPM significantly brings in the 'ethos' of private sector into public entities that promotes competition, empowerment of customers and citizens, performance measurement and it is results- and outcomes- based (Hood, 1991; Polidano, 1999).

(2009), the public service has an obligation to deliver public service with a high degree of accountability. There is a top-down hierarchical bureaucratic structure to deliver public services with the higher-ranking officers being allowed and expected to give instructions<sup>146</sup> based on the 'rigid' hierarchy and power relation. This distinctive nature classifies civil servants as follows: top management, managerial and professional group and support staff for evaluation performance. This structure is used, in turn, as a basis for rewards, recognition, and career advancement.

Second, the civil servant is responsible to formulate and implement public policies as decided by the Cabinet. Public servants play their role as implementers<sup>147</sup> of public policies (Karim, 1995). A. S. b. Ahmad et al. (2003) argue that any good publicity on public policy is given to the Minister, but the civil servant is held accountable for any poor implementation of public policy. The system of obedience of the civil servant possibly gives potential space for fraud and corruption because of the politicisation of public servant employment in the context of the Malaysian public service (Haidar, Pullin, & Hai, 2004). As a result, the role of the Malaysian bureaucracy seems to be that of the implementer to deliver public services for the citizens, and/or to maintain a 'non-political' affiliation with governing coalitions (Information Department of Malaysia, 2011; Mahathir Mohamad, 1995).

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<sup>146</sup> For instance, the use of Modified Budgeting System (MBS) ascribed the empowerment of higher authority to lower level managers. Following this, John Antony Xavier (1996) shows that MBS employed the 'intimate' accountability concept by making program managers individually responsible for the performance outcomes of their department.

<sup>147</sup> In an attempt to implement public policy, A. S. b. Ahmad et al. (2003) critically discuss the system in which policies and decisions are made by the political elites, and the civil servants are only there to implement them.

Finally, a public officer holds a strategic role as a facilitator and regulator at the nexus of public-private synergy. The leading role that the public service has in relation to economic policies, such as privatisation, industrialization, e-Government and others, would gradually result to an interventionist approach and market orientation by the state. However, such role might be tainted by many scandals of fraud and corruption, abuse of power, patronage, cronyisms, clientele and inequality in distribution of resources (Shukry, 2013b; Sundaram, 1989; J. Tan, 2008). Thus, the strategic role for the institutionalization of public-private synergy might impair the 'noble' role of Malaysian civil servant, and merely employ politicisation by the ruling elites. The next section highlights the impairment of the Malaysian civil servant to exercise their duties.

#### **4.4.2 Impairment of the Public Service Delivery**

The 'noble' attention of the civil servant to serve the public is hijacked by the greater influence of cases of conflict of interests. First, a civil servant has to apply the neutrality principle when conducting their daily job (Puthuchear, 1978). The reality of the neutrality concept in Malaysia in fact shows a continuous support for the current governing coalition by establishing hegemonic control over the administrative system. This principle involves a non-partisan perception towards those who gained dominant political power in the public sector (UNDP, n.d.). However, a former Chief Secretary criticized that the ruling politicians may put pressures and demands on public servants to follow their political whims. In his words,

*'certain groups [including political parties] in the country are trying to disrupt the neutrality of civil servants by influencing them with their own ideologies... There are people who are trying to influence government officers, asking them not to abide by the neutrality principle which had been one of the pillars of strength of Malaysia's civil service. They want civil servants to take sides with the country's present political situation'. (Ali, 2000 cited in Haidar et al., 2004, p.9)*



A. S. b. Ahmad et al. (2003) reveal that there have been cases when the civil servant is transferred to other places if known to be of a different political ideology than the current government political coalition. Many transfers also take place when there is a change of political party at the state level. This shows the use of coercion and control against many public officials under an 'authoritarian rule' (R.S. Milne & Mauzy, 1999).

Second, the state bureaucracy has to ensure the implementation of decisive public policy so as to have a satisfactory yearly performance appraisal.<sup>148</sup> In many cases, public servant who are linked with the opposition party are not promoted, awarded or rewarded (Basir, n.d.). Thus, the civil servant is not devoid of political influence in exercising their role on a daily basis. It was observed that bureaucracy in the Malaysian public office is facilitated by partisan performance evaluations, by a politicisation of favours to the supporters, an oppressive attitude towards the opposition and by ignoring those in the middle (Husain & Brahim, n.d.).

Finally, the bound rules and regulations<sup>149</sup> imposed upon the civil service have to some extent prohibited any constructive criticism conducted against the government (even the implementation of public policy has somewhat violated norms, practices;

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<sup>148</sup> On the one hand, a civil servant relies on the distinctive practices for employment, rewards and assessment. Yet, the subjective appraisal schemes "*has been abused by superiors and used as tool to victimise their subordinates*" (Haidar et al., 2004, p.10). On the other hand, a study by Pullin and Haidar (2003) on the ministerial control in Australia shows that control over employment of public servants can effectively fulfill demands by the political elites. Following this, a study by Haidar et al. (2004) provides evidence that ruling politicians subsequently influence the recruitment, selection, promotion and dismissal of Malaysian civil servants.

<sup>149</sup> Civil servants in general are bound by the Rules for Public Workers (Conduct and Discipline) 1993, Official Secret Acts, Standing Orders, General Orders, Government Circulars and Office Instructions, Safety Instruction book, and Letter of Undertaking, and many others. An appointed civil servant needs to sign the relevant documentation before their employment starts.

clearly not for the public interest). The rationale of such bound rules, however, raised questions on the obligation and obedience of public officials in delivering public services.<sup>150</sup> The first point is the exercise of bound rules protects the individuals who are involved in malpractices and wrongdoings when it continues to be shrouded in secrecy. While the use of the Act (e.g., Official Secretive Act-OSA) is to block any intelligence activities of espionage, subversive acts, acts of sabotage, or extremist acts (especially during the British colonial) from enemies of nation, the Act has been used to 'protect' and 'shield' fraud, corruption and malpractices in the public office (Khan, 2014). It appears that individuals who might be involved in wrongdoings are able to camouflage any 'secretive official documentation' under the slogan of national interests (Go Malaysian, 2009; R. A. Hamid, 2015; Jam, 2000). Jam argues that,

*'OSA is actually an Act which can deprive people of this country from getting, say or divulge anything that is deemed by the government as a secret. Those who are guilty of violating this Act shall be imprisoned for at least one year. This Act is a shield to certain people in power, his quarter and his cronies who largely benefit from such Act. Despite of this, the Act is able to shield all the scandals, mismanagement, intrigue and their ultimate goal is protected from the public'. (p.2)*

Therefore, the obligations of the Malaysian civil servant are to some extent seen as preserving fraud and corruption in Malaysian public procurement as most procurement documentation is protected under OSA. The second point is about the obedience of Malaysian public service is seen in the context of the phrase 'I am following the orders' whenever they sign government official documentation. The slogan has been changed from the colonial times from 'I remain your obedient

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<sup>150</sup> The reasons for the imposition of many rules and regulations including (not exclusive): (1) being a public official with the most efficient, highest integrity and accountability; (2) to adhere to their public duties rather than their private interests (3) to keep the image of public service; and (4) infliction of punishment to those who violate the rules (Attorney's General Office, 2002).

servant’ to ‘I am following the orders’<sup>151</sup> (C. S. Hai, 2011). A critical assessment of the latter shows the public servant as only following the orders and/or not questioning any orders/instructions by the higher superior and appear to have a ‘blind obedience’ to discharge their duties as instructed (Hooi, 2014; Mansoor, 2013). Nevertheless, reliance on that slogan is likely to suggest possible manipulation and abuse which give the idea of lack of accountability and affect the governance landscape in Malaysia (N. B. A. Bakar et al., 2011).

#### 4.4.3 Towards Public Accountability

Inevitably, all state officials must ensure public accountability in handling public money. The Malaysian government sought to ‘show’ having made an effort towards public accountability of ‘good’ governance in public administration (A.-A. Bakar & Ahmad, 2013). In combating fraud and corruption in Malaysia, there are various strategies and initiatives taken by anti-corruption and watchdog agencies to ensure greater integrity and accountability. The anti-corruption framework for eradicating corruption has programs for regulatory and enforcement agencies, government procurement and grand corruption (NKRA, n.d.). For instance, e-Procurement is established to ensure transparency, combat corruption, increase integrity in the procurement system and procure goods with value for money for the government. However, Siddiquee (2010) provides evidence that despite governmental efforts to combat corruption, “*corruption has remained acute, widespread and, in fact, worsened in recent years*” (p.153). These efforts undoubtedly show a lack of effectiveness in fighting corruption and managing integrity in the society.

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<sup>151</sup> The former (‘I remain your obedient servant’) was used during colonial regimes where the public servant treated the customer (the public) as their master and the civil servant was the slave. The latter (‘I am following the orders’) shows the hierarchy of the institutionalized power structure in the public office according to which one obeys the instructions/orders of the higher authority.

First, there is lack of effectiveness of public integrity in Malaysia in eradicating fraud and corruption in government offices. In addition, various agencies<sup>152</sup> are also established to promote good governance and ethics in the private sector. Despite such institutional arrangements, the public is hardly convinced about the preventive and punitive dimension of these arrangements.<sup>153</sup> The magnitude of corruption suggests entrenched corruption in the country. The Transparency International Corruption Index (CPI) shows a ‘worrying’ level of public sector corruption in Malaysia (The Sun Daily, 2013). Malaysia was perceived as a ‘high risk’ country for conducting bribery to seal a government contract (Josie Fernandez, 2013). N. R. W. Abdullah (2008) suggests that the governance of the country resulted from political, bureaucratic, business and societal behaviour and this has contributed to the prevalence of fraud and corruption in Malaysia. Thus, the set-up of various institutions to combat fraud and corruption in Malaysia is not effective enough.

Second, it appears that there is an inefficient judicial system that likely supports selective prosecution, which only identifies and punishes certain types for fraud and corruption cases (as noted in 4.2.3). It has been argued that the Malaysia Anti-Corruption Commission (MACC) always pursues ‘the small fish’ (i.e., cases involving unimportant individual people or low-ranked public officials). The degree of corruption is low in such cases and enforcement agencies normally will go after those individuals that seem to show that they do their work, and they are not able to

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<sup>152</sup> Among other institutions, there is the Bank Negara Malaysia, Securities Commission, Bursa Malaysia, Companies Commission, Malaysian Institute of Corporate Governance, Business Ethics Institute of Malaysia, Integrity Management Committee, the Malaysian Institute of Integrity and many others.

<sup>153</sup> The public believes that little improvement has been made to curb corruption in the levels of integrity in both public and private sector (The Malaysian Times, 2014). MACC is accused of lacking independence, having no prosecutor power and being under control of the all-powerful executive (as discussed in section 4.2.1).

capture high-profile individuals (The Star, 2014). The investigation paper by the MACC sometimes cannot convince the Attorney's General office to convict individuals because there is lack of evidence. Despite this, the judicial spheres seems to allow the Attorney's General office to simply refuse to take those politically-linked corruption companies to court (Anbalagan, 2014c). This is partly because of the consensus between the executive and the judicial branch. It is possible that powerful political and economic actors might selectively prosecute cases and this normally leads to acquittals (Sim, 2013). Even though, the law can undoubtedly bring justice and maintain integrity, the judiciary process is inevitably affected by abuse of power, conflict of interests, the nexus of the state and business leaders, deviation from rules and regulations, and a partisan approach in dealings with such practices (Seah, 2004).

Finally, detective and punitive actions do not work to 'deter' fraud and corruption in public agencies. For instance, every year the Auditor's General Report is tabled in the Parliament to show the accountability of many government departments in handling public money. It is obvious that many issues in the report<sup>154</sup> are repeated (see [www.audit.gov.my](http://www.audit.gov.my)). It seems that detective and punitive action as laid out in the report is highly vague and does not work effectively. The culprits follow a 'distinctive' approach in manipulating the rules and regulations, especially in the procurement process, and this is indispensable for not getting caught (Malaysiakini, 2010). Thus, the detective and punitive mechanisms are relatively weak and limited.

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<sup>154</sup> Among others, issues highlighted in the Auditor's General report include wastage, overpricing, overcharging, failure of government projects, imprudent and illegal spending, improper payment, poor supervision, and many others related to the government's department of finance and management.

As shown in this section, the fact that public sector governance of Malaysian Civil Servants seem to preserve malpractices in the public offices raises suspicions and requires more serious effort to combat fraud and corruption in the Malaysian public sector. First, Malaysian civil service is acknowledged to deliver ‘reliable’ public services while maintain the authoritarian rule within an embedded state autonomy (Balasubramaniam, 2012; Hutchinson, 2014). Second, the impairment of the civil servant is caused by the pressures and demands of the politicisation of bureaucracy as well as the nature of obedience and loyalty existing in most public offices. Lastly, the efforts of the Malaysian government for public accountability are not effective or do not work properly in order to suppress and eradicate fraud and corruption in Malaysia (N. B. A. Bakar et al., 2011; Yaakob et al., 2009). The next section presents a summary of this chapter.

#### **4.5 Summary**

This chapter has provided a summary of the historical development, socio-political, cultural, economic context of Malaysia that relate to the institutional structures and social actors working towards the persistence of public procurement fraud in Malaysia. The chapter considers historical and institutional arrangements that are intertwined with the role of political and economic elites. It shows the influence of global and domestic forces that influence the powerful group to engage in fraudulent practices facilitated through prevailing political and governmental structures, the avenue of economic policy and development for accumulation of capital and creation of wealth and the preservation of Malaysian state officials.

The historical legacies draw attention to feudalism in Malaysia, which left the legacy of blind faith and loyalty towards the ruling elites. Next, it addresses the fact that the ideology of colonial capitalism, which celebrates wealth creation and capital, is embedded in the society. Lastly, the discourse of capitalistic nationalism addresses the conjuncture of political and economic means for independence from the colonial master.

The political and governmental structure as established in Malaysia provides weak check and balance mechanisms. The decline of the three pillars of institutions (executive, legislative, and judiciary) might have facilitated many malpractices and wrongdoings (including fraud and corruption in public procurement) and those who are to blame might get away with it and get off scot-free because their wrongdoings are not easily proven in court. This chapter has suggested that the public accountability appears to have been further curtailed, because the mechanisms to curb public procurement fraud do not work effectively.

The economic structure provides awareness about an avenue of economic policy to be legitimated by political and economic elites from the platform of government and business relations. It appears that the nexus of public and private organisations seems easily endorsed political business, money politics and patronage-driven model. Public procurement process is likely to be further ‘manipulated’ by the astute individuals within the state’s apparatus.

The public sector governance shows that the Malaysian civil servant retains its prevalence role of delivering administration and regulatory services, formulating and

implementing public policy and being a facilitator of public-private synergy. However, their role is further likely to be compromised if they want to/try to serve public interest and/or to maintain a 'non-political' affiliation with governing coalition. This chapter argues for the possibly contaminated state bureaucracy which does not follow the neutrality principle, has got a vague system of performance appraisal and 'rigid' rules and regulations that public officers need to follow. It suggests that the obedient role of the public servants might only preserve the malpractices in the public offices. The Malaysian state official's role is riddled with contradictions in ensuring public accountability. There is possible lack of effectiveness in curbing fraud and corruption, there seems to be selective prosecution and it appears that the detective and punitive mechanisms do not function properly. Overall, the discussion in this chapter indicates that public sector governance system is not effective and/or does not work properly in relation to curbing and suppressing fraud and corruption in Malaysia

The next chapter provides evidence and views from procurement officers, public professionals, politicians, academics and media actors about the possible reasons for the persistence of public procurement fraud in Malaysia.



## Chapter 5 Findings

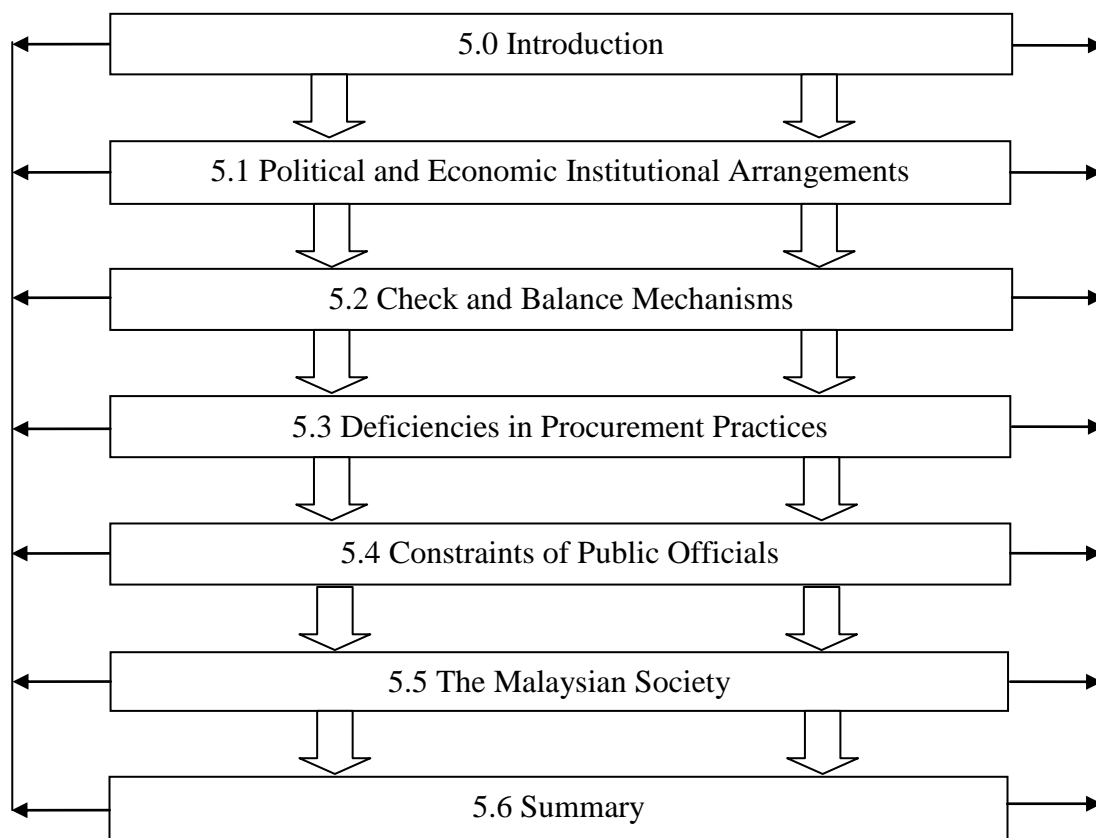
### 5.0 Introduction

The methodological framework employed in this thesis (see Chapter 3) suggests studying the arrangements of social interactions between political and economic institutions when searching the underlying explanations of the collusive network of social practices. It is argued that those institutions are able to permit and constraint the actions of social actors when engaging in public procurement fraud. Chapter 4 discusses the dynamic interactions between institutions in Malaysia and the powerful groups that might indulge in public procurement fraud. This chapter (Chapter 5) focuses on the narrations of lived experiences of the practices of public procurement fraud in Malaysia. The chapter offers the personal views and interpretations of the participants in relation to public procurement fraud in order to gather diverse evidence from those meaningful experiences and from the patterns of the interviewees' everyday life. The views were elicited by using semi-structured interviews, which helped 'unpack' the so far hidden and silent voices of people in relation to procurement fraud in Malaysia.

This chapter consists of six sections (see figure 5.1). The five thematic analyses are organised in sections 5.1 to 5.5, with sub-themes following each section. Section 5.1 provides the interviewees views on the political and economic institutional arrangements that contribute to the emergence of procurement fraud in Malaysia. Section 5.2 notes their views about the effectiveness (or ineffectiveness) of check and balance mechanisms. Section 5.3 represents their opinion on the deficiencies in

procurement practices. Section 5.4 focuses on what people had to say about the constraints of Malaysian public officials face, which have to some extent facilitated the occurrence of procurement fraud in the Malaysian public sector. Section 5.5 explains the peculiarity of Malaysian society in relation to the development of fraud and corruption. Section 5.6 concludes the chapter with a summary.

**Figure 5.1: The Structure of Chapter 5**



## **5.1 Political and Economic Institutional Arrangements**

This section discusses the views of all interviewees on the link between political and economic arrangements that contribute to the prolonged nature of public procurement fraud in Malaysia. The nexus of business, politics and the state has played a

significant role in securing wealth and accumulation of capital by sustaining a variation of the crony capitalism concept in public funds allocations (Johnson & Mitton, 2003; K. S. Jomo, 1998). According to political economy theory, the findings reveal that the political and economic arrangements in Malaysia aid in the persistence of public procurement fraud as follows: (1) the dynamic of political business practice, (2) the powerful influence of economic actors, and (3) by the direction of public policy.

### 5.1.1 The Practice of Political Business

The concept of political business is the outcome of the nexus between politics and business<sup>155</sup> in securing government contracts, public jobs and offices, licences, subsidies, privatised projects and privileges by those in power (Ashari, 2013). Similarly, Gomez et al. (2013) as well as Welsh and Chin (2013) claim that the politicians who hold power in the government office use this power to distribute and allocate funds to their party members, donors, and selected business associates who support their political career. The majority of the interviewees argued that the close and intimate link of politics and the business system plays a significant role in the persistence of public procurement fraud in Malaysia.

According to Ciepley (2013), the practice of ‘bed-fellows’<sup>156</sup> which has been often noted in many government procurement cases might have been compromising public benefits. By using political economy theory, this research argues that there are

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<sup>155</sup> The practice of political business in Malaysia is likely supported by the state in promoting the rise of big business for transfer of wealth and capital in the country. The creation of capitalists through state-rents and state assets is preferentially selected for: (1) Malay politicians who became entrepreneurs; (2) Malay entrepreneurs who have a close-connection with the ruling party; and (3) non-Malay entrepreneurs who are well-connected with the ruling party (E.T. Gomez, 2002; Gomez & Sundaram, 1999; Searle, 1999; Sloane, 1999).

<sup>156</sup> In other words, both public and private entities act together and they are dependent on each other.

inevitable relations between government and business. Academic 1 claimed that politics and economics are ‘bed-fellows’, because business leaders need to strengthen their political power through the political vehicle since the political master is willing to give access to rents, projects, subsidies and many privileges to the public office. Such system is being nurtured in the country and facilitates ‘state-business’ interaction for public procurement fraud. Politician 5 also admitted that the relationship between politics and business is prevalent and that the two complement each other. This opens the door to corruption since their fraudulent actions can easily be conducted through and facilitated by government-business interactions. Thus, fraud and corruption flourish within the context of government-business transactions and become entrenched.

Political economy suggests that the interaction between public and private organisations is genuine and legitimate (Rausser et al., 2011). Even so, the same interaction can be abused by narrow self-interests so as to pursue economic domination. The model of political business seems to be acceptable and acknowledged by all regulators in the Malaysian public sector. According to them, it is fair to secure government contracts for many *Bumiputera* companies since the state is responsible to improve the latter’s economic well-being.<sup>157</sup> In fact, the regulators did not think that this is wrong because it is the role of the state to promote the rise of big businesses, especially for the *Malays* capitalists. The increasing role of state intervention in the market and public sector investment cultivates a political business

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<sup>157</sup> The allocation of public resources to those companies is seen as giving incentives to compete with and economically surpass other races, especially the Chinese.

concept, which has been nurtured for quite some time now and it is perceived to be a normal practice. Regulator 10 explained,

*'When processing any procurement project, we only follow the procurement procedures. As long the contractor can fulfil all requirements that are necessary for us, it is not a matter of concern to us if that contractor is linked with the Minister or any other powerful person. A greater state intervention for ethnic affirmation policy was created for capital accumulation on behalf of the Malays through a political patronage system for restructuring the country's wealth. The initial idea was definitely good. After all, it is for the development of the country.'*

What is more, numerous scholars express concern over the impact of big businesses on domestic politics. For instance, Edmund Terence Gomez (2002) shows how various forms of links between politics and business have possibly facilitated the growth of corruption and money politics in Malaysia. Wain (2009) sheds light on the money-making opportunities taken by the ruling party to venture into businesses publicly known as the 'interventionist policies' and 'market coordination' so as to facilitate the *government-in-business* strategy (Vithiatharan & Gomez, 2014). A study by William Case (2015) highlights the increasing state power in business and finance, which facilitates the practices of patronage and crony capitalism among ruling elites.

Professional 3 talked about patronage and cronyism in response to policies and incentives introduced by the government. S/he explained,

*'For ....case [the case is hidden for confidentiality purposes], we found that the rewarding of the privatised projects were based on the close-connection with the husband of the one of prominent politicians in the ruling party. While his company was not viable, he was given the contract. Do you think if you don't have any connection or relationship with the ruling party, you can bid and get the contract? It will not be that easy because the ruling party can select from the state private entrepreneurs in order to distribute rents.'*

Seeing things from another perspective, Academic 3 argues that the embeddedness of the political-business structure contributes to the emergence of public procurement

fraud. The creation of well-connected rich companies (e.g., state-owned enterprise) involves the extortion of public fund from rents created within the government apparatus. This provides an opportunity to those with private interests to maximize their profits. According to Professional 8, closely-political connections facilitate cronyism, favouritism, conflict of interest cases, business scandals, rent-seeking, fraud and corruption. More importantly, Professional 10 also highlights the fact that political business as implemented in Malaysia has resulted in endemic fraud and corruption through political patronage, unproductive rent allocation and distribution, in particular in relation to its public procurement.

Politician 2 believed that there is nothing wrong with applying a patronage system in many government procurement cases as long as the project can benefit the country and people can enjoy public services. This was also supported by Politician 3,

*‘So if the government likes to do business with some politicians and they [politicians] can provide them [the government] the goods and services, so what’s wrong with that? I cannot see anything wrong or why there is conflict of interest as long as we declare our interest. If everybody is making money, why not politicians as well?’*

However, Politician 4 expressed his/her concern on the growing power given to politicians in influencing public policy decisions.<sup>158</sup> Many politicians are able to take advantage of their position to favour their own interests.

Politician 1 and 3 confirmed that the link between politics and business contributes to the wide spread of money politics. They argued that money politics has badly

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<sup>158</sup> Politician 4 believed that politicians must act for the public interest and not the private one, and that the politicians’ duty is to serve the people who elected them.

influenced<sup>159</sup> how politics operate in Malaysia (Sarawak Report, 2013) . Tan (2015) suggests that the practice of rent-seeking and money politics is based on patrons (state bureaucrats or politicians) and clients (business leaders) within the political business system. Tan (2015) argues that privatisation is the main vehicle for unproductive rent distribution for wealth and capital accumulation. Gomez (2012b) and Tan (2012) have illustrated state-business linkages for many privatisation projects of state-created rents to the well-connected companies.

Yet, the concept of money politics seems to be accepted in the Malaysian society as a structured and matured system needed so that a political party survives.<sup>160</sup> This rhetoric was disclosed by Media Actor 1 when explaining that public procurement fraud stems from the abuse of power by the politicians since most successful business leaders<sup>161</sup> in Malaysia were heavily supported by government contracts. Media Actor 4 claimed that,

*‘The leader of the country has reasoned his purpose to build fortress with the institutionalised power’.*

The ex-Prime Minister (Politician 5) did not deny that money plays a role in a political campaign;<sup>162</sup> however, he claimed that the money was spent for greater

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<sup>159</sup> In order for politicians to be elected, they need to pay their voters to support them for the highest post possible. This is consistent with the concept of giving money (by politicians) and having demands (voters/supporters) and vice versa.

<sup>160</sup> This includes donations, sponsorships and private funding given by various parties with vested interests so as to finance an election. It is seen as an ‘investment’ for a political master.

<sup>161</sup> It is important to note that the rise of well-connected *Bumiputera* has also supported the rise of non-*Bumiputera* businessmen through state patronage and the crony capitalism concept (see chapter 4). These profitable rich companies continue to make political donations to the existing government. The institutionalization of corruption is nourished by the leader in the country (e.g., The Prime Minister) so as to build and establish his power using relations with other powerful people.

<sup>162</sup> By making an excuse with relation to the development for the country, Politician 5 was confident that fraud and corruption only occur when a favour is returned to those who have supported a politician in the first place.

purposes. He believed that it is wrong to return favours by fulfilling the politician's promises through abuse of power within the state apparatus. Nevertheless, he explained that the system is not bulletproof, which means that it is open to fraud and corruption at any level. Politician 5, however, believed that corruption in Malaysia is still manageable as it is still conducted 'under the table'. He said,

*'In the Malaysian context, fraud and corruption is still conducted under the table where the person normally hides and conceals the wrongdoings. Corruption, however, becomes institutional when those malpractices are manifested and implemented openly especially by the leaders. It also becomes institutional when it is accepted by the society. But not in Malaysia'.*

It has been observed that many interviewees from the regulators' group admitted the prevalence of money politics between political and economic institutions. Yet, they (regulators) justified their obligation to help various businesses as one way of delivering good public services.

Academic 5 also affirmed the wide spread of money politics among politicians, political parties and the supporters. Academic 5 claimed that public procurement is always linked to money politics in financing a political party and stated that,

*'The money politics is linked to the financing of politics in UMNO<sup>163</sup> [the ruling party]. UMNO today is a party to which if you don't give money, they will not vote for you. Money politics has been mentioned by our ex-Prime Minister as it involved a lot of money. Therefore, in return, these people get contracts from the government, and when they make money and profits, the money will go back to UMNO'.*

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<sup>163</sup> UMNO stands for United Malays' National Organization (UMNO), the hegemonic partner in the ruling party of *Barisan Nasional* (National Front) coalition.



In the same way, money politics encourages ‘captured’ bureaucracy.<sup>164</sup> Politician 1 and 3 were of the view that political parties are implicated with money culture; hence the leaders from political leaders are no longer ‘true fighters’ for the wider public. Likewise, Media Actor 1 and 5 agreed that many business elites in Malaysia have secured influence over the state by having the political master working in their favour, in other words, by having him “captured”<sup>165</sup> so as to safeguard and advance their interests in government administration. The majority of the interviewees did not deny the link between politics and business as politicians in power and private capitalists usually distribute resource allocation. Regulator 4 claimed that,

*‘Our politicians are business-related people. There is a lobbying practice between business leaders and our politician. Though no law allows this lobbying practice, we do not have the proof that they are not doing it. Donating and funding political parties was always allowed in Malaysia’.*

Jong (2014) and Welsh (2013b) raised questions on the big money needed behind every election held in Malaysia. Moreover, Global Integrity (2014) reported that the laws and regulations on political finance and funding in Malaysia are out-dated, that there is lack of transparency and they are rarely enforced. Therefore, donating and political funding activities in Malaysia’s landscape promote the political business concept as a justification of growth and development. Nicholas J. White (2004) and Searle (1999) draw attention to the involvement of politicians and political parties in

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<sup>164</sup> In this ‘captured’ bureaucracy, R. A. Smith (2006) and Cerny and Evans (2004) provide evidence that money plays an important element in influencing a political campaign and the fundraising for electoral reasons.

<sup>165</sup> It can be accepted as universal that business leaders influence political masters so that they formulate public policies in ways that favour the former’s vested interests (Bernhagen, 2007). The increasing dependence of politicians on businesses takes the form of political donations, financing elections, general election campaigns or buying the support of party members (William Case, 1994; Teh, 2002) State patronage, in return, has allowed influential politicians with a business background to access rents, large government contracts and privatised projects in order to maintain a power base. Therefore, the reciprocal interaction in many government procurement cases in Malaysia is common and, to some extent, facilitates fraudulent practices.

Malaysia which are primarily involved in business. In reality, they (politicians and political party) serve the interests of a selected group supported by the state. In that context, Professional 3 commented on the patronage network and rent-seeking activities, which result in lobbying practices and state capture and which may have other consequences, such as fraud and corruption. In the case of lobbying practices, Regulator 8 expressed their concern,

*‘There is nothing wrong with any businessmen to come and meet the Minister. They [business leaders] often give the Minister their business proposal for his consideration. In addition, it is not surprising when certain projects, which are announced by the Cabinet as public policy, are given to those businessmen. This is especially so if the instruction for the project is based on direct negotiation; we just implement the public policy. You can see that from most of our privatised projects’.*

Some interviewees suggest that the institutionalization of fraud and corruption in the Malaysian public sector is the result of the collective perceptions and actions of regulators. For example, many regulators acknowledged that donations for political funding were retrieved and returned from rewarding government projects. Reasonable justifications ‘to accept’ the situation, among others, were to help the business leaders survive in the market, being important for the political base of their ministers, and in the name of growth and development. This is the result of political involvement in the Malaysian public machinery. Academic 2 stated,

*‘I feel that to some extent we are politically captured by political donation and by financing a political party. This becomes possible when the alliance between politics and economics makes them do whatever it takes to get what they want. Of course, this is done at the expense of others’.*

Most interviewees acknowledge the existence of political donations and the practice of funding a political party in Malaysia. The majority of politicians confidently said that the system does not violate any law. Correspondingly, the majority of media actors and academics said that the lack of transparency of the practice of political

donation and funding raises questions about the legitimacy of the funds channelled back to the political party. For Regulator 10, there is no necessity for any political party in Malaysia to disclose sources of funds to parties, even during a general election. Regulator 9, however, believes that such practices are not only confined to Malaysia, but to other countries as well. The big money behind political funding, especially during a general election is associated with state-created rents in a form of licenses, government contracts, subsidies and privatised projects (Edmund Terence Gomez, 2002). Without declaration of any secret political donations from undisclosed sources<sup>166</sup> the same funds are abused for political advantage, including funding and enriching the families of the politicians (Meng, 2012; Sarawak Report, 2012c). It is likely, then, that lack of transparency in political donation and sponsoring a political party favours public procurement fraud in Malaysia.

