

# **Pacific Poverty, Solutions and Government Response**

**Greg Clydesdale**

Lincoln University

Greg.Clydesdale@lincoln.ac.nz

## **ABSTRACT**

Wealth is irregularly distributed and many countries have ethnic minorities that feature disproportionately among the poor. One of the most enduring problems in the New Zealand economy is the persistence of poverty among Pacific people. Government attempts to fix this have failed. In fact numbers living on poverty have grown dramatically. Multi-culturalism is often offered as a solution in preference to assimilation in which the dominant culture imposes its values on minority groups. However, this raises the question whether some degree of assimilation is needed to acquire wealth generating behaviors. This paper examines reasons for government failure to solve Pacific poverty in New Zealand and argues that it has failed to identify and address the underlying cause. The cause is a cultural mis-match where Pacific cultural behaviours are not well matched to the demands of the NZ economy. The solution is to focus on the behaviours of parents who are the transmitters of culture.

**Key Words:** Welfare, poverty, culture, Pacific people

## **INTRODUCTION**

MacPherson(1977) noted a phenomena of socio-economic stratification in New Zealand. In particular, he noted that Polynesians were forming an “eth-class; a situation in which minority ethnicity and lower socio-economic status coincide and are likely to do so permanently.” More recently, he and other sociologists repeated the claims noting Pacific people were becoming a “marginalised minority in New Zealand society - an ‘underclass’ with some intergenerational dimensions of deprivation and disadvantage” (Bedford et al., 2000, p.19).

As these quotes suggest, this is a long standing problem and decades of government policy have failed to address this situation. In fact, New Zealand has seen a dramatic rise in Pacific people living on the lowest income levels. It has risen from 13% in 1982 to 22% in 2013. In this time the Pacific population in New Zealand has grown from approximately 120,000 to approximately 295,944 (Statistics NZ, 2013). This data tells us that the number of Pacific people living on low incomes in New Zealand has risen from approximately 15,600 to 65,107. The persistence of this problem raises many questions including what is its cause and why has government failed to solve it.

This paper looks at government’s response to the problem. The next section investigates the characteristics of poverty and reveals that Pacific people possess many of these traits. Section three considers explanations for government

failure including poor performing ministries, insufficient income redistribution, failure of the education system and racial explanations. This leads to the link between culture and economic performance. To deepen the discussion, Chinese parental styles are examined, followed by a discussion of how multi-culturalism is influencing education policy. Finally, the paper suggests the government has failed to solve this problem because it has failed to accurately define the problem. It is argued that Pacific poverty is a consequence of cultural mis-match between the behaviours needed to succeed in the New Zealand socio-economic system, and the behaviours produced in the Pacific culture. The suggested solution is to focus on the behaviour of parents who are transmitters of cultural behaviours.

### **WHY HAS THE GOVERNMENT FAILED TO ADDRESS THIS?**

McNaughton and Lai (2008, 2) stated “New Zealand researchers and policy makers have known for some time that we have not served these communities as well as others”. This section considers possible reasons why government departments and academics working in this area have failed.

The Ministry charged with improving the livelihood of Pacific people is the Ministry of Pacific Island Affairs. A recent review of the Ministry revealed significant failings. It scored positive gradings in just three of 22 performance categories and nearly a third of the categories were classed as weak. In no categories was performance ranked as ‘strong’. Of concern is the finding that the Ministry has failed to lift incomes and standards of living for Pacific People (State Services Commission et al., 2011).

One possible explanation for the performance of the Ministry is poor management. This is the most optimistic explanation as it implies that replacing management will increase success. The evidence from the review would suggest that the Ministry has been badly managed. Findings in the review suggest weak management including weak vision strategy and purpose, weak leadership and governance and weak management of people performance (State Services Commission et al., 2011). The Chief Executive, Colin Tukuiaonga claimed the review was heavy handed. It is not the purpose of the paper to determine his competence, but he was replaced soon after.

