

INTEGRITY AND INDEPENDENCE OF JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS

*Rashidah binti Haji Rashid**

I. INTRODUCTION

The United Nations and other international organizations have made efforts to promote the integrity and independence of the judiciary, prosecutorial authorities and law enforcement authorities and have adopted several relevant legal instruments. Most importantly, the United Nations Convention against Corruption (UNCAC) Article 5 states that a State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of rule of law, proper management of public affairs and public property, integrity, transparency and accountability. In addition to Article 5, Article 11 states the importance of securing the independence of the judiciary and integrity in order to prevent and suppress corruption. In addition to UNCAC, there are other essential laws and regulations to ensure integrity and independence of judges, prosecutors and law enforcement agencies.

In Brunei Darussalam, the Prime Minister's Office is the central coordinating body for all Government ministries and agencies, including the Judiciary Department, the Attorney General Office and the Law Enforcement Agency. All public servants are governed by several laws and regulations and government circulars namely the Public Service Commission Act (Chapter 83) – Public Officers (Conduct and Discipline) Regulations.

The Anti-Corruption Bureau (ACB) Brunei Darussalam was established on 1st February 1982. Following the formation of the Bureau, the Emergency (Prevention of Corruption) Order, 1981 was replaced with the Prevention of Corruption Act (Chapter 131) (PCA). The ACB is the lead agency with designated powers of investigation into corruption offences. The PCA was reviewed and amended to include preventive powers and duties of the officers of the Bureau and additional powers of investigation including misconduct in Public Office. As for the Brunei Anti-Corruption Bureau (ACB), each investigator is governed under several laws and regulations. The laws and regulations are as follows:

- The Public Service Commission Act (Chapter 83 of the Brunei Laws
This Act makes provision for the punishment of offences in connection with the Public Service Commission, for the protection and remuneration of the members of the Commission and for other matters connected therewith. ACB officers are considered as members of the Commission. Under this Act, no member of the Commission shall publish or disclose any contents/documents/communications or information without consent. Any person contravening the provision shall be guilty of an offence, with a penalty \$5,000.00 and imprisonment of one year.

* Assistant Special Investigator, Anti-Corruption Bureau, Brunei Darussalam.

- Regulations made in General Orders:
All government officers have to follow the regulations stated in General Orders. If any officers is against this order, they could be removed from the government office if convicted, or they will not be promoted as disciplinary action.
- Instruction from the Prime Minister's Office known as *Surat Keliling*:
This is a memorandum by the Prime Minister's office which stated that if any officers suspected/found to commit any offence under the Penal Code, the Ministry has power to withhold their salary and to suspend them from working while the case is under investigation.
- Treasury Circulars issued on financial matters; and Financial Regulation 1983 governing procurement and related issues.
It is the duty of all officers to be conversant with Financial Regulation and with such Treasury Circulars and special accounting instruction as are applicable to them or to their department. This is to establish a proper system of accounting and to supervise the expenditure and disbursement of the Government account so as to ensure the integrity of the officers.

Several other government agencies also act as a check and balance on the conduct of civil servants. This includes the Anti-Corruption Bureau. Besides the general laws and regulations, the ACB also has several standard operating procedures (SOP) in place to ensure that investigations are conducted with integrity and independence. For example:

- Any information received will be reviewed by the Complaint Evaluation Committee;
- The committee consists of ACB senior officers and is chaired by the director;
- Once investigation is completed the investigation papers will be forwarded to the Deputy Public Prosecutor (DPP) for advice;
- The DPP will decide to proceed with prosecution to ensure checks and balances between investigation and prosecution.

As for prosecutors, the Criminal Justice Division under the Attorney General Chambers (AGC) is responsible for prosecuting the ACB's and other law enforcement agencies' cases. The DPP will then evaluate the investigation papers forwarded by the ACB to ensure that the investigation is conducted in accordance with law and that there is sufficient evidence to proceed with prosecution.

Magistrates and judges are governed under laws and regulations similar to other civil services. Hence, magistrates and judges can be investigated and prosecuted.

II. CORRUPTION CONTROL

In 2015, Brunei enacted a new corruption law to address abuse of power and misconduct in public office. The latest laws will give powers to the ACB to investigate civil servants who fail to carry out their duties, for example, criminalizing the use of public funds for private purposes; giving undue preferential treatment; misuse of information acquired during the course of duty; and allowing private interests to come into conflict with public duties. Hence, with these latest laws it will allow legal action to be taken against

judges, prosecutors and law enforcement officers who fail to carry out their duties to a high ethical standard.

III. EDUCATION AND TRAINING

Since the new corruption laws were enacted, the ACB and the AGC have been giving awareness talks to the civil service. The AGC also conducts training for ACB investigators on what is required to conduct the investigation, such as handling exhibits and digital evidence.

IV. PROCEDURAL SAFEGUARDS

In order to avoid any conflict of interest in case assignments (e.g., disqualification and recusal of judges and prosecutors) some procedural safeguards have been put in place. For example, in the Anti-Corruption Bureau, an investigator must declare to the director if there is any conflict of interest in connection with a person of interest. For example, if the subject is family or friend to the investigator, the case will then be reassigned to another investigating officer and as far as possible, the conflicted investigation will not be involved in the case at all. As for prosecutors and judges, they must recuse themselves from any case if they are disqualified from performing their legal duties because of a conflict of interest or lack of impartiality. The conflict of interest should be avoided to ensure integrity of the case officer and also to avoid bias.

V. CONCLUSION

With high integrity of the Judges, Prosecutors, and Law Enforcement of Officials, most of the cases in Brunei have been investigated and prosecuted well. Independence shows equality and fairness of the duties of judges and prosecutor, and it is considered right for all citizens.

References

- i. Constitutional Matters I, Constitution of Brunei Darussalam
- ii. United Nations Convention Against Corruption (UNCAC)
- iii. Prevention of Corruption Act (Chapter 131)
- iv. Criminal Asset Recovery Order (CARO)