### 5.1.2 The Alliance of Political Power With Economic Interests

Within the context of political economy theory,<sup>167</sup> this study shows the influence of powerful economic actors in rewarding government contracts. Numerous regulators experienced interference of powerful groups,<sup>168</sup> who have their own institutionalised power relations mostly with political and economic institutions, in rewarding a government contract. This is parallel with the concept of (in)visible hands and the concentration of institutionalised power in the hands of specific groups of people (Faizli, 2013; Kennedy, 2009). These power relations have been experienced by many

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<sup>166</sup> Even the Prime Minister is in a position to accept 'undisclosed sources' for political contribution as a normal practice for the ruling party, this has *legitimized* the act of political donation since 'proper' procedures are followed (Chooi, 2012a; Izwan, 2012a).

<sup>167</sup> Political economy theory often focuses on the interpenetration of power relations of political and economic institutions, with the powerful group having common interests for their own benefit (Froud et al., 2004; L. Y. Lim & Stern, 2002).

<sup>168</sup> They mainly came from politicians, top bureaucrats, and business elites (including royal descendants).

regulators in the study.<sup>169</sup> Regulator 3 and 5 also confirmed that there are political and business interests influencing the rewarding of a government contract. Regulator 5 elaborated on this by saying that,

*'I cannot deny that there is some interference. I'll be lying if I said that there is not any. However, it depends on the kind of wording from a higher authority to us; for example, "please consider this application". Therefore, when we present to the procurement committee, we will normally make a note to the Chairman that this proposal has remarks from a higher authority. Perhaps from there, we can say that there is a certain degree of influence when rewarding the contract'.*

The influence exercised by the powerful group in the public office comes in a variety of forms. The merging of cultural customs and practices within the institutional frames of the Malaysia public service helps to serve the interest of invisible hand<sup>170</sup> according to the political economy approach. Yet, the argument of invisible hand in this new era has been manipulated since capitalists have an innate tendency to deceive and oppress others in the society while maximizing their profits. The very notion of interference in Malaysia's procurement process provides evidence on the flaws of the invisible hand concept, since it only involves pursuing private interests at the expense of society. Regulator 4 refers to some kind of interference, which can come from almost all levels of power.

*'When we talk about government procurement we know that the rewarding decisions are to some extent shaped by certain parties. The extreme situation is that interference comes from all levels. Such influence comes in a variety of ways, sometimes in the form of a phone call or a small note'.*

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<sup>169</sup> This took the form of instructions, which came in a variety of wording, given to procurement officers during the procurement process.

<sup>170</sup> The interest of invisible hand within the political economy theory was differently conveyed by Adam Smith, a prominent actor of this theory. Smith wished to demonstrate that the invisible hands of the owners of capital would inadvertently promote public interest by pursuing their own private interest (Grampp, 2000).

When sharing their experience on how political and economic actors collaborations influence the rewarding of a government contract, Regulator 4 provided evidence that when political and business relations are intertwined, strong elements of fraud and corruption can complement such relationships. Reflecting upon corrupt and fraudulent practices, Regulator 4 explained,

*'The business leaders always need to ask for political support to get a government contract. This is because they have 'invested' [business elites aim to gain something in return from state officials] in that political party through donation and financial support for election campaign. At one occasion, a company was not viable enough to get the government project. But they got the contract.'*

In case of wrongdoings in the public office, most regulators admitted they did not dare to report them because in most cases the culprit will not be caught because of the reign of power relations. Especially when the wrongdoing involves a higher-ranking officer, the regulators are afraid that their career will suffer consequences. As experienced by Regulator 1,

*'Even though I reported the wrongdoing to the authority, I was the one who was monitored afterwards. It seemed that I was the culprit, not them. Because of that event, I have been transferred many times; there is no room for promotion in my career.'*

Most regulators are not convinced with the effectiveness of the Whistle-blower Act 2010 as the cultural, customs and practices in the Malaysian public office do not support the nature of whistle-blower actions.

Embong (2008) and Jomo (2003) critically pointed to the effort political and economic elites make to maintain the status quo. Equally important for their survival, Professional 6 claimed that an elected politician needs to work hard to ensure that

their political career lasts for long. The participant explained that the concept<sup>171</sup> of ‘*I scratch your back and you scratch mine*’ is widely applicable in relation to the political and economic interests in Malaysia. The analysis of interviews suggests the existing system in public procurement in Malaysia is highly influenced by political power and economic interests. Thus, the influence of political power and economic interest possibly nurtures fraudulent practices in procurement process.

### 5.1.3 Direction of Public Policy

In promoting growth and development, public policy is used as a way to create avenues for powerful groups to gain access to large government contracts. In the Malaysian context, the policy<sup>172</sup> followed by the Cabinet clearly benefits certain vested interests. Regulator 8 expressed his disappointment,

*‘Public policy is supposed to be formulated by public officials. We look at and study in depth any government projects including the budget to implement the project. However, the decision to choose and implement the public policy lies collectively on the Cabinet; definitely not on us’.*

The dynamic of policymaking and policy implementation allows the ruling party to show to the public that the interest of the citizens is protected and that they can help them (especially the *Malay* community) economically. Although this must be true, the public policy framework is also used as an avenue to promote and offer benefits to selected well-connected business elites (O. K. Beng, 2013; Gomez & Sundaram, 1999). As a matter of fact, Regulator 9, 12, and 13 admitted that there are cases when government projects, which are given to a contractor who has a ‘big cable’ (i.e., a

<sup>171</sup> The concept (I scratch your back and you scratch mine) indicates the dependency between corrupt actors in fraud and corruption in public money. As long the corrupt officials continue to secure rents and allocation of public funds to their supporters, business elites continue to offer their loyalty to and support the power base.

<sup>172</sup> Political economy theory takes into consideration the important reciprocal relations between politics and economics. Caporaso and Levine (1992) show that politics and economics serve the allocation of resource mechanisms. It is true that the formulation of public policy is intended to deliver public services for the public interest.

network of political and powerful connections), are not delivered. For a variety of reasons, the ‘unperformed’ contractor will get help from the government by bailing out their companies before/after becoming bankrupt (Shukry, 2013b; J. Tan, 2008).

The decision of the Malaysian state to bail out domestic companies, especially during a financial crisis, is justified for the *national interest*. Johnson and Mitton (2003) argue that the implementation of capital control by the Malaysian state during the financial crisis of 1997 created a setting for cronyism. This was abused by influential politicians to save their cronies by securing publicly funded bail-outs at the public’s expense (K.S Jomo, 2001). On the other hand, Searle (1999) confirms that recession in Malaysia was a *catalyst* for radical policy reform, with the hope of a speedy recovery. Wain (2009) shows the intensification of important collusive networks of political patronage and close connections with politicians and political parties.

In this study, fraud seems to be facilitated because the fraudsters have a strong network of political and powerful connections. In that sense, that strong network is, to some degree, abused by few well-connected with political and economic elites individuals through public policy mechanisms (Wain, 2009).<sup>173</sup> As long as businesses have strong connections, public policy mechanisms will continue to benefit the ‘legitimate’ decisions made by the Cabinet.<sup>174</sup> The politicians will always

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<sup>173</sup> As a consequence, public policies are formed based on biased decisions made by the legislators via the Cabinet members which favour private interests rather than the general public.

<sup>174</sup> The institutionalization of various interests of politics and business as connected to political economy theory has influenced the formulation of the Malaysian public policy. Focusing on improving the social-welfare and on safeguarding the special positions of the Malays and indigenous people, the affirmative action policy is implemented to accelerate social restructuring and eradicate poverty (see H.-A. Lee, 2015a).

show that they help the public especially during an election period. By acting professionally, the Malaysian public officials need only to be the implementers of any public policy decided by the Cabinet. Regulator 11 said:

*'We never argue against or question any public policy decided by the Cabinet. Although sometimes we do feel that a certain policy only benefits certain people, i.e., those who are close to the Minister, We just implement it; we don't dare to ask. Who are we to ask?'*

According to most regulators, there are frequent interactions among politicians, top bureaucrats, political party and business elites to formulate and laminate public policy in Malaysia. Rather than being open to public scrutiny, most regulators argue that public policy arrangements are 'hidden' and conducted behind the close door of a government office. This is so because they may affect national security and they are protected under the Official Secret Act. One dimension in political economy approach addresses the existence of policy arrangements that provide the ruling party with incentives and impose constraints on potential changes (Cerny & Evans, 2004). When discussing the implementation of public policy, Media Actor 2 criticised many policies as being lop-sided agreements and argued that the government contracts are 'manipulative' and 'biased' in favour of private interests.

Interestingly, the majority of the regulators agreed that there are decisions taken in rewarding a government contract to unviable companies because of their political connection; such decisions have influenced public procurement fraud in Malaysia. However, the connection is not simply proven in procurement documentation, as it needs more investigation and evidence of conflict of interest. To some extent, the political and economic actors use their position to manoeuvre their way within the



institutional context so as to generate new policies and legislation and to protect or strengthen their political and economic position and interests. Academic 5 stated that:

*'The idea of sharing a bigger piece of the cake for the Malays was initially good. Nevertheless, Malaysian politicians are very creative in manipulative the situation. They develop a policy for their own vested interest but they are very clever in announcing that it is for development and growth'.*

The transformation of Malaysia promotes liberalization of economy initiatives<sup>175</sup> for modernity and growth (Milner et al., 2014). Rather than reaping the benefits, Malaysia faces various losses of public funds when privatising state-assets (Jasin, 2013; Salazar, 2004). There is no person held 'accountable' for the failure of privatised projects. Although there is a high magnitude of losses of public money in many privatised projects, Regulator 9, 11, and 12 pointed out the that the success of a privatised project is not guaranteed as the government faces some risks, which are seen as 'collateral damage', when privatising the projects. Besides, as mentioned by Professional 3, 5, and 7, although some projects were badly delivered or not successful at all, the political-connected companies continue to be awarded with various government contracts. They also believed that those companies know that they are protected by those in power and this makes public procurement fraud perennial. These interviewees claimed that many public policies do not favour the public interest but mostly benefit the private interests at the expense of the wider public. Media Actor 3 said:

*'We can see that highways, commercial buildings and financial institutions grow like mushrooms in Malaysia. The government always says that it is for national interest, for growth and development. I can only see extravagant and lucrative profits for the private sector gained from such contracts'.*

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<sup>175</sup> Among other initiatives taken by the Malaysian state while promoting neo-liberal capitalism logic are: privatization, deregulation and trade investment.

Professional 7 argues that extravagant and lucrative profits gained by the private entrepreneurs need to be monitored as they might involve bribery, fraud, collusion, and corruption activities. Professional 3 also shared their experience,

*'Yes, the cost of the project is so high for only delivering [the items are not disclosed due to sensitivity of the item] to ... office. Only after some causality, for example, a stadium collapses or a school's roof falls down, we would know that the quality and material of the building is so poor, fails to meet the specifications or the high prices demanded by the contractor. The tendency to 'cut-corner' is very high. But as always, the company is a close-connected company with some politicians, so we cannot really see any culprit been convicted and punished'.*

Some media actors and academics believe that moral values have been eroded because of the pursuit of money and wealth. Academic 3 linked this with the capitalism mantra. When no one pays attention to the moral consequences of seeking capital and wealth, then this may create a society that is based only on satisfying human needs. In order to strive for economic growth by providing opportunities in the market, it can be argued that the assistance provided by the state may at the same time be tainted from a moral standpoint and only be focussing on generating wealth and profits. Friedman (2007), Bakan (2005) and Chomsky (1999) argued that economic growth must be more evenly distributed, the rich should not be the only ones getting richer. Consequently, they suggested that for any material benefits to foster economic growth there must be a moral benefit for society.

In that sense, the concept of 'ersatz capitalism'<sup>176</sup> that has been implemented in Malaysia has jeopardized the true spirit of an entrepreneur by being willing to do whatever it takes to maximize profits (K. S. Jomo, 2005). Some scholars have

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<sup>176</sup> The ersatz capitalism concept promotes a variety of assistance by the state in creating 'connected-rich' companies by using the privilege and opportunities of preferential treatment of many aspects in allocating public funds. It is argued, however, that this has undermined the vigor of real-entrepreneurs for fair and highly competitive environment (see K. S. Jomo, 2005; Yoshihara, 1988).

mentioned and questioned the concept of real entrepreneurship and the way it has been applied in Malaysia (Searle, 1999; Nicholas J. White, 2004). Academic 4 talked about the concept by relating it to ‘ersatz capitalism’ and commented that:

*‘I refer to ‘ersatz capitalism’ and not industrial capitalism because industrial capitalists are the ones who are the real entrepreneurs. In our case, do we have real industrial capitalists? I doubt there are.....the reason we face this situation is that the road to success has to be shortened. Our road towards modernity was compressed in terms of time and, as a result, moral values also underwent a rushed process of change which instead of lasting a hundred to two hundred years it lasted only three decades!’*

Professionals 6 and 7 reported on cases where procurement processes clearly follow the concept of Ali-Baba<sup>177</sup> in most government purchasing. In processing procurement documentation, most regulators admitted that they knew about the practice of the Ali-Baba concept when most of the sub-contractors are non-Malays.<sup>178</sup> Yet, for regulators, it is a common practice because the system has existed for so long and nobody checks it.

As can be seen from the empirical evidence, there is a variety of responses about the arrangements of political and economic forces that contribute to public procurement fraud in Malaysia. Having presented the evidence, this section sheds light on the nurtured system of political business in procurement practices (Tay, 2012), the alliance of powerful actors in creating wealth and capital (H.-A. Lee, 2015b; Netto, 2003), and the direction of public policy by few individuals that are infiltrated in the

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<sup>177</sup> The Ali Baba concept in Malaysia promotes a fast and quick way to get money by the *Bumiputera* entrepreneurs from the non-*Bumiputera* entrepreneurs. It is so common for the Malay companies to get government contracts through their privilege of the affirmative action based-policy. However, the project is sub-contracted to another company for a profit, usually the non-*Bumiputera* companies, which are more skilled and have more capital (see chapter 4). The Ali refers to Malay, and the Baba refers to the Chinese.

<sup>178</sup> To some extent, the Malays are only selected as a proxy in order to get the government contract while the Chinese are the ones who run the business (Crouch, 1996; R.S. Milne & Mauzy, 1999).

political context, who enrich themselves and their cronies.<sup>179</sup> The political and economic forces appear to be consistent with the political economy approach in understanding public procurement fraud in Malaysia. The next section discusses the check and balance mechanisms.

## 5.2 Check and Balance Mechanisms

The successive administration of Malaysian bureaucracy has applied a constitutional monarchy based on the British colonial rule (the Westminster model) (A. S. b. Ahmad et al., 2003). All interviewees generally argued that although there have been some attempts to curb procurement fraud in the Malaysian public sector, the attempts were not good enough and showed little success. The interviewees commented on the three pillars of institutions (i.e., the Legislative, the Executive and the Judiciary branch as stipulated under the Malaysian Constitution) that are supposed to play their role as check and balance institutions in the country. This section provides evidence and a discussion on: (1) historical legacies, (2) lack of independence, (3) inefficiencies, (4) judicial system as a ‘tool’, and (5) modes of power.

### 5.2.1 Historical Legacies

Political economy theory pays attention to the historical institutionalism since it serves as a mechanism to understand the transformation and changes of the society (B. Clark, 1998) . Historical legacies are important because they show the understanding and linkages between past and present. The regulators explain that the establishment of the three pillars of institutions in Malaysia are part of the legacy that

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<sup>179</sup> They do so by misusing allocation of public funds through government contracts, license, quotas, subsidies and privatised projects (Fuller, 2006).

the British left. Regulator 4 and 5 argued that the British colonial administration still applies in many Malaysian public administrations. Regulator 5 said:

*‘Yes, half of our government machinery is copied from our colonial master and adopted based on the Westminster model, a legacy from the British’s style’.*

Siddiquee (2013), Yaakop (2010) and Sundaram (1986) have well documented the legacies from the colonial rule in the Malaysia’s administration system. Despite undergoing many structural and administration changes, Malaysia’s public administration system has been shaped by its colonial history and it has promoted a centralized system, a prevalent top-down approach for decision making, dominating top bureaucrats, a Malay-dominated civil service, government information shrouded in secrecy, and a bureaucratic politicization which suggests *“political power and/or political control over administration”*(Siddiquee, 2013, p.39). The views expressed by the majority of the regulators acknowledge the embeddedness of the legacy from the colonial British rule in the Malaysian public administration. More importantly, most media actors agreed that the three pillars of institutions have been set up based on the British colonial model- this is linked with the ‘divide and conquer’ idea.<sup>180</sup>

Media Actor 2 said that,

*‘Our institutional structure is formed and set up based on our colonial master - British administration. During British colonial rule, the British used the concept of divide and conquer. Therefore, with this legacy from colonial times, Malaysia has actually improved the divide and conquer concept. We did not only follow the system; we perfected the system!’*

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<sup>180</sup> The divide and conquer concept employed by the British rule has been followed by the Malaysian government (see Chapter 4). The British used that concept to remain in power by preventing any alliance that could have challenged them. The existing ruling party in Malaysia still implements that concept in order to gain and maintain their supreme power within the 3 pillars of institutions. For example, all the enforcement agencies set up to prevent fraud and corruption in Malaysia were appointed with the advice of the Prime Minister. All enforcement agencies normally link back to the Prime Minister’s office (see Chapter 4).

Although Malaysia has undergone structural changes and transformations from the colonial rule, Siddiquee (2005) argues that the accountability system in Malaysia is still far from satisfactory. Some Professionals who focused on the feudal system that is traditionally embedded in the Malaysian society expressed another point of view. They argued that although Malaysia no longer follows the feudal system, the culture of respect and loyalty towards one's superior is maintained in the society (The Malay Mail Online, 2015). At the same time, academics explained that entrenched values, norms and practices from previous historic times have been instilled and reproduced in the Malaysian social structure.

### **5.2.2 Lack of Independence**

Throughout history, the ruling elites have made a vital rearrangement of social structures and processes in order to give themselves privilege and benefits (A. Harding, 2012). In relation to the independence of the 3 institutions as a check and balance mechanisms to prevent public procurement fraud in Malaysia, Regulator 4 said:

*'In our constitution we have a separate entity for these three branches. However, the appointment of our enforcement agencies, for example the Anti-Corruption Agency, police and even the National Audit Department, is according to the advice of the Prime Minister. The Prime Minister's advice is so powerful. On paper yes, there are three branches, which work independently. However, what happens in practice? The political rule is too entrenched in the Malaysian public administration.'*

The majority of the interviewees perceive that a 'tone at the top' is very important to set a good example in public administration. However, the prevalent financial scandals or alleged cases of corruption by people of higher social status and a respectful position often resulted in total impunity and have led to an 'integrity crisis' in many aspect of public governance in Malaysia at all levels. Consequently, fraud and corruption activities have more consequences because some top leaders of the

country appear not to be 'clean' from committing wrongdoings, unethical and illicit behaviour but yet they remain *untouchable*. As Professional 3 explained,

*'Sometimes I realize that a wrongdoer of low level status committing fraud and corruption in the public office has purposely done something wrong. The fraudsters believe that if the top people in the country do it openly without being caught, why can't they? We can see from the evidence of alleged illicit behavior by the top leaders in the country, but hardly anything or anyone can touch [take action against] them. It is definitely an integrity crisis!'*

On the other hand, professionals viewed that the three branches lack independence as check and balance mechanisms to curb public procurement fraud. They believed that the business leaders have taken advantage of the flaws in the check and balance system from those institutions for their private interests. Professional 3 stressed out that the independence of the check and balance of the enforcement agencies is vague and claimed that,

*'Yes, they are supposed to be independent. However, you need to consider they are also a 'yes man' person as their appointment is linked with the advice of the Prime Minister. Therefore, when there is an alleged abuse of power, the enforcement agencies need to take care of those who appointed them. Who? In addition, who dares to take action against the more powerful ones? That's why in Malaysia abuse of power cannot be avoided in government procurement'.*

In this thesis, a 'Yes Man' person is associated with the governance structure in the Malaysian public sector. In this context, many enforcement agencies have been set up as check and balance mechanisms to curb fraud and corruption in the public sector. However, as described by Siddiquee (2002) and Siddiquee (2005) the institutional location of many enforcement agencies that has been set up in Malaysia which subordinates to the Prime Minister office seems as an impediment to the execution of the enforcement agencies' roles and responsibility. In many ways, the enforcement agencies need to respect and listen to the Prime Minister as the highest authority and linked with their appointment. It then goes back to the legacy of historical

institutionalism in the Malaysian society: among others this includes the quality of respecting the authority, obedient and fidelity (see Chapter 4).

When the three institutions are not able to act independently, the governance and accountability of the country to curb fraud and corruption are tainted. Surprisingly, the ex-Prime Minister (Politician 5) confirmed that the three institutions cannot be totally independent and further emphasized that,

*‘The three institutions cannot play their role independently. For example, the process of making laws should be confined to the legislative institution; it is not the role of the judiciary to question the law. The judiciary institution’s role is to judge people and actions according to the law. But when the judiciary says “no you are wrong” then, of course, there is interference between the judiciary and the legislative institutions’.*

Here, the ex-Prime Minister perhaps was referring to the Malaysian judicial crisis in 1988. In 1988, there was a constitutional amendment in order to amend and repeal the law that seemed to have subordinated the judiciary to the executive arm of government and various reputable judges in the country were sacked (M. S. Abas, 1989; A. J. Harding, 1990). The constitutional amendment was made when “*the judicial award decisions in favour for those challenging the government*” (H. K. Leong, 2001b, p.14). As a result, the Malaysian judicial crisis perhaps involved executive interference with the judiciary since the Prime Minister was able to remove the Lord President of the Supreme Court, the country’s most senior judge and other 2 judges of the Supreme Court (Koh, 2012b).



In a different view, Media Actor 2 focused on the various roles of the Attorney General (AG) in Malaysia.<sup>181</sup>

*‘The Attorney General is the Chief Prosecutor who also plays a role as government advisor that sits at a Cabinet meeting. His department formulates and amends the laws before they go to the Parliament. Which hat does he need to wear? For example, a Minister sitting at a cabinet will normally listen to the advice of the AG. The Cabinet, which consists of various ministers, will then decide on whether a particular government contract should be rewarded to intended companies only, with the advice from the AG. If the Prime Minister is not in favour with the decisions, the AG can prosecute the Minister with the instructions of the Prime Minister’.*

Academic 1 argued that institutional decline and failure in Malaysia have been tainted by the undue influence of hegemonic power and authority of the governing coalition. This academic also claimed that the erosion of the three pillars of institutions has been a turning point and has opened up the gates to many ‘malpractices’. It is suggested that those institutions must be and be seen to be independent from any parties (Pua, 2011).

### 5.2.3 (In)Effective Roles

Regulator 5 explained that the role and functions of the legislative and the executive are overlapping and stated that,

*‘Our Minister is a politician elected for his constituency for the legislative branch. At the same time, he holds a position as a Minister in this ministry as one of the executive branch of the Cabinet. So like it or not, his roles as a politician and a Minister clearly overlap’.*

In relation to the lack of independence of the three institutions, Media Actor 1 seemed to agree with the ex-Prime Minister’s view that those institutions cannot work in isolation as they complement each other and, to some extent, have overlapping roles.

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<sup>181</sup> The various roles of the Attorney General in Malaysia include acting as government advisor in the Cabinet meeting, as a formulator to propose, implementing and amending laws and as a prosecutor to prosecute fraudsters (Pragalath, 2012).

Since there are overlapping roles, many ministers can simply abuse their positions and enrich themselves. Professionals shared their experience of ministers using the ministry's budget for their political activities. It was said that politicians should not use public money for their political activities. Regulator 13 explained that it is common for the Minister to use the ministry's money for their political activities especially during election because the budget for those programs is endorsed by the Parliament. As the practice of using public fund is justified by the Minister for the benefit and activities of the Ministry, there is no provable abuse of power since it does not violate any laws.<sup>182</sup>

In a different context, some regulators, politicians and the majority of professionals, media actors and academics strongly believed that Parliament in Malaysia is not a 'true' legislative body. They strongly agreed that the Parliament seems to act as merely a 'rubber stamp' for any decisions made by the Cabinet (Jo-Ann & Chin, 2013; H. K. Leong, 2001a). In other words, the Parliament appears to act, amend and repeal laws according to the Cabinet's decisions. As a result, no check and balance procedure is applied as the Parliament basically legitimates a decision, especially decisions on public policies by the Cabinet (L. H. Hai, 2002; Yaakob et al., 2009).

The initiatives<sup>183</sup> taken by the Malaysian state to eradicate fraud and corruption in order to mould a strong and spiritual base in the Malaysian society are laudable

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<sup>182</sup> Each Minister in Malaysia has their privileges as constituted in the Ministerial Functions Act 1969.

<sup>183</sup> Among other initiatives in the Government Transformation Programme (GTP) are establishing compliance units in key enforcement agencies, Whistleblowing Protection for Civil Servant, Expediting Corruption Trials 'Name and Shame' Databases, implementation of e-Procurement for government purchasing, implementation of integrity pack and Corporate Integrity Pledge (CIP) (see [www.pemandu.gov.my](http://www.pemandu.gov.my)).

(NKRA, n.d.). However, these government agencies are not effective. They are open to question as they do not seem to be good, efficient and effective enough to curb fraud and corruption. Academic 2 jokingly said that in many cases of malpractices in the country,

*'It is as if we captured all the ants in the world, but a big elephant passes by and we either ignore it or fail to see it at all!'*

Professional 7 supported this view,

*'It is so frustrating to see the culprit, especially the top people [those who have high social status and are closely connected with powerful group] getting off scot-free, with fewer penalties or no prosecutions or convictions at all. We do our part as professionals, but it is not up to us to catch the culprit. I believe the public feels frustrated, too.'*

It has been observed that many responsible agencies have been established, but those agencies are not effective in curbing fraud and corruption. Although a considerable progress has been made over the years to improve public accountability and transparency by establishing many responsible agencies in Malaysia, N. B. A. Bakar et al. (2011) and Samaratunge et al. (2008) argued that control mechanism and the limitations of the responsible agencies have undermined the intention and work of those agencies. Thus, the effort and actions to curb fraud and corruption in Malaysia are still far from satisfactory and fail to put in place important accountability mechanisms as would be expected from many responsible government agencies (Chee, 1991).

#### **5.2.4 Judiciary as a 'Tool' for a Political Party**

According to Welsh (2013a), the increasing erosion of the three pillars of institutions has deteriorated people's confidence in them. Several segments of Malaysian society expressed concerns over the fact that ruling coalition mostly control and govern most

of Malaysia's institutional structures (Z. Ahmad & Phang, 2005). Academic 4 pointed out that,

*'When people see that the judiciary is independent and that it dares to take action against whoever engages in fraud and corruption, they dare to report the wrongdoings because they believe everybody is equal before the law. But since the power of check and balance mechanism is contested by the executive branch, every attempt is a failure'.*

The majority of the interviewees agreed that the judicial branch plays an important role in charging a fraudster. However, the requirement of the law to prove 'intention for fraud' or that 'an offence has been committed' is not easily met in court. Professionals believed that it appears that if the fraudsters have a 'manipulative' lawyer, they might get away with it. Most of interviewees have given the example of a financial scandal in Perwaja Steel, when the ex-Managing Director was acquitted because there was not enough evidence for prosecution (Khair et al., 2015; Norwani et al., 2011). The interviewees also mentioned the Port Klang Free Zone scandal, when the Minister was acquitted as the defence was able to raise reasonable doubts against all charges (I. Lim, 2013b). There were also some examples given by the interviewees about losses of RM8 billion due to mismanagement in Malaysia Airline System; eventually, an out-of-court settlement was reached (Anand, 2015; Jeff Tan, 2008).

Professional 10 shared their experience of bringing a culprit to the court for alleged corruption in the public office. However, due to the absence of witnesses the judge withdrew the case without further notice. The culprit got off scot-free. This professional expressed frustration as s/he compiled all the investigation paper work but the judiciary simply rejected the case. Therefore, the particularities and

complexity of law might open up the opportunity for and are prone to manipulation and abuse (M. S. Abas, 1989; Seah, 2004).

In contrast, Media Actor 3 highlighted the weaknesses of the judiciary's role in approaching decisions on fraud and corruption cases in Malaysia and stated that,

*'Nowadays we can see many fraud and corruption cases being adjourned for too long. I also witnessed a court decision favouring [those having] vested interests. Ultimately, those in power always escape prosecution'.*

Soon (2013) believes that the controversial amendments made to the Constitution in 1988 curtail the powers of the judiciary by turning over its powers to the Parliament. This permanent damage made to the judiciary was reported by A. J. Harding (1990) when noting of a political party's ability to overturn court decisions by legislative interference. The increased centralization of power by the ruling coalition raised "*suspicious [...] about how the judicial decisions in high-profile cases or cases with high net-worth litigants were arrived at*" (Soon, 2013, p.373). It appears then that the politicization of the judiciary has further disadvantaged the judicial institution (Anbalagan, 2015a; Yin, 2014).

Specifically, there are flaws in the judiciary institution in Malaysia which suggest selective prosecution of fraud and corruption cases; in other words, someone with a close power relation gets away while other people - normally those who only take instructions - are held accountable. Such selective prosecution seems to benefit the ruling elites. In many cases, professionals were of the view that some culprits might know that people in power protect them because they have close connections with them. It is argued that many fraud and corruption cases marginalize high-profile cases

involving prominent politicians, top bureaucrats or business leaders (Welsh & Chin, 2013). The interviewees seemed to believe that the judiciary is inefficient in prosecuting the real fraudster. What is more, Regulators 6, 7 and 8 discussed the ‘choosing’ and ‘selecting’ of various cases by responsible government agencies. They believed those agencies tried their best to investigate and prepare the paper work. Yet, charging and prosecuting depends on the discretion of the AG’s chamber. Academic 5 stated that,

*‘When there is alleged fraud and corruption in Malaysia, we can see some people being prosecuted and others being exonerated. The non-powerful people are put in jail; mostly the bureaucrats or a person who has been instructed to do something. Powerful people or people connected with the source of power are cleared’.*

There are cases involving high-profile political partisans (as mentioned in Chapter 4) for which court decisions are not ‘judicial independent’ but ‘executive-compliant’ (Thomas, 2001; Yatim, 1995). The high degree of power vested in the executive and the fact that the three branches (the Legislative, the Executive and the Judiciary branch) are not separate make the judicial branch a mere tool of a political party. The empirical findings show this when the media actors and some politicians argued that the appointment of the Attorney General-AG with a prosecution power has a political purpose. They agreed that politicians used the AG for their political agenda because they are extremely powerful. They concluded that no one dared to accuse the Prime Minister of misconduct because in that case they (politicians or state officials) would be removed from their posts. In order to have a political career, many politicians normally support the decisions of the Prime Minister to administer the country merely based on the modes of power mobilized in Malaysia (Diane K. Mauzy & Milne, 1983).

### 5.2.5 Mobilizing Modes of Power

The political economy approach forms the basis of understanding the power relations in relation to how actors use their position to protect their interests (Twigg, 2012). This approach also presents the positions of power, which facilitate political and economic elites to engage in fraud and corruption in public procurement. Thus, the monopolization of power by the governing coalition has constrained the check and balance mechanisms in Malaysia. Politician 4 argued,

*'We definitely do not have checks or have very few checks; this allows them (i.e., the political and economic elites) to get around the system very easily. Whatever system you design, they will find a way to get around it. Here they do not really try to change their system, as the culture of the ruling party is to ensure that they stay in power. There is no reason for them to change the system or make an attempt to make further changes in the existing institutions. Being complacent, they will not try to correct any mistakes. Furthermore, there is no devolution of power in the public office. In fact, our Prime Minister also holds the power of Ministry of Finance. And our Parliament is merely a rubber stamp'.*

Most interviewees generally agreed that there are no changes made to improve any of the institutions, as the current situation is comforting and safe for the ruling party.

When commenting on the institutionalised power of the state, Academic 1 was of the view that the centralised power may have created certain rules and regulations to protect the ruling elite's interests to remain in power.<sup>184</sup> Academic 3 claimed that there is no devolution of power in Malaysia as all power is concentrated in the executive office. It appears that if there is any suspicion of fraud and corruption involving the Cabinet, nobody seems to dare to investigate or prosecute anyone (The Star, 2012a). All academics agreed that the check and balance mechanisms in Malaysia might be very limited in scope and ineffective and it seems that hardly anything can be done to minimize fraud and corruption (see chapter 4).

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<sup>184</sup> This provides a strong institutionalised power to the Cabinet ministers headed by the Prime Minister. The decision for any public policy and the direction of the Malaysian public sector is decided by the political master via the Cabinet.

For most regulators, in cases of alleged fraud and corruption activities by any higher-ranking superior in the public office (including top bureaucrats and politicians), they do not dare question or challenge the government. As long as the event does not disturb their monthly salary and as long as there is no proof, they perceive it is as something that they need not to bother themselves with. Thus, perhaps there might be some degree of compliance and acceptance by the individuals that should be in charge of control in Malaysia's public bureaucracy (A. S. b. Ahmad et al., 2003).