Another explanation for the government’s failure may be insufficient redistribution of income. There is sufficient evidence proving that a link exists between socio-economic status and educational performance which in turn determines future earnings. However, correlation does not always mean causation. It can be a case of reverse causation, that is those with strong educational values and behaviours are most likely to achieve high socio-economic positions, so their children inherit those same strong educational values. It may alternatively be a case that the two phenomena have the same cause. Another problem with the socio-economic explanation comes from the fact that many poorer Asians who, despite their poor socio-economic position, produce children with high educational outcomes.

Nevertheless, great faith has been placed in redistribution of income as a solution to poverty. For example, in 2007, the Labour government introduced the Working for Families policy with great expectations. On its release, the Minister of Pacific Island Affairs stated:

“Working for Families is increasing the incomes of hundreds of thousands of New Zealand’s working and beneficiary families, and lifting tens of thousands of children out of poverty...A family on a combined income of \$50,000 now effectively pays no tax in real terms” (Laban, 2007a)

In another speech she noted that the average weekly wage for Pacific peoples was \$434, well below the national average of \$610 (Laban, 2007b). This meant that most Pacific Island families are not making a net contribution to government. In the same speech, the Minister confirmed her faith and pride in this distribution measure stating “I am deeply proud of this achievement” (Laban, 2007b).

Working for families was a substantial investment in poverty (Fletcher and Dwyer, 2008). However, five years on, Pacific poverty rates have not improved. By 2012, the income gap between Pacific people and the European majority had widened sharply (Collins, 2012). Pacific incomes had actually fallen. Recent figures reveal that 22% of Pacific people are living in poverty (Perry, 2013) with unemployment rates of 15.7% compared to 4.9% for Europeans. Thirty percent of Pacific children are still living on the poverty line (Child Poverty Monitor, 2013). This suggests that the re-distribution explanations and solutions are not addressing the problem.

Another area of government failure may be education which is the basis of productive capabilities, as well as the wealth of future generations. Policies prioritise changing New Zealand teachers with a focus on respecting the Pacific way (Ministry of Education n.d). Papers are characterised by comments like “many teachers and schools are not yet fully effective for Pacific students” (Statistics NZ et al., 2010, p.37). Such comments place the onus on the teachers and suggest the New Zealand education system is failing Pacific people. It is claimed that Pacific students require a different type of teaching. For example, it appears that Pacific students respond better to firm directions rather than being expected to be self-motivated (Schoeffel and Meleisea, 1996).

However, significant differences exist between Pacific and Maori children and others from the start of school, before the education system has had a chance to let them down (McNaughton et al., 2000). McNaughton (2011) attributes poor school readiness to differences in family practices and participation in early childhood education.

This explanation also ignores the fact that while Pacific students may better respond to some forms of teaching, no alternative education system exists that provides more success. Outside of New Zealand, the educational achievement of Pacific People is even worse. In a recent speech to the Pacific Leader’s Forum, the Minister of Foreign Affairs noted that:

- A million school age children around the Pacific do not go to school at all.
- Around 40% of children in Pacific Island countries do not complete a basic primary education.
- Only 20% graduate from secondary school. (McCully, 2011)

## **CULTURE AND ECONOMIC PERFORMANCE**

The importance of the child's environment leads to another explanation as to why the government has failed to solve this problem - a simplistic view of culture. There is a long established academic literature linking culture and economic outcomes. One of the earliest is Weber's *The Protestant Ethic and the Spirit of Capitalism* which focused on the origins of modern society and the emergence of Western capitalism. While Weber claimed that culture determines economic outcomes Karl Marx noted causality works the other way. In Marx's eyes, a society's resource base determines the culture. He famously noted how an economy based on the hand-mill created a feudal society, while one based on the steam-mill resulted in capitalism (Marx, 1859 [1979]).

The importance of the economic base in shaping culture has received significant support. For example, the anthropologist, Malinowski (1922) noted that even magical, religious and superstitious behaviours have their basis in the society's resource base.

