



## Implications of whistleblowing: what can we learn

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### Abstract

Whistleblowing application has been treated as another alternative to identify and determine a good corporate governance. In this paper, we identified a content of the whistleblowing practices to propose its accountability issues and implications. Based on the previous literature review, we suggest the execution of whistleblowing generally affected by both moral dilemmas and relevant Acts or Regulations. It is anticipated that our analysis will provide a suggested research direction to explore how whistleblowing can be addressed effectively.

**Keywords:** whistle-blower, whistleblowing, accountability

### 1. Introduction

Since the need for having an effective whistleblowing channel within an organization is becoming more and more critical in corporate governance, a whistle-blower exposing the chronic accountability illness within the management of the organization will improve its supervision mechanism. Deriving from a sporting event where the referee blows the whistle to stop an illegal or foul play <sup>[1]</sup>, whistleblowing is defined as the disclosure by organization members of illegal, immoral or illegitimate practice under the control of the employees, to persons or organizations that possibly, give significant impact <sup>[2]</sup>. And the whistleblower, is the person who whistle blows someone typically an employee or former employee discloses information either internal, or external that reasonably believes there is direct and credible evidences on wrongdoing including violation of law, mismanagement and abuse of authority in the workplace which resulting adverse impacts.

Accountability is defined as the obligation of an individual or organization to account for its past activities, take the responsibilities and disclose results in a transparent manner <sup>[3]</sup>. The real accountability occur within surrounding environment will happen when the trust and genuine teamwork is promoted by its organizational culture. However, creating the sense of accountability is something intrinsic and challenging as it involves human behavior. Whistleblowing occurs when accountability that built within the individual who is accountable for making decisions and responsible for the consequences regardless of whether the impacts turn out to be positive or negative.

Organizations have the accountability to create value to its stakeholders. The relationship and interactions between whistleblowing and accountability is vital significance to address the moral values of integrity, transparency and trust that is necessary in embracing the harmonization of interactions between stakeholder and organization. Therefore, an accountable whistleblower act as a key player to unmask accountability issues isolated, hidden and undetected within the private sector, public sector as well as the governmental institutions.

### 2. Whistleblowing Channels and Types of Whistleblowers

#### 2.1 Whistleblowing Channels

Whistleblowing can disclose the unethical activities anonymously and released through both internal and external reporting channels. The reporting channel is the key indicators to define in which its own nature belongs to <sup>[4]</sup>. The Tab. 1 shows that there are two common channels used on whistleblowing from both internal and external path.

**Table 1:** Whistleblowing channels

| Activity       | Reporting Paths | Category  |
|----------------|-----------------|-----------|
| Whistleblowing | Internal        | Anonymous |
|                |                 | Open      |
|                | External        | Anonymous |
|                |                 | Open      |

#### 2.2 Types of Whistleblowers

In the Tab. 2, we categories whistleblower into four dimensions according to the extent of hidden harm to economic entities and employees' commitment while four levels: indifferent, rebel, mature and spoil.

**Table 2:** Types of whistleblower

| Levels         | Commitment | Intention | Channel  | Hidden Harm |
|----------------|------------|-----------|----------|-------------|
| Self-conscious | Low        | Low       | Internal | Low         |
| Revolutionary  | Low        | High      | External | High        |
| Sensible       | High       | High      | Internal | High        |
| Indulgent      | High       | Low       | External | Low         |

##### 2.2.1 Self-Conscious Whistleblowers

They often present a low commitment or loyalty to organization and low whistleblowing intention, therefore has lower potential harm to economic entities. This type of whistleblower usually defined as are new onboard employees <sup>[5]</sup>. They are self-conscious when they see a misconduct and may not willing to take actions because of the lack of concern and also unfamiliarity of what about to happen if action is taken.

### 2.2.2 Revolutionary Whistleblowers

This kind of whistleblower have a lower commitment to organization but a higher intention on whistleblowing. They tend to disclose the misconduct through external channels in order to avoid hidden revenge and identification<sup>[5]</sup>. Their behavior can cause an organizational crisis as disclosing those unethical behaviors which belong to a scandal of the organization will damage its reputation and deteriorate the relationship between the organization and stakeholders.

### 2.2.3 Sensible Whistleblowers

They have a higher commitment and loyalty to the organization and a higher whistleblowing intention compared to self-conscious whistleblowers, hence might exposed a higher hidden harm to the corporates. They prefer to choose internal channels to disclose the unethical behaviors to stabilize their accountabilities among the organization, society and themselves without totally jeopardizing the entities' state.