Regulator 1 explained,

*'We did hear of alleged cases of wrongdoing even by our top leader in the country. However, we can only wait and see as these are only alleged cases, which are not proved yet in the court. Therefore, I guess it just hearsay and there is no evidence to prove it. After all, they are powerful people'.*

Sundaram (1986) claims that a specific set of social relations of power, as also supported by political economy theory, lead to exploitation, oppression and inequality. In the Malaysian context, the legislative branch can act 'above the board'<sup>185</sup> since it can issue, appeal and amend the laws. Interestingly, academics always pointed out how the ruling party has been in power for so long since the independence of Malaysia (1957).<sup>186</sup> They argued that the ruling coalition<sup>187</sup> seems to be able to overrule the rules of the country,; this might act in their full favour and against anyone who tries to oppose or challenge them. The political system has to some extent facilitated fraud and corruption in Malaysia as those who hold the power

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<sup>185</sup> In the Malaysian judicial crisis in 1988, the Prime Minister sacked the Lord President of the Supreme Court due to 'non-alignment' of judiciary decisions with the state. It shows that the Prime Minister has power over the board with his supremacy over the executive and legislative branches.

<sup>186</sup> Only one coalition, i.e., the multi-party Alliance of Barison Nasional has hold a long trust recognition by the Malaysian society to rule the country (D.K. Mauzy, 1983; Wah, 2003).

<sup>187</sup> In addition, the Cabinet (from the Legislative branch) can formulate and decide on public policy as a supreme power of the Executive branch.



want to remain powerful. This ideology was articulated by Academic 4 when stating that,

*'Being in power for so long has made those holding power reluctant to let it go. According to them, they have been serving the greater good of the country with the power and from the position they are trusted with. That is the ideology of incumbency. By having supremacy power in the political system combined with the incumbency, they simply become untouchable!'*

When a powerful group becomes 'untouchable', fraud and corruption easily emerge and flourish. This is facilitated by a strong connection between the central powers and the state. Entrenched institutional arrangements appear to exist that might open up opportunities to restrain public accountability and control mechanisms in order to curb fraud and corruption (see William Case, 2013; Gomez & Jomo, 1997; Norwani et al., 2011). Following this view, Academic 3 pointed out that,

*'The socio-political institutions are definitely the ones responsible for what we are now. And eventually it will change the landscape of the economic environment and will change the behaviour of the people. They [the ruling party] are definitely in a position to engage in these malpractices. Therefore, this structure was given that way and then it was left to grow and mature with no action taken to protect it. They turn a blind eye to fraud and corruption'.*

The empirical evidence shows the complexities of governance institutions to ensure check and balance within procurement practices. Thus, the complexities of governance institutions in Malaysia seems to shed light firstly on the legacy of historical institutions in many aspects of the Malaysian society (R. N. A. R. Omar, 2012). Secondly, it shows that those institutions are not independent and this leads to an institutional decline in some way (H. K. Leong, 2001b; Loh, 2013). The centralisation of power by the ruling coalition damaged the independence of the governing system by hardly implementing the idea of the separation of power for the governance institutions (Z. Ahmad & Phang, 2005). Thirdly, there are overlapping

roles that have been entrenched in the system. The responsible agencies for ensuring public accountability appear not to be effective enough (N. R. W. Abdullah, 2008; Siddiquee, 2005). Fourth, the interviewees were of the opinion that judicial branch is used as a tool for selective prosecution and awarding court decisions tailored to suit the ruling elites and those closely connected to them. Lastly, the evidence suggests that the long-term incumbency and supremacy of the ruling governing coalition makes them *untouchable*, the powerful groups appear to be ‘above the law’ and escape with impunity (Miller, 2013). The next section presents the deficiencies in procurement practices, which the fraudster often seek to exploit and which likely contribute to public procurement fraud in Malaysia.

### 5.3 Deficiencies in Procurement Practices

There is an infinite number of deficiencies that can create loopholes<sup>188</sup> in procurement practices. Institutional deficiencies in Malaysia procurement practices are as follows: (1) playing around the system, (2) lack of evidence, and (3) the hegemonic power of the Ministry of Finance (MOF).

#### 5.3.1 Playing around the system

Most regulators and professionals affirmed that the complexity of procurement process provides opportunities to ‘astute individuals’<sup>189</sup> to play around the system and engage in public procurement fraud. Professionals’ view about the loopholes in a

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<sup>188</sup> Among other loopholes within a procurement life cycle are lack of transparency in procurement process (Oyegoke, 2012; Racca & Perin, 2013), breach of internal control and monitoring practices (Chang, 2013; Neu et al., 2015; Sikka & Lehman, 2015), conflict of interest (Rose-Ackerman, 1999; Schapper, Veiga Malta, & Gilbert, 2006), and corrupt collusion to weaken the competitive market (Caldwell et al., 2005).

<sup>189</sup> The ‘smart people’ (also known as astute individuals) who are mentioned here refer to people with knowledge about the loopholes in the public procurement process who usually seek to exploit these weaknesses. The smart people hold powerful positions so they are able to manipulate the weaknesses and get away with it.

procurement process is that they have been manipulated by the astute individuals.

Professionals admit that loopholes have created more opportunities to engage in fraud and corruption. According to Professional 10,

*'The loopholes and weaknesses exist either at the contractor's side or at the government's side. Normally, the weaknesses arise when the contractor is able to take advantage of loopholes in the procurement system'.*

Professional 1 supported this view in regards to conflict of interest and said,

*'One area that is not easy to prove is conflict of interest in rewarding government projects. A cunning culprit is able to avoid violating the law by declaring their interest in the procurement committee but by not being involved in any decision making process [getting out of the room where the meeting takes place]. By declaring their interest, they have not violate any rule, thus they cannot be brought to court. The culprits know where the line is and they do not cross it'.*

Astute individuals, as mentioned earlier, are those who often seek to exploit the opportunities to indulge in fraud and corruption activities in the Malaysian procurement system. Professional 12 explained that many contractors were ex-public officials with high status, who were part of the system. These people know where the weaknesses of the system lie and they know how to profit from them.<sup>190</sup> Confirming this view, Professional 4 said that,

*'Those who were involved in procurement fraud were those who had extensive experience with the procurement process [including those who have high status]. They studied the government rules and regulations a lot. They know the strengths and weaknesses of any procurement process... Only smart people can do this and this would normally involve high-value contracts. The small amount contracts will normally follow the procedures'.*

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<sup>190</sup> The high status represents powerful political and economic actors, who are people with a title or people closely connected with powerful groups. Within the Malaysian society, it seems that those with titles need to be given priority and more pleasant treatments compared to normal ordinary people. This is linked to the legacy of feudal system where the submissive subjects must be loyal to those in power and with authority.

Regulator 7 said,

*‘Many contractors can take advantage of the weaknesses. For example, if they fail to deliver the project they know they will be fined for a late delivery project according to the contract signed. They will appeal and give ‘justifying’ excuses for late delivery to the highest position in the country. Unfortunately, when we have the approval and instruction to ‘waive’ the fine earlier, we have to follow the instruction. Thus, this is one weakness of the system that a contractor can exploit. It does not even violate the law’.*

Many professionals have ‘seen’ a culprit managing to play around the rules and regulations by providing and furnishing procurement documentation. Professional 7 in particular emphasized that their auditing job was based on procurement documentation, which seems legal and genuine. All accounting and procurement documentation<sup>191</sup> is seemingly well organised and full-documented. Professional 7 admitted that based on government documentation, fraudulent activities are unlikely to detect, as most procurement transactions are made according to rules and regulations. In contrast, Regulator 1 argued that fraud can be facilitated and sustained by people working around rules and regulation. Fraudulent activities can also be concealed and disguised using legitimate procurement documentation. S/he further argued that fraud and corruption activities in government purchasing are *‘not easy to detect as A, B, C. [They] will normally be hidden and concealed’*.

Professional 4 concluded that loopholes (playing around the system) in procurement process can conceal the fraudulent activities behind legal and genuine procurement documentation. S/he further concluded that public procurement fraud is being facilitated by astute individuals abusing the loopholes in the procurement process. By

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<sup>191</sup> Relevant documentation involves invoices, receipts, contract, quotation, tender forms, and minutes of meetings.

taking advantage of the loopholes in the procurement process, there is hardly any evidence about public procurement fraud as discussed in what follows.

### 5.3.2 Lack of Evidence

Political economy approach pays attention to resource allocation related to agents, institutions, processes, values, practices and organizational culture (March & Olsen, 1984). From this point of view, the entrenched power relations are more likely used to create opportunities for the political and economic elites' benefits (Rose–Ackerman, 2008). Thus, there are opportunities to exploit the deficiencies in procurement practices, something that is concealed within the governance structure.

To start with, regulators are positive about loopholes in the public procurement system. Even if there have been alleged fraud and corruption cases in government deals, regulators maintained the view that the procurement documentation is genuine<sup>192</sup> and in accordance with the rules and regulations. Regulator 2 asserted,

*'If you ask me about any procurement fraud and corruption in government agencies, I will tell you that you can go and check the relevant files. When the Anti-Corruption Agency came to investigate, I told them that the contract is legitimate. It has been awarded based on all stipulated rules and regulations; there is no evidence of fraud or of any abuse of power in rewarding this contract. All the documentation was there. That kind of abuse, you cannot find in any documentation, there will always be black and white. So there is no real evidence!'*

Neu, Everett, Rahaman, et al. (2013); Omurgonulsen and Omurgonulsen (2009); Sikka and Lehman (2015) critically emphasized the fact that accounting manipulation facilitates fraud and corruption activities. Regulator 3 shared their experience of when their procurement team was instructed by the Minister to award a contract to a

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<sup>192</sup> While many regulators were positive about the genuineness of procurement documentation, they also mentioned that loopholes (lack of evidence) in procurement process via abusing of power could not simply be pointed out as the procurement officer will normally follow the procedures when rewarding the contract.

particular company (although to some extent the company is not reliable or viable to get the contract). According to Regulator 3, there was, in fact, no evidence of those instructions. As a result, it appears that nobody could prove anything since government procurement documentation is strictly confidential. Thus, Professional 9 questioned the ability to expose and detect fraudulent and corrupt activities in public procurement, by saying that,

*'Do you think that if there is no evidence for fraud and corrupt activities, there is no such wrongdoing? I doubt it, as those activities can also be hidden and concealed under procurement documentation. Especially if it does not breach any laws or there is no black and white evidence, no one will know or notice'.*

In addition, Professionals also argued that astute individuals (see section 5.3.1) can manipulate the weaknesses in the procurement system because it is very hard to get evidence for any abuse of power<sup>193</sup> when rewarding a government contract. Professional 4 further argued that there is abuse of power when those in power have authorised and approved the rewarding contract to a non-viable company.<sup>194</sup> According to Professional 4, the evaluation of the non-viable company clearly showed that company was not the best option for executing the project. However, the committee has selected the non-viable company and there might have been interference from the higher authority for the decision-making. This professional also pointed out that lower level management is afraid to make any decisions that are against the rules. This is not the case with people with institutionalised power in the public sector who are not easily accused of abuse of power. Thus, s/he claimed that,

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<sup>193</sup> In contrast, Professional 4 strongly believed that abuse of power was not easy to trace if there was collusion between public official and contractor. If it is based on procurement documentation, the abuse of power is not easily proven as government agencies normally follow the rules and regulations.

<sup>194</sup> The government contract was given to a company which was not viable enough to complete the project.

*'We cannot simply charge people for abuse of power for rewarding the government procurement. In my experience of handling procurement fraud in Malaysia, most of procurement documentations are clear! There is no evidence of abuse of power on the documentation. Although we know something is fishy in a particular project, how can we proof that abuse of power elements within the government administration took place?'*

Because all public procurement documentation in Malaysia is protected under the Official Secrecy Act 1972, any official secret documentation is not allowed to be publicly distributed.<sup>195</sup> Regulator 4, for example, strongly disagrees with the secrecy<sup>196</sup> of government documentation because it breeds fraud and corruption and culprits can hide their wrongdoings by taking advantage of the documents confidentiality policy.

Professionals, on the other hand, who need to check government documentation, believed that procurement documentation should be confidential in order to safeguard the country's reputation. This means that there are contrasted opinions between regulators and public professionals about the secrecy of government documentation. The former (regulators) disagree with the fact that the government documentation is kept secret and confidential as this may result in concealed and hidden fraud and corruption activities. The latter (professionals) want procurement documents to be secret as to not tarnish the reputation of the public office. The contrasted opinions regarding the secrecy of government documentation show evidence of the loopholes in the procurement process. This shows that not all public officials (regulators and public professionals) share the same views regarding the secrecy and confidentiality

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<sup>195</sup> Those documents are controlled and classified under 'Top Secret', 'Secret', 'Confidential' or 'Restricted'(The Commissioner of Law Revision Malaysia, 2006). A public servant may suffer repercussions if violating the act.

<sup>196</sup> S/he further argued for the importance of transparency to ensure public accountability for all government projects so as to implement the public policy decided by the Cabinet.

of procurement documentation. This is most probably because they are bound to the applicable Act as Malaysian public officials, which restricts their views about fraud and corruption.

It is widely known amongst Malaysians that large contracts are rewarded to powerful people or people with connections (Shukry, 2013b; Tan, 2012). Under the Malaysian court of law (see Chapter 4, section 4.2.3), Politician 2 confirmed the fact that the evidence required to prove that fraud has occurred is such that in many cases the culprit gets away with it. It can be said that the technicality of the law is to some extent able to 'protect' and let the culprit get off scot-free because one needs to show evidence that decision made for rewarding government contract is either purely or intentionally influenced, which is not easy to prove. This is illustrated from court decisions in many high-profile cases in Malaysia, where the culprit was acquitted and discharged due to lack of evidence for conviction (see chapter 4, Khair et al., 2015; I. Lim, 2013a; Norwani et al., 2011). Next, the hegemonic role of Ministry of Finance Malaysia in government procurement is discussed.

### **5.3.3 Hegemonic Role of Ministry of Finance (MOF)**

All regulators admitted the 'unchallenged' power of the MOF as an institutionalised power structure in the procurement process because they normally follow the decision made by the MOF in rewarding government contracts. Interviewees, such as Regulator 1, 2 and 3, argued that the MOF has a powerful role in rewarding direct negotiation contracts. Regulators agreed that the justification for any direct negotiation contract must be at the discretion of the MOF as a leading agency in



government procurement.<sup>197</sup> Regulator 3 mentioned that a direct negotiation process must always involve the MOF as the only approving body that gives ‘special approval’ when the ministry wants to be exempted from the current rules. S/he stated that,

*‘For any direct negotiation contract, the user will normally suggest at least 5 contractors to implement the project. The user needs to justify why they only want this company to do the project and further justify the use of a direct negotiation contract.’<sup>198</sup> The user’s proposal must go through the procurement department and we will forward the proposal to the MOF. Only the MOF has the power to approve a direct negotiation contract. Only they can do it, no one else’.*

On the other hand, politicians were very concerned with the way the MOF’S institutionalised power is exercised. Politician 3 believed that direct negotiation contracts have opened up ways for more fraud and corruption activities. S/he argued that,

*‘The malpractices in many government contracts can be traced back to direct negotiation contracts in Malaysia. Although the circulars clearly state that all government contracts should go through a tendering process, there are always exceptions to the rule. In the case of exceptions, the department must always have an approval obtained from the MOF, especially in the case of direct negotiation contracts’.*

Regulator 2, however, disputed the way power relations are utilized by the MOF when approving a direct negotiation contract. They explained that the ministry was given a list of contractors to choose from for a particular contract. Unfortunately, the price offered by those contractors was too high and they tried to negotiate the price.

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<sup>197</sup> According to the MOF, the types of procurement for any government agencies must be categorized under 3 modes: direct purchase, quotation and tenders. If the Ministry wishes to be exempted from any of the types of procurement, for example, a direct negotiation contract, it needs to give concrete justification for that exemption. Among others, justifications given by the Ministry for approving direct negotiation contract are the following: strategic reasons, sole contractor in supplying goods and services, and lack of expertise.

<sup>198</sup> The user mentioned by the regulator is the department or section in the Ministry who intends to procure or buy goods and services from the private companies.

By using the power relations of the MOF, the project was rewarded to the company with the approval of the same institution. Regulator 2 expressed their frustration as that contractor pulled ‘politically-connected’ strings to get the contract. In the end, the ministry rewarded the contract to that company, as that was the decision made by the MOF.

Given the evidence in this study, the deficiencies in Malaysian procurement practices suggest three broad explanations that largely support the persistence of public procurement fraud. First, there are astute, creative people who take advantage of the weaknesses in the procurement process by playing around the rules. Second, it is very hard to prove abuse of power in rewarding government contracts since procurement documentation is legitimate and genuine. Government documentation shrouded in secrecy under applicable Acts results in fraudulent transactions being undetected and unreported.<sup>199</sup> Finally, the institutionalised power structure embedded by the MOF in managing government procurement has to a degree opened up opportunities for fraud and corruption. The next section examines the governance constraints of public officials and how those constraints relate to the preservation of fraud in public procurement.

## **5.4 Constraints of Public Officials**

The quality and productivity of the public service requires that it implements public policy with a high degree of accountability, integrity and transparency (Mahathir Mohamad, 1995). Despite the fact that a high level of professionalism is expected of

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<sup>199</sup> However, this raises the question on whether when there is lack of evidence for a wrongdoing can this automatically mean that there is no fraud and corruption in the public office.

civil servants to deliver public service, public officers face governance constraints in exercising their public duties. This section discusses how the constraints faced by the Malaysian public officials have to some extent helped the preservation of public procurement fraud by: (1) the role of the obedient implementer, (2) the conflicting role, and (3) politicisation of bureaucracy.

#### 5.4.1 The Obedient Implementer

The administration frame in Malaysia depends on the civil service to uphold public service delivery (H. K. Leong, 2001b).<sup>200</sup> As urged by the ex-Chief Secretary to the Government of Malaysia, the civil service must professionally deliver and ensure the successful implementation of the public policy (Public Service Department, 2010). However, evidence was given by Regulator 4 that as a procurement officer they need to accept the instructions professionally and implement them.<sup>201</sup> In many government procurement cases, the ‘wahyu’, i.e., instructions coming from the high-ranking people need to be followed.<sup>202</sup> Regulator 4 commented that,

*‘If we ever have a ‘wahyu’ project from above, we must ensure that procurement goes according to the rules and regulations. For example, when government procurement involves the Minister, I don’t really bother about the interference. Sometimes we know the contractor is closely connected to the Minister. Then, if you would like to violate the rules, you need to ask the Ministry of Finance for a special approval for projects initiated by the political master but this might breach the applicable procurement regulations’.*

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<sup>200</sup> Without the capability and dedication of its civil service, Malaysia could not have developed accordingly. Moreover, the Malaysian bureaucrats are responsible for implementing development projects.

<sup>201</sup> As an implementer, the public official needs to ensure the government procurement is based on applicable rules and regulations.

<sup>202</sup> ‘Wahyu’ refers to instructions received from the top level to civil servants which normally need a special approval from the Ministry of Finance (MOF). The special approval from the MOF is required because that government procurement might violate the procurement guidelines and/or instructed by the higher power hierarchy.

Majority of regulators affirmed that the public servant as an implementer must advocate the delivery of public services. A. S. b. Ahmad et al. (2003) and Dahlstrom (2012) argued that generally public officials act as implementers of public policy and continue to obey instructions especially when the order comes from a higher status person. Such norms and practices have also been embedded in the Malaysian public sector.

Professional 10 claimed that many procurement officers simply listen to their superior.<sup>203</sup> All regulators admitted that the decisions for rewarding government contract are often imposed in a 'top-down' fashion, according to which, decisions are made collectively and getting instructions from above. On the other hand, Academic 2 argued that public officials normally obey the instructions given to them and that is a part of being a professional public official. Professional 6 insisted that state officials are normally decent but somehow the state's apparatus abuses its power and engages in public procurement fraud. S/he stated that being obedient and decent means that the professional public officials follow orders or else they face the consequences.<sup>204</sup>

Thus, the mantra of 'I'm following the orders' in the Malaysian public service, which has been entrenched in many aspects of the public administration, facilitates public procurement fraud activities. When asked about the meaning of that mantra, Regulator 12 explained,

*'Everything that a public servant does is guided by the management's policy and standards. The instruction comes from above based on the jurisdiction and power*

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<sup>203</sup> The effects of merely listening and obeying such commands are part of the consequences of the hierarchy of power and status existing in the Malaysian public sector.

<sup>204</sup> Consequences affecting the public official's job security include transfer to other department, no promotions or no excellence award.

*given to every level in the administration. Therefore, it is not a personal decision; when a public servant signs a letter or a document the 'I'm following the orders' comes before the signing of the signature'.*

In justifying the rewarding of a contract for the public interest, the regulators claimed for the importance of giving preferential treatments to help the domestic industry.

This is usually instructed by the procurement policies circulated by the Ministry of Finance. Regulator 1 described the situation as below:

*'In rewarding a government contract, we always prefer the local industry. Even though they may be a little more expensive than others, we always prioritize their application. This is to support and protect our local markets. We never bother with any relationship between a minister and the contractors. We only do our job and wait for the decisions to be taken to reward the contract. We are only the lowest level implementers in procurement processes'.*

All Malaysian public officials confirmed their obligation to follow the orders or instructions given to them with submissive obedience. Relatedly, Kelman and Hamilton (1989) and Beu and Buckley (2004) raised questions on the morality for people to commit illegal acts when so instructed by authority. Yet, this way of thinking was challenged by Professional 7 who believed that not all public officials want to be blindly obedient. Sometimes they are just forced to do so by being pressed upon or threatened. Professional 13 explained about the entrenchment of fraud and corruption, especially within the uniform body in Malaysia (e.g., police force, soldiers, etc.) which has been tainted by their sense of collective action when performing their duties. Thus, when fraud and corruption in the office occurs, these people will normally allow it so as to show their loyalty to their team (Carsten & Uhl-Bien, 2013).

In relation to the complexity of handling government procurement, most regulators agreed that they could only act within the context they have as procurement officers.<sup>205</sup> Interestingly, Regulator 5 explained that when handling big government projects, the procurement officers do not have the power to finalise a deal. In a different view, Regulator 13 discussed direct negotiation that is open to abuse.<sup>206</sup> This seems to show the ‘restricted power’ of procurement officers when handling government contracts in particular when these involve a closely connected contractor or a crony of a political master.<sup>207</sup>

On the contrary, Politician 5 believed that professionalism means that the public officials need to just do what they are asked to and not try to make any changes. According to him, being a professional Malaysian public official means that one needs to only implement decisions and obey whatever instructions are given to them in accordance with particular decisions made by the Cabinet. Therefore, it appears that the cultural values, practices, norms, system and structure that have been embedded into the Malaysian public sector likely aid the pervasiveness and persistence of public procurement fraud.

Interestingly, most of the interviewees explained that Malaysian public officials always face dilemmas when asked to follow ‘questionable’ instructions from their

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<sup>205</sup> In answering a different question about the extent to which their ‘voice’ is heard in rewarding government contract, all regulators said that they usually follow the rules and instructions given to them to the extent that their job as procurement officers allows them.

<sup>206</sup> S/he mentioned the justification of direct negotiation contract of strategic reason in order for procurement officers to choose certain contractors. During such procedure, a direct negotiation contract can easily be manipulated.

<sup>207</sup> For procurement committee decisions, all regulators agreed that the committee has a right to choose contractors accordingly, or even change their decisions.

superior. The interviewees admitted that they learned to obey, not to talk back and never question the orders given by the higher authority. They also highlighted that the system (subservient obedience) is a normal practice; it is culturally accepted and ingrained in the public office. Regulator 7 claimed that fraud and corruption is embedded in Malaysian public sector because no public official dares to confront any decisions made by a higher superior. Although this might be possible because there is perhaps the lack of communication between superior and subordinates during the decision making process in the public administration, however A. S. b. Ahmad et al. (2003) and Mahathir Mohamad (1995) argued that the style of administration as well as its own cultural values have been highly influenced by the hierarchical bureaucratic structure of the Malaysian administration. The majority of regulators and professionals confirmed that they are restricted according to administration rules and the way they conduct their work determines whether they get a promotion, a certificate of achievements or a transfer. This situation causes suffering for these officials in many ways. Placing an emphasis on procurement officers, Professional 5 said that when there is alleged fraud in a public procurement process,

*'Public officials sometimes act as scapegoats and accept the blame for fraud. We know they are sometimes instructed to do the paperwork for a government project, particular in cases of direct negotiation contract. They do not really want to do it but if the instructions come from the higher authority, who dares to say no?'*

If a problem arises or any practices in the public sector are questioned, many public official are made the scapegoat (I. Lim, 2013a). The reality of the Malaysian administration, as explained by Academic 3, when fraud and corruption is detected in the public sector is that in the majority of the cases wrongdoings and mistakes are attributed mostly to public officials and not the Ministers. An example given by Regulator 3 was the Port Klang Free Zone's (PKFZ) scandal where only the public

officials needed to step down from their position when there was alleged wrongdoings, maladministration and malpractices (L. H. Beng & Lian, 2012; Pua, 2011). Regulator 10 gave the same example when they emphasised that in the PKFZ's scandal no one seemed to be held accountable for the RM12.5 billion losses of tax payers' money (D. Leong, 2014). Although the Malaysian public service has undergone major changes and development in public delivery system, it might appear that the system created in the Malaysian public service consists of public servants who act as desk officers ultimately obeying instructions by their superiors to prepare paperwork for the sake of promotions, salary and transfers (Siddiquee, 2013; John Anthony Xavier, 2013a).

Lastly, the question about the governance constraints of procurement officers as the obedient implementers when handling government procurement has generated various responses. Some interviewees view the procurement officer as only a 'victim' if fraud occurs. Other interviewees relate this with the obedience concept and link it with the intentional or unintentional conduct of fraud in public procurement. Thus, it can cause conflict and this is something discussed next.

#### **5.4.2 The Conflict**

Political economy lays the groundwork for a dynamic creation of formal and informal practices which have become the customary practices of political and economic institutions (Wickramasinghe & Hopper, 2005). Therefore, the fear and suppression the Malaysian public officials face when they carry out their daily duties have been entrenched in their professional life. That is why Academic 3 expressed dissatisfaction with the public officials because they are too obedient to politicians. S/he said,



*'Public officials are too obedient to the politicians [as the high ranking officers] when conducting their duties. We always say yes to them, we never say no. Always yes sir, always do what they ask us to do without asking questions even though sometimes their instructions are questionable'.*

Being a professional Malaysian public official has partly contributed to corruption and fraud practices in public procurement processes. Some professionals, media actors and academics expressed their frustration when they acknowledged that many public officials that might engage in fraud and corruption activities possibility do it on behalf of the Minister. To some extent, those public officials are forced to do it; otherwise, they will be immediately transferred.

Contrary to the above views, Politician 2 highlighted the dilemmas faced by everybody in authority. He mentioned that those who are empowered to handle public funds by the state officials always have a contradictory role to play. On the one hand, they want to serve public services by benefitting everybody. On the other hand, they need to consider their private and business interests to survive in the market. As he mentioned, the system is not bulletproof and it has always had weaknesses to be manipulated.

When acting professionally, the regulators pointed out one important issue, i.e., their views on the rewarding contract for the sake of public interest. Regulator 8 said,

*'When rewarding a government contract, we act professionally. Yes, perhaps rewarding contract to certain contractors was decided by those at the top. However, sometimes, the contract was rewarded based on certain justifications, at the discretion of the Minister. Who knows if this is intended for the public interest?'*

As clear justification for fraud and corruption in Malaysian public sector, regulators can rationalize the decisions they take in rewarding such government contract as

having to do with diplomatic reasons. It is important to note that the Malaysian civil servant apparently sustained the 'neutrality principle' by maintained the tradition of being politically neutral (A. S. b. Ahmad et al., 2003). Although there have been a code of ethics of the Malaysian civil servant as values and principles in decision making, there are possibility instructions given and interference from the higher ranking officer. There is, however, the indication of being 'powerless' within contemporary Malaysia's cultural values, norms and practices in public administration as described by Politician 3, the fact that the Malaysian public officials act professionally means that they do not have the power to reject any instructions given to them.

Politician 3 stated that,

*'The public officials are merely powerless. They cannot do anything because they always have someone on top of them telling them what to do. They take instructions from someone on top of them, from the Minister probably. The moment you say no, they can transfer you immediately. No promotions, no excellence award for your services'.*

On top of this, the majority of politicians were of the view that public procurement fraud in Malaysia is prevalent and persists because the public officials have partly allowed this to happen. The chains of performance and crisis in Malaysian governance of its public sector are also affected by the politicization of the state bureaucrats. This is examined in the next section.

### **5.4.3 Politicization of Bureaucracy**

All regulators acknowledged that they play a prominent role in managing the country's public administration. However, the governance constraints of the politicisation of Malaysian public officials in serving the public interest have been

tainted by the interference of politicians in rewarding a government contract (Cross & Stuart, 2006). Regulator 5 commented that,

*‘The instructions from the Minister’s office go down to the Chief Secretary and then reach the lowest level i.e., us, the procurement desk officers. As desk officers, we don’t get to call the shots. Based on my experience, in many governments procurement cases there is always interference from the politicians but we always need to be professional when handling procurement processes’.*

From another point of view the ‘neutrality’ concept for the civil servant seems to be only applicable to the current regime as the ruling party. The interviewees explained that they need to sign the ‘Letter of Undertaking’<sup>208</sup> before starting work in the public office as a bond between the public official and the government. Despite this, Politician 5 (ex-Prime Minister) insisted that the Malaysian public officials need to be professional and implement any public policy decided by the Cabinet. He asserted that,

*‘According to the system, the administration officials must act professionally and do their job. Their job is not to decide but to implement. If the administrative wants to decide, they are encroaching on the work of people who are empowered to decide. If the administration says “no this is wrong” in relation to a decision made by the Cabinet, the public policy cannot carry out its work and the system will not work’.*

Those perspectives perhaps show how the Politician 5, as ex-Prime Minister, reflects on the ‘unquestioned’ policy i.e., public officials who act only as implementers and obediently follow the orders. However, Academic 4 viewed that the professionalism of Malaysian public officials is supposedly based on the professional bureaucracy of experts. Academic 4 further argued the professionalism of Malaysia’s public bureaucracy started ‘deteriorating’ in 1981. During that year, Malaysia ventured into privatisation and industrialisation by transforming its public administration (Dass &

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<sup>208</sup> The ‘Letter of Undertaking’ obliges the civil servants to be loyal, not to smear the country’s name, to always keep the information of government agencies private and confidential and to exercise their public duty with a high degree of accountability and integrity (F. Hamid, 2013).

Abbott, 2008). The aim was to change the nature of Malaysia's economy from agricultural to industrial in order to achieve economic growth and modernisation of the state. Privatisation aimed to improve efficiency and lead to economic growth but study by Salazar (2004) and Jeff Tan (2008) appear to argue that the decision to privatise according to New Public Management policy in Malaysia seems to have opened up opportunities for rent-seeking activities, it has nurtured a patronage system and a lack of accountability and transparency conditions. In a similar vein, Academic 4 further explained that,

*'When the Prime Minister decided to liberalize, privatise and deregulate this was his decision, his personal choice and he has passed it to the bureaucrats. These actions have to some extent generated fraud, corruption, and cronyism. At that time, there was an increased need for public procurement and this allowed fraud and corruption to flourish. The nightmare of developmental state Malaysia started when the boss started ruling by making his own decisions without referring to the public officials'.*

It is also important to point out the moral hazard that seems to pollute governance mechanism for the Malaysian public officials (Rachagan & Kuppusamy, 2013; Rodan & Hughes, 2014). Academic 1 clearly stated that the moral hazard is created when the political master disregards the expertise of civil servants. In the name of their personal interests, powerful groups neglect the public bureaucrats and take advice only from closely connected friends' rather than from the experts. Media Actor 3 argued that the institutions have started to erode and this has opened up more space for fraud and corruption. This view is clearly expressed by Academic 5 when claiming that,

*'The procurement process has no check and balance mechanisms. The ministers are quite powerful and the state bureaucrats are sub-servants of the Minister. In this country, state bureaucrats take their cue from politicians'.*

All academics interviewed agreed that a powerful Minister is the one who sets the direction for the state, not the civil servants. Although it is legitimate for Ministers from governing coalitions to set the direction for a country (Doherty, 1988), the civil servants are the ones responsible to implement public policy for the greater benefits of the citizens. It appears that when a Minister uses their position and power to influence and interfere with public administration by not taking into consideration the expertise of civil servants opportunities for abusing the system arise; all academics clearly confirmed the way the system is structured in Malaysian public administration is wrong (L. H. Hai, 2002).

The evidence gathered from the interviews excellently show how governance constraints faced by the Malaysian public officer have contributed to the persistence of public procurement fraud in Malaysia. First, public officers are likely to follow the culture of being obedient, not to talk back and never question the instructions<sup>209</sup> given by their superior. This system has prevailed in many aspects of governance of public administration. To some extent, it is also pertinent to link the values; practices and organizational culture in the Malaysian public administration from colonial past and the legacy left from historical institutionalism (see Chapter 4). Second, the conflicting role of Malaysian civil servant is often masked with the justification and rationalization for procurement fraud. The civil servants are powerless, as they never say 'no' to any instruction given to them by politicians. Finally, the study highlights the politicisation of bureaucracy in the Malaysia public sector and that is affected by the interference of political engagement, which is intended for the pursuit of certain

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<sup>209</sup> The role of Malaysian public officials is to follow the instructions received from their superior even though that may make them victims of scapegoating.

vested interests. Therefore, the social structures which have been created in the Malaysian public sector perhaps may have enabled, and/or might constrained the actions of social actors in many aspects of procurement practices in the Malaysian society.