Given the influence, if not the root, of culture in economic resources, we should expect cultures to change as societies change their resource base, and as people move between regions with different resources. However, cultures can be very slow to change (Roland, 2005). There are several reasons for this. First is the natural tendency of parents to teach their children what they have learned from their own parents. This reproduction of past behaviour often occurs without full assessment of the efficiency of those behaviours (Bisin and Verdier, 2000; Fernandez, Fogli and Olivetti, 2004; Grusec and Kuczynski, 1997). A second form of inertia comes from organizations that reinforce the existing culture such as churches.

These studies show that culture is not economically neutral. Each culture creates its own mechanisms for exploiting the resource base on which that culture relies. If you take someone endowed with some cultural behaviours, routines and capabilities, then place them in a different culture and resource base, they may not have the skills to succeed. It might be expected that migrants adapt the required behaviours in their new society. However cultural mechanisms are passed on through the parents and some are not easily changed, especially if migration occurs in large enough numbers, and the old cultural behaviours are reinforced in regional sub-cultures.

Vaisey (2010) states that most social scientists do not accept that culture plays a significant role in perpetuating socio-economic disadvantage; the primary reason being an aversion to "blaming the victim". Consequently, research

has focused on social-structural factors with little attention given to cultural determinants of failure. Similarly, Kao and Thompson (2003) claim that cultural models are popular for explaining the high performance of Asians, but they are out of favour when explaining lower performance groups. This selective use of culture means that social scientists may be missing their best opportunity to solve Pacific Island poverty.

This logic suggests a solution to Pacific Island poverty. The parental role as transmitters of culture suggests that resources and research needs to focus on changing parental behaviour. Research is needed to identify the parental behaviours of successful children. It is not sufficient to identify parental values. Studies regularly reveal that Pasifika parents place high value on education. Because of the high value placed on education, research suggests that Pasifika parents will welcome improvements. Schoeffel and Meleisea (1996) note that most Pacific Island parents want their children to do well at school and feel disappointment about their children's educational performances. They state if a "message directed to parents said 'this is how you can help your child to achieve better at school', we believe most Polynesian parents would be interested and receptive"(Ibid, 145).

The task is to identify and transfer successful parental behaviours. Some important factors have already been identified. For example, one international study found that students whose parents read to them "every day or almost every day" or "once or twice a week" during the first year of primary school had markedly higher scores (OECD, 2010). The problem is, people without experience of education lack knowledge on how best to foster it. When you are part of a culture, your cultural memes are taken for granted and you do not know what you do not know.

One area where parental training can have an impact is in reinforcing the link between effort and achievement. Meyer et al. (2009) noted that Pacific students considered luck more important in determining their NCEA results than effort and ability. Students felt they had little control over their results and had no sense of 'doing my best' associated with higher achievement (Meyer et al., 2009). This lack of understanding of the role of effort was also observed by Jones (cited in Franken et al., 2005). The girls in their study believed their lack of brains was the key influence over their outcomes. Such beliefs do not lead to successful learning and achievement.

## **CHINESE PARENTING**

To illustrate the importance of parental routines, a comparison with Chinese migrants is of value. Chinese and Pacific students face similar barriers at school. They are both visually distinctive ethnic minorities which could expose them to discriminatory treatment. Both cultures have strong respect for authority and dislike being embarrassed which effects risk taking. Both have English as a second language and are operating in a second culture and institutional environment. While these factors can be a barrier to Pacific learning, the Chinese

students overcome them. In fact Chinese educational success is repeated in western nations around the world (Centre for Ethnicity and Racism Studies, 2006; Archer and Francis, 2007).

Chinese parental patterns recently came to prominence with the release of *Battle Hymn of the Tiger Mother* (Chua, 2011) in which the author claims Chinese parenting emphasises hard work:

Tenacious practice, practice, practice is crucial for excellence... Once a child starts to excel at something - whether its math, piano, pitching or ballet - he or she gets praise, admiration and satisfaction... This in turn makes it easier for the parent to get the child to work even more (Chua, 2011, p29).