### 2.2.4 Indulgent Whistleblowers

Overindulge whistleblower has a higher organizational commitment and loyalty therefore lower intention of whistleblowing. They want to be the one accepted by everyone and therefore the meagre misconduct will be ignored by themselves. They prefer to talk to a third party in order to release their pressure on blowing the whistle but will not take any corrective actions. Their tolerance can result in a serious organizational crisis in the future but lower hidden harm in a short-term<sup>[5]</sup>.

## 3. Accountability Issues on Whistleblowing

Most of the worst corporate disasters were identified by any kind of whistleblowing activity. A good example is Sherron Watkins; Enron vice president who raised the misconduct of Enron. Watkins wrote an internal memo to the new president, Kenneth Lay to raising her suspicions on accounting improprieties. And she has been hailed as a whistleblower as the memo was exposed to the public by congressional investigators after six weeks when Enron filed for bankruptcy. Other honorable mention like Cynthia Cooper announced to the management on major accounting issues incurred within the WorldCom.

In the case of Enron, it is mentioned that both internal and external blows are accepted as an act of whistleblowing. And several recent literatures which focus on the accountability issues relating to whistleblowing informed the need for having an effective supervision mechanism includes A dual-processing model of moral whistleblowing in organizations<sup>[6]</sup>, The evolution of whistleblowing studies: A critical review and research agenda<sup>[7]</sup> and Whistle blowing intentions—evidence from Malaysian PLC<sup>[8]</sup>. Based on the recent literatures reviewing, we find four main accountability issues in whistleblowing which are loyalty, individual intention, the failure of organization to respond and legal protection.

### 3.1 Loyalty

Whistleblowing is highly associated with decision making dilemmas especially when individuals have high ethical stands but being compromised by the environment experienced in the workplace that may invalidate such stands<sup>[9]</sup>. Other than that, individual ethical dilemmas may accessible towards many common parameters such as

equity, fairness, justice or loyalty<sup>[10]</sup> and one of the heavily accessed parameters is the loyalty which whistleblowers find their loyalties divided between the organization and their standard of ethics<sup>[7]</sup>. However, the act of whistleblowing will not threaten employees' loyalty to their employer if such loyalty is been understood correctly.

In some situations, the ethics may be impaired due to malicious intent of management to conceal the potential whistleblowers. Such intention may be settled in terms of paying off them a sum of money, impromptu promotion, demotion and firing, or on worst agenda, even life threatening.

### 3.2 Individual Intentions

The importance of investigating behavior must be out greater weight on as most whistleblowing are made based on individual intentions rather than a group process. The highest category of people who intend to be a whistleblower is among employee, lawyers, auditors and accountant.

The whistleblower may report misconduct for various purposes which includes personal gain<sup>[7]</sup>, loyalty and care on company's welfare, personal standard of ethics<sup>[11]</sup>, Machiavellianism and prioritizing public interest<sup>[12]</sup>. Some whistleblowers may be seeking financial rewards<sup>[13]</sup>, obtained as a percentage of the return to victims for the fraudulent misconduct exposure. The Dodd-Frank Act 2010, Section 922 states that the Security and Exchange Commission (SEC) shall award to eligible whistleblowers who voluntarily provides original information that leads to a successful enforcement action yielding to monetary sanctions of over 1 million US Dollar (USD). However, this new section received substantial backlash as people got greedy and tend to provide misleading information. The European Commission argued that such whistleblowing rewards as inappropriate and it shift the purpose of the reporting away from the public interest to the personal gains of the whistleblowers, thus making the whistleblowing appear as a commercial transaction which may discredit the whistleblower in general.

### 3.3 Failure of Organization to Respond

Dasgupta stated that an act of external whistleblowing only occurs when organizations fail to respond to internal reports of wrongdoing<sup>[14]</sup>. By taking the case of Enron as basis of statement, Watkins addresses her suspicion on accounting improprieties through an internal memo to the new chairman and she has not made any means of addressing it externally, even throughout the conversation with auditors.

Some organization treat whistleblowers as troublemaker and decide to ignore it, some even reprimand the individual. The organization's management will try all means to discredit the whistleblower instead of the allegation as it is easy to ignore an issue being brought up rather than receive the consequences of the non-compliance or illegal activities. In this situation, it could retaliate against the whistleblower, thus, expand few more reasons why potential whistleblowers does not want to blow the whistle. some organizations pretend to listen, appoint the whistleblower to solve the issues and make the whistleblower the scapegoat when the wrongdoing persists<sup>[15]</sup>.