## **5.5 Public Procurement Fraud within the Malaysian Society**

The occurrence of public procurement fraud and corruption practices can be seen from the media coverage of the annual Auditor's General report, Anti-Corruption Agencies report, and other international agencies' reports. Most of the interviewees acknowledged that the problem of public procurement fraud still exists in the Malaysian public sector. This section describes the views of stakeholders regarding public procurement fraud in relation to the distinctiveness of the Malaysian society that supports (1) the successful ideology for wealth, material goods and money, and (2) the institutionalization.

### **5.5.1 Successful Ideology of Wealth, Material goods and Money**

The central argument of political economy theory is how political and economic forces co-exist (Banks & Hanushek, 1995). In this context, creation of wealth and capital and the pursuit of materials, development and growth is perennial. Ironically, Nambiar (2014) argues Malaysia is a developing country and, as such, there are many infrastructural projects running at the same time. The mushroom of mega projects and the lack of control mechanisms may impose serious treats to weak and not advanced control systems that in many cases proved to be inadequate to cope with this new/sudden growth which may likely open up a space and opportunity for malpractices, fraud and corruption (Malaysia Today, 2015; J. Ng, 2015; Tan, 2012).

At the same time, evidence of business and government activity for development and growth was given by Regulator 12, who linked the needs of mega projects under the pretext of ‘national interest’ and pointed out that,

*‘The overarching policy and mega projects may be heavily influenced by the ruling party. The monopolization of power of the ruling party has to some extent forced the implementation of the projects. After all, the decisions made by the ruling party are for the development and growth of Malaysia’.*

In order to achieve greater economic growth, the Malaysian state has concentrated on industrialization, which has created reasonable materiality values and growth to its society. Regulator 2 claimed that the new ethos of public services has made the public office *extravagantly* ambitious. Regulator 4 supported this idea by saying,

*‘Even in the public sector, which provides public services, the government contracts entail materialistic values. They aim for more wealth and money’.*

For this reason, Academic 4 insisted on emphasizing how quickly Malaysia has achieved growth and development. He explained how it took other developed countries 100 to 200 years to develop both economically and socially – i.e., in ways that they also found solutions to various social problems they were facing. However, Malaysia was developed at an extraordinary speed, only in a few decades. This academic was confident that this occurred at the expense of institutional rules and regulations, which were neglected and never addressed. In this way, fraud and corruption continue to flourish within the Malaysian society.

However, the views of ex-Prime Minister contradicted those of the other interviewees. He was very proud of the development and growth achieved in Malaysia within such short time. In his words,

*'You see the country has developed much faster than most other countries which became independent about the same time. Now when the country is developed, it means that it is possible to do business. In Malaysia, you will see the roads, the railway and the government offices are built and subsidies are given. All things have been done here. As far as corruption is concerned, corruption is universal; otherwise this thing [he refers to development] cannot be achieved'.*

The ex-Prime Minister's view on the universality of corruption is used by him as a justification for fraud and corruption in the Malaysian public sector, and perhaps as necessary in order to achieve development. Despite the fast growth and development, Tan (2012) and O.M. Bakre (2010) argue that when development and growth are not achieved by having robust structures of control and good governance, this likely opens up space for wrongdoings and abuse. Perhaps, the ex-Prime Minister was not as concerned about corruption as he was about growth and development in Malaysia. Although the ex-Prime minister was concerned about the loss of government fund from procurement frauds and the failure to carry out government projects, he accepts that fraud and corruption happen all over the world.

From another point of view, Academic 4 strongly believed that the new-liberal globalization<sup>210</sup> aims to create more wealth and maximize profits. Also, the new-liberal globalization provides motivation and opportunities for accumulation of capital as economic expansion (Handley, 2008; Ward & England, 2007; Waters, 2001). The outcomes from that ideology hence may sometimes involve fraud, corruption, malpractices and financial crisis (see Michele Chwastiak, 2013; Morales

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<sup>210</sup> S/he, however, claimed that the new mantra of new-liberal globalization favours profit maximization and wealth creation (including many government contracts) which has been embedded in the society. By pursuing self-interests in a free market system, entrepreneurs are willing to do whatever it takes to get a richer and appear to be successful, regardless violation of ethical and moral values.



et al., 2014). In relation to this, Academic 3 drew attention to the vicious circle of capitalism within the Malaysian society and stated that,

*'In order to get rich, people are willing to do anything. It's okay to chase money, it's okay to get rich because the target is to get richer, to maximize profits for wealth. It's okay to step on other people's head, it's okay to lie, cheat and stab someone in the back. It is all okay as long you reach your target. This is clearly embedded and engrained in our society'.*

The idea of getting rich is also mentioned by Professional 13 when mentioning the paradigm shift of the Malaysian society towards money culture. This professional explained that money culture to towards growth and development in Malaysia and the obsession with getting rich quickly. This obsession has led to many causes of corruption, be it petty or grand corruption cases. The concept of capitalism is one way for people to create wealth and achieve profits (The Economist, 2013). Academic 5 commented on the role of the state in relation to this,

*'The role of the state in this [public procurement fraud] comes from the abuse of the procurement system by the engagement from the state in giving all these contracts through a patronage system and by manoeuvring public policy itself'.*

The concept of capitalism (i.e., creation of wealth and capital) is embedded in the Malaysian society (even without realizing it) through the capitalism transformation. Academic 2 believed that people are always searching for a new way of getting rich by chasing money and wealth and that they are driven by a lust for materiality. Academic 2 claimed that the fact that the Malaysian society embraced the capitalism mantra has contributed to the emergence of fraud and corruption.

The consequences of materialism and of giving value to money are quite deep in the Malaysian society.<sup>211</sup> Engaging in fraud and corruption practices has been justified and rationalized under the pretext of the rapid growth of the society and the country. Being rich is considered a success in life and offers someone a higher social status. Despite the fact that the majority of the citizens in Malaysia are Muslims, the country has adopted a liberal capitalist economic system for its economic transformation (Pemandu, 2011). K. S. Jomo (1998), Athukorala (2002) and Tajuddin (2014), however, have pointed out the flaws of the capitalist economic system in Malaysia that perhaps promotes inequality, suppression and prioritizes the most powerful and rich groups. In talking about the justification of wrongdoings, Media Actor 3 claimed,

*'In many cases, we can see that those who engage in fraudulent and corruption activities generally will go to perform the Hajj: Pilgrimage to Mecca to the sacred sites in Mecca. Sadly, the illegitimate money gained from fraud, corruption and malpractices is used to perform the Hajj. These people say that in order to clean themselves from the 'sin', they perform the Hajj with the intention to ask forgiveness from the God'.*

Regulator 1 stated that some wrongdoers like to donate to charity every year (perhaps by using the money gain from corrupt deals). S/he further explained that the good deeds 'performed' to the community by donating money to charity as one way to show their ethical values. Thus, Islamic ethics have continuously faded within the Malaysian society as described by Academic 3,

*'We have been instilled with a life structure of the so-called establishment in the country. That structure of life is based on how you are brought up – the family institutions, moral values, and religious teaching. Our development has sacrificed the human capital development in terms of morality and good governance. Even our Islamic values have been weakened in order to be rich. Good governance is never*

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<sup>211</sup> Materialism and giving value to money contradict the Islamic religion, which teaches people to help the poor, to be fair and just, to have an ethical and good character, and 'to command the good and forbid the evil' in all aspects of life. The consequences of materialism are that it erodes moral values and human ethics (see Sloane-White, 2011; Sloane, 1999; Welsh, 2013b).

*instilled. On paper it is good, but we are hiding behind the good governance to conduct corrupt practices’.*

The next section addresses the trend towards the institutionalization of fraud and corruption in Malaysia.

### **5.5.2 Towards Institutionalization**

The institutionalization of fraud and corruption in Malaysia has been encouraged under the pretext of developing the country by using public policies. Public policy in Malaysia has legitimised state intervention in the market and increased public sector expenditure so as to generate capital and wealth (Sundaram & Hui, 2014) This is explained in detailed by Academic 3,

*‘The model of development encouraged by the government was actually aiming to make certain people rich, very rich while others lose their money. The existing government is the one that has been implementing this structured system and has let it mature throughout all these years’.*

The endemic system of fraud and corruption is possibly nurtured by the implementation of public policy in Malaysia. Politician 1 disclosed that the government is the one which seems to be the most capable institution to engage in many ‘malpractices’ and nurture this system in the public sector. S/he further explained that systemic fraud is embedded in the institutional structure of a country,<sup>212</sup> something that helps malpractices to flourish.

It is interesting to note that most of the interviewees also insisted on emphasizing that income disparity in Malaysia resulted from the implementation of Malaysia’s public policy (Faizli, 2014; Roslan, 2001). Media Actor 3 explained that in many occasions,

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<sup>212</sup> In particular, Migdal (1988) explored the highly-centralised capabilities of the state to control the mobilization of human and resources.

fraud and corruption is committed to ease and speed up a government process. This media actor confirmed that such wrongdoings have been widespread in the society because a payment needs to be made so that things get done.<sup>213</sup>

At the same time, all interviewees agreed that Malaysian society is still bound to the historical, socio-political and economic structures that have shaped and created many social practices (including fraud and corruption practices). Regulator 2 and 4 believed that the way many Malaysians think has been shaped by the socio-political, economic and cultural values as those have developed throughout its history. Political economy responds to the prevailing directions of the cultural and values context created as the result of political consequences and as an economic phenomenon (E. Brown & Cloke, 2005). Regulator 7, Professional 10 and the majority of politicians, media actors and academics suggest that historical roots, socio-political and economic values and the cultural context influence how people think and react to different situations. For example, the culture and values of respect and loyalty to one's superior and authority are deep-seated within the community (Daniels, 2005). Professional 5 in particular argued that,

*'We always believe our top leaders and their leadership. We always respect and put our trust that what they (the ruling elites) are doing is always good for the country. [If this hadn't been the case] people would not have voted for the same party all this time'.*

This view seems to reflect on the institutionalization of fraud and corruption when the masses believe that whatever the ruling coalition's decision is, it is for the interest of the country, regardless of the fact that many ruling elites have been accused of fraud

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<sup>213</sup> It highlights how the system of bureaucracy in many government departments results in paying many public officials 'under the counter' so as to get one's job done.

and corruption activities openly (Anand, 2015; The Economist, 2001; The Malay Mail Online, 2015). Some regulators and professionals, in particular, justified this with a rationalised reason. It is important to point out that perhaps other ideologies, such as nationalism, also make things difficult and prohibit change from happening. This is because anybody who challenges the government or questions the action of the authority seems to be called a traitor and disloyal to the country. Considering that historical institutionalism might have influenced and shaped socio-political, economic, cultural values, norms, practices and organizational cultures in the modern society, Media Actor 4 expressed their concern,

*'In Malaysia, all the actions of the ruling elites are acceptable as they are assumed to be for the national interest or good for the country. But anyone who tries to challenge or ask questions about their actions and decisions is called a traitor or one who is trying to tarnish the country's name'.*

This is evident when the Sedition Act 1948 is used to prohibit discourse that is 'deemed' seditious and disrupts the peace and harmony in the country (Devaraj, 2015; Palatino, 2015). On the pretext that in this way they maintain 'harmony', the governing coalition appears to expect total obedience from the public and consequently, this is probably how they are able to maintain their hegemony and power (E. Ng, 2014; The Malaysian Insider, 2015b).

Moreover, Media Actor 3 commented on the peculiarity of the Malaysian society that allows fraud and corruption practices to flourish:

*'We, as Malaysians, always look up to those who are of a higher status than us. We believe they need to be treated in a special way and differently than others as their status protects them from the system, especially those clinging on to a powerful person'.*

What is more, the nature of Asian values tends to favour forgiving and forgetting of any wrongdoings occurring in the country.<sup>214</sup> Unfortunately, culprits take advantage of these values.<sup>215</sup> Many interviewees highlighted the differences between Asian and Western cultures. Politician 5 expressed his views highlighting that,

*‘The Asian culture is different from the Western culture. In Western culture, people do not have an extended family. They don’t even consider that their family owns anything to them. But in Asian culture you have families, friends who always put pressure on you to help them’.*

From this point of view, favouring one’s extended family and friends may be seen as cronyism, favouritism and bias in rewarding government contracts. The person in authority is vulnerable to fraud and corruption, as they need to consider their relationships and friendships with other people when evaluating and negotiating government tenders. Thus, crony capitalism in Malaysia’s government procurement has spawned a legitimate form of allocating and distributing the country’s wealth.

As shown by empirical evidence, the development of public procurement fraud in Malaysia has to some extent been influenced by the nature of Malaysian society. First, there is transformation of the society in terms of what being successful means; it now means to possess wealth, materials and money. Although the successful ideology of being rich and acquiring a higher social status may contradict Islamic values<sup>216</sup> (by engaging in fraud and corruption activities), the ruling elites have ‘colonised’ the mind of the Malaysian society and made them believe this is acceptable as long as it is for fortune and prosperity. Second, the institutionalization

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<sup>214</sup> Common values for the Asian society involve, among others, high tolerance, respect for a superior and the elder people, the concept of politeness, the idea of not giving defensive and offended opinions, the avoidance of confrontation in order to remain happy and peaceful (Yoong et al., 2007).

<sup>215</sup> This is because they know that eventually their wrongdoings will be forgiven and forgotten.

<sup>216</sup> The contradiction with Islamic values are justified and *cleansed* accordingly.

of fraud and corruption is supported for the sake of development and growth. Historical roots, socio-political and economic values and the cultural context have shaped customs and practices in such a way that fraud and corruption are tolerated and acceptable. The next section provides a summary and an overall discussion of the analysis chapter.

## 5.6 Summary

This chapter has presented the views of various stakeholder groups about public procurement fraud in Malaysia. Taking together their responses and perspectives on the issue, it provides evidence to explain why procurement fraud continues to persist in the Malaysian public sector.

This section draws attention to the dynamic power of political and economic forces which suggest (1) for a nurtured system of political business which operates through legitimate interactions of public and private organisations. Notably the same interactions promote crony capitalism, patronage, favouritism and rent-seeking which have been greatly influenced by financing and donations for a political party; (2) that the political power works in alliance with narrow economic interests for wealth and capital accumulation and (3) that when business meets government over public policy issues, public policies might be formed or implemented in such a way so as to create opportunities for and enable fraudulent practices which benefit people with vested interests at the expense of the public.

The complexity of check and balance mechanisms in Malaysia was identified through: (1) the historical legacies that are deeply embedded in Malaysia's administration; (2) lack of independence amongst the three pillars of governance institutions; (3) the ineffectiveness of many government agencies to curb public procurement fraud; (4) judiciary branch as a 'tool' for a political party; and (5) the longevity of the power of the ruling elites that provides them with a means of conducting public procurement fraud in Malaysia.

There are institutional deficiencies within Malaysia's procurement practices as below: (1) astute individuals are able to exploit the weaknesses in procurement process so as to play around the system; (2) there is lack of evidence because the abuse of power can be camouflaged by legitimate and genuine government documentation; (3) the existence of hegemonic control of the Ministry of Finance in many aspects of government purchasing.

The governance constraints of the Malaysian public servants in conjunction with certain structures created in the Malaysian public sector have resulted in the creation of a set of norms, practices and cultures that contribute to the occurrence of fraud and corruption. The section casts light on (1) the public official as an obedient implementer who does not question the instructions given by their superior; a practice that has long been instilled in the public office; (2) the conflicting role that the public servants have in relation to whether to serve the public interest or do their political master's favours and (3) the influence of political discourse in public administration.



The Malaysian society has to some extent ‘allowed’ and helped public procurement fraud in Malaysia ‘persist’. (1) The interviewees argued that the Malaysian society developed in such a way that it celebrate the chase of wealth, money and social status and it may encourage fraudulent behaviour. Consequently, people are willing to do whatever it takes to achieve their materialistic aims, including engaging in fraud and corruption. (2) By tolerating and accepting ‘malpractices’ under the pretext that this is for growth and development, institutional fraud and corruption has been practiced and embraced openly, especially by those in power. Thus, the sense-making for prosperity and wealth has been eventually (re)shaped and (re)created into cultural, values and practices.

Chapter 4 discussed how the nature of historical legacies, the socio-political, economic, and cultural context of Malaysia has contributed to the emergence of procurement fraud. Chapter 5 provided the empirical evidence for the persistence and prevalence of public procurement fraud in Malaysia. The next chapter reviews and discusses the evidence.



## Chapter 6 Discussion

### 6.0 Introduction

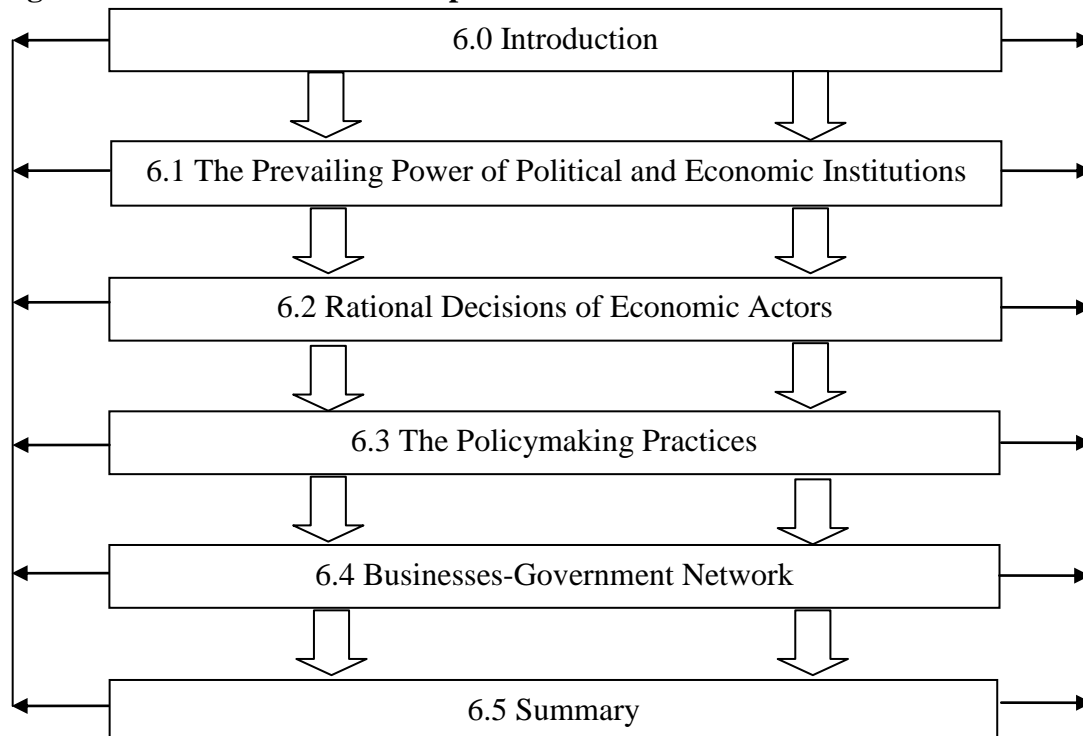
This penultimate chapter of this thesis provides a discussion of the findings of the documentary analysis and semi-structured interviews with 5 main stakeholders involved in Malaysia's procurement practices. Evidence of public procurement fraud practices was collected from the views and perceptions of the main interviewees. It is important to note that those stakeholders are social actors who experience and construct meaning of social phenomenon in their own way and can perhaps aid the understanding of public procurement fraud practice in Malaysia. Nevertheless, this study does not aim to make generalisations or draw substantial conclusions regarding the social phenomenon but instead aims to shed light on the understanding of fraudulent practices in procurement. This chapter aims to synthesise the findings<sup>217</sup> of the two previous chapters (chapters 4 and 5) and to provide critical explanations for them in the context of the relevant literature and the theoretical framework underpinning this research.

This chapter is divided into 6 sections (see Figure 6.1). In order to illustrate the persistence of public procurement fraud in Malaysia, the discussions are based on the theoretical framework described in Chapter 3 and aim to demonstrate various interlinking elements taken from the political economy approach. This chapter considers potential explanations for the persistence of public procurement fraud in Malaysia. Following this introduction, section 6.1 explores the prevailing power

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<sup>217</sup> The results of the document analysis and the semi-structured interviews (see chapters 4 and 5) are considered in light of the research questions.

relations of political and economic institutions in Malaysia. This section shows how dominant power relations are a catalyst for certain stakeholders to engage in public procurement fraud. The third section reflects on the rational decisions made by economic actors in relation to resource allocation (section 6.2). This section sheds light on how individuals look after their interests and how they maximise their profits in their pursuit of capital. Next, section 6.3 considers policymaking practices in Malaysia and discusses the interaction of prominent social actors and their consequences on policymaking processes. The institutionalisation of the policymaking framework in Malaysia innately reflects the relative power and interests of the coalitions of social actors. The chapter continues with a synthesis of findings in relation to the existence of a crony network at a close nexus of government and business relationship in section 6.4. The crony network manages to award government contracts to favoured economic groups and it is usually able to ‘camouflage’ these fraudulent transactions through legitimate transactions of government purchasing. The structure of social networks consisting of politicians, top bureaucrats and business elites, is explored accordingly. The final section (section 6.5) summarises the chapter.

**Figure 6.1: The Structure of Chapter 6**

## **6.1 The Power of Political and Economic Institutions: The Prevailing Institutional Arrangements**

The current study discusses the significance of the institutional power structure, which is embedded in the social structure and culturally shapes the behaviour of groups and practices of institutions. The political economy approach forms the basis of understanding the power relations on how actors use their position to protect their interests (Twigg, 2012). To strengthen the legitimacy of the state's role and their practices, an analysis of power relations in this section sheds light on three main attributes: (1) the institutional power structure, (2) historical institutionalism and (3) the creation of formal and informal practices. This thesis then considers the prevailing power elements in both institutions: politics and economics.

### 6.1.1 The Institutional Power of the Governance Institutions

There are dominant power relations of the government and the market that act as political and economic institutions<sup>218</sup> within Malaysia's governance system. The socio-political and economic elements of Malaysia's governance system are exemplified in Chapter 4 as the constitutional structure of power of the Malaysian state. Regardless of the structure of the power exercised by the executive, the legislative and the judicial branch, there are noticeable forces that play a role in the persistence of public procurement fraud in Malaysia.

The findings seem to address on prevailing power of the executive branch and the prime-ministerial system in the government. First, the executive powers influenced by the Prime Minister and the Cabinet<sup>219</sup> lead to a concentration of power in public office (section 4.2.1 and section 5.2). Accordingly, it appears that any procurement policies and their implementation reflect the power, influence and discretion of the office of the Prime Minister.<sup>220</sup> In this regard, the power accrued by the Prime Minister has reinforced an authoritarian administration by using the government apparatus (Loong, 2013). Most importantly, the authoritarian rule is institutionalised with power and influence through a legitimate system of being elected by voters (section 4.2.2).

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<sup>218</sup> The practice of political business in Malaysia has been nurtured and supported through social actors' capabilities and institutionalized actions in many areas of public procurement (E.T. Gomez, 2002; Nicholas J. White, 2004). This element is explained in detail in section 6.5-Business-Government Crony Network.

<sup>219</sup> The Cabinet profoundly adheres to the principle of collective ministerial responsibility as stipulated in Article 43(3) of the Malaysian Constitution. The 'cabinet collective responsibility' is constitutionally based on government using the Westminster System where all ministers and parliamentary representatives must publicly support all decisions made by the government through the Cabinet even though they do not agree with the decisions made (Masum, 2012).

<sup>220</sup> In their study of the concentration of power of the Prime Minister, Hwang (2003); Khair et al. (2015) and A. Harding (2012) disclose the personalisation power of Malaysia's Prime Minister to control the ruling coalition as well as the legislative and judiciary branches.

Second, the same authoritarian regime appears to impose constraints upon the public officials discharging their accountability as civil servants (section 4.4 and section 5.4). However, there seems to be tendency for conflict of interest in relation to the public's interests, especially in delivering public policy,<sup>221</sup> and the public officer's obligation to accept the instructions and implement the order given to them without further questions (section 5.4.2). In relation to the concern of the accountability constraints of the Malaysian public officials, this study aims to address how those constraints have, to an extent, preserved fraudulent practices in the public offices.

Third, findings indicate that the government's agencies, which are responsible for curbing and minimising fraud and corruption in the Malaysian public sector were seen to have been compromised when their appointment, hierarchy of power and other forms of undue influence go back to the discretion of the Prime Minister's office (section 4.2.1). There are also some perceptions that the lack of effectiveness of the government agencies to ensure public accountability and good governance is because public administration under the influence of by the hierarchical power of the authoritarian rule (section 5.2). Thus, it implies that the authoritarian nature of the executive power in the current study predominantly affects every aspect of the nature and operation of the public-administrative institutional environment.

Given that the fact that the incumbent ruling party has been in power since independence (year 1957) they implicitly maintains the status quo of the governing coalitions and helps them staying in power (Khair *et al.*, 2015, Tajuddin, 2014). First,

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<sup>221</sup> While public policy mechanisms are (supposedly) used for development and growth (A.-A. Bakar & Ahmad, 2013; Hutchinson, 2014), there are, however, some questions on the exercising of public accountability of its public funds.

pervasive characteristics of the incumbent dominant ruling party, which has been the supreme power for 58 years with no or very little resistance or contesting from other parties especially through electoral practice, were noted (Chapter 4, William Case, 2011). There are some indications that the strong powerful government of the ruling governing coalition places them in an advantageous position since they are able to secure the majority of the seats in the Parliament so as to endorse any public policy, laws and rules for the country they want to. It is argued that the prolonged institutional power of the ruling elite lacks the political will to eliminate fraud and corruption, especially the elite level corruption in most high-profile cases (section 4.2.2 and section 5.2).<sup>222</sup> These findings support the studies conducted by Caulfield (2014) and Heggstad et al. (2010) who claim that investigation of fraud in public procurement appears to be rather restrained because of the limited chances of bringing the culprit to the court. There is lack of prosecution for the misuse of political and administrative power (Pemandu, 2009). The above might suggest that politicians as well as of politically-linked individuals in alleged cases of fraud and corruption are protected and that is why they are rarely prosecuted (Khair et al., 2015; D. Leong, 2014).

Second, the entrenched political power exercised by the same governing coalition as described by Abdul Aziz (2002) and Masum (2012) appears to consolidate the Prime Ministerial supremacy in the Parliament. The main stakeholders' perception is that the Parliament is merely a 'rubber-stamp' institution that gives legitimacy to the decisions made by the Cabinet (section 5.2.4). The majority of the interviewees strongly agree that the constraints of the Parliamentary roles mean that it is not a

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<sup>222</sup> High-profile cases normally involve high ranking officials, politicians and business leaders.



‘true’ legislative body but rather a fusion of the powers of the executive branch (Thomas, 2001; Yaakob et al., 2009). The study indicates that overlapping roles are unavoidable within Malaysia’s governance system as the same Minister from both the ministry and the Cabinet attends the Parliament session. Therefore, it seems that the decision for any government projects and contracts is influenced by the legitimate political power of the same government, thus enabling them to promote and favour certain practices or policies. The point that is often overlooked here is how powerful groups, as described in this study, can interact and legitimise their actions by holding the power of the incumbent government and the supreme power of Parliament (section 4.2.2 and section 5.2). As can be seen, the participants of this study appear to highlight the *untouchable position*<sup>223</sup> of the ruling coalition that exercises an absolute power in Malaysia. This leaves the impression that the power of the government and the supreme power has made the ruling party *invulnerable* because they are never likely to be charged with engaging in fraud and corruption activities in government purchasing.

The judiciary institution in Malaysia somewhat contributes to the persistence of public procurement fraud in Malaysia. First, some of the interviewees indicated ‘selective prosecution’ exercised by the judiciary in favour of those in power (section 4.2.3). It was observed that the same party has ruled in Malaysia since its independence in 1957. The institutionalization of the supreme power by the ruling government coalition in Malaysia enables selective prosecution to be applied. In other

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<sup>223</sup> The ruling coalition of *Barisan Nasional* (the Alliance Party) in Malaysia is known as the world’s most successful ruling coalition as they have been able to be in power for more than half a century. Because of the dominant and legitimate political power, their influence and actions are justified and rationalised with complete impunity (Z. Ahmad & Phang, 2005; Miller, 2013).

words, the institutionalized power is concentrated and the executive can prosecute whomever they want. For example, in terms of the investigation and prosecution for fraud and corruption cases, there is no real arm's length relationship among the three institutions. The arm's length principle in this thesis is about the conditions of check and balance mechanisms that exist among the 3 pillar of institutions in Malaysia which are rarely independent and it seems that efforts to curb fraud and corruption in Malaysia do not stand on an equal footing (F. A. Aziz & Yi, 2007; Koh, 2012b; The Star, 2012a)

To some extent, it would appear that the *role* played by the Attorney General suggests a case of conflict of interest that impairs the judicial independence (A. J. Harding, 1990). As has been discussed in Chapter 5, the judicial institution is not able to check and monitor the power of other governance institutions (section 5.2.4). Not only is there a wide perception of the lack of judicial independence, the findings also pointed out the curtailed power of judges prior to the controversial legislative amendments to the constitution in 1988. The curtailed power of judges indicate the exercise of selective prosecution by the judiciary because it seems that much of the judicial power has been discharged and it is in the hands of the Parliament (Soon, 2013, section 4.2.3). Most interviewees noted the lack of transparency and coverage on the actions taken against perpetrators, especially in high-profile cases. Following this, the monitoring government agency<sup>224</sup> highlights that for corruption cases reported in 2009 the conviction rate for politicians and local authorities is extremely low

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<sup>224</sup> The monitoring agency refers to PEMANDU which stands for Performance Management and Delivery Unit and it is a unit under the Prime Minister's department which oversees the implementation, evaluation and examination of a policy progress; it also facilitates and supports the delivery of public policy. One of the roles of the monitoring agency is to monitor crime and any programs which are designed to curb corruption (see [www.pemudah.gov.my](http://www.pemudah.gov.my)).

(Pemandu, 2009). It seems then that the judicial branch is used as a tool to legitimise the actions of the ruling party in the court cases that involve people favourable to those in power (section 4.2.2 and section 5.2.4).

Second, the complexity of the law in proving intent to commit fraud and corruption can be easily manipulated and this results in a lack of prosecution and punishment. Some interviewees considered that if the fraudster has a close connection with the ruling party, any allegations of fraud and corruption seem to be rationalised, and any investigation on the matter will probably be dropped (section 5.2.4). These views are similar to those of R. J. Berger (2011) as well as P. Green and Ward (2004) who argue that when a malfeasance is committed by the political and economic elites, or those with close connections with powerful people, the criminal justice system tends to overlook such crimes. The findings seem to suggest that in order to escape punishment and prosecution in Malaysia, it is very crucial to understand that ‘who’ you know (those who have close connection with people in power) and not ‘what’ you know (the crime and its details) is important (Devaraj, 2015; *The Malaysian Insider*, 2012). In the events of great losses of public funds in many high-profile cases, B. Teoh (2013) argues that the public’s confidence in judiciary is shaken. The current study, in particular, refers to the powerful of the governing coalition who with their institutional power structure can simply ‘choose’ and ‘select’ cases that are in their interest (section 5.2.4).

Third, given the prevailing hegemonic control held by the powerful groups, there are some indications that these people have been able to define and construct what is and what is not considered to be criminal activity. Herman and Chomsky (2002) and

Johns (2010), for instance, suggest that control and influence in constructing a ‘crime’ is performed through the mass media and public opinion. Yet, it is important to note that the mass media play a role in constructing the definition and understanding of ‘crime’ in the society by being an agency which is controlled by the powerful people in society (e.g., the ruling party). From this point of view, the perception is that the crimes of the powerful people in Malaysia are justified as common sense and it is unlikely that their wrongdoings would be defined as criminal acts (section 5.2). For example, there is evidence in this study to suggest that the regulators are able to justify themselves for rewarding government projects to a company that has close connections to the ruling party (e.g., for the national interest or diplomatic reasons) (section 5.4.2). However, in line with the studies of Neu et al. (2014) and Stefes (2007), it is difficult to detect and prosecute a network of systemic corruption. It is assumed that when fraud and corruption are systemic, endemic and highly institutionalised, the informal rules and norms are embedded in a myriad of informal networks which are highly unlikely to be detected and prosecuted as they have been normalised in day-to-day activities (see Ashforth & Anand, 2003; Stefes, 2008, section 5.5). As a result, the judicial system faces difficulty in detecting and prosecuting criminal activity, especially if it is conducted by powerful individuals.