Chau (1994) studied the parental styles of immigrant Chinese mothers and found that culture plays a critical role in shaping parental goals and how those goals are translated to encourage children to bring honour to the family. She used the term *guanjiao* to refer to that caring, monitoring, teaching, and training. Chinese parents spend much longer mentoring their children than westerners.

Chinese mothers stress that it is effort that generates success, not ability (Kohler et al., 2012; Kim & Wong, 2002; Li, 2012). If a child fails, they have not worked hard enough. This stands in sharp contrast to the Pasifika students who contributed success to luck or brains.

Chinese parents exercise strong control of extra-curricular activities, a behaviour which has support in Lareau's (2004) *Unequal Childhoods* which revealed that middle class people favoured 'purposeful cultivation' and organised their children's extra-curricular activities. By contrast, poorer families favoured 'natural growth' with unstructured leisure time which did not contribute to learning skills or preparation for professional life.

Chua's (2011) mentoring went beyond reading to the children and included mentoring of study techniques and subject content. To provide this level of mentoring, a parent must have some educational skills. Not surprisingly, Kao and Thompson (2003) state that parental education, together with family income, is probably the best indicator of academic outcomes. Pacific people do not have the same educational expertise which suggests they will find it hard to provide the same level of mentoring. Surveys of Pacific students reveal that a lack of parental understanding and support for school-related activities potentially inhibits their progress (Fletcher et al., 2006 and 2009). This education difference can reflect both culturally induced behaviours and immigration selection criteria. Pacific people do not generally enter New Zealand under categories that require educational attainment.

## **PROMOTING CULTURAL DIVERSITY- A BARRIER TO SUCCESSFUL ASSIMILATION?**

Lamont and Small (2010) claim that cultural diversity is a source of innovation, and creativity, and bilingualism can aid education. They refer to Portes and Schauflier (1994) who studied immigrants to the USA and found bilingual migrant children

performed better on a number of academic measures than those who had not retained their language of origin. Similarly, Garcia (2003) and Sweet and Snow (2003) revealed that children with English as a second language can transfer their first language skills and actually enhance their learning of English by raising self esteem, identity and confidence. The student's prior knowledge can be used as scaffolding their learning (Fletcher et al., 2006). It also helps to avoid language barriers, including unfamiliar concepts and words that relate to things that the students had not experienced or have equivalent translations for.

New Zealand studies have supported this line of thinking. For example, in two studies, Amituanai-Toloa & McNaughton (2008) found that Samoan primary school students who are instructed in both Samoan and English achieved higher academic scores than those who were instructed only in English. However, in a more recent study, the results were mixed (Amituanai-Toloa, McNaughton, Lai & Airini, 2009).

In New Zealand, there is a "general consensus" that school children who have English as a second language (such as Pasifika children) but who are adept in their first language can transfer their language skills to enhance their English competence (Amituanai-Toloa, 2010; Toloa, McNaughton, & Lai, 2009). However, a closer examination of the research leaves concern. For example, an excellent intervention targeting culturally and linguistically diverse students achieved significant improvements in outcomes. However, when the model was replicated in schools without that ethnic diversity, the improvements were even greater (McNaughton and Kuin Lai, 2008).

Mila-Schaaf and Robinson (2010) noted that "being proud of Pacific ethnic identity and placing importance on Pacific ethnic values was associated with being twice as likely to report doing well at school". This initially sounds encouraging, however the measure of doing well is being either 'about the middle' or 'above the middle' of a low performing school.

Research on the affects of the language of origin (L1) on educational success are highly contestable and the evidence is inconclusive (Kristen et al., 2011), with some papers arguing that the impact can be negative. For example, research has consistently shown that bilingual children have a smaller vocabulary in each of their languages compared to monolingual peers (Oller and Eilers, 2002). Similarly, bilingual adults have been found to possess more difficulties in verbal retrieval (Kaushanskaya and Marian, 2007).

