

Boosting MACC Independence for Greater Public Confidence

Introduction

- Public support for an anti-corruption commission influences its effectiveness to tackle corruption. The public is more likely to report any corruption cases and cooperate in investigation process if they have confidence in the commission.
- Unfortunately public perception of the Malaysian Anti-Corruption Commission (MACC) is not always positive. Some quarters accuse the MACC of lacking independence and that the MACC's decisions are influenced by those in power.
- Commendably, the MACC has been working hard to improve its image among the public. Unfortunately public perception of MACC's lack of independence lingers on.
- How can we address the perception that the MACC lacks independence? This Policy Ideas explores the issue by studying the anti-corruption agencies of Hong Kong and Indonesia. Suggestions for improvement are provided at the end.

Current measures to ensure independence

- The Malaysian Anti-Corruption Commission (MACC) was established in 2009 to replace the Anti-Corruption Agency (ACA). This move was aimed to give the MACC greater independence and accountability.
- Structurally, five committees have been established to monitor and advise the MACC's operations:
 - Anti-Corruption Advisory Board,
 - Special Committee on Corruption,
 - Complaints Committee
 - Operations Review Panel
 - Corruption Consultation and Prevention Panel
- The establishment of these committees differentiates MACC from ACA. Prominent individuals, including those who used to be involved in civil society movements, are appointed to be the members of these bodies to show the serious efforts of MACC to be independent. This is a good move as it creates greater chance for public involvement in monitoring MACC's work.

The Issues

Despite of above mentioned measures, MACC is still accused of lacking independence. Admittedly there are many issues that have been raised but the following issues are the most often raised to argue the case against the MACC:

1. MACC is perceived to be under the Prime Minister's influence which means its powers - such as to investigate the Prime Minister himself or to disagree with the Prime Minister - is limited:

- While the MACC commissioners are appointed by Yang di-Pertuan Agong, the MACC as an entity is placed under the Prime Minister's department and gets funding from this office.
- The dependence of the commission on the government's executive wing for funding, as well as the institutional structure, may compromise MACC's independence.



The Issues (continued)

2. MACC does not have prosecution power and therefore it is perceived to be toothless:

- The decisions on whether to prosecute lies with the Attorney General (Public Prosecutor). The MACC does not and cannot interfere with the decision of the Public Prosecutor in the prosecutorial process.
- This separation of prosecution and investigation powers has led to allegations that the MACC cannot prosecute cases even when they feel they have sufficient evidence because the Attorney General may refuse to do so.

Therefore, to make the MACC perceived as being more independent, the questions that have to be asked are:

- Should the MACC continue to be placed under the Prime Minister's Department, or should they report directly to parliament?
- Should the MACC be given prosecution power?
- Are there other institutional arrangements that could be established?

Case studies of Hong Kong and Indonesia

To answer above questions, we will present two short case studies of the anti-corruption commissions that are seen as independent and successful in tackling corruption in their respective countries:

Hong Kong

Independent Commission against Corruption (ICAC)

Like MACC, the ICAC is placed under the Chief Executive of Hong Kong, and it does not have prosecution power.

However, ICAC is seen as more independent and accountable for several reasons:

- The Attorney General office and the judiciary in Hong Kong are trusted by the public. Therefore, even though the ICAC does not have prosecution powers, there is less fear that the decisions of the Attorney General could be compromised.
- ICAC and its advisory committees publish an annual report that is tabled to the Legislature for debate.
- ICAC interviews all suspects under video, because they believe a professional interview technique and the safeguarding of the integrity of the interview evidence are crucial for successful corruption prosecutions.
- ICAC cases are prosecuted by a select panel of public prosecutors to ensure both quality and integrity.

- ICAC hires its own staff through open recruitment. In its first year, experienced people were attracted and hired from various local sources and the United Kingdom police forces. In addition, specialists were headhunted from the accounting sector and other relevant professions in the private sector.

Indonesia

Corruption Eradication Commission (KPK)

Indonesia's Corruption Perception Index (CPI) score is lower than that of Malaysia. However, efforts of its commission to address corruption, particularly those involving high ranking officials, have been considered successful by many.

The commission enjoys wide public support. The success of KPK in prosecuting high ranking officials has boosted public confidence in this commission. Nevertheless, one should not discount the importance of institutional arrangements that led to this success:

- Prosecution power - The Indonesian government consulted ICAC Hong Kong when they wanted to establish an anti-corruption commission. However, instead of being modelled exactly after ICAC,



the Indonesian government gave the commission greater power than that of ICAC. KPK therefore:

- is operationally autonomous of other institutions, having authority to check all sections of the public sector. It reports to the President of Republic of Indonesia and Parliament (DPR).
- has prosecution powers, with the investigators and prosecutors working closely together in the same building. Indonesia's KPK can prosecute any officials, including members of parliament and judges. The only exception is military which can be investigated but not prosecuted.
- Collegial Commission – KPK is led by a collegial commission of 5 commissioners that have to reach consensus before a case is agreed to be investigated and prosecuted.
 - Every case that KPK handles will undergo three-stage panel review before being filed to court for trial.
 - The review is conducted by the KPK commissioners whose role is to challenge the proposed case strategies to ensure the case is winnable.
- Recruitment of Commissioners – KPK has a robust and transparent procedure to recruit its commissioners.
 - A special committee made up of prominent individuals named as Panitia Seleksi Calon Pimpinan KPK is assigned to manage the recruitment process of the KPK commissioners.
 - The application for commissioner is open to public. The Panitia Seleksi will review all applications and recommend 10 names to a parliamentary committee (Komisi III).
 - The parliamentary committee will examine the recommended applicants and select five individuals as commissioners and then hold a voting process to choose the coordinator.
- Recruitment of other staff – KPK's staff recruitment is independent.
 - KPK utilises an independent, private firm to manage and hire staff.
 - The application opens for public.

Policy suggestions

Looking into the experience of these two countries, there are some steps that the government can take to improve public perception towards MACC's independence:

- **The judiciary and Attorney General's Office must be reformed together with MACC**
 - The experience of Hong Kong shows that it doesn't really matter whether the MACC sits in the Prime Minister's Department or whether they have prosecution power.
 - What is most important is the integrity of the judiciary and the Attorney General's office. Any efforts to improve the quality of MACC, therefore, will have to be accompanied by reform in both the judiciary and the Attorney General's Office. Focusing on the MACC alone is not sufficient.
- **There must be greater involvement of our Parliament**
 - Currently the MACC report is only discussed by Special Committee on Corruption which only has 7 members of parliament. This arrangement is not sufficient.
 - The report of MACC and its monitoring bodies should be made public and discussed in the parliament.
- **The MACC must recruit its own staff**
 - Currently MACC staff recruitment is under the purview of the Public Services Commission, the same as all other government agencies. This reflects negatively on MACC's independence as it highlights their dependence on the government for recruitment.



- Closed recruitment may also lead to allegations that the MACC is made up of officers sympathetic to certain parties.
- To truly ensure MACC's independence, the MACC should be responsible for their recruitment process.
- An open recruitment process is necessary as this will ensure that the best and brightest possible candidates will be part of the MACC.
- **Open recruitment of MACC Commissioner**
 - The MACC Commissioner is currently appointed by the Yang di-Pertuan Agong following the advice of the Prime Minister. This arrangement should be changed.
 - Recruitment should instead be open to the public and involve the Parliament. This is to ensure that there would be no doubts as to the Commissioner's independence and freedom from influence.
 - Open recruitment would also ensure that the best candidates possible will be considered for the position.