While many interviewees acknowledge the existence and importance of check and balance mechanisms to ensure public accountability, their existence may to a large extent be regarded as irrelevant since the political influence from the current regime has been able to endure for a very long time without any interference (section 4.2.1 and section 4.2.2). The findings and discussions presented earlier demonstrated how power is used as a medium to influence the governance structure in Malaysia and why

check and balance mechanisms are very limited in what they (can) do and hardly anything can be done to curb fraud and corruption (section 4.2 and section 5.2). This raises the question of to what extent Malaysia may be considered a democratic nation,<sup>225</sup> one which typically elects representatives by voting in a Parliament (section 4.2.2, A. Ibrahim, 2014). The conflict and antagonism in a democratic nation like Malaysia may reflect the predominantly social unrest and tensions existing in a civil society when there is high level of inequality in the country (Shukry, 2014, section 4.3.1.3). Ooi (2015) and Muzaffar (2015) raised concerns over the impediment of democracy in Malaysia. As a result of the impairment of democracy in Malaysia, the important role<sup>226</sup> of civil society actors (CSA) in a democratization process and social change for the society has to be emphasized (Schmidt, 2010).

The media has a particular important role to play in disseminating news and information, in reflecting social reality and as powerful ideology institutions that influence people's views on a particular subject (Herman & Chomsky, 2002). Herman and Chomsky (2002) provide evidence on how media has consistently toed the government line and how some issues/topics have been framed and manipulated. Thus, the media affects people's perspective according to how they present and interpret the news. The power of media in Malaysia is controlled as follows. Firstly, media control<sup>227</sup> is predominantly placed under a politically-connected ownership

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<sup>225</sup> Ooi (2015) and Muzaffar (2015) raised concerns over the setback of democracy in Malaysia where the centralized power of the executive branch is able to control the Parliament as the legislative and the judiciary, which indirectly brings a predicament to the check and balance system in Malaysia (A. Ibrahim, 2014; Yatim, 1995).

<sup>226</sup> The World Economic Forum suggests that the CSA roles include that of a “*watchdog, advocate, service provider, expert, capacity builder, incubator, representative, citizenship champion and definer of standards*” (The World Economic Forum, 2013, p.9).

<sup>227</sup> The ownership of mainstream press in Malaysia is monopolized and in the hands of one businessperson with close ties with the ruling elites. The concentration of media ownership eases and

especially in relation to mainstream media (Kim, 1998). Radio and television are almost entirely in the hands of the government or pro-government organisations. Therefore, the news is framed, filtered and portray various events and situations as approved by the government (Nain, 2002). For their survival, the media is willing to distort its reporting to favour the government or businesses in order to stay in business. J. Chin and Welsh (2013) state that controlling over the mainstream media is done by allowing more political appointments and being run by individuals or business groups allied with the governing coalition. Those media companies with close ties with the ruling party particularly lack ‘investigative journalism’ as many journalists would like to ‘play it safe’. Weiss (2013) argues that ‘the old media’ are advantaged when the government gives them a wider coverage on radio and television station. This results in a monopoly controlled by the government on how news presented by the media.

Secondly, the state has imposed restrictions on the media in the name of national security and to secure public order (Malaysia Kini, 2016; Palatino, 2015). The restrictions have restricted to a degree the exposure and reporting of news by journalists and the media<sup>228</sup> in Malaysia. For instance, the revised Printing Presses and Publications (PPPA) Act 1984 gives absolute power to the internal security Minister to grant, refuse, suspend and revoke the licenses of the news media stations. What is more, the Minister has the power to ban and prohibit publications. In other words, the proliferation of news media is undermined and controlled by the

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facilitates the ruling elites with the surveillance and access of ‘selected’ news and timely information in Malaysia (J. Chin & Welsh, 2013; Weiss, 2013).

<sup>228</sup>Laws that can restrict freedoms of expression are among others the Sedition Act 1948, the Defamation Act 1959, the Official Secrets Acts 1972, the Internal Security Acts 1960, and the Printing Presses and Publications Act 1984.

government (Yeoh, 2013). Continuous controls restrict<sup>229</sup> media openness by creating fear. There are laws, as mentioned by Suaram (2015), which legitimise abuse of power and allow the ruling party to silence those who disagree with the government. For example, one cartoonist was harassed, investigated and detained due to his 'drawings' which in various ways criticised the government. All of his publications were confiscated, his assistants were investigated, the printing plates were seized and the publisher was given a stern warning. The government justified their actions on the grounds that his drawings were 'detrimental to public order' and could 'influence the people to revolt against the leaders and government policies' (see [www.zunar.my](http://www.zunar.my)). Clearly, such laws favour the ruling coalition.

Finally, repression of media freedom<sup>230</sup> is exercised by denying licenses to press, repressing news and restricting access to information (Freedom House, 2014). Other draconian laws<sup>231</sup> also suppress media freedom (Lopez, 2007). The media actors that dare to criticise the Prime Minister and the ruling party are faced with prosecutions, imprisonment, detention and residence orders or the imposition of fines. Any individual (especially one who supports the opposition) who dares to expose government favouritism in contracts and projects, mismanagement and malpractices can be arrested and detained (R.S. Milne & Mauzy, 1999). The ruling party justifies

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<sup>229</sup> Although the Malaysian Constitution provides a room for freedom of speech and of the media, the Constitution also specifies that freedom can be curtailed by legislation for the interests of security and public order.

<sup>230</sup> The World Press Freedom Index shows a historically low ranking of Malaysia's freedom of press, ranking it 147 out of 180 countries (A. Ibrahim, 2014).

<sup>231</sup> Malaysia inherited 'prevention detention' laws from the British to fight conflict, dissent and other alleged offences. There are, among others, the 1948 Emergency Regulations to crush opposition in pre-independence Malaya, detention without trial as Emergency (Public Order and Prevention of Crime) and Ordinance 1969 – used against suspected gangsters and violent criminals and many others (Netto, 2013).

their actions based on national sovereignty; the detention is needed to protect public order, for the suppression of violence or for the protection against crimes involving violence. Consequently, Malaysia's media is not free to disclose fraud, corruption, malpractices and mismanagement, especially cases which involve influential political elites or prominent business leaders (Kaur, 2014; Sani, 2005).

The widely perceived lack of freedom of expression is also experienced by academics in Malaysia who to some extent do not have the freedom to communicate their own unbiased knowledge and expertise. For example, one prominent scholar of Malaysia's constitutional law was detained under Sedition Act 1948 for his remarks on the role of royalty in politics. The academic was suspended, issued a show-cause letter and has been barred from entering the academic institutions (Manimaran, 2011). Restriction laws also apply to other scholars (e.g., in the private sector). Thus, academics cannot 'speak their mind'. In case they do they will "*either be [...] charged with sedition, facing trial or under investigation*" (E. Ng, 2014, p.5).

### **6.1.2 Historical Legacies**

This study shows Malaysia's historical experience has 'sparked' the ideology of capital accumulation and profit maximisation (Tajuddin, 2014; N.J. White, 2004). As discussed in Chapter 4, the imperialist ideology involves substantive exploitation<sup>232</sup> of the lands of a colony for the benefits of the imperialist home country. The ideology has indeed been constructed in such a way that it is acceptable for everybody to achieve their dreams, regardless of the consequences (good or bad) (Milner et al., 2014). Regulators highlighted the existence of the legacies of governance in the

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<sup>232</sup> This refers to the colonial practices of pursuing capital and wealth by exploiting colonial lands. The legacy of the British rule has been the driving force behind implementing colonial administrative policies (Amoroso, 2014).



current public administration originating from the British colonial times (section 5.2.1). It was perceived that the powerful ruling elites in Malaysia are able to use following their colonial master the ‘divide and conquer’ approach so as to maintain the status quo and use their power, to some extent, to suppress, exploit and manage public funds (A. Harding, 2012). In chapters 4 and 5, it was shown that politics and economic forces are able to mobilise the three pillars of institutions (the executive, the legislative and the judiciary) for their vested interests. The ability of the ruling party to divide and conquer paramount governance institutions profoundly contributes to the persistence of public procurement fraud in Malaysia.

### **6.1.3 Formal and Informal Practices**

There are prevailing forces of politics and economics, which have created formal and informal practices and transformed them into the institutional arrangements in the Malaysian public sector and more generally in Malaysian society. The former, i.e., the Malaysian public sector, follows the concept of professional bureaucracy and public officers are ‘obedient’ implementers of the public policy as illustrated by A. S. b. Ahmad et al. (2003) and Siddiquee (2006b). The analysis in this study shows that public officials do their work professionally, they follow the instructions given to them, and they highly respect the hierarchy of authority without asking questions. Adams and Balfour (2008) verify that the root of this unquestioned dominance of the structures of authority is in core values, a living culture, and the ethical behaviour of public administrators. This research adds new insights on how the norms, cultures and practices in the Malaysian public sector to some degree facilitate fraudulent behaviour in public procurement (section 5.4). Mansor and Ariffin (2015) argue for the presence of a highly submissive culture of Malaysian public officials; to respect and not to question their superior. However, perhaps in reality, that submissive

culture is rather an expression of 'fear'. In other words, this 'unwritten rule' of respecting the hierarchy may reflect employees' concern about their job salary, promotions and career advancement (Jamaludin, 2013; John Anthony Xavier, 2013b). The mantra of 'I'm following the orders' in the Malaysian public sector has been embedded in many aspects of public administration and, to some extent, it has helped preserved the existence of fraudulent activities in public procurement (section 5.5).

What is more, it seems that in the Malaysian society, the institutionalisation of fraud and corruption is 'camouflaged' as development and growth of the country. This research argues that the pervasiveness in the society of this idea of economic growth Malaysia which also nurtures the ideology of materialism and wealth is another factor leading to the persistence of fraud (section 5.5.1). The study adds insights on how the ruling party has been able to 'colonise' the mind and sense-making of the society that rent-seeking activities, cronyisms, patronage systems, favouritism, and many immoral practices in public procurement are justified for the growth and development of the nation. After all, the ruling elite believes that the citizens of Malaysia 'owe' them for the economic progress and development of Malaysia (Amoroso, 2014; Shaharuddin Maaruf, 2014). This study also points to the norms and practices of a 'money culture' and wealth creation in Malaysian society for the sake of or under the pretext of achieving development although the society appears at the same time to respect moral values and ethics. It seems that although people in this country respect Islamic values at the same time some individuals engage in fraud and corruption and finds ways to rationalise their actions (section 5.5.2). The presence of systemic corruption is also supported in a study by Stefes (2008) who reveals how formal and informal institutions interact, stabilise and protect each other. The characteristics of the

institutionalisation of corruption in the current study place an emphasis on the cultural aspects of Malaysian society. These include values such as respecting older people, respecting leaders and/or superior persons, especially those with a higher social status, forgiving and forgetting for public peace, gift-giving, helping each other, especially family members, and always returning favours (Daniels, 2005; Tajuddin, 2014). Overall, this study has addressed the systemic nature of fraud in public procurement and how it has been rationalised into imbued norms and cultural values, which seek the attainment of higher social status (section 5.5).

The next section discusses the rational decisions of economic actors to indulge in public procurement fraud.

## **6.2 Economic Actors: Rational Decisions**

In this study, the concept of an invisible hand gives a different dimension to the analysis when the invisible hand comes to intervene in the market rather than depending on free market forces. G. Brennan and Pettit (1993) describe the interplay of the actions of various economic actors that aim to maximize profits for the benefits of society. Hence, the current study shows how the economic man is able to influence the rational decisions in distribution of wealth: (1) in the pursuit of self-interest, (2) the attribution of social class domination and (3) the pervasive elements of a free market in public procurement.

### **6.2.1 Rational for Self-Interests**

Political economy approach places an emphasis on the rational for self-interests of political and economic actors by the pursuit of wealth (Acosta & Pettit, 2013). In

other words, the political and economic actors may have visible and invisible interests in certain government purchasing practices. The former i.e., visible interests, involve the interests of economic actors to make commitments and influence the delivery of good public policy to promote economic growth (Ramli, Kamarunzaman, & Ramli, 2013, section 4.3.1 and section 5.1.3). The latter i.e., invisible interests of the Malaysian state, takes the form of deliberately intervening in the market. Such intervention has its consequences. It may cause the misallocation of resources through government contracts, permits, licenses, and privatization projects as the outcome of implementing public policy (e.g., New Economic Policy) (Gomez et al., 2013; Yean, 2014). The findings suggest that although public policy may result in inefficiency in resource allocation by giving projects and government contracts to cronies and by being favorable to *Bumiputera* companies (especially those who have close connections to a powerful group), most regulators believe that it is the obligation of the Malaysian state to assist those companies (section 5.1.1). Regulators strongly believe that favourable treatments in government purchasing are perceived as assistance by the state in order for the domestic companies to compete in the market. As suggested by Kui (2001), the public sector is obliged to help the private sector and play a role as the 'protector and trustee' on behalf for the *Bumiputera* community, which is the main indigenous group in Malaysia.

As discussed in section 3.2.2, political economy theory assumes that profits gained by capitalists are then returned to the society (Thornton, 2009). In regard to this, there is, however, little understanding of what benefits or profits are actually returned to the society. This study suggests addressing the rational decisions made by economic actors in government purchasing which they are in conflict with and constrain

transparent and accountable procurement practices. The works of K. S. Jomo (1990) and R Rasiah and Shari (2001) are particularly useful to show how the economic actor is able to enunciate the implementation of an affirmative policy for poverty eradication and distribution of income and wealth. Yet, this current study also argues that the rational decisions of economic actors can also be used as an attempt to indulge in fraudulent and corrupt acts of behaviour in public procurement through power relations, as discussed in section 6.1. In this case, it appears that the capabilities of economic actors for employing their 'rational decisions' are legitimated by using the state's apparatus (section 4.3.1 and section 5.1.3).

Following the decision to implement a procurement policy, public officials continue to act professionally in order to implement the public policy (section 4.4 and section 5.4). The interpretation of the rational decision of the economic man by the interviewees provides a further potential explanation of the alliance of political power with economic interests (section 5.1.2). In that sense, political economy sheds light on the preferences of the capitalist group for wealth creation which has been realized by using the state's machinery (Beeson, 2001). Hence, it appears that the interest of the ruling elites in embarking on government purchasing is something that becomes acceptable especially by procurement officers as a means for their political survival.<sup>233</sup> Although some interviewees did, to a certain degree, question the decision to reward government contracts to unviable companies closely connected with the ruling party, most public officials normally follow the decisions made from those at

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<sup>233</sup> Acknowledging the importance of survival, further evidence suggests that public procurement fraud in Malaysia is facilitated by enduring power relations for collusive procurement decisions (K.S Jomo, 2001; Khair et al., 2015). Crouch (1996), Teh (2002) and Gomez and Sundaram (1999) affirm that many Malaysian politicians have businesses on behalf of themselves or the political party as a form of political survival.

the top of the hierarchy (section 5.4.3). The findings in this study confirm those of Nathan (2002), K. S. Jomo (2003) and Nicholas J. White (2004) about the influence and power exercised by both businesses and politicians in rewarding government contracts. At the same time, the empirical evidence shows that political survival and maintaining the power base is also consistent with the ideology of improving the well-being of the *Bumiputera* community and of reducing the gap between ethnic groups. Using the supposedly reason of the need of survival as an explanation, this study sheds light on the attempt to preserve the position and power even though they engage in fraudulent practices in public procurement (section 5.1, 5.3 and 5.4). Thus, it also appears to be consistent with how the preference in individual's narrow interests in government purchasing affects the behaviour of the economic actors who wish to maintain their political and economic status quo (Johansson, 2014; Lovrenciar, 2013).

### 6.2.2 Social Class Domination

The institutional legal arrangements most likely influence or maneuver public procurement policy towards practices of inequality, exploitation and economic discrimination (R. S. Milne, 1986, section 4.3; Roslan, 2001). In that sense, the political economy articulates the oppression, tension and social class struggle in a society where some private benefits may result to social disruption (Kehl, 2009). It was asserted, in the current study, that the promotion of the *Malay* capitalist class has eroded the true spirit of entrepreneurship and it has facilitated *ersatz capitalism*<sup>234</sup> through the dispensation of political patronage and assistance from the Malaysian state (Searle, 1999, section 4.3.1 and section 5.1). To some extent, ersatz capitalism

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<sup>234</sup> *Ersatz capitalism* is adopted when the state aims to generate a class of domestic industrial entrepreneurs, but it has been retarded by the inefficiency of public funds of crony capitalism and ethnic affirmative action policies (see K. S. Jomo, 2005; Yoshihara, 1988).

results in unequal allocations of public funds in the form of rent-seeking activities, state patronage and cronyism which are supposedly promoting economic development and embracing developmental strategies (E.T. Gomez, 2002). It seems that the institutional set up which generates the domestic industrial capitalist can also facilitate fraud and corruption activities in Malaysian public procurement (Tan, 2015).

### **6.2.3 Free Market Economy System**

In the challenging environment of a free market economy system, there are groups and individuals with vested interests that possess wealth and capital that can result in conducting actions and implementing or adopting policies that sometimes do not promote a productive allocation of investment (see Bakan, 2005; Chomsky, 1999). Although political economy theory believes that profits gained by private capitalists are then returned to society, it can be argued that the drive of self-interest for wealth and capital in a free market may contribute to the emergence of unintended social orders (Otusanya, 2011; Petras, 2013).

The findings from the current study broadly suggest that the industrial capitalist entrepreneur has a higher chance for further growth and profit because the economic framework created in Malaysia favours economic liberalization, privatization and deregulation (Nambiar, 2009; Shukry, 2013b). In that sense, it is perceived that the promotion of rational self-interests for wealth creation and profit maximization impose the neoliberal ideology in many aspects of life. It was viewed that in some way the neoliberal ideology of wealth creation for self-interest perhaps has influenced the industrial entrepreneur to do whatever it takes to seize the opportunity offered in a free market economy, even if that means committing fraudulent and corrupt activities

in public procurement (section 5.1). Moreover, it is perceived that the economic system of the free market helps the ruling party to implement mega projects for the sake of development (Welsh & Chin, 2013, section 5.5.1). The evidence points to the intimate and integrative relationships of the state and the economic business elites who welcome government initiatives<sup>235</sup> which are supportive of a neoliberal ideology (Salazar, 2004; Shukry, 2013b).

Under the influence of the free market economy system, there is a transformation of norms and values in Malaysian society. In the economic system, being successful in life is exemplary of having more money and material wealth, therefore, Islamic values (most Malaysians are Muslims) are clearly compromised (section 5.5.2). Many Muslim entrepreneurs act in a way that contradicts Islamic religion since they are influenced by the ideology of being successful with money and modernity, rather than obeying their moral responsibilities as a good Muslim<sup>236</sup> (Sloane, 1999). Altogether, the findings show that Malaysian society has moved towards striving for money and material wealth for a success story and higher social status. This is regardless of the fact that supporting the ideology of money and wealth might undermine the Islamic ethics and values, and the widening wealth gap among social groups (William Case, 1994; Waythamoorthy, 2013).

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<sup>235</sup> State intervention in Malaysia takes various forms: preferential treatment for government contracts (Adham & Siwar, 2012), favourable regulatory mechanisms and protection (Athukorala, 2005; Teik, 2012), import-export licences (Krueger, 2002; Diane K. Mauzy, 1988), capital controls (Bhattacharya, 2001; Johnson & Mitton, 2003; Ventura, 2013), preferences to debt financing (K. S. Jomo, 2003), subsidies preferential sectors (Hart Energy Publishing, 2008; Yean, 2014) and bailouts of companies (Asian Business, 1998; William Case, 2005).

<sup>236</sup> As in many other religions, Muslims also advocate the idea of a good Muslim and a bad Muslim. The former represents a Muslim with good behaviour, who strives for rewards only from God, who is fair and just, and aims to command good and forbid evil. The latter shows Muslims who are willing to justify the wrongdoings and immoral behaviour that they have committed. To some extent they can rationalise such behaviour by justifying their actions rather than pursuing the true Islamic role.



In the next section, the landscape of policymaking processes of the Malaysian public sector is discussed as one of the driving forces behind fraudulent activities in the procurement system.

## 6.3 The Policymaking Environment: The Practice

The political economy approach advocates the process of both policy formulation and implementation (Howlett, Mukherjee, & Koppenjan, 2015). The policymaking environment shows collaboration<sup>237</sup> and links between actors and advocacy coalitions within policy networks (Howlett et al., 2015; Jung, 2010). The current study provide insights into Malaysia's policymaking framework on wealth restructuring by identifying the objectives, the blurring of the distinction between corporate and political power and in what way political and economic actors interact and the implications their interaction has on public policy. The outcomes from those interactions are examined by reconsidering the policymaking processes as an element that contributes to the possible reasons for the persistence of public procurement fraud in Malaysia: (1) distribution of public funds and (2) the conflicting role of the state.

### 6.3.1 Distribution of Income and Wealth

Malaysia's public policy mechanisms seems to demonstrate the ideal framework of distribution of income and wealth (Sundaram & Hui, 2014). However, the empirical evidence suggests that there is lack of transparency and accountability in the public sector when political and economic elites seek to manipulate the rules, budgets and

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<sup>237</sup> It is argued that the interrelationships and interactions existing between the main stakeholders elucidate and influence policymaking processes for pursuing and achieving their strategic objectives.

public officers of governmental institutions to achieve their goals. The prevailing views expressed by interviewees suggest Malaysia's public policy is directed by the power relations of politics and economics (section 4.3 and section 5.1). The interviewees voiced their concern on the continued potency of authoritarian rule (Balasubramaniam, 2012, section 4.2.2 and section 5.2.5). It seems that an authoritarian regime affects and becomes part of many decisions for government procurement by exercising public policy on affirmative programs and by protecting politically influential Malaysian business interests (William Case, 2010b). This current study is of the view that the same platform<sup>238</sup> (public policy environment) may bolster the government purchasing power, especially for the majority *Bumiputera* companies in the award of government projects as examined by Cross and Stuart (2006). These findings are in line with the study by Guccio, Pignataro, and Rizzo (2014) who believe that preferences should be given to private military and security companies (PMSC) and that there should be restrictions on the bidding process by having a small number of contractors participating. Such preferential treatments have, to some extent, created opportunities for fraud and corruption in the Malaysian procurement practices through rent-seeking activities, nepotism, the patronage system, cronyism, state-capture, money politics and many other questionable practices (O. K. Beng, 2013; Gomez & Sundaram, 1999; Vithiatharan & Gomez, 2014).

There appears to be a general concern about public accountability and good governance within the policy networks of the state and businesses in the allocation of

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<sup>238</sup> Sundaram and Hui (2010), Rajah Rasiah (2010) and Sundaram (1993) argue that the New Economic Policy (NEP) has legitimated the growing state intervention in the market and public sector expansion for inter-ethnic redistribution and poverty eradication.

public funds (section 4.3). It was viewed that the primary concerns associated with these interrelated elements are returning favour to supporters, lobbying practices and politically captured people, political donations, financing and funding the political party (section 4.3.1). First, most of the interviewees acknowledged the requirement of politicians to have big money<sup>239</sup> in order to be elected (section 5.1.2). It is perceived that there is an engrained practice of money politics<sup>240</sup> as a way to return favours to political supporters through public procurement policies by private negotiations (e.g., privatisation of state assets), increasing government intervention in the economy and lucrative state rents (Gomez, 2012a; J. Tan, 2008; Teh, 2002). Chapters 4 and 5 show the rampant money politics involved when politicians are allowed to hold businesses and posts for themselves or on behalf of the political party. As a return of favours and in order to maintain the loyalty of their supporters it was shown that politicians secured business opportunities from the public offices' contracts and policies. Yet, the reaction from most regulators regards the secured opportunities for supporters by most politicians as a contribution of gaining the support and loyalty of their voters (section 4.2.2).

Second, it is argued that political capture and lobbying practices are to the result of the intimate relationship between politicians and business people in the Malaysian

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<sup>239</sup> In that sense, there is a situation of giving money (by politicians as wealth-dispensers) and pushing demands (by voters/supporters as wealth-seekers) (R. A. Smith, 2006). The former represents the initiatives taken by most politicians to stay in power and be elected in their political posts (Nathan, 2002). The latter describes the 'bribe-taking' and the giving of money, special treatments, and the providing of accommodation to delegates and voters during general elections so that they elect those politicians (William Case, 1994).

<sup>240</sup> Money politics are predominantly a means to receive illicit funds for political campaigns and elections. Yet, in Malaysia, money politics also involve using money, gifts and contracts to 'bribe' and 'buy' supporters for politicians to be elected. For example, during a political general election, supporters are given gifts and money to attend elections and vote for their chosen politicians so that they are re-elected (Johns, 2010; Tarrant & Hamid, 2008; Teh, 2002).

policymaking environment (Vithiatharan & Gomez, 2014). Within policymaking mechanisms, both political capture and lobbying practices represent structural weaknesses in the regulatory system (Gomez & Jomo, 1997; Nicholas J. White, 2004). While most interviewees did not *directly* talk about political capture and lobbying practices in the policy networks for public funds, they always viewed and emphasised the common network of politicians and political parties, business elites and business groups and the outcome of this in relation to public policies. Most importantly, this study addresses the political influence of the invisible hand (see section 6.1) in preferential policies towards politically favoured companies as a means to give favours in the interactions between business and political players (M. A. Bliss & Gul, 2012; Gul, 2006). Within this context, it seems that the abuse of power in the public office serves vested interests by having decisive influence over government institutions and procurement policies. The views and the findings in chapters 4 and 5 show that the whole system of patronage (especially from the practice of a political business) and money politics have been nurtured for quite some time in Malaysia. As can be seen from the discussion above, it seems that due to the nature of political capture, lobbying practices, state patronage and money politics, the appropriation of public funds has become part of the system; they are entrenched and accepted in many aspects of governance in the Malaysian public sector.

Third, there is the questionable practice of political funding and donation, financing political parties and sponsoring by businesses (Global Integrity, 2014; J. Ng, 2015). There was a mixed response regarding these practices on the part of the interviewees.

Some view the lack of transparency<sup>241</sup> of political donations as an opportunity for fraud and corruption in many government transactions. R. A. Smith (2006) argues that the abuse of entrusted power by political leaders so as to enrich themselves and their families constitutes institutional inefficacy; it has become a structured political tradition and results in the erosion of moral values and ethics. Another point of view advanced by some interviewees was that there is nothing wrong with receiving sponsorships because it is legal and legitimate. The legitimacy of political donations seems to be accepted when the funding transfer is done through a legal framework (Swiss Info, 2012; The Star, 2012b, section 6.2). The overall perception on the widespread phenomena of money in politics due to the activities of political funding, donation, financing and sponsoring of businesses for a political party appears to be acceptable and allowable within the political structure in Malaysia (Jong, 2014; Tan, 2015). Since any political donation or financing for general elections in Malaysia is legal and does not violate any laws, the Malaysian political system is prone to violations or abuse of the existing regulatory frameworks. However, those who abuse the system do not easily get caught and they often do not face punishment for doing so (this is because of the existence of the power relations of both political and economic institutions as explained in section 6.1). Therefore, the raising of money for a special interest group as part of policy networks and the institutional power structure likely contributes to the persistence of public procurement fraud in Malaysia.

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<sup>241</sup> Lack of transparency in political donation represents the institutional designs that can hinder effective enforcement and become coordination system failures and there are opportunities that are created and weaknesses to be manipulated by most politicians (Global Integrity, 2014).

### 6.3.2 The Conflicting Role of the State

The conflicting role of the state in policy mechanisms may result in the lack of accountability and transparency that might also preserve fraudulent practices in the public procurement process. First, the hegemonic role of the Ministry of Finance (MOF) is seen as the ‘unchallenged’ government institution that plays a part in forming many decisive procurement policies (section 4.3.2). Most interviewees argue that any special approval, especially for direct negotiation procurement processes, requires all respective government departments to gain the ‘permission’ of the MOF (Khan, 2014). Despite a ‘long’ decisional process by the MOF, it was argued that there has been no dispute from other government agencies on the decisions made by the MOF. That is to say, the stakeholders argued that the fact that the implementation of procurement policy faces no confrontation from the public officials is normal because they believe they are merely the implementers of the public policy (section 4.4 and section 5.4). The findings provide evidence that in general the Malaysian public officials remain obedient and try to avoid any confrontational circumstances with their superior. This is closely connected with the role of Malaysian bureaucracy (as explained in section 4.4) and the constraints of Malaysian public officials (explained in section 5.4).

Nonetheless, some frustration was expressed by procurement officers when referring to the MOF’s decisions to reward government contracts to politically-connected companies rather than considering first their viability to complete government projects (section 5.3.3). To some extent, regulators admitted the existence of

questionable decisions ‘behind closed doors’<sup>242</sup> on the part of the MOF, but they attributed the rationalisation of the decision to reward the contract by the MOF mostly to diplomatic reasons and for the good of the country.

Second, public officials have a conflicting role to play because they face governance constraints for accountable and transparent actions within public administration of the country. Although the administration system in Malaysia has undergone many changes after independence, there are some indications for the continuation of the public bureaucracy system to maintain the colonial legacies which followed a top-down approach on decision-making. Hence, there are highly centralised administrations of federal ministries and agencies and secretive government operations and processes (A. S. b. Ahmad et al., 2003; Siddiquee, 2006b). Siddiquee (2013) also affirms that Malaysia’s administrative system was shaped by its colonial history and merged in a unique socio-cultural and institutional setting by maintaining its traditional institutions and local customs. Although public administration in Malaysia may uphold the neutrality principle of being ‘politically neutral’ in many aspects of government operations, the empirical evidence points at the difficulty of separating politics from public administration (section 5.4.3). This begs the question of whether the Malaysian public bureaucracy is an apolitical institution which is powerless to reject any instructions given by the political master for fulfilling political interest.

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<sup>242</sup> The meetings between contractors and officers from the Ministry of Finance (MOF) and the negotiation process are private and secret. The discussion resulting in the award of government contracts is never open to the public or to the public officials who need to implement the projects at various ministries.

Third, the politicisation of bureaucracy affects the policymaking environment (see Christensen, 2010; Rouban, 2012). The interviewees seem to argue that there is tainted professionalism among public officials when a political master is able to influence, coerce and interfere with the decision of the administration (section 5.4.2). The instructions given to public officials are sometimes hidden and concealed so as to 'protect' the higher authority of the administration system. For example, the government requires every public servant to sign a Letter of Undertaking when commencing their appointment to the public service (Malaysian Anti-Corruption Commission, 2012). The letter is the so-called 'the oath' for public officers and emphasizes the importance of loyalty, honesty, responsibility, dedication and professionalism. Yet, the same medium can be used by the powerful group to demand, pressurise and take advantage of the commitment of most public officials when exercising their public duties (section 5.4).

Finally, the most compelling evidence in this study points to the all-encompassing degree of indoctrinated subservience of Malaysian public officials that ensures the policymaking institutional setting to some extent facilitates the preservation of fraudulent practices in public procurement. Chapters 4 and 5 fully discussed the concept of obedience which characterises Malaysian public officials who see themselves as the 'implementers' of what it is asked of them to do when acting as a professional public servant. In relation to this, there was the view that emphasised the 'restricted' power of most procurement officers in rewarding government projects as they always need to obey and follow the decision made by the higher authority who has the power (section 4.4 and section 5.4). It seems that the hierarchical power structure plays a prominent role in the public office where public officials feel they



will face repercussions for not following the orders and not respecting those in power (section 4.4.2). The overall views of the stakeholders direct to formal and informal customs and practices which result in the public officials being at the end of the spectrum as victims and the ‘scapegoat’ when government projects fail or opportunities exist to indulge in fraud and corruption activities (David S. Jones, 2007a; Soong, 2010).

The next section looks into the concept of the powerful crony network as well as its process and interfaces with other constructs.

## **6.4 Crony Network: Business-Government Relations**

There is empirical evidence that demonstrates the influence of business and government arrangements for legitimate public procurement activities (Andrews et al., 2015; Singaravelloo, 2013). This supports Farnell and Booth (2014) who talk about the massive spending of the UK’s public funds on procurement of goods and services, in particular engaging with small and medium-sized enterprises (SMEs). In relation to engaging with SMEs, Tátrai (2015) suggests that the decision to cut back legislation on public procurement can become a threat to the small industries as the SMEs are considered to be a fundamental support for economic and growth. A similar view is given in the current study where relations between government and business are intimate and in the form of bedfellows and this is the result of continuously close ties and shared interests (Johnson & Mitton, 2003). Within that context, this study then shows a crony network which depends on the close relationship of business elites, political party, politicians and top bureaucrats. Therefore, this research closely

examines and provides a deep understanding of the institutional context of crony network functioning in respect of: (1) legitimate relations and (2) the blurred relationships that seems to contribute to public procurement fraud in Malaysia.

#### **6.4.1 Legitimate Activities**

It seems to be believed by most interviewees that there is a close relationship between government agencies and businesses. Chapter 4 has identified some elements of the Malaysian social history and distinctive socio-political conditions and ethos on the close relationship between the government and merchants/traders of that time. First, there was a prevailing feudal system in Malaya sometime between 15<sup>th</sup> and 16<sup>th</sup> centuries which was characterised by the acquirement and obtainment of materials and supplies on part of the merchants and the Malay rulers (M. Abdullah, 1965; Noor, 2002, section 4.1.1). Second, there was exploitation of raw materials, new places for investment and free trade for the colonial capitalists (Harper, 2001, section 4.1.2). Third, the ideology for the Malay survival was associated with capitalistic nationalism of wealth creation and capital accumulation (William Case, 1996, section 4.1.3; Mahathir Mohamad, 2011). The evidence of the historical analysis from pre-colonial to the modern post-independent state highlights the extortion, exploitation, opportunism, bribery, and inequality in allocating and distributing the funds and resources of the country (Amoroso, 2014; Hirschman, 1986; Milner, 2002). It is argued that the concepts of patronage, nepotism, and favouritism in protecting the interests of the Malay Sultanate, British imperialist colonial power and the Malay ruling elites have become engrained in many aspects of Malaysian society (Noor, 2002). Although many changes have affected the Malay society and Malaysia in general, the empirical evidence shows that the close ties between Malaysian businesses and politics, in particular in relation to government purchasing, license,

contracts and projects, serve as a persistent framework for accumulation and creation of wealth (section 5.1).