There is also the question of opportunity cost. If a student is weak in English, would it not be better to concentrate resources on studying English? The opportunity cost argument can draw upon Carroll's (1963) model of school learning which emphasizes the time component in learning. Following this approach, a strong argument can be made for focusing on English while the proficiency lag exists.

Bilingual programmes in New Zealand primary schools are a relatively recent provision and very little is known about bilingual and biliteracy development, with less known about the instructional impact of these programmes (Tagoilelagi-Leota

et al., 2005). Nevertheless, such programmes are funded by the government. When bilingual classes are established in schools, it is driven by demand from parents with little regard given to the affect on education. The effect on student achievement is given little consideration (Amituanai-Toloa, 2010).

Another policy that facilitates diversity is the introduction of early childhood education facilities using Pasifika languages and culture. These cater for children who are still at an age where their sense of culture is developing, so the normal theories about exploiting culture for cognitive scaffolding can not apply. In fact, this is an excellent time to introduce the dominant culture and advance English language provision.

Studies regularly show that Pacific students who do not have English as their main language at home have lower results than those who do, and Pacific languages can present obstacles to learning (Franken et al., 2005). PISA (2006) results show that nearly half (49%) of students who did not have English as their home language were low achievers compared with only twenty percent from English-speaking homes. One study found that thirty percent of Pacific students could only complete the simplest reading tasks that PISA measures, compared with only nine percent of European students (cited in Statistics NZ et al., 2010). Ironically, one of the few areas that the Ministry of Pacific Island Affairs performed positively on was promoting Pacific language and culture. This raises the possibility that in promoting cultural diversity, children are not given the necessary capabilities to succeed.

A number of writers have claimed that cultural diversity contributes to wealth creation (eg: Lamont and Small, 2010). Florida (2002) claimed that ethnic diversity is an indicator of high-technology success and wealth. However, he has been criticised for lack of hard evidence (Evans, 2005; DTI (2004); and Pawson, (2006). Legrain (2007) claimed that “diversity may boost creativity because people with different backgrounds, viewpoints and experience stimulate new ideas in each other”. However, the studies on which he relies have nothing to do with ethnic diversity. These include Johnson (1999) who speaks, not of ethnic diversity, but of diversity of experience and capabilities, and Ancona and Caldwell (1992) who talk of putting teams together comprising members with diverse functions and tenure in the organisation.

All in all, the supposed benefits run in the face of international research. A review of the international literature concluded that the proposed benefits do not occur and “the evidence favors a more pessimistic view: that diversity creates social divisions, which in turn create negative performance outcomes for the group” (Mannix and Neale, 2005). Two years later, a review published in the Academy of Management Perspectives found it cannot be claimed that ethnic diversity spurs productivity nor innovation. Bell and Perry (2007) summarised research on the effects of diversity on organisation performance, group cohesion, turnover, job satisfaction, attachment, creativity, etc and found that the results were mixed.

Perhaps the greatest evidence of the failure of diverse ethnic groups to stimulate growth is the fact that the Office of Ethnic Affairs was created because of the poor economic performance of migrants.

## **CONCLUSION**

Pacific poverty has been an enduring feature in New Zealand beginning not long after Pacific migration to New Zealand began. For decades, policies have failed to address this problem with the consequence that the number of Pacific people on the poverty line has grown dramatically. Although there has been fluctuation, since the 1980s, the percentage of Pacific people on the poverty line and the total number have both increased.

Pacific families are characterised by lower wealth, more children which raises expenses, and lower incomes. This suggests that income redistribution can alleviate the problem and raise incomes. However, recent attempts significantly raised incomes but still left a significant number of people on the poverty line. More worrying, there is no guarantee that this redistribution will change parental behaviours.