### 3.4 Legal Protection Issue

The Public Interest Disclosure Act 1998 was implemented to protect individuals who make certain disclosures of

information in the public interest and are consequently victimized or dismissed. Although whistleblowers are often protected under law from employer retaliation, there have been many cases where punishment for whistleblowing has occurred such as termination, suspension, demotion, wage garnishment, harsh mistreatment by other employees and to the most extreme level.

In United States, the Sarbanes-Oxley Act 2002 (SOX), passed after the Enron and WorldCom scandals was revised to protect the whistleblowers who alerted on accounting frauds and other fraudulent activities. A watchdog for whistleblowing has been established to attend the interest and safety of whistleblower. On most circumstances, the whistleblower may feel safe to blow the whistle. However, on some agendas, pertaining the subject that the potential whistleblower plans to blow, it may be very risky to the whistleblower even after considering the whistleblowing act and watchdog protection. When a whistleblower is exploring on issues that is highly related to government, top management or those charged with governance, higher risk of punishment may occur like imprisonment or penalty.

#### 4. Implications of Whistleblowing

A series of recent literatures which focus on the implications of whistleblowing on organizational accountabilities and individual responsibilities include Whistleblowing: Myth and reality <sup>[2]</sup>, Whistleblowing: a survey of literature <sup>[14]</sup>, Whistle-blowing: individual and organizational determinants of the decision to report wrongdoing in the federal government <sup>[16]</sup>, Whistleblowing: acts of courage are often discouraged <sup>[17]</sup> and Whistleblowing: Target firm characteristics and economic consequences <sup>[18]</sup>. The detailed on the beneficial impacts and risks associated with whistleblowing are discuss further in this paper.

##### 4.1 Beneficial Impact of Whistleblowing

Some whistleblowing could be beneficial, and other tend to be risky. According to the reviews of Mathews (1987) and Bowen, Call, & Rajgopal (2010) stated that whistleblowers could benefit organizations, individuals as well as shareholders by proposing solutions to organizational problems. These benefits could be effective in the short and long-term periods if explored further. Therefore, below are some positive effects of whistleblowing:

###### 4.1.1 Benefit to Organizations

Customers may choose not to buy certain goods and services as soon as they are aware of any form of wrongdoing, thus placing the market at a disadvantage over other competitors with the same goods and services. In other words, if attention is paid to wrongdoings reported within an organization, it will help protect the organization's good name and avoid any damage claims. However, some argue that outsiders also may become aware of organizational wrongdoings, this is because the whistles are blown outside. Whistleblowers often alert authorities in organizations about the dangerous, unstable or detrimental situations within organizations. Ideally, this action leads to greater transparency within the organization <sup>[16]</sup>. Punishments for wrongdoings or illegality can be minimized or avoided only when the organizations respond to internal whistleblowing and correct it before the public notices about the wrongdoings <sup>[19]</sup>. By responding to the internal whistleblowing, it will protect the organization from being

constantly monitored by legislators, which could lead to the legal action and new regulations for organizations activities <sup>[2]</sup>.

###### 4.1.2 Impact to Individual and Social Group

A study by Mathews (1987) stated that there existed little relationship between codes of conduct, civil, and administrative corporate violations, contrary to the notion that the code serves as an effective form of regulation. Having a sound whistleblowing mechanism and high commitment from the management towards best practice will demonstrate dedication towards high ethical standards and accountability within the employee. This indicates that whistleblowing has moved from being an early warning hotline to an important part of the organizational ethics of being accountable <sup>[19]</sup>. Allowing people to talk about alleged misconduct, able to change organizational unethical behavior and avoid further adverse impacts. Those who blow the whistle tend to feel more fulfilled and satisfied than those who silent about wrongdoings. Therefore, internal whistleblowing mechanism gives more confidence to employees and the ability to correct unethical behavior in organizations, also improving employees' satisfaction of employees at workplace <sup>[2]</sup>, empowering the employees thus improving the performances <sup>[20]</sup>.

###### 4.1.3 Benefits to Shareholders and Stakeholders

When making corporate decisions, each stakeholder group needs to be well thought out as they have a stake in the organization and directly or indirectly impacted by any decision made within the entity <sup>[21]</sup>. Those shareholders are considered as who provide an organization's continuing fund. They are usually considered as legal owners of businesses interested in how their money is invested so that they can make a return in the form of a cash dividend and profitability. However, some scholars argued that whistleblowing would help shareholders and stakeholders improve their security and well-being. it tends to save a company from huge potential losses that could harm an organization's stakeholders, especially investors and potential investors, because of weak financial performance will harm shareholder interest <sup>[21]</sup>. Shareholders and potential investors therefore do not feel safe in investing on such business. Subsequently, the Criminal Justice Commission (1999) also provides some long-term benefits of whistleblowing to shareholders and stakeholders as follows:

1. Helps protect stakeholders from corporate negative reputation;
2. Helps managers and staffs to focus on accountability, as a result to their accountability to shareholders;
3. Helps improve company's performance, which could lead to increase in cash dividend and capital gains; and
4. Helps protect employees, consumers and the public from the danger of health and safety.