Following the partaking of the historical institutionalism in Malay society, there seems to be a continuity of political influence in rewarding government contracts and projects (Abdul Aziz et al., 2007; Gomez & Jomo, 1997; Edmund Terence Gomez, 2002). It was viewed that public procurement policy in Malaysia in general has nurtured the practice of political business (section 5.1.1). The perception was that the networks<sup>243</sup> of state officials and business leaders are legitimate and regulate as an incentive to assist the domestic industrialist. The findings illustrate the link of policymaking framework in Malaysia by showing how the economic policy has been able to legitimize state intervention in the market for poverty eradication and restructuring society (Aeria, 2013, section 4.3.1; Ariff, 2008).

The perspectives from empirical data also indicate that the political business alliances have created politically ‘new rich’ companies designed to promote a variant of capitalism, aimed at economic extension by strategically channeling available funds between leading politicians and big businesses using a vast array of institutional power structures within the state (Schmidt, 2002). Yet, the ideology of race-based policy,<sup>244</sup> as described by Gomez and Jomo (1997), has also fostered the activity of rents, rent-seeking and rent distribution which ‘camouflage’ the assistance given by

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<sup>243</sup> The network in the practice of political business has been embedded in many aspects of government procurement by allowing politicians and political parties to venture into businesses and/or take part in the gaining of government contracts, projects, licenses, and shares through state funds. It encourages conflict of interest cases and money politics between politicians that hold power in the public office and their supporters (Tan, 2015; Teh, 2002).

<sup>244</sup> The policy is part of the affirmative action program for poverty reduction and wealth distribution (Sundaram & Hui, 2014).

the state to promote the ‘new-rich’ capitalist entrepreneurs. By playing around the system, the riddle of Malaysian capitalism, as argued by Searle (1999) and Jeff Tan (2008), poses the question of whether the creation of domestic entrepreneurs in Malaysia has promoted rent-seekers or true capitalists. It was suggested that the social structures associated with the development of the new-rich business actors are concerned with the manipulation of rent activities, crony capitalism, entrenched patronage and money politics (section 4.3.1 and section 5.1). The study addresses these aspects of manipulation of the legitimate relations that are likely to encourage fraud and corruption practices, which function based on collaborations within networks and on the influence of politics, political power, bureaucrats and business actors.

It is important to note about fraud in public procurement, which entails a multi-complex range of schemes within the collaboration and close relationship between a strong network of politicians, bureaucrats and business elites. For example, when the bidding for government purchasing is only mobilised among cronies and business networks, there is no competition for the contract as per its value for money, hence there is lack of transparency. When a bribe amount is exchanged, there is up-front cost pricing for goods and services. To some extent, there are many low quality materials provided for the contract or government projects, thus affecting the usage or efficiency of public service delivery. If a government project cannot be delivered accordingly, there are structural flaws which prohibit the punishment and penalisation of the culprits (see ADB, 2014; Hessami, 2014; McCarthy, 2013; Sargiacomo et al., 2015). Thus, legitimate activities in procurement process to some extent may contribute to the persistent of public procurement fraud practices.

### 6.4.2 Blurred Relationships

While the evidence points to a legitimate core activity and determinant of network behaviour, there are blurred relationships at the nexus between the state and business in Malaysia (Gomez, 2007). Various views have been expressed that indicate crony networks thrive when there is lack of evidence in proving abuse of power in the public offices (section 5.3.1). First, the data from procurement officers and professionals confirms the difficulty of acquiring evidence from procurement documentation on any abuse of power and malfeasance in government purchasing. Many public officials agreed that procurement documentation is genuine as it has been prepared according to rules and regulations (Adham & Siwar, 2012). Because of the difficulty of getting the relevant evidence, concerns over the inability to expose fraud, corruption and malfeasance transactions in the public office, especially fraud conducted by those with close networks with the higher authority and by the powerful groups, were raised by the interviewees (R. J. Berger, 2011, section 5.3.1; Walklate, 2011).

Second, in relation to crony networks, Haber (2002) describes the abuse of power in the form of returning favours and rewarding politically connected economic agents. Pua (2011), in particular, shows abuse conducted in the public office in decision-making processes, which is generally veiled, and this makes detection and prosecution processes mostly unsuccessful as the culprits play around the system and do not violate any laws. For instance, most public information on financial scandals<sup>245</sup> in Malaysia was deliberately incomplete for public scrutiny or lacked

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<sup>245</sup> Other financial scandals in Malaysia (with losses) are as follows: (1) Perwaja Steel with RM15 billion losses, (2) Bank *Bumiputera* losses of at least RM10 billion, (3) Bank Negara foreign exchange losses of RM23 billion, (4) Tin industry savings was injected by RM1 billion, (5) alleged illegal

evidence for prosecution (R.S. Milne & Mauzy, 1999; Wain, 2009). While those scandals mostly incurred enormous losses of public funds with blatant embezzlement, write-offs on the losses, bailout of cronies<sup>246</sup> and opportunity costs in the name of ventures, the ruling leadership was able to justify the failure of public policy as the result of financial crises or for the national interest (Edmund Terence Gomez, 2002; Khair et al., 2015). The findings are broadly similar to the collusive and collaborative endeavours of industrial networks from both the state and business leaders as studied by Nicholas J. White (2004), Gul (2006) and Gomez (2009). There is lack of evidence on collusive crony networks in appropriation of public funds earned privately by political and economic elites through abuse of power (section 5.3.2). It seems then that politically-related companies and their family members are able to enrich themselves with allocations of public funds and privatised projects (Jeff Tan, 2008). Subsequently, the blurred state-business linkages, in particular of those companies that are owned or controlled by the ruling coalition, although incurring huge public losses, are protected and ‘*swept under the carpet*’ (Haggard & Low, 2000; Wain, 2009).

Finally, the secrecy and confidentiality imposed on most Malaysia government procurement documentation is protected under the Official Secrecy Act 1972, and other applicable acts that protect government documentation from public scrutiny

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political donation of RM 2.6 billion, (6) commission for timber licenses of RM40 million, and many others (see A. Harding, 2012; Khalid, 2014; Norwani et al., 2011; M. Parker, 2005; Sivalingam, 2014; Wain, 2009).

<sup>246</sup> The Malaysian government was able to justify its actions to save and bail out many conglomerates and domestic companies by arguing that the aim was to protect the industry and the economy from deteriorating, especially during periods of financial crisis. The government actions deliberately used the state’s machinery and budget by injecting capital, capital control, offer loans and borrowing through government-controlled banks, by deregulating the financial sector and privatising projects by increasing state intervention in the economic sector (see Asian Business, 1998; Johnson et al., 2006; Millman, 1995; Woon, 2013).

(Law of Malaysia, 1972). Some interviewees<sup>247</sup> see the secrecy in government activities, which can breed fraud and corruption, as a result of the document confidentiality and classification policies (section 4.2.1 and section 5.4). It was also argued that the various applicable acts<sup>248</sup> for the Malaysian public officials are supposedly enforced to improve their accountability and integrity to exercise their duties. Failure to adhere to the Public Officers (Code and Disciplines) Regulations 1993 seems to result in disciplinary actions, transfers or dismissals from the public service. It can be argued that the same institutional framework can also stop the public servant from reporting the wrongdoing and corrupt practices in the office (section 4.4.2 and section 5.3.2). Moreover, the findings of this thesis seem to suggest that the enactment of the Whistle-blower Protection Act 2010<sup>249</sup> is not able to convince the public servants to report the wrongdoings of corrupt actors, especially those with authority (Rachagan & Kuppusamy, 2013). This is also true when the details described by the whistle-blower is not only not secured by the authority but they may instead be charged with both civil or criminal actions as they disclosed secretive and confidential information (Izwan, 2012b; The Malaysian Insider, 2015d, section 5.4). Based on the above discussion, one has to ask whether lack of available evidence further ingrains the crime of fraud and ‘safeguards’ the *corrupt* crony network in Malaysia.

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<sup>247</sup> However, professionals prefer the procurement documentation being kept secret and confidential as otherwise this may tarnish Malaysia’s reputation.

<sup>248</sup> There are various multiple acts and applicable laws that need be obeyed by all Malaysian public officers. Among others there are the Official Secrets Act 1972, Financial Procedures Act, Public Officers (Code and Disciplines) Regulations 1993, and all sets of guidelines on exercising their duties as a civil servant.

<sup>249</sup> The Malaysia Whistleblower Protection Act 2010 came into force to provide protection and encourage inside informants to give confidential information over malpractices, fraud, bribery, or corruption without fear.

The blurred relationships characterising crony networks may support the persistence of fraudulent practices in the public offices when fraudulent acts of behaviour are committed within legal boundaries. First, the empirical data suggests the existence of astute individuals who know the procurement system well. Procurement officers and professionals believe that these individuals<sup>250</sup> know the loopholes in the procurement system and are able to take opportunity to exploits the weaknesses of the system (section 5.3.1). For instance, the contractor knows there is lack of internal control system when most procurement officers do not make a market study for price comparison of goods/products/services whenever they want to make government purchasing. Because of these weaknesses, the contractor uses the opportunity to increase the price, and the government needs to pay more than the market values (Banoo, 2015; National Audit Department, 2011).

Second, because of the shortcomings in law and blurred relationship in most crony networks, the corrupt actors use their knowledge to manipulate those shortcomings to avoid being charged (section 5.3.2). The example given by interviewees was a situation when there was conflict of interest in rewarding government contracts. Professionals involving public auditors and enforcement officers admitted that in certain cases the culprit was able to escape prosecution because they know where the line for not violating any laws is and they do not cross this line; in other words, they do not break the rules and regulations (Joe Fernandez, 2013). If a state officer's

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<sup>250</sup> As mentioned in chapter 5, astute individuals are those with the knowledge and the powerful position to manipulate the weaknesses in the procurement system. They are sometimes those who have been working in the public offices and who have high social status, i.e., people who were once part of the system and were respectable by the society.



family members bids for contract, the state officer needs to declare their interest<sup>251</sup> and walk away from the procurement committee meeting. To what extent the declaration is made and the non-participation in the decision-making process for that procurement project is true, however, is open to dispute. For example, Tan (2012) and Wain (2009) argue that the rewarding of many privatisation projects are given to closed-political companies although they are sometimes not based on merit or conflict of interest. Therefore, it seems that as long the rewarding of government contracts does not violate any laws, and interest has been disclosed accordingly, there is no law enacted in Malaysia that can be used to prosecute the alleged corrupt actors.

Finally, it seems that there are flaws in the technicality of laws in Malaysia (Palansamy, 2015, section 4.2.3). It was argued that the intention to commit fraud, which is not easy to prove, has to some extent ‘protected’ and let the culprit get off ‘scot-free’ (section 4.2.3 and section 5.3.2). Since there is a thin line separating what government and businesses can do and there are blurred relations between them, some public officials seem to believe that their choices to preserve (or not) fraudulent or wrongdoing behaviour are legitimated because they are able to rationalise and justify the actions. Therefore, a crony network of business-government relations is socially constructed for both legitimate and illegitimate forms of co-operation that likely contribute to malpractices of human actions (see Ashforth & Anand, 2003; Linstead, Maréchal, & Griffin, 2010). This study addresses the lack of evidence and the playing around the system as well as the blurred crony networks in Malaysia as likely reasons for the persistence of public procurement fraud.

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<sup>251</sup> By disclosing the interest and not being involved with any decision-making, that public officer did not violate any law if his/her family member gets the contract (The Edge Malaysia, 2014).

As discussed in this chapter, sections 6.1 to 6.4 provide the possible reasons for the persistence of public procurement fraud in Malaysia based on the theoretical underpinnings of the study and as such it has addressed the main research question of this thesis. The possible reasons are: (1) the power of politics and economic institutions, (2) rational decisions of economic actors, (3) the policymaking environment, and (4) crony networks. These conclusions are the result of the discussion of the five sub-research questions as explained in chapter 5: the political and economic forces, the institutional outcome, deficiencies of procurement practices, governance constraints, and the paradox of Malaysian society.

The following section concludes the chapter.

## **6.5 Summary**

This chapter provided a discussion of the findings pertaining to the main research question; i.e., why procurement fraud continues to persist in the Malaysian public sector. The discussion was conducted with reference to the theoretical framework as described in Chapter 3, i.e., in the context of political economy approach. The discussions consider the findings derived from other sub-research questions as described in chapters 4 and 5 using documentary and interview-data analysis. As described earlier in section 6.0, the findings do not aim to make generalizations about the persistence of public procurement fraud in Malaysia, in fact the fundamental aim is to gain insights into the constructive meanings of social phenomenon from the perspectives and views of the main stakeholders.

The study considers the possible reasons for the persistence of public procurement fraud in Malaysia as follows: (1) the prevailing power of politics and economic institutions provides a mixed range of collective actions conducted by the powerful group to indulge in fraudulent practices in public procurement. While the institutional power structure is devoted to maintaining the status quo and protecting the power base, the powerful actors remain *untouchable*. In addition, with the social processes of historical institutionalism, formal and informal practices equally place an emphasis on the exercise of power and the practice of domination. (2) The rational choice of economic actors in the current study has been rationalised for fulfilling vested interests, social class domination and the prevalence of a free market. Economic actors concentrate on bringing modernity, larger capital and wealth via *ersatz capitalism*, by eroding, at the same time, Islamic ethics and values. (3) In the event of a policymaking environment, the ruling elites seem to direct public policy and, at the same time, they may have created opportunities for fraud and corruption activities via rent-seeking activities, nepotism, patronage system, cronyism, state-capture, and money politics. In that sense, public administrators are in this way conflicted and compromised: subservient and protecting their political master or being a good civil servant. (4) The returning of favours in the context of crony networks between business and government often results in fraud and corruption practices in public procurement. Yet, blurred relationships between the two parties mean a hard time for the prosecution process whether it is because of lack of evidence and/or that the corrupt actors have committed malfeasance within legal boundaries.

The following chapter (Chapter 7) concludes the thesis with the reflections of the findings, describes its contribution, discusses its limitations and gives recommendations for future research.

## Chapter 7 Conclusion

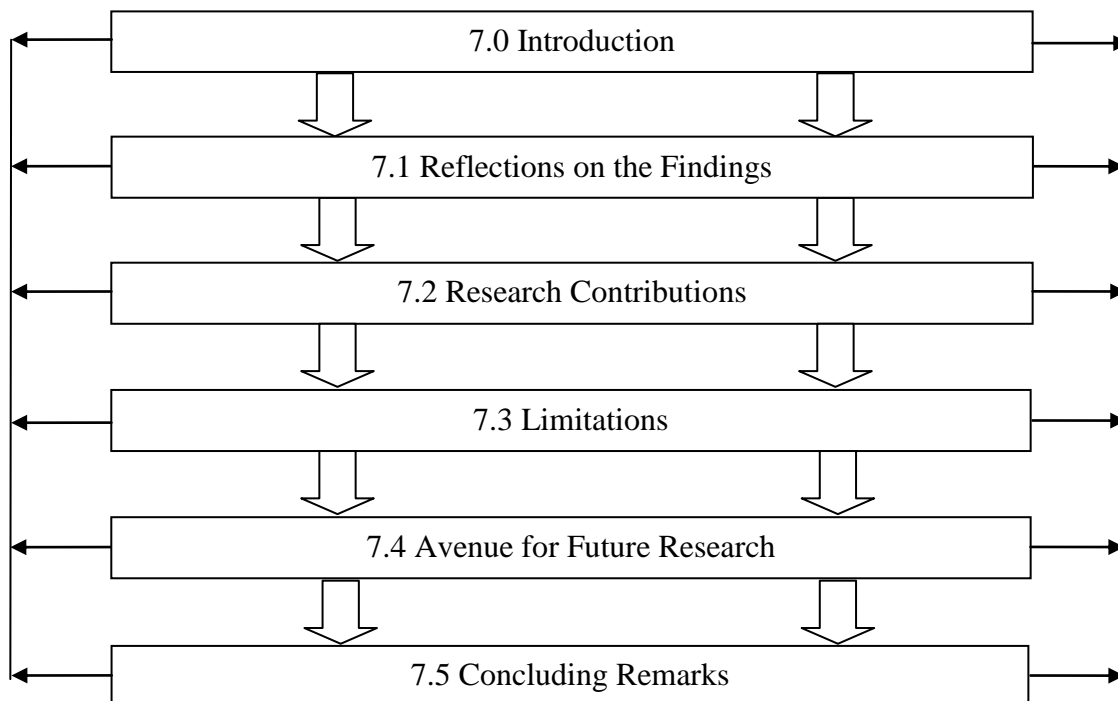
### 7.0 Introduction

The aim of this thesis has been to examine the persistence of public procurement fraud in Malaysia. Investigating fraudulent practices and corruption associated with procurement is often described as an under-researched area, particularly within the context of the public sector (Heggstad et al., 2010; Khi V Thai, 2001). The study of fraud in Malaysia, which is the context of the current study, is an empirical work from a different cultural setting and belief system within the domain of public procurement (W. S. Hui et al., 2011). There are huge losses of public funds because of fraud and corruption in relation to Malaysian public procurement (Bernama, 2015b; National Audit Department, 2011; Pua, 2012). This study argues that fraudulent practices in public procurement are related to institutional practices and the capabilities of social actors which have been shaped, created and influenced by historical institutionalism and the power relations of the governance system. Furthermore, such practices have been fostered by the prevalence of political and economic institutions, the deep vulnerability of the public service and the distinctiveness of Malaysian society. It is important to recognise the enduring nature and modes of power that are entrenched and ingrained in the system and which perhaps contribute to the governance and accountability failures in Malaysia.

The study employed a political economy approach to investigate public procurement fraud practices in Malaysia. The research design involved document analysis and semi-structured interviews collected through the Snowball Sampling Method (SSM).

The views and perspectives of 40 stakeholders constitute the evidence of this study. The findings should be interpreted in light of the views and experiences and the so far hidden stories of the stakeholders in the current study, and does not aim to make generalisation or arrive at a singular conclusion about this social phenomenon.

This chapter is divided into 5 sections. The chapter continues by offering reflections on the findings of the current study (section 7.1). Specifically, this section answers the main research question outlined in Chapter 1. The salient findings from Chapter 4 and 5 are presented as well as the discussions from Chapter 6, which suggest the possible reasons for the occurrence of fraudulent practices in public procurement practices. Then, the contribution of the current study is discussed (section 7.2). The chapter continues by describing the limitations of this research (section 7.3) and by sketching an avenue for future research as this study appears to open up ‘doors’ for providing explanations for fraud in public procurement (section 7.4). The last section presents the concluding remarks of the thesis in the form of a personal reflection by the researcher (section 7.5). The structure of chapter 7 is shown in Figure 7.1.

**Figure 7.1: The structure of Chapter 7**

## 7.1 Reflections on the Findings

The thesis has investigated public procurement fraud in Malaysia. Evidence in this thesis has shown that public procurement fraud is constructed by the enabling and constraining institutional structures, which have shaped and influenced the social actors' behaviour and capabilities. Given these elements, fraud in the Malaysian public sector is understood by making sense of events, values and ideologies which have become embedded in and restructured into legitimate activities and processes where personal interests are served and fulfilled. All these potentially lead to a decision to engage in fraudulent and corrupt practices. Through the lens of the political economy approach, the possible reasons for the persistence of public procurement fraud as evident in this study are as follows: (1) the influence of institutional arrangements of political and economic interactions, (2) the complexities

of check and balance system, (3) deficiencies in procurement practices, (4) constraints of civil servants, and (5) peculiarities of the Malaysian society.

### **7.1.1 Prevailing Political and Economic Structures**

The findings from this study predominantly show how institutional arrangements of political and economic forces, which have ‘legitimate’ power and position in the country, tend to contribute to fraudulent and corrupt activities within the procurement life cycle (sub-research question 1). Political and economic interactions to some extent have enabled public procurement fraud in Malaysia through: (1) designated privileged policymaking; (2) the arrangements of a crony system in a political business framework for the allocation of public funds; and (3) the institutional power structure of the ruling coalition.

First, a considerable embedded belief of the Malaysian people is that the implementation of public policy decided by the Cabinet serves the public’s interest. Yet, the designated public policy for creating *Malay* capitalists has been ‘hijacked’ to serve the interests of a selected group rather than the interests of the masses (K.S Jomo, 2001). Fraud and corruption in public procurement within the policymaking context exist when state intervention in economic distribution provides the opportunity for unproductive rent allocation in ersatz-type ways. Malfeasance and malpractices in government purchasing are linked with the process of seeking special business favours, such as licenses, contracts, concessions, and privatisation of state assets from the powerful social groups, by using legitimate public policy mechanisms. It was noted that the implementation of public policy has particular aims; to help, protect and improve the well-being of its citizens, in particular the *Bumiputera* community. There are, however, indications of an exceptional abuse of



policymaking mechanisms as an avenue for capital accumulation for private interests. There are also arguably indications of the ability of the ruling party to 'colonise' the mind setting of the Malaysian society and convince them that this same public policy promotes poverty eradication and a restructuring of the welfare of the social class.

Second, it seems that the appropriation of public funds through a cronyism system of political business framework is enabled because of the nexus between the state and business, and this is considered acceptable in the practice of Malaysian public procurement. The study examines the blurred relationship of political parties and private sector through a political business system in the public office. The evidence clearly indicates a close relationship between government and businesses in most government purchasing. The alliance between the public and the private sector with the extensive involvement of political parties in business has resulted in the creation of 'new-rich' and politically well-connected companies (Gomez, 2013). The evidence also suggests that the same crony system of political business has been nurtured, encouraged and enabled in many government purchasing transactions to promote industrialization and diversification of the free economy. The views of the stakeholders seem to link fraud and corrupt practices with the political business interests which are served when the distribution or the securement of rents have been awarded to favoured economic groups through corruption, bribery, insider trading, manipulation of stock prices, mispricing of contracts, state patronage, conflict of interest and rent-seeking activities (Gomez & Jomo, 1997; Edmund Terence Gomez, 2002; K. Jomo, 2000; Nicholas J. White, 2004). The rampant culture of money politics and financing political parties via political donations, financing general elections, lobbying practices and state-capture as an attempt to exert pressure on the

political leadership for greater business opportunities was also noted (Searle, 1999; Wain, 2009). Generally, the overall perceptions of the stakeholders seem to suggest that the political business system has become ingrained in many parts of government purchasing and it falsely appears to promote the growth and development of the country.

Finally, the hegemony of the incumbent government coalition in Malaysia has to some extent created an 'unchallenged' power in the country. In a sense, the persistence of public procurement fraud in Malaysia seems to be related to the *invulnerable* institutionalised actions of the powerful groups. Discussions with interviewees and their experiences highlighted the role and influence of the power of political and economic actors in relation to how they interfere with the rewarding process of government contracts. This study has also questioned the actions of the 'invisible hand' in Malaysia's public procurement since wealth creation and capital accumulation mechanisms through public policy that has been created by the state to some extent may provide opportunity for fraudulent practices. Thus, creation of wealth and capital through government purchasing do not necessarily benefit the masses but are perhaps only beneficial to certain closely connected individuals with the ruling elites. There is also the idea conveyed from the interviewees that the role of the free market as conceived by the ruling coalition also serves their interest by allowing and promoting government intervention in the economy under the pretext of the growth and development of the country (K. S. Jomo, 1990). What is more, the allocation and distribution of public resources to some degree creates and protects a selected privileged class of *Malay* capitalists (Searle, 1999). The views of the stakeholders seem to suggest that those in power engaging in fraud and corrupt

behaviour in public procurement do it under the hegemony of the ruling coalition because they have an exclusive control of the governance institutions (socio-economic, political, bureaucratic and judicial).

### **7.1.2 Complexities of Check and Balance Mechanisms**

The study has investigated the ability of check and balance mechanisms to curb public procurement fraud in Malaysia. Despite the various initiatives taken by the Malaysian government to curb fraud and corruption in public procurement, there are complexities, which hinder the constitutional governance from working successfully to curb fraud and corruption in public procurement (sub-research question 2). The complexities identified in the study are: (1) the erosion of the governance institutions and (2) the ‘divide and conquer’ approach.

First, there is the belief that the ruling coalition controls the power of all three pillars of institutions. Rather than acting to ensure public accountability and implement good governance, the overall views of the interviewees indicate that the check and balance institutions in Malaysia have been undermined and compromised. According to the perceptions of the interviewees, there is no separation of power in the constitution. Most interviewees also acknowledge the unchecked power of centralisation of the executive branch headed by the Prime Minister. The broad view is that the Parliament is not a true legislative institution but merely a rubber-stamping institution and that the judicial branch is a tool used by the political party. This has contributed to the persistence of fraud and corruption in Malaysia. The check and balance mechanisms are a legacy of the Westminster-model, and the overall perceptions seem to be that there is lack of independence, ineffective roles of enforcement agencies and selective prosecution by the judiciary. It has also been argued that corrupt actors who engage in

public procurement fraud are confident that they are protected and that they will not be caught since they have close connections with those in power.

Secondly, public procurement fraud in Malaysia, as viewed in this thesis, has 'perfected' the system of 'divide and conquer', a legacy from the colonial rule. As argued by the interviewees, just as the exploitative and oppressive colonial government did before them, the current ruling coalition has been able to prevent alliances that could challenge their status quo and their power base. It appears from the various views expressed that one may be witnessing the demise of check and balance mechanisms of the constitutional government since people with executive power and governmental roles arrest and threaten those who openly criticize the government through various applicable Acts (Hookway & Fernandez, 2015; Suaram, 2015; The Malaysian Insider, 2015b). Despite the growing contestation and protests by the masses, the ruling party has consolidated and advanced their grip on power by securing the majority of political seats in Parliament since Malaysia's independence in year 1957. It seems then that by having the legitimate authority, the ruling elites are able to influence the enactment of laws, rules and regulations, by endorsing public policies that benefit most politicians and their business allies (Welsh, 2013b). In that sense, the political economy approach sheds light on these issues by focusing on the (alleged) crimes committed by political and economic powerful actors,<sup>252</sup> crimes which are normally concealed and not reported compared to ordinary crimes (see Barak, 2015; L. Lim, 2014). It would appear from the views expressed by the

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<sup>252</sup> Tomasic (2012), Doig (2011) and Whyte (2009) in particular argue the crime committed by powerful and wealthy individuals, business elites, national state and influential groups brings more harmful and systemic forms of injury to the masses. However, there is lack of attention in examining the possible crime of the powerful because most citizens are unaware of the routinized and 'hidden' actions of political and economic actors.

interviewees that the increased centralisation of power allows the current regime to reject court decisions; this amounts to legislative interference. In relation to many corrupt cases in Malaysia, especially the high-profile ones, there is the question why in some cases people are exonerated or get off scot-free while those who accept the orders and/or instructions from the higher authority are punished (Shukry, 2012b). It appears that ‘powerful’ perpetrators or culprits who have close connections with those in power can escape punishment. Thus, the battle for combating fraud and corruption in public procurement is further compromised by the non-performance and the crisis in the governance institutions in Malaysia.

### **7.1.3 Deficiencies in Procurement Practices**

Despite various procurement rules and regulations adopted in the Malaysia public sector, the internal control systems established to ensure greater accountability and a transparent procurement system have systematically been violated. This study has shown the deficiencies in procurement practices in Malaysia which enable the occurrence of fraudulent practices (sub-research question 3) as follows: (1) lack of evidence; (2) playing around the system; and (3) the hegemony of Ministry of Finance (MOF).

First, it was argued that there is some difficulty in acquiring evidence of the abuse of power when rewarding government contracts. For the most part, the interviewees did not challenge the fact that procurement documentation is ‘genuine’ within the procurement life cycle. As most government documentation lies behind the wall of secrecy and is not open to public scrutiny (Bernama, 2009), it seems that fraud in public procurement can easily be concealed and hidden. Some interviewees pointed to the inability of the Whistle-blower Act 2010 to report wrongdoings in public office as

the public officers fear facing repercussions. For the most part, it appears that fraud in Malaysian public procurement continues to be hidden, undetected and unreported.

Second, it has been emphasized in the interviews that the possible crimes of the powerful perpetrators usually involve well-respected, educated, influential individuals who hold positions that enjoy some sort of social status. It seems that these are smart individuals who take an opportunity to manipulate weaknesses and/or loopholes in procurement system (Malaysia Kini, 2010). As noted in this research, the perceptions of the interviewees seem to be that the wrongdoer knows how not to get caught by playing around the system and by creatively indulging in fraudulent and corrupt activities. Thus, the crimes of powerful people as illustrated in this study present a different kind of deception practiced by a collusive network of politicians, top-bureaucrats and business leaders (Sundaram, 1989; Tan, 2015).

Finally, the interviewees highlighted the hegemony of the Ministry of Finance (MOF) as the most powerful and unchallenged institution within the context of public procurement. Given the evidence in previous chapters, the paramount power relations of the MOF is perceived to lie behind the authority of the Prime Minister, who holds the same position in the Ministry of Finance. It appears that decisions and instructions from the MOF have never been challenged or disputed in order to implement government contracts, projects or policy. It is possible that the hegemony of MOF over procurement decisions may reinforce the ease, severity and pervasiveness of fraudulent practices in the Malaysian public sector.

#### 7.1.4 Accountability Constraints of Public Officials

It is believed that public servants are responsible for exercising their public duty with the utmost accountability and integrity (Mansor & Ariffin, 2015). Yet, there appears to be pressure and constraints on ensuring accountable and transparent public procurement practices in the Malaysian public office. The research has examined how the accountability constraint on the Malaysian public officials preserves fraud in procurement (sub-research question 4). The predicament and constraints on exercising their duty faced by public servants to some degree support and help in the preservation of the prolonged nature of public procurement fraud through: (1) the obedience concept; (2) conflict of interest in discharging their professional duties; and (3) politicization of bureaucracy.

First, it seems that public administrators in Malaysia appear to be obedient implementers, always doing what has been required of them and never questioning the orders or decisions made by a higher superior. Discussions with the interviewees seem to suggest for the non-separation of politics and administration in the public office. This non-separation also influences the accountability and control process as well as formal and informal practices within the institutional mechanisms (Røiseland, Pierre, & Gustavsen, 2015). It appears that most public officers in Malaysia are often influenced by prevailing cultural customs, practices and a specific socio-political context when exercising their duty. For example, the idea of respecting the authority, one's superiors and those who have a higher social status is entrenched and engrained in the public service. The interviewees provided insightful thoughts about Malaysian public officers who believe that they need to be loyal to their superior and the ruling party. But, to some extent, it appears that the doctrine of submissive cultural values,

respect, and loyalty of public officials can conceal and preserve the conduct of wrongdoings. It is also suggested that the Malaysian public service is structured in a hierarchical structure of administration according to the British colonial model. The overall perceptions of the interviewees seem to suggest that the fear of being transferred, not getting promotions and the fear that one's monthly salary may be affected imposes a strong culture of 'only' following the orders without questioning them. The interviewees were of the opinion that the hierarchical structure plays an effective role for the civil servant to become accustomed to following orders and accomplishing their given tasks without asking any questions (see Kelman & Hamilton, 1989; The Malay Mail Online, 2015). Although, it is inevitable that wrongdoings and acts of immoral behaviour can occur at different levels of the hierarchy, there seems to be a pattern according to which offences conducted by those in power are often overlooked, remain hidden and normally involve massive amounts of money (Doig, 2011; Malaysia Today, 2015).

Second, it appears that there are conflicting goals and interests<sup>253</sup> on the part of Malaysian civil servants, as illustrated in this study. This research shows institutional arrangements of bargaining, negotiation, pressure, coercion, persuading and mutual concessions, in particular in relation to its policymaking environment. From what the interviewees said, it seems that there is a high number of dilemmas faced by the Malaysian public officers when doing their public duties. It appears that the dilemmas have to do with either implementing the decisions made by the Cabinet, which is the public officers' political boss, or working for the interest of the masses.

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<sup>253</sup> Conflicting goals and interests arise when public officials are willing to compromise the interests of the masses for the private reasons.



Finally, it seems that there is a politicization of the civil service when political arrangements of government apparatus are of a particular importance for Malaysian public administrations. It was noted that only the Cabinet committee, which consists of various ministers selected by the Prime Minister, can decide on public policy in Malaysia. After decisions are made at the Cabinet level, the respective minister informs the Ministry so that public officials implement the public policy. This research appears to show the professional role of the public servant as being steadfast obedient implementers, rarely challenging or questioning the orders given to them. It appears that the politicization of bureaucracy is prevalent as it is perfectly legal and acceptable for the ruling party to interfere and intervene in the socio-economic and administration matters (e.g., decisions for public policy, budgets for each government agencies) of the country as these politicians have been elected legitimately by the public. In relation to the influence and control over public administration, the interviewees suggest that their appointment, career path, merit system, as well as any disciplinary action taken against them and any punishment they may suffer are dependent on their performance in the office. Their performance also means implementing public policy, orders and instructions from their superior. Thus, this sometimes results in them mainly satisfying their political master, and not working for the public's interest.