Policies have focused on promoting cultural diversity and a Pacific style of education. However, there is no Pacific Island maths or science. These disciplines have been recently introduced to their cultures, and in that lies the root of the problem. Poverty is a consequence of cultural change in which some cultural groups are having to incorporate foreign cultural mechanisms.

Cultural mismatch provides a logical explanation for the growth of poverty in New Zealand and the failure of governments to address it (Clydesdale, 2009). It also provides a direction to the most logical remedy – changing the behaviour of parents. This involves studying successful parental behaviour and running programmes to ensure such behaviours are transferred. Areas already identified include increased reading to children, and stressing the link between effort and achievement.

This paper argues that it is time for a new approach to Pacific poverty. The solution is to study parental behaviours of different ethnic groups to recognise behaviours that lead to success or failure of children. Once the behaviours have been recognised, programs need to be introduced to educate parents of those behaviours. There is evidence that Pasifika parents will value such intervention, as illustrated by the following quotation from a Samoan parent:

My desire for them is to have a high level of education but I don't know what sort of support I should give my children... (Amituanai-Tolua et al., 2009, p.17).

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## **Pemakaian Peruntukan Akta Persaingan 2010 Terhadap Aktiviti Komersil Di Malaysia: Satu Tinjauan**

**Prof Madya Dr Nazura Abdul Manap**

Fakulti Undang-Undang, Universiti Kebangsaan Malaysia  
43650 Bangi, Selangor  
nazura@ukm.edu.my

**Haliza A.Shukor**

Fakulti Undang-Undang, Universiti Kebangsaan Malaysia  
43650 Bangi, Selangor  
hliza@usim.edu.my

### **ABSTRAK**

Akta Persaingan 2010 telah diperkenalkan oleh kerajaan Malaysia pada tahun 2010 bagi tujuan menggalakkan pembangunan ekonomi melalui proses persaingan. Bagi merealisasikan matlamat tersebut, Suruhanjaya Persaingan telah ditubuhkan bagi memastikan Undang-Undang Persaingan dapat dilaksanakan dengan sempurna di Malaysia. Seksyen 3 Akta Persaingan 2010 memperuntukkan bahawa Akta Persaingan 2010 terpakai terhadap aktiviti komersil di dalam Malaysia dan di luar Malaysia sekiranya aktiviti komersil di luar Malaysia memberi kesan terhadap persaingan dalam pasaran di Malaysia. Justeru, objektif kajian ini ialah untuk mengenalpasti peruntukan dalam Akta Persaingan 2010 yang terpakai untuk sektor perniagaan di Malaysia. Hasil kajian menunjukkan bahawa peruntukan di dalam Akta Persaingan 2010 adalah bersifat umum, namun terpakai untuk pelbagai jenis sektor perniagaan yang menjalankan aktiviti komersil.

**Kata Kunci:** Undang-Undang Persaingan, Akta Persaingan 2010, sektor perniagaan, aktiviti komersil

### **PENDAHULUAN**

Undang-undang Persaingan ialah suatu undang-undang yang mengawal selia amalan perniagaan dan transaksi yang mewujudkan penyalahgunaan kuasa pasaran dan mengganggu persaingan bebas di pasaran (Andreas F. Lowenfeld, 2008, hlm. 418). Berdasarkan pada sejarah susur galur undang-undang persaingan di negara-negara maju seperti Amerika Syarikat dan Kesatuan Eropah, tidak dapat dinafikan bahawa undang-undang persaingan diwujudkan bagi melindungi pasaran perniagaan daripada disalahgunakan oleh perusahaan yang memiliki kuasa besar dalam pasaran di samping melindungi hak pengguna (Cosmo Graham, 2013, hlmn. 5-14).

## UNDANG – UNDANG PERSAINGAN DI MALAYSIA

Malaysia telah memperkenalkan dasar undang-undang persaingan seawal tahun 1990-an kepada dua sektor iaitu