##### 4.2 Risks Associated with Whistleblowing

Despite all the above-mentioned advantages of whistleblowing to different parties, some researchers claim that whistleblowing costs outweigh its advantages. Some of these are unbearable costs. Many whistleblowers tend to get a lot of negative reaction from organizations, families, and many more. Whistleblowing also tends to be risky to various parties which according to Bowen *et al.*, (2010),

whistleblowing might be perceived as a form of threat to individual and organization. Below are some negative consequences of whistleblowing:

#### 4.2.1 Impacts of Whistleblowing to An Organization

Whistleblowers act as a form of threat to organizations as a destructive tool for an organization's profitability. According to Estell (2002), the major impact to organization is potential loss of clients and trust<sup>[19]</sup>. Research found that almost 80% of consumers will change their mind about making a purchase due to negative articles or content online about an organization<sup>[16]</sup>. When news about organization is negative, negative perspectives are more likely to come into a consumer's mind before positive ones.

#### 4.2.2 Risk Associated to Individual

The consequences of whistleblowing include the risk of retaliation from members of the organization, which could reduce their intention to report wrongdoing. Some scholars argued that some retaliation could occur in intangible forms, for example, a bias performance assessment, the refusal of pay remuneration, the termination of one's job contract, or transfer to an undesirable position. Related with the assessment of personal cost, the personal cost of reporting may be based on a subjective assessment<sup>[22]</sup>. Hence, the personal cost may be assessed differently across employees and it may also increase and decrease depending on other factors.

To some organizations, they do not feel the need to keep a whistleblower in their organization. Whistleblower usually undergoes a terrible financial crisis as a result of job losses and their prospects for another job are threatened as a result of the person's reputation as a traitor<sup>[23]</sup>. In most cases, even the reported organization who choose to keep the whistleblowers, will move the whistleblower to less desirable work situations far away from the mainstream activities where they will see less and barely anything to report on.

Another personal risk of whistleblowing which according to study of Taylor & Curtis (2010), that whistleblowers continue to be ostracized and humiliated by the companies they hope to improve<sup>[22]</sup>. The rejection by colleagues and, or those in authority with disastrous consequences. Some may blame the whistleblowers for putting the organization in a difficult position. In society with weak effective security promise, threat to life and possible assassination may befall a whistleblower.

### 5. Suggestions – Improving the Accountability

Blowing the whistle is a big step, it can be deeply stressful and unpleasant but letting the impeachment to continue is sure not an easy thing to do too. The accountability issue and risk associated with blowing the whistle can sometimes trigger uncertainty and dilemma within oneself. This section discusses dissolving the moral dilemma, evolution of Act and benchmarking towards best practices in improving the accountabilities.

#### 5.1 Dissolving the Moral Dilemma – Loyalty

Whistleblowing is a deliberate non-obligatory act of disclosure<sup>[24]</sup>. Many have witness fraud or misconduct at work, but few take accountable steps to do the right thing by reporting to appropriate channels, while many are still reluctant to blow. Dissolving the moral dilemma is the key

to encourage loyal employee to blow. There is a conflict between the duty of loyalty to the organization in which one works and the liberty to speak out against the wrongdoing. A person does not have an obligation to be loyal to the organization, even prima facie one as organizations are not the kind of things that are properly objects of loyalty<sup>[25]</sup>. This strongly supported by some scholars that a person has no duty of loyalty that can restrict whistleblowing. Hence, loyalty should not be the excuse to not disclosing misconduct since many other parties, especially the public will be affected by the wrongdoings. Fairness is a publicly recognized rules where every stakeholder deserves to be treated equally with openness and trust. It is the accountability of the whistleblower to value this rule and avoid playing safe by hiding the truth for the benefit of many stakeholder.

#### 5.2 Dissolving the Moral Dilemma - Intentions

Dissolving the moral dilemma pertaining to the intention of whistleblowing to internal or external channels being highlighted by the studies of De George (2006) where according to him, there are conditions to be met where internal whistleblowing is permitted:

1. The wrongdoings, if not disclosed, will do serious and considerable harm to the public;
2. Once defined a serious threat to the user or public, employee should report this to immediate superior and make the concern known;
3. If immediate superior does nothing effective about the concern or complaint, the employee should exhaust the internal procedures and possibilities within the firm. Unless these criteria are satisfied, disclosing wrongdoing to external would be unjustified.