#### **7.1.5 The Malaysian Paradox**

The persistence of public procurement fraud in Malaysia needs to be understood within the context of its socio-economic, political, and cultural embedded values and practices within the multi-racial solidarity of the society. This study has shown what the peculiarities of the Malaysian society are in relation to fraud and corruption

practices (sub-research question 5). These have to do with (1) the transformation of society and (2) a tendency towards institutionalization.

First, this thesis provides a general overview on the change which occurred in Malaysia. The latter was transformed from an agricultural and plantation country into one with a liberal economy and a capitalist system. The Malaysian society was structurally changed and transformed towards development and growth after her independence. The findings of this research show the prominent role of the Malaysian state, which can intervene in and reform the economy and market forces. Under these circumstances, the government has legitimate reasons to pursue a public policy for poverty eradication and for the restructuring of society. It is perceived that the ruling party promotes the growth of *Malay* capitalists and the middle classes as a way to improve the social well-being and domination of capital, especially for the indigenes. The affirmative action programmes developed by the government include preferential access to various interests stipulated in the Constitution, among others: educational opportunities, business licenses, employment and promotion in particular working in the civil service, subsidies, and tariff protection. These preferential treatments, as viewed in this thesis, are reflected in most government purchasing as *Malay* business interests have been generally favoured by the government practices of state patronage, rent-seeking and distributions, cronyism, and favouritism (William Case, 2013; R.S. Milne & Mauzy, 1999; Wain, 2009). While the above practices appear to be blurred in relation to whether they are legitimate or not, it appears that the ruling party aggrandize their effort to be regarded as the ‘champion’ for the development and economic growth for the country. As a result, it seems that the opportunities arising within the capitalist economy for profit maximization and wealth creation

through government initiatives are acceptable, allowable and rationalised as a means for the good and development of the country.

Second, the pursuit of a *successful* life in Malaysia seems to require wealth, material and money, in other words, economic development and growth make a *successful* life possible. The Malaysian society has also been influenced by following this path of economic development, modernity, wealth, as well as material and money culture (Shi-ian, 2014; Shukry, 2013a). As promoted by the ruling elites, the perceptions of the interviewees show that the successful ideology of having privileges as indigenes serves a persistence framework of systemic and endemic fraudulent and corrupt practices. Apart from maintaining the traditional cultural values and customs (such as respecting and remaining loyal to one's superiors and the authorities, acknowledging the social status and the hierarchy of society, being submissive and never challenging those in power, high tolerance for harmonization, gift-giving practices, returning favours for extended relationship), it seems that the desire for money and material goods has been ingrained in people's minds and has ultimately led to people being self-centred in the society. Although to some extent, committing fraud and corruption activities has tainted the Islamic values and ethics, it appears that the 'sin' is forgiven when the *illicit* money is used for charitable activities and/or to benefit other people. All these have become possible since the interest in money and wealth exists at all levels of the society and serves as a prime element in measuring one's success. In particular for the public office, there is the impression that fraud and corruption are institutionalized from the top leadership to the lowest implementers of public policy (Brian, 2014; Geyzel, 2015). Because fraud and corruption are widespread in the

public office, it appears that institutionalization undermines any accountable and transparent procurement practices.

Taking together all the findings and evidence presented in the earlier chapters (chapter 4, 5 and 6), this research contributes to a number of important areas of knowledge as illustrated in the next section.

## **7.2 Research Contributions**

This thesis has contributed to the literature by examining the possible reasons why public procurement fraud in Malaysia continues to persist. As described in chapter 2 (Literature Review), there are diverse gaps in the literature that this study aimed to address. Therefore, this study is novel and original with a potentially beneficial impact on the study of public procurement fraud in Malaysia in relation to three areas of knowledge: empirical, theoretical, and practice- and policy- related areas.

### **7.2.1 Empirical Contributions**

Several empirical implications have arisen as a result of this study; informed mainly by the analysis of the data collected by the documentary analysis and 40 interviews conducted.

This study has investigated a complex, conflicting, sensitive and controversial issue by nature. This is because fraud and corruption activities are normally hidden and kept secret. This study is an important contribution on exploring the potential spaces for investigating fraudulent practices which are perhaps greatly dependent upon the secret nature of procurement government documentation. Conducting research on this

topic is inevitably challenging and might at first seem impossible. However, this thesis provides evidence that such challenging research can be conducted with an appropriate methodology, techniques, and willingness from participants. Thus, it may attract the interest of other scholars to unpack public procurement fraud in another setting or by taking another perspective.

This study contributes to the fraud literature by providing evidence on why public procurement fraud in Malaysia continues to persist. In this way, this thesis offers interested scholars important insights into the investigation of fraudulent actions, corruption, malfeasance, malpractices, and wrongdoings in government purchasing. As a result, this study offers rich possibilities for interdisciplinary research (see Neu et al., 2015; Sargiacomo et al., 2015), as it opens ‘doors’ for investigating some of the social problems in the world.

The study contributes to the literature by contributing to the existing literature on business and government practices in Malaysia. Despite the existing literature debating on various views about fraud, there is a dearth of research that examine social problems related to fraud and corruption activities which are not necessarily illegal or unlawful but socially amiss and with detrimental effects for the public (P. Green & Ward, 2004; Kramer et al., 2002; Quinney, 2003). This research presents empirical evidence on procurement fraud in the Malaysian public sector and offers an understanding of fraudulent and corrupt practices within public procurement that is perhaps highly effective and operates within legal boundaries and can out-smart the system but is immoral, in the context of rewarding government contracts (Pua, 2011; Searle, 1999). Therefore, it contributes to the academic debate by acquiring a broaden

understanding of fraudulent practices embedded within the governance of Malaysia's public procurement practices.

The study adds to the extant literature by studying procurement fraud practices in Malaysia which is a setting with a specific culture, ideologies, religion, customs and values which is different from developed countries that have already been studied (see Araujo, 2013; O.M. Bakre, 2004; Caulfield, 2014; Celentani & Ganuza, 2002; Murray, 2009). Therefore, this study has been conducted in an attempt to fill that gap in the literature.

This research also responds to the calls of procurement fraud scholars for a much more critical examination of specific procurement fraud practices (for example Murray, 2009; Caulfield, 2014). Relatively few studies on procurement fraud in public sector settings have been examined within Malaysia's context which appears to be shrouded in secrecy and behind the closed doors of many government departments (Balakrishnan & Matthews, 2009; W. S. Hui et al., 2011). Also, the investigation of fraud within the Malaysian public sector can provide an opportunity to examine the subtle and complex relationship between public and private organisations in many government purchasing activities (see Gomez, 2004; Othman, Aziz, & Ibrahim, 2010). The investigation of the public sector is another area which remains largely unexplored in the literature; thus it is a novel setting for an investigation of public procurement fraud practices.

This research explored the possible factors accounting for the persistency of procurement fraud in the Malaysian public sector. The research presents empirical

evidence in relation to 5 main stakeholders (regulators, professionals, politicians, academics and media actors) so as to understand the nature and extent of public procurement fraud in Malaysia. It contributes to the academic debate by offering an avenue for a discourse on differences (or similarities) of the perceptions and ‘hidden voices’ of those stakeholders. The research borrows from and builds on sharing the experience, views, perceptions and understanding of fraud from 12 regulators, 12 professionals, 5 politicians, 4 media actors and 5 academics about fraud and corrupt practices in government purchasing. The call to investigate other group of stakeholders was made by other scholars such as Murray (2009) and Hessami (2014).

The final significant empirical contribution of this study is the use of a qualitative approach in investigating public procurement fraud practices in Malaysia. Despite the growing numbers on procurement fraud studies (Hessami, 2014; Karpoff, Lee, & Vendrzyk, 1999), it was observed that there is a general lack of qualitative studies in understanding the nature and extent of public procurement fraud. This study is different because it explores and understands social practices with the use of semi-structured interviews via the Snowball Sampling Method (SSM) by getting the participants’ consent and by making them willing to share and discuss significant issues of fraud in public procurement. This qualitative study is pertinent to ‘unpack’ a complex phenomenon that is subjectively reflected by a reciprocal relationship of both the social context and the role of human actors (see Bailey, 2007; J. A. Clark, 2006; J. Ritchie et al., 2014).

### **7.2.2 Theoretical Contributions**

The study of public procurement fraud has been approached and theorized in various ways by many competing disciplines (Haron, Mohamed, Omar, & Jomitin, 2013;

Matthew et al., 2013; Murray, 2015; Sargiacomo et al., 2015; World Bank, 2013). This study has used a political economy theoretical framework, which has made it possible to investigate the persistence of fraud in public procurement and the role of social actors within a broader social-political and economic context.

One particular characteristic of political economy theory is the role of the 'invisible hand' in a free market in the pursuit of self-interest for wealth and profits. Political economy theory describes how the invisible hand of market forces allows individuals to make profit and maximize it, without the need of government intervention (Thornton, 2009). However, this study adds to the literature where the 'invisible hand' in many government purchasing contracts in Malaysia instead has used prevailing institutional power structures that perhaps enable, shape and create fraudulent and corrupt practices in public procurement. It can be said that those powerful individual hands in Malaysia has convinced Malaysian society that procurement policymaking arrangements are only for the benefits of society when in fact those procurement arrangements may involve fraud and corrupt activities, and may be socially amiss and detrimental to the public at large. Consequently, this study has shown that legitimate and (il)legitimate interests held by powerful groups in Malaysia in allocating and distributing public resources, to some extent, do not actually benefit the wider society (Siddiquee, 2006b; Singaravelloo, 2013).

The current study provides deeper theoretical insights when it shows the prevalence of political power with economic interests within the policy-making process (Caporaso & Levine, 1992; Rausser et al., 2011). There is lack of studies in connecting fraud and corruption activities and the transformation of the public sector



to improve government accountability and effectiveness (Brewer et al., 2008; David Seth Jones, 2013). The current study argues that the reformation of public sector governance through modernisation programmes can also become the site where fraudulent and corrupt activities are carried out (Gomez et al., 2013). In this respect, the study makes a theoretical contribution by showing that the exercise of power in Malaysian public administration within the policy-making process in rewarding government contracts are legitimate and legal through public policy with the aim of improving the social well-being of people, especially that of the indigenes, even though such activities perhaps also involve immoral behaviour (including rent-seeking activities, state patronage, cronyism, and money politics). For example, the study examined how there is lack of evidence in abusing of power for rewarding contracts on part of a collusive corrupt network which intimately engages in fraud and corruption. The irony is that fraud and corruption activities are manufactured within the applicable law (Baer, 2008; Boyce, 2014). To the best of the researcher's knowledge, no previous study in the public procurement fraud literature has showed a connection between the legitimate public-policy settings and fraud and corruption activities.

The use of a political economy framework for the study has provided an additional insight on a new theoretical dimension to the literature pertaining to the relationship between legitimate activities and the collusive institutional arrangements in government purchasing at the nexus of business and government and their interactions (see Andrews et al., 2015; Grødeland & Aasland, 2011). Specifically, this research adds a possible and alternative lens to look into the legitimate public-private interactions as both a constraining and an enabling factor to engage in fraud in public

procurement. Most importantly, this study provides evidence on the platform of government-business framework of political business and crony capitalism, which facilitate the emergence of fraud and corruption within the procurement process (Embong, 2012; E.T. Gomez, 2002). Some scholars have highlighted the nexus of business and government that may be prone to fraud and corrupt activities (Asquer, 2011; Hawkins et al., 2011). However, the literature on the interaction of government and business is frequently about economically advanced countries (Chomsky, 1999; Schneider, 1998), and there is still a lack of studies on public-private interactions with fraud and corrupt activities in many developing countries and in Malaysia in particular. As a result, the study has aimed to fill that gap in the literature.

This study provides some additional contribution to theory by showing how historical institutions and the governance of colonial rule has been entrenched into Malaysia's structural transformation, especially its public administration, which continues to exist in today's society (Amoroso, 2014; Milner, 2002). By looking at historical development, this study has been able to bring an understanding on how Malaysian societies construct and reconstruct themselves over time. More specifically, the study shows how history matters to understand social practices as also addressed by other scholars such as Shaharuddin Maaruf (2014) and Harper (2001).

The current study has helped to unpack the *unchallenged* power relations in the governance system of Malaysia. While the political economy theory is concerned with power and authority in a dynamic political and economic institutions (Dean, 1989; Nurmi, 2006), the current study provides evidence on how the exercising of power has to some extent facilitated fraud and corrupt activities in government

purchasing. The existing literature has rarely drawn attention to illegal, unethical, deviant activities or crimes conducted by those in power in relation to fraud and corrupt activities (Barak, 2015; Goldstraw-White, 2012). There is still lack of research that addresses crimes or practices of the powerful people in public procurement studies. In contrast, this study is particularly useful in explaining the complexity, secrecy, norms, customs and habits of the powerful elites that have been embedded into Malaysia's procurement practices. In other words, it seems that many cases of fraud in public procurement in Malaysia are hardly detected or reported; these are cases where the culprits can escape punishment as they are *protected* by those in power (Pua, 2011; Wain, 2009).

Finally, the study contributes to emerging theoretical perspectives since it helps to shed light on how institutional values and practices in public procurement provide an important platform for understanding the systemic nature of fraud and corrupt activities. For this reason, the study provides unique insights on how the creation of formal and informal practices has shaped and reshaped particular cultural, social norms and moral values (see Ashforth et al., 2008; Dwivedi, 1967; Islam, 2004) in Malaysian society. This particular contribution presents a case that pushes the boundaries of this theory, which has received relatively little attention in the context of the systemic nature of fraud and corrupt activities in Malaysia.

### **7.2.3 Practice and Policy Contributions**

The value and impact of the current research to managerial practice is demonstrated from the essential and fundamental findings underpinning the study. This means that the findings benefit the policymaker and enforcement agencies in Malaysia by

deepening our understanding of the persistence of public procurement fraud in Malaysia. The thesis provides additional insights on practice and policy as follows.

The thesis contributes to practice by highlighting the prevailing power structure of the governance institutions in Malaysia. The study has shown the flaws of governance institutions if the 'separation of power' is not endorsed or implemented by all institutions. Therefore, it may be possible to improve the governance system by restricting any domination and control of power, including any 'personalisation' of power, even to the Prime Minister.

The current research may influence the vigorous prosecution and the enforcement of the appropriate sanctions towards perpetrators. The complexity of law needs to be addressed so as to ensure the culprits do not walk free with impunity. This research also implies that stiffer penalties and prosecutions are required; those who commit fraud must be labelled as such and identified so as to 'shame' their social status and strip them from any privilege given to them because they betray the public trust. For example, the existing law on conflict of interest in rewarding government contract need to be strengthened in order to reduce opportunities for abusing power in public office.

The study has evaluated the deficiencies of the procurement system implemented in the Malaysia public sector. In this regard, the study has proposed that there should not be any direct negotiation of contracts, but only through public tenders. The decision-making process as well as other activities in government purchasing should be more

transparent and open to public scrutiny. A requirement of public disclosure is needed to break the 'wall' of government secrecy.

This study has clearly highlighted the accountability constraints by public officials in exercising their public duties. This research has shown that the laws and administrative rules can constrain the Malaysian public servant in exercising their public duties. Therefore, the laws and rules need to be revised to promote accountable and transparent procurement practices. Furthermore, the flaws of the Whistle-blower Act 2010 require greater participation from all parties: public servant, civil society, and the masses. Freedom of Information should also be sanctioned.

Finally, a contribution of the study has to do with the conceptualization of fraud and corruption within the Malaysian society. This study yields insights on the 'camouflaged' conceptualization of fraudulent activities with the pretext of improving the social well-being of the indigenous population. To a certain extent, the public's conception of what is 'wrong' and what is 'right' in procurement practices cannot assess the wrongdoings and immoral activities even if they are supposedly conducted for the development and growth of the country. Thus, this study can enlighten the policymaker and enforcement agencies in (re)considering what exactly constitutes fraudulent and corrupt activities. Activities which do not violate any laws but they are in fact unethical and immoral, clash with norms, values and beliefs, they are socially amiss and brings losses to the country and the public at large need to be taken into consideration and be addressed (Hirsch & Morris, 2010; Lounsbury & Hirsch, 2010).

### 7.3 Limitations

As with any other research, despite best intentions, this research is not without its limitations. First, this study is limited by the lack of publicly available data. There is lack of information and evidence to study fraud and corruption in the Malaysian public procurement. Any reports from publicly available data were derived only from government reports, on which the information can be tampered or restricted in order to 'protect' and conceal activities that may smear the reputation of the government.

Second, due to the problem of accessing interviewees to talk about this sensitive matter, there are only a limited number of interviewees forming the sample of stakeholders who were willing to be interviewed (40 participants). The use of a specific methodological approach has helped to partly overcome that limitation. However, all findings and discussions of public procurement fraud practices in Malaysia used these 5 groups of interviewees (13 regulators, 13 professionals, 5 politicians, 5 media actors and 4 academics). As a result, the current study is limited to this particular sample and no claims can be made for its generalizability. Therefore, the understanding of public procurement fraud practices in Malaysia emanating from this study is particular to these stakeholders only.

Finally, in any study of this type, there is a number of possible interpretations of data and, therefore, although I have relied on direct quotations provided by participants, it should be recognized that my interpretation of the data is but one of a number of possible interpretations. Therefore, it is inevitable that my personal experience,

feelings, attitude and thoughts are embedded and reflected on the research process and the presentation of the findings.

## **7.4 Avenue for Future Research**

This research has revealed possible explanations for the persistence of public procurement fraud in Malaysia. However, future research can enhance the current study and raise further questions on the investigation of public procurement fraud as follows. First, future research can consider investigating fraud in public procurement by examining several cases, either cases that have been prosecuted or alleged fraud cases. Perhaps, a comparison of diverse case studies can provide insights into the pattern and reveal other possible factors for fraud's persistence (assuming access would be granted).

Second, further research might expand the current study by interviewing a wider range of interviewees who can provide their views and share their experience of the subject matter. For example, the views from different stakeholders (e.g., media and NGO parties) can be solicited. .

Third, future research may consider adopting a different theoretical framework for investigating public procurement fraud. Different methods, for example, a quantitative method or a mixed-methods approach can be employed and it would be interesting to see what kind of results they will produce.

Finally, it would be beneficial to research different settings (e.g., private sector). It might also be useful to compare and contrast different settings (public sector vs. private sector) in order to understand their similarities or differences. What is more, it can be fruitful to investigate this social phenomenon in different developing countries in order to understand its similarities or differences (if any).

## 7.5 Concluding Remarks

This thesis has investigated public procurement fraud in Malaysia. The thesis has argued that the history of Malaysia as well as its socio-political and economic context have influenced, shaped and created public procurement fraud. Considered as a whole, this thesis has sought to challenge several dominant accounts. First, it has challenged the prevailing power of the governance institutions in Malaysia that have given political and economic powerful actors the opportunities to engage in fraud and corrupt practices. The thesis argues that the long incumbency and the supremacy of the ruling coalition make them *untouchable* as they are able to make their actions legitimate, and their decisions unquestionable. Second, it has challenged the rational decisions made by the economic actors in order to create wealth and maximize their profits. The study has questioned the notion of the invisible hand by claiming that increasing private wealth and serving narrow self-interests do not necessarily profit the masses. Third, while this study has acknowledged the legitimacy of public policy processes, it has challenged the policymaking environment that enables the occurrence of fraudulent practices in public procurement. The study has been critically concerned with the legitimization of public policy by allowing government intervention in the free market and the public sector expansion for development and



growth. Thus, this study provides insights on the conflicting role of the Malaysian state, which seems to facilitate the prolonged nature of fraud in public procurement. Finally, it draws attention to a blurry cronyism network that conducts legitimate and illegitimate activities at the nexus of collusive interactions between politicians, top-bureaucrats and business leaders. The success of this corrupt crony network raises concerns over the lack of evidence for fraud and corrupt practices in procurement process. The current study has also addressed the blurred relationships between business and government organisations. Thus, irrespective of the accounts mentioned above, this study has perhaps only made visible the *'tip of the iceberg'* of the examination of fraud in public procurement.

The unpacking of public procurement fraud in Malaysia provides an opportunity for an understanding why it has endured for so long. Being a public auditor in Malaysia for 15 years has enabled me to raise more questions about its persistency in most government departments. Thus, it is important to note on the positive points as an insider who works in the public office undertaking this research. Firstly, I was able to gain access to the participants, as they were able to tolerate with me as a public servant. Secondly, my knowledge and wide experience as a public auditor in Malaysia were able to give confidentiality and privacy assurance to my participants which allowed them the opportunity to project their own feelings and provide an honest and representative answers by using their own words and language (Berg & Lune, 2014; J. Ritchie et al., 2014). My knowledge also enabled me to decode answers given by the participants, which only insiders would know about. Lastly, as an official, I was able to empathise with the participants especially those who work in the public office. However, there were also negative aspects in undertaking this

research as a staff member in the Malaysia public office. Firstly, there were some preconceptions about fraudulent behaviours in the public office. In other word, the researcher approaches the research problem with a background and a set of experiences and knowledge that cannot be turned off. In this respect, steps were taken to minimize this by using the participant's voices whenever possible. Next, there might be biased in some interpretation of the findings and responses of the participants in this study. However, in order to overcome this, the researcher tried to minimise the intrusion of her own opinions on those of the participants. The researcher has explained in detail (in Chapter 3) how the data was obtained and analysed and give a clear description of the usage of the data for the research to ensure the results were up to the highest qualitative standards. Finally, this research has challenged the status quo of the current regime and questioned procurement practices in the Malaysia public sector. Thus, it has touched a sensitive issue but though the research design it has also ensured that the prejudices of the researcher were minimised in order for the findings to be reliable and meaningful. It is hoped that taking these precautions will have minimised the negative aspects for the current study and implied a neutral research.

To explore a complex, sensitive and controversial issue like this one, requires a high degree of understanding and trust that may shape future action, attitudes, beliefs, emotions, knowledge, sentiments, thoughts or perhaps a combination of these. Never was my intention to tarnish my country's name by exposing and revealing the possible factors of the persistence of public procurement fraud in Malaysia. In fact, I believe that the current study will benefit my country and its people.



## Appendices



### Appendix 2.1: Various Definitions of Fraud

Perspectives	Definition of Fraud	Scholars	Descriptions
Law	<ul style="list-style-type: none"> <li>• A criminal deception, which involves the use of false representations to obtain an unfair advantage or to harm the interests of others.</li> <li>• The making of a misrepresentation of a material fact, with knowledge of its falsity and with the intention of having the other person rely upon it. If the other person reasonably relies upon it to their detriment, they can make a tort claim for damages against the person making the false representation.</li> <li>• An intentional act of lying to, cheating, or stealing from a customer (or attempting to do so), which is punishable as a crime in any jurisdiction.</li> <li>• A defence to a breach of contract action, an affirmative cause of tort and crime.</li> <li>• A violation of trust and breach of any of the following:</li> </ul>	<p>Burdick 1916</p> <p>Green 1943</p> <p>Rothschild and Throne 1976</p> <p>Orrmerod 2007</p> <p>Tullo 2006</p>	<p>Legal definitions of fraud are used to condemn fraudulent behaviour (Burdick, 1916; Klass, 2009). However, the generic definition of fraud seems to legitimate the current legal law system and assumes that such laws are universal and are uncontested. According to Stone (1975), the weakness of the legal and judicial structure is likely to restrain the role of law from working to curb fraud. Correspondingly, Michalowski and Bohlander (1976) and Quinney (2003) suggest that the formulation of law has been controlled and refrained in order to serve the interests of powerful groups. As a result, the ambiguity of fraud definition from a legal perspective may result to selective prosecution in fraud cases. In many countries with weak legal and regulatory structure, selective prosecution is openly practiced by powerful groups through the abuse of power and manipulation of the law for their personal gains in order to prosecute those who challenge their position (Vinod, 2013a). In doing so, selective prosecution cases are extremely difficult to prove, especially those involving the powerful and</p>

	by representation, by failing to disclose information and by abusing one's position.		wealthy elites (Otusanya, 2012). Consequently, selective prosecution is a different mode of powerful source in a society and it is based on historical background, institutional structures and modes of accountability of each society (Johnston, 2005).
Criminology and Sociology	<ul style="list-style-type: none"> <li>• Law violation arises from the desire to discover and study wrong, which are absolute and external rather than mere violations of a statutory and case law system.</li> <li>• A legal description of an act as socially injurious (violation of any law, civil or criminal) and legal provision for penalty for the act.</li> <li>• An intentional act of violation of the criminal law (statutory and case law) committed without defence or excuse, and penalized by the state as a felony or misbehaviour.</li> </ul>	<p>Tappan 1947</p> <p>Sutherland 1945</p> <p>Tillman 1992</p>	<p>Fraud is also defined by criminologists and sociologists. They believe fraud exist because of violation of any law, civil or criminal, but such definition requires a more complex definition of fraud (Arevalo, 1999). In that case, Petrucelli (2012) suggests that each element of fraud has to be proven in court in order for an act to be considered a legally culpable act of fraud. He further explains that four important elements need to be proven in court, as follows: misrepresentation, intention, reliance and damage. Alternatively, Coleman (2006) suggests that the element of fraud is not easily proven in court. Depending on the fraud cases, Ormerod (2007) claims that failure to demonstrate the element of fraud has substantial consequences for conviction<sup>254</sup> and the fraudster may easily be freed. In short, criminologist and</p>

<sup>254</sup> This is due to the difficulty of proving in the court of law intent and the underlying motive behind fraud..

			sociologist have been restraining definitions of fraud within a legal perspective.
Accounting and Auditing	<ul style="list-style-type: none"> <li>• An intentional act that results in material misstatements in financial statements.</li> <li>• A deliberate, rational choice to circumvent accounting rules and regulations for personal gain, which results in financial reporting that is misleading or deceptive.</li> <li>• A manipulation of accounting information for personal enrichment (e.g., to increase stock price by manipulating earnings)</li> <li>• Use of false numbers to suit private interests, the numbers can be unintentionally false or intentionally wrong. Fraud is combined with other violations involving diversion of materials, illegal side payments and theft.</li> <li>• A deliberate attempt to deceive or mislead another</li> </ul>	<p>AICPA 2002</p> <p>Troy <i>et al.</i> 2011</p> <p>Core 2010</p> <p>Harrison 2011</p> <p>Rezaee 2005</p>	<p>In the accounting and auditing context, the definition of fraud is dynamic but limited to the violation of law as the main principle of its definition. According to Lehman and Okcabol (2005), “<i>accounting practice has always been concerned with fraud, and has always been effected by financial collapses, management transgressions, and misstatements by corporate officers</i>” (p.614). Funnel (1998) has demonstrated that accounting is a source of disguise and can be used by interest groups to achieve very particular purposes. Comparatively, this relates to the myth about accounting, i.e., the belief in its legitimacy, reliability and trust, values which are obviously violated when accounting fraud occurs (Bayou, Reinstein, &amp; Williams, 2011; Macintosh, 2002). Thus, the definition of fraud from the accounting and auditing’s perspective does not imply rich understanding of fraudulent phenomenon as it merely adopts a legal standpoint.</p>



	<p>person or group by misrepresenting or omitting the amounts and by not disclosing financial statements.</p>		
Management and Governance	<ul style="list-style-type: none"> <li>• Organizational deviance in abusing power to violate organizational norms.</li> <li>• Breakdown of a normally well-functioning institutional system, with organizational mistakes and misconduct</li> <li>• Acts of corporate illegality which intend to benefit an organization</li> <li>• Organizational misconduct when individual's acting is harmful or morally objectionable for the individual's own interest at the expense of organization</li> </ul>	<p>Meisel 2008</p> <p>Earle <i>et al.</i>, 2010</p> <p>Baucus and Near, 1991</p> <p>Greve <i>et al.</i>, 2010</p>	<p>From a management and ethical perspective, an insightful understanding of fraud is offered by looking at violation of conduct norms (Greenberg, 1997). Kulik <i>et al.</i>, (2008) and Vaughan (1982) claim that fraudulent behaviour is institutionalised when norms, values and beliefs have justified attitudes or actions which then become embedded in structures, processes and routines. Assuming that norms, values and beliefs are consistent with wrongful actions, a fraudster essentially concludes that their decisions to commit fraud is, in fact, rightful (Punch, 1996). In contrast, that definition does not offer a boundary separating fraudulent act from non-fraudulent acts in an organization (Greve <i>et al.</i>, 2010). In addition, the definition of fraud from management and ethical perspectives does not identify the extent to which an action is fraudulent. Ultimately, the vague boundaries of fraudulent conducts are located within a social, economic, ethical and political culture, which is situated in specific social and historical contexts</p>
Ethics and Moral	<ul style="list-style-type: none"> <li>• Unethical behaviour which includes violations of informal and implicit norms</li> <li>• Unethical decision making which can</li> </ul>	<p>Kaptein 2008</p> <p>Jones 1991</p>	

	<p>harm others either illegally or immorally and can be acceptable to some part of the community</p> <ul style="list-style-type: none"><li>• Organizational wrongdoing which involves unethical conduct, illegal, immoral, or illegitimate practices</li><li>• Failure of moral reasoning which is in conflict with moral principles/attitudes</li></ul>	<p>King 2001</p> <p>Marquardt and Hoeger 2008</p>	<p>(Cooper, Dacin, &amp; Palmer, 2013).</p>
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### Appendix 3.1: Key Philosophical Stance for the Current Research

Philosophical Issues	Elements	The Current Study	Justification
Ontological	The assumptions that the researcher makes about the nature of reality and the nature of being	Subjectivist Ontology: by advocating idealism as a my nature of reality	The reality for the current study is a product of individual consciousness shared by meanings, views and conceptions. I clearly reject the notion that reality is hard, real and independent from the subject under study
Epistemological	A general set of assumptions about how we acquire and accept knowledge in the social world	Anti-positivist approach	In investigating public procurement fraud in Malaysia, this research uses anti-positivist approach to understand the subjective meaning making of the social phenomenon. This approach is subjected to day-to-day language, individual experiences and multiple perceptions in producing and reproducing social reality by the human actors
Human Nature	Assumptions about the connection between human beings and their environment	Human beings as the voluntarily controllers of their environment	This research offers profound insights into how humans create their own environment completely autonomously and by possessing free will. The institutionalised environment in the Malaysian public sector seemed has been created voluntarily and offers a fertile ground for the prevalent nature of fraudulent practices.
Methodology	A system of methods used in a particular study which is closely connected with the three sets of assumptions (ontology, epistemology and human nature)	Ideographic approach to give voices to my interviewees	This approach ideally shows the role people's interactions and perceptions of their own experiences play in constructing public procurement fraud in Malaysia. The ideographic approach is preferred and adopted with the use of

			analysis of documentations and semi-structured interviews
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**Source:** Current Study



### Appendix 3.2: Paradigm Choices for the Current Research

Paradigms	Elements	The Current Study	Justification
Positivist Approach	<ul style="list-style-type: none"> <li>• The nature of reality is hard, objective and tangible</li> <li>• Social reality can be discovered based on unbiased, independent and observation of external reality</li> <li>• This approach uses scientific testing in order to show patterns, causal relationships and make generalisations whether to accept or reject hypotheses</li> <li>• This approach assumes that theories should be as simple and concise as possible to understand a social phenomenon</li> <li>• The positivist researchers ‘divorces’ themselves from the subject matter as they believe the research should be objective and value free</li> </ul>	Not Suitable	<ul style="list-style-type: none"> <li>• This research rejects the fact that the nature of reality is hard, objective and tangible</li> <li>• Social reality is constructed based on individual experience and consciousness. This research pays particular attention to meaning-making of the construction of public procurement fraud in Malaysia by human interactions and actions</li> <li>• This approach uses semi-structured interviews to subjectively situate the perceptions of social actors. The interpretations of the social phenomenon are made through personal experiences, feelings and attitude towards fraud in the Malaysian public procurement</li> <li>• I reject the positivist approach because I believe the world we live in is complex, and most social practices are reflected by reciprocal dialectic relationship of both the social context and the role of human actors</li> <li>• My involvement in the research reflects the fact that the reality to the subject matter is persuasively subjective. Therefore, this research is clearly ‘value biased’ as I</li> </ul>

			cannot detach myself from the subject under study
Interpretive Approach	<ul style="list-style-type: none"> <li>• The social world is not 'given', but it is produced and reinforced through human actions and interaction</li> <li>• The analysis of the social world is conducted by taking into consideration constructed subjective shared meanings and realities</li> <li>• The shared meanings are constructed through symbolic interactions by human action and personal experience</li> <li>• Human actors actively make representations and hold consensual views of a particular reality through norms, rites, rituals and day-to-day activities</li> <li>• The researcher is part of what is being researched, and is immersed in the subjective reality of social actors</li> </ul>	Partly Suitable, but has some limitations	<ul style="list-style-type: none"> <li>• The interpretive perspective does not address the particular socio-economic and political contexts where it operates. Arguably, such contexts clearly influence meanings and the experience of social actors</li> <li>• The interpretive approach attempts to ignore the historical analysis and changes in social structure</li> <li>• An interpretivist only explains the status quo, they do not criticize it and aim to preserve it</li> <li>• The interpretive approach lacks in examining the structural contexts within society. Major conflicts and power struggles between classes are neglected as human actions are restrained by prevailing systems and the social order</li> <li>• Interpretive research does not critically evaluate social order and human practices</li> </ul>
Critical Approach	<ul style="list-style-type: none"> <li>• The critical approach draws on many assumptions as the interpretive approach</li> <li>• The critical approach is interested in casting light on the relationship of social practice and context</li> <li>• Critical studies pay particular attention to</li> </ul>	Suitable	<ul style="list-style-type: none"> <li>• A critical perspective is able to address political and ideological influences in order to understanding a social phenomenon</li> <li>• The critical paradigm pays attention to the historical analysis, working towards transformation of society</li> </ul>

	<p>the relevance of historical analysis</p> <ul style="list-style-type: none"><li>• The critical paradigm attempts to criticize the status quo in relation to unequal power structure and the prevailing systems of social order</li><li>• The critical theorist focuses on the ways power is embedded in particular structures of society. This approach demonstrates ingrained structural conflicts within society and social practices</li><li>• The critical approach sheds light on inequality, oppression and exploitation towards dominant contexts</li></ul>		<ul style="list-style-type: none"><li>• This approach presents a critique of status quo, which is maintained in the particular political and social context</li><li>• The critical paradigm throws light on unequal power structures, where power is concentrated and institutionalised</li><li>• The critical approach can better explore inequality, oppression and exploitation in contemporary society</li></ul>
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**Source:** Current Study





### Appendix 3.3: Detailed List of Interviewees

No.	Coded Name	Method	Duration
<b>Group 1: Regulators-R (Public Procurement Officers)</b>			
1.	R1	Face to face Interviews	50 minutes
2.	R2	Face to face Interviews	77 minutes
3.	R3	Face to face Interviews	53 minutes
4.	R4	Face to face Interviews	32 minutes
5.	R5	Face to face Interviews	49 minutes
6.	R6	Face to face Interviews	91 minutes
7.	R7	Face to face Interviews	57 minutes
8.	R8	Face to face Interviews	119 minutes
9.	R9	Email Interviews	N/A
10.	R10	Email Interviews	N/A
11.	R11	Email Interviews	N/A
12.	R12	Email Interviews	N/A
13.	R13	Email Interviews	N/A
<b>Group 2: Public Professionals-PP (Public Auditors and Enforcement Officers)</b>			
14.	PP1	Face to face Interviews	91 minutes
15.	PP2	Face to face Interviews	64 minutes
16.	PP3	Face to face Interviews	136 minutes
17.	PP4	Face to face Interviews	75 minutes
18.	PP5	Face to face Interviews	50 minutes
19.	PP6	Face to face Interviews	60 minutes
20.	PP7	Face to face Interviews	42 minutes
21.	PP8	Face to face Interviews	49 minutes
22.	PP9	Email Interviews	N/A
23.	PP10	Email Interviews	N/A
24.	PP11	Face to face Interviews	65 minutes
25.	PP12	Face to face Interviews	66 minutes
26.	PP13	Face to face Interviews	52 minutes
<b>Group 3: Politicians-P</b>			
27.	P1	Face to face Interviews	70 minutes
28.	P2	Face to face Interviews	73 minutes
29.	P3	Face to face Interviews	71 minutes
30.	P4	Face to face Interviews	65 minutes
31.	P5	Face to face Interviews	39 minutes
<b>Group 4: Media Actors-M</b>			
32.	M1	Skype Interviews	161 minutes
33.	M2	Face to face Interviews	48 minutes
34.	M3	Face to face Interviews	55 minutes
35.	M4	Skype Interviews	37 minutes
<b>Group 5: Academics-A</b>			
36.	A1	Skype Interviews	48 minutes
37.	A2	Face to face Interviews	33 minutes
38.	A3	Face to face Interviews	98 minutes
39.	A4	Face to face Interviews	69 minutes
40.	A5	Skype Interviews	57 minutes

Source: Generated from the Fieldwork



## Appendix 3.4: Interview Guide

This interview guide is to be structured accordance to five identified groups (regulators, public professionals, political officials, media actors, and civil society group (Academics and/or NGOs). The questions are intended for particular objectives, or may be used repeatedly based on the themes and methodological frameworks.

### **INTERVIEW GUIDE FOR REGULATORS**

#### Question 1

In the public sector, the usage of public fund for public procurement is for the benefit of society by providing good facilities and amenities, education, subsidies and various developments. However, weaknesses in public procurement and emerging issues of accountability, transparency, fraud and corruption, integrity and cronyism are continuously raised by the public towards Malaysian public procurement.

- a) What is your opinion on the issue raised on public procurement specifically in relating to public procurement fraud?
- b) In your views, how would you rate public procurement fraud in Malaysia? (good-no fraud; fair-acceptable; bad-cannot be fixed), if so why?
- c) In your opinion, do you think public procurement fraud has tarnished the images, accountability and transparency of public organization?

#### Question 2

Public procurement fraud in Malaysia is committed in several ways: bid rigging; creation of shell companies to facilitate fraudulent payments; collusion between suppliers; purchase order and variation orders and false invoices.

- a) Can you please describe with me the public procurement system in Malaysia (perhaps by giving the process in a diagram)?

- b) Some contend that profit motives by global capitalism towards competitiveness have motivated the flourish of much fraudulent behaviour. What is your view regarding this?
- c) In your view, what is (are) the internal and external factors for organizations to engage in fraudulent activities?
- d) In your opinion, why do individuals commit fraud?
- e) Based on your experience, could you please share with me on how the fraudster commits such immoral activities (no evidence of fraud in the procurement's documentation)?
- f) As the public procurement system involves many layers (pre-contract, contract and post-contract), can you please explain at which layer frauds normally occur?
- g) Why do you think auditors were not able to detect fraudulent transactions in many public procurement frauds?

### Question 3

In the public sector, lack of transparency, prevalence of interference from outside parties and cronyisms, has affected the credibility and integrity of the public procurement system in Malaysia. Instructions from 'above' and confidentiality of government contracts seem to be manipulated in the public procurement system for vested interest. This is supported with oppressive and restrictions on governmental procedures (e.g. Official Secrets Act, The Oath of Allegiance, the Statutory Bodies (Discipline and Surcharge) Act 2000, Staff General Order).

- a) Based on your experience, have you encountered any interference from outside parties (e.g. local politicians, prominent businessman, member of parliament or high ranking officer) in awarding any government contracts?
- b) In your opinion, do you think the procurement system in Malaysia (direct purchase, open/close tender and direct negotiation) aids fraudulent practices and corrupt activities? If so, can you please provide an example?
- c) What barriers/challenges have you encountered for implementation of procurement policies and procedures?
- d) Why do you think government contract is always private and confidential?

- e) Based on the above, to what extent do you think that government projects are shrouded in secrecy that can lead to fraud?
- f) To what extent do you think secrecy of government documents can undermine the investigation and enforcement's role in detecting and preventing fraud?
- g) In your opinion, do the oppressive and restrictions of government policies hide and conceal any fraudulent activities among public organizations and may be open to abuse?

#### Question 4

Socio-political and economic policies of Malaysian history has been based on economic mismanagement and corruption. This section invites your thoughts about reform that have taken place since independence.

- a) In your opinion, do you think that government has been able to control fraudulent practices and malfeasance activities in the country since independence?
- b) What are your thoughts of level of success, if any, with which successive governments has achieved in controlling fraud?
- c) In your opinion, what should the government be doing to restrain and curb fraudulent activities in Malaysia?

#### Question 5

As a successful developing country in its region (e.g. ASEAN), Malaysia continues to grow and progress aided by international and domestic support for economic growth. The international support is normally associated with foreign direct investments (FDI). The domestic support comes from strong intervention of the Malaysian government in its public policy (New Economic Policy, National Development Policy, and New Economic Model). However, the increasing interdependencies of countries in a globalised world by capitalism and global competition has transformed Malaysia with its protectionist economy to be more vulnerable to economic problems such as the Asian financial crisis of the late 1990's.

- a) Can you please describe the negotiation process between Malaysia and foreign countries, for example in setting up the terms for foreign direct investment between the two countries?
- b) In your opinion, how much influence does international forces on development have on public policy in Malaysia?
- c) To what extent do you think the protective economic policies of the Malaysian state tend to develop fraudulent practices between politician, public officials and business leaders?
- d) What do you understand by the word 'globalisation'?
- e) In your opinion, do you think globalisation prepares a means for people to engage in this immoral behaviour of fraud (e.g. using technology) which leads to the financial crisis?

#### Question 6

As part of public policy processes in early 1980's (in particular in New Public Management-NPM), privatisation has been implemented by the Malaysian government for improving efficiency and introductory of various competition (J. Tan, 2008). However, the implementation of privatisation in Malaysia entails continued state intervention, rent-seeking activities, fraud and corruption, mismanagement and policy failure. (e.g. the collapse of Malaysian Airlines System, Perwaja Steel, Indah Water Konsortium). Public official on the other hand are suppressed by all the regulations and restrictions to comment on governmental policies, with the motto of 'I'm the obedient servant'.

- a) In your view, what are the factors that influence the failure of privatisation in Malaysia?
- b) In your opinion, do you think the outcomes of resource allocation (e.g. yearly budget of development programs) in public policy can provide evidence of fraudulent practices and mismanagement?
- c) To what extent, do you think that development policy by the Malaysian state is based on the monopolization power of the ruling party associated with 'entrepreneurial subjects' beyond the public interest?

d) Can you please explain to me the significant of 'I'm the obedient servant' in Malaysia public sector?

e) In Port Klang Free Trade (PKFZ)'s case of fraud, our former Prime Minister indicates that if any fraudulent or cheating elements in the cabinet papers, then it implies that the people who were preparing the cabinet papers (public officials) were also colluding in the fraudulent schemes. What is your opinion on that?



## **INTERVIEW GUIDE FOR PUBLIC PROFESSIONALS**

### Question 1

Public procurement fraud in Malaysia is committed in several ways: bid rigging; creation of shell companies to facilitate fraudulent payments; collusion between suppliers; purchase order and variation orders and false invoices.

- a) Some contend that profit motives by global capitalism towards competitiveness have motivated the flourish of much fraudulent behaviour. What is your view regarding this?
- b) In your view, what is (are) the internal and external factors for organizations to engage in fraudulent activities?
- c) In your opinion, why do individuals commit fraud?
- d) Based on your experience, could you please share with me on how the fraudster commits such immoral activities (no evidence of fraud in the procurement's documentation)?
- e) As the public procurement system involves many layers (pre-contract, contract and post-contract), can you please explain at which layer frauds normally occur?
- f) Why do you think auditors were not able to detect fraudulent transactions in many public procurement frauds?

### Question 2

Matechak (2005) opined that public procurement is one of the key areas where the public sector and the private sector interact financially and politically with each other. Indeed, public procurement seems to facilitate corrupt activity, cronyism and favouritism as well as outright bribery.

- a) What is your view on this?
- b) In your opinion, do you think fraudulent activities can occur at the intersection between government and business interactions? If so, why?
- c) To what extent do you think business and political interest are influencing public procurement fraud in Malaysia?

- d) Are you aware of any fraud cases involving politicians, public officials, or reputable businessmen in Malaysia?
- e) In your opinion, does the existence of a middle man between public and private sphere have facilitated corrupt and fraudulent activities?

### Question 3

Every year, Auditor General of Malaysia reported in its Audit Report the public sector's activities and the inherent financial negligence, corruption, malfeasance activities and breach of trust. In particular of public procurement fraud, it has established massive wastages of public funds, creating frustration and cynicism among the Malaysian people towards accountability of public funds.

- a) What is your view about the Malaysian situation?
- b) Some have argued that fraudulent practices and wrongdoing activities are major impediments to the development of Malaysia. What do you think are the consequences of fraud in Malaysian public sector?
- c) In your opinion, do you think the wastage of public money has been dealt with sufficiently by the regulators and judicial party?
- d) As an independent body, the Auditor's General staff is surrounded by expertise and 'technical know-how' to prevent and detect fraud. To what extent do you think the auditors have played their role in preventing and detecting fraud in Malaysia public sector?
- e) Then what is your comment on other regulatory bodies (e.g. ACCA, Police Force, and judiciary) on their role in public procurement fraud?

### Question 4

With the widespread nature of frauds in public organisations, the role of auditor in preventing and detecting fraud has been questioned and criticised. Specifically, the conflicting role between external auditor and internal auditor in exercising their duties in many public organizations in Malaysia has recognized some fallacies and damages public confidence. The Public Accounting Committee (PAC) on the other hand relies on the Auditor's General report on how far the Government has complied with authority to raise and spend public money.

- a) Based on your experience in reporting fraud and improper activities in Malaysian public sector, what barriers have you encountered?
- b) If an auditor does not agree principally with some of the findings in the audit report, what steps can they take to highlight the issues? Can you please provide an example for this case.
- c) In what way, do auditors reflect independence, integrity and free from bias in maintaining their professional self-images?
- d) What do you think can further improve the role of auditors in preventing and detecting fraud in Malaysian public sector?
- e) In your eye, what do you think the profession should do to restore public confidence towards the profession?
- f) In your opinion, to what extent does the auditor-management relationship impair independence and reliability of the audit report (give example)?
- g) To what extent do you think the independence of the auditor in checking other's auditor work? (for example between internal and external audit's jurisdiction)?

#### Question 5

It has been consistently claimed that professionals in Malaysia have not effectively used their special knowledge, special training, professional opportunities, and special gifts to promote development in our country. Some believe that the judgment of professional conduct by these groups are further impacted by interference by 'people from above' and used for particular purposes. It has been further claimed that the professional service is no longer within the reach of ordinary people.

- a) What is your view about this?
- b) In your opinion, do professionals in Malaysia act with the highest integrity, with professional conduct and for the public interest.
- c) Some have argued that professionals have been involved in all sorts of professional misconduct in Malaysia, including fraudulent practices. What is your opinion on this?
- d) Some argued that audit's report are selective and influenced by powerful groups (e.g. ruling elites) and to impress management. Only some reports are

exposed to public while others tend to hide or conceal fraudulent practices.

What is your view about this?

e) Can you please give example of any interference from outside parties when producing an audit report?

## **INTERVIEW GUIDE FOR POLITICAL OFFICIALS**

### Question 1

The Malaysian variant of developmental state was moved by imperatives of postcolonial development, impulses of economic nationalism, aspirations of Asian-style capitalism and expectations of economic solutions to deep political and social problems (Teik, 2012). However, these concepts may be seen as motivating and encouraging fraudulent behaviour and misconduct activities among Malaysian society.

- a) In your opinion, what do you think is in Malaysian culture or history that encourages fraudulent practices and wrongdoing activities in Malaysia?
- b) How do such immoral practices become entrenched and normalised in our socio-political and economic life?
- c) In your opinion, what is/are the main factors (s) that influence people to perpetrate fraudulent practices?

### Question 2

Politicians and public officials are responsible and powerful actors in managing public administration in Malaysia. Both of the groups are involved directly with the public policy processes and implementation arrangements. These actors as ruling elites demonstrate monopolization of power and have considerable influence in how resources are allocated between public and private institutions.

- a) What are your views about what politicians and public officials have been doing in the public policy processes which perhaps lead to fraudulent activities and mismanagement?
- b) In your opinion, do you think that the corrupt activities of politicians and public officials have had an effect on the general public and development of Malaysia? If so, how?
- c) In your view, do you think that political officials play any role either in facilitating or regulating fraudulent practices in Malaysia?

- d) Do you know any cases where a complaint has been lodged against Malaysian politicians by the public regarding the issue of corruption or frauds?
- e) It has been argued that a method of check and balances is not fully conceived in managing public funds in Malaysia. What is your opinion on this?

### Question 3

The existence of patron-client cultural traditions within a politically dominant group (the ruling elites) has encouraged fraudulent practices within Malay-dominated government institutions. The 'money politic' between the politician, bureaucrats and businessmen has established revenues or rents earned by these private businesses as well as government officials (L. Y. Lim & Stern, 2002).

- a) In your views, why are these powerful groups (politician, bureaucrats and prominent businessman) willing to engage in fraudulent practices?
- b) How important do you think it is for the same group to exploit scarce resources to grow power, status and wealth in Malaysia based on profit seeking motives using political and economic institutions for their own self-interest? If so, why?
- c) In your opinion, do you think fraudulent practices and immoral activities are aided and supported by political and economic institutional structures? If so, why?

### Question 4

It has been argued that the lobbying process has captured the regulation of public policy in and aids in determining favourable business private interests rather than the public interest. For example, it is common for businessmen in Malaysia to support a political party that campaign to retain the ruling elites to stay in power and maintain the status quo in the distribution and accumulation of wealth.

- a) To what extent do you think money play an important role for any political campaign? If so why?
- b) Can you please explain how normally political parties finance their campaign?
- c) In your view, what is the nature of political campaigning in Malaysia?

- d)Based on the above scenario, is there any evidence of the lobbying process in political campaign which seems to influence fraudulent practices in Malaysia? If so why and how?

#### Question 5

In Malaysian judicial episodes, there have been continuous conflict and contradictions in practicing its integrity and independence. It has been argued that in the history of the judiciary in Malaysia has exposed the institution to unethical practices of case fixing, selective prosecution, corruption and abuse of power (Embong, 2012). For example, in the case of Datuk Eric Chia in embezzlement RM76.5 million to pay bogus company in Hong Kong, he escaped from serving a sentences due to a flawed prosecution case. Thus, the law in Malaysia is seen as a means of domination, exploitation, intimidation, and the subversion of the public good by some people.

- a)What is your view regarding this issues?
- b)In your opinion, do you think our judicial mechanisms are controlled by the executive especially the Prime Minister?
- c)In your view, do you think our judiciary had acted with independence and integrity in particular of fraud and corruption cases in Malaysia? If so, why?
- d)To what extent do you think our current law (rules and regulations) is sufficient o really plays its intended role in this regard?
- e)To what extent do you believe that the public in Malaysia is free to complain of any occurrences of corruption and fraudulent practices committed by politicians, public officials and prominent businessman?
- f)In your view, do you think the enforcement bodies in Malaysia (e.g. police, Anti-Corruption Agency) are success in bringing the culprit (in particular corrupt elites) to justice? If so, why?

## **INTERVIEW GUIDE FOR MEDIA ACTORS**

### Question 1

Matechak (2005) opined that public procurement is one of the key areas where the public sector and the private sector interact financially and politically with each other. Indeed, public procurement seems to facilitate corrupt activity, cronyism and favouritism as well as outright bribery.

- a) What is your view on this?
- b) In your opinion, do you think fraudulent activities can occur at the intersection between government and business interactions? If so, why?
- c) To what extent do you think business and political interest are influencing public procurement fraud in Malaysia?
- d) Are you aware of any fraud cases involving politicians, public officials, or reputable businessman in Malaysia?
- e) In your opinion, does the existence of a middle man between public and private sphere has facilitated corrupt and fraudulent activities?

### Question 2

The existence of patron-client cultural traditions within a politically dominant group (the ruling elites) has encouraged fraudulent practices within Malay-dominated government institutions. The ‘money politic’ between the politician, bureaucrats and businessmen has established revenues or rents earned by these private businesses as well as government officials (L. Y. Lim & Stern, 2002).

- a) In your views, why are these powerful groups (politician, bureaucrats and prominent businessman) willing to engage in fraudulent practices?
- b) How important do you think it is for the same group to exploit scarce resources to grow power, status and wealth in Malaysia based on profit seeking motives using political and economic institutions for their own self-interest? If so, why?



- c) In your opinion, do you think fraudulent practices and immoral activities are aided and supported by political and economic institutional structures? If so, why?

### Question 3

The media play an important role in disseminating information to the public. However, media freedom is restricted by Printing Presses and Publications Act (PPPA) issued by the regulators. This creates a difficult situation for the media and journalists to report any fraudulent activities and wrongdoing behaviors for citizens in Malaysia.

- a) In your opinion, do you believe that the media is playing their intended role in Malaysia?
- b) Do you believe that fraud cases in Malaysia are fairly circulated by the media? If so why?
- c) Do you believe that sometimes the media presents fraud cases in Malaysia in favour of someone or in certain private interests?
- d) In your view, do you think media's reporting of fraud cases is constrained or limited or restricted by anything? If so, what is/are the constrain (s)?

### Question 4

The Malaysian variant of developmental state was moved by imperatives of postcolonial development, impulses of economic nationalism, aspirations of Asian-style capitalism and expectations of economic solutions to deep political and social problems (Teik, 2012). However, these concepts may be seen as motivating and encouraging fraudulent behaviour and misconduct activities among Malaysian society.

- a) In your opinion, what do you think is in Malaysian culture or history that encourages fraudulent practices and wrongdoing activities in Malaysia?
- b) How do such immoral practices became entrenched and normalised in our socio-political and economic life?

- c) In your opinion, what is/are the main factors (s) that influence people to perpetrate fraudulent practices?

Question 5

Socio-political and economic policies of Malaysian history has been based on economic mismanagement and corruption. This section invites your thoughts about reform that have taken place since independence.

- a) In your opinion, do you think that government has been able to control fraudulent practices and malfeasance activities in the country since independence?
- b) What are your thoughts of level of success, if any, with which successive governments has achieved in controlling fraud?
- c) In your opinion, what should the government be doing to restrain and curb fraudulent activities in Malaysia?

## **INTERVIEW GUIDE FOR ACADEMICS**

### Question 1

The Malaysian variant of developmental state was moved by imperatives of postcolonial development, impulses of economic nationalism, aspirations of Asian-style capitalism and expectations of economic solutions to deep political and social problems (Teik, 2012). However, these concepts may be seen as motivating and encouraging fraudulent behaviour and misconduct activities among Malaysian society.

- a) In your opinion, what do you think is in Malaysian culture or history that encourages fraudulent practices and wrongdoing activities in Malaysia?
- b) How do such immoral practices became entrenched and normalised in our socio-political and economic life?
- c) In your opinion, what is/are the main factors (s) that influence people to perpetrate fraudulent practices?

### Question 2

In the public sector, lack of transparency, prevalence of interference from outside parties and cronyisms, has affected the credibility and integrity of the public procurement system in Malaysia. Instructions from 'above' and confidentiality of government contracts seem to be manipulated in the public procurement system for vested interest. This is supported with oppressive and restrictions on governmental procedures (e.g. Official Secrets Act, The Oath of Allegiance, the Statutory Bodies (Discipline and Surcharge) Act 2000, Staff General Order).

- a) In your opinion, do you think the procurement system in Malaysia (direct purchase, open/close tender and direct negotiation) aids fraudulent practices and corrupt activities? If so, can you please provide an example?
- b) Why do you think government contract is always private and confidential?

- c) Based on the above, to what extent do you think that government projects are shrouded in secrecy that can lead to fraud?
- d) To what extent do you think secrecy of government documents can undermine the investigation and enforcement's role in detecting and preventing fraud?
- e) In your opinion, do the oppressive and restrictions of government policies hide and conceal any fraudulent activities among public organizations and may be open to abuse?

### Question 3

As a successful developing country in its region (e.g. ASEAN), Malaysia continues to grow and progress aided by international and domestic support for economic growth. The international support is normally associated with foreign direct investments (FDI). The domestic support comes from strong intervention of the Malaysian government in its public policy (New Economic Policy, National Development Policy, and New Economic Model). However, the increasing interdependencies of countries in a globalised world by capitalism and global competition has transformed Malaysia with its protectionist economy to be more vulnerable to economic problems such as the Asian financial crisis of the late 1990's.

- a) Can you please describe the negotiation process between Malaysia and foreign countries, for example in setting up the terms for foreign direct investment between the two countries?
- b) In your opinion, how much influence does international forces on development have on public policy in Malaysia?
- c) To what extent do you think the protective economic policies of the Malaysian state tend to develop fraudulent practices between politician, public officials and business leaders?
- d) What do you understand by the word 'globalisation'?
- e) In your opinion, do you think globalisation prepares a means for people to engage in this immoral behaviour of fraud (e.g. using technology) which leads to the financial crisis?

#### Question 4

In Malaysian judicial episodes, there have been a continuous conflict and contradictions in practicing its integrity and independence. It has been argued that in the history of the judiciary in Malaysia has exposed the institution to unethical practices of case fixing, selective prosecution, corruption and abuse of power (Embong, 2012). For example, in the case of Datuk Eric Chia in embezzlement RM76.5 million to pay bogus company in Hong Kong, he escaped from serving a sentences due to a flawed prosecution case. Thus, the law in Malaysia is seen as a means of domination, exploitation, intimidation, and the subversion of the public good by some people.

- a) What is your view regarding this issues?
- b) In your opinion, do you think our judicial mechanisms are controlled by the executive especially the Prime Minister?
- c) In your view, do you think our judiciary had acted with independence and integrity in particular of fraud and corruption cases in Malaysia? If so, why?
- d) To what extent do you think our current law (rules and regulations) is sufficient o really plays its intended role in this regard?
- e) To what extent do you believe that the public in Malaysia is free to complain of any occurrences of corruption and fraudulent practices committed by politicians, public officials and prominent businessman?
- f) In your view, do you think the enforcement bodies in Malaysia (e.g. police, Anti-Corruption Agency) are success in bringing the culprit (in particular corrupt elites) to justice? If so, why?

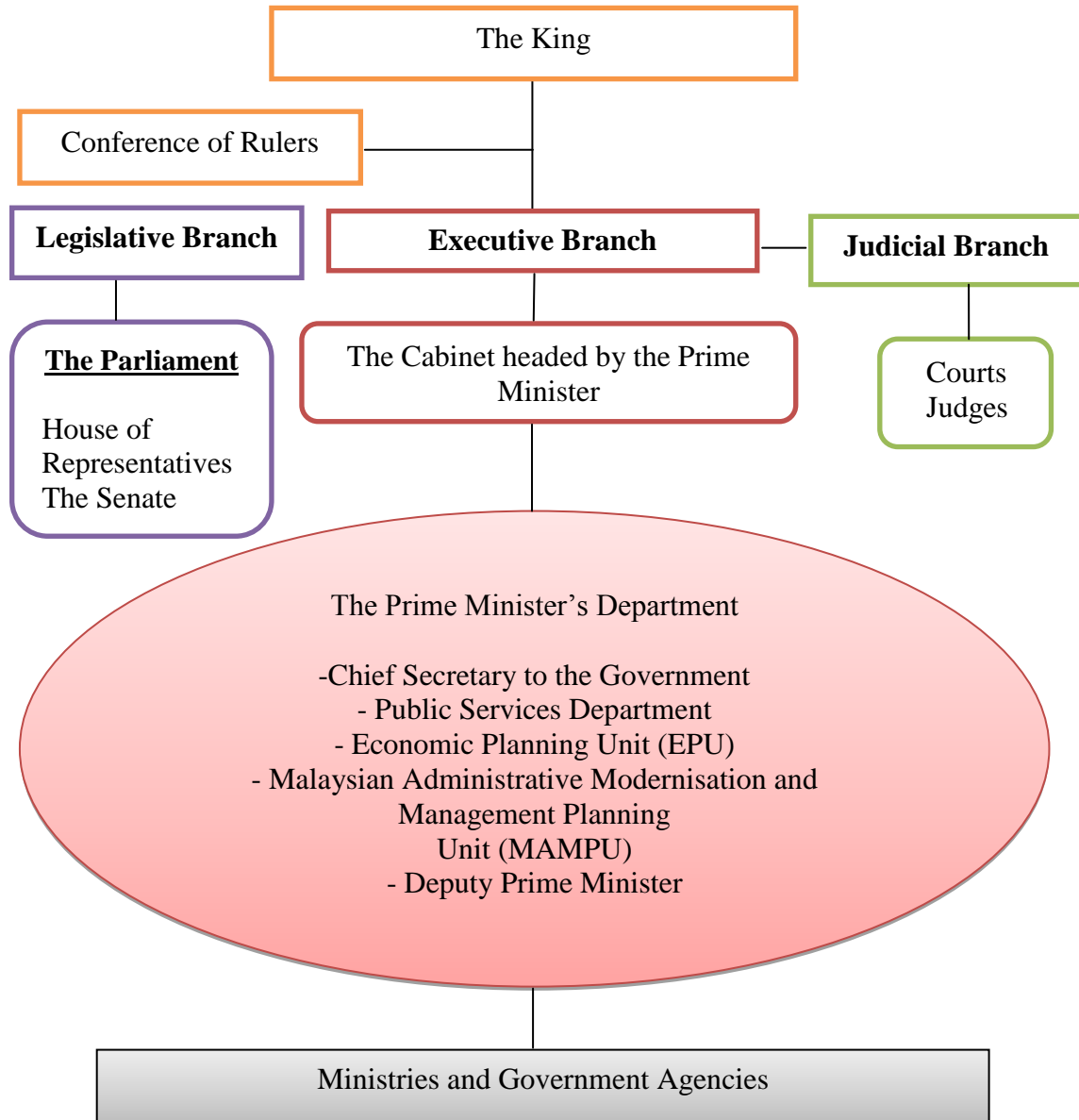
#### Question 5

Academics in Malaysia play a prominent role in promoting awareness about fraud phenomenon amongst students. From education, it is hoped students will reject all sorts of immoral and unethical behavior embedded in norms, cultural, values and practices.

- a) I would like to hear your views on this?
- b) How are academics participating in shedding light and disseminating awareness about fraud phenomenon among students?
- c) To what extent does the curriculum that has been used in the universities help academics to do this?
- d) How do academic see their role in the future in promoting ethical and moral behaviour to restrain fraudulent practices?
  - e) What are your views about the current situation of fraudulent practices in public procurement fraud in Malaysia?
  - f) How important it is for academics to critically express their views upholding academic freedom in their teaching and research responsibilities?

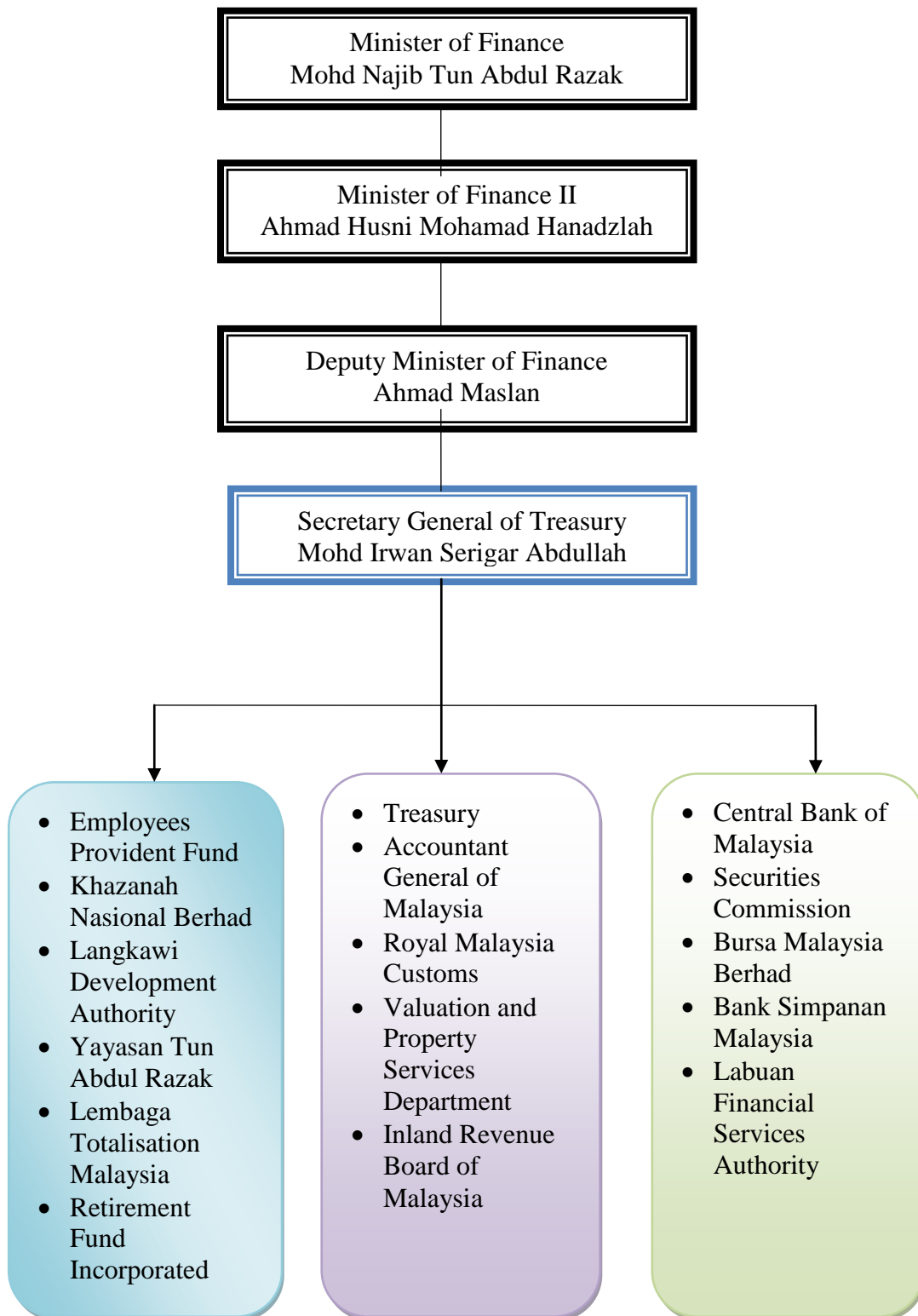


### Appendix 4.1: Government of Malaysia







**Appendix 4.2: Organization Chart of Ministry of Finance, Malaysia**



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