However, there are additional conditions where external disclosure is permissible:

1. The whistleblower must have, or have accessible, documented evidence that would convince a reasonable, impartial observer that the view of the situation is correct and poses a serious and likely danger to the public.
2. The employee must have good reason to believe that by going public the necessary changes will be brought about.

This condition provide guideline to whistleblowers on selecting the reporting channels. The true motivation for blowing the whistle is difficult to identify. Some studies found that financial rewards are one of the agendas for blowing the whistle. True or not, let's play safe and do it right from the beginning, so, little can question on accountability and intentions of disclosing and reporting the wrongdoing. This will lead to objectivity of situation and focus on the main agenda, which highlighting wrongdoings and protect the interest of affected stakeholder using the right and appropriate channels. Finally, the person with the information may consider to speak externally if the internal channel chooses to ignore and fail the good faith intentions.

#### 5.3 Evolution of Whistleblowing Program and Act – Government Policy

Accountability issue associated with the government policy are not something that can be resolved permanently. The process requires extensive studies and discussion to ensure

all parties can benefit from the policy established. According to Stephenson and Vandekerckhove (2014), the basic requirements of a good whistleblower law are as follows <sup>[26]</sup>:

1. to provide a wide definition of work-based relationships, where whistleblowers may require protection;
2. to permit a special scheme to apply high classified information;
3. to over-ride any contractual obligations of confidentiality;
4. to ensure protection is not lost if the whistleblower's report is mistaken;
5. to admit the possibility of media disclosures in certain circumstances;
6. to require the whistleblower's report to be investigate promptly;
7. to entitle whistleblowers to raise the fact that they made a disclosure in accordance with the national framework in civil, criminal or administrative proceedings;
8. to reverse burden of proof, so that if a whistleblower can show that he has suffered retaliation, it must be proof not due to the whistleblowing;
9. to provide interim relief that should be available pending the outcome of the civil proceedings.

A dedicated channels and more transparent process is required to provide sufficiently, guaranteed and secured within the whistleblower that they will be treated seriously, enjoy the protection before, during and after the disclosure.

#### 5.4 Benchmarking Towards Best Practices – Corporate Governance

While most of the listed companies had appointed appropriate report recipient and meet the requirement of producing annual report on whistleblowing arrangements, there are areas of improvement that require appropriate attention. Observations by Financial Conduct Authority (2018) highlighted that, some annual reports did not contain appropriate information and analysis, particularly where companies had a lower volume of whistleblowing cases. There are also rooms for improvements in the process where companies need to demonstrate how whistleblowers would be protected against victimization and how the arrangement would work in practices as part of the investigation process. Corporate governance framework is not static. There are constant shifts, in respond to changes and challenging event, needs and environment. Benchmarking towards best practices is a continuous process to enhance corporate prosperity and accountability with ultimate objective of realizing long-term shareholder value while considering the interest of other stakeholders.

#### 6. Conclusions

Whistleblowing policy is a platform to uncover blind spot in organization by letting the employee or participant of the organization to reveal and expose hidden illegal, misconduct or wrongdoings to appropriate communication channels within the organization. We studied the accountability issues from whistleblowers perspectives to understand the issue, implication and provide suggestions which we believe is appropriate and important to improve current loopholes. Inadequate protection, long legal battle and using the law

against the whistleblower are some of the never-ending accountability issues attached with the whistleblowing which fail to encourage whistleblowers to come forward. Various parties need to continuously exert influence on government policy making to uphold the value and implants ideas to the public on the importance of whistleblowing in restoring the integrity, accountability and transparency of government and corporations. The importance of having powerful pressure group, sensitive and knowledgeable citizen is crucial in developing a nation that is free from bribery, corruption, and unnecessary unethical misconduct to uphold the accountability by being responsible for decision made, action taken and the results from the decision and action made and not simply get away from mistakes they made on purposes.

“Having put these facts before you, I leave it to the wisdom of the board to take the matters forwards. However, I am also taking the liberty to recommend the following steps:” <sup>[27]</sup>. The paragraph in the resignation letter caught our attentions. Despite being revealed as fraudulent, the Chairman of Satyam suggested steps to be considered by the board to minimize the damages showing that there are still accountability values held within himself. Starting from small, growing bigger and later became out of control, what can we learned from this phenomenon is to step on the brake, start correcting and do the right thing. Keep tracks all the records to ensure everything is justifiable according to the law and applicable standards. The key pillar is to do the right thing and always come back to the basic intention on why we do thing and why some things work the way it did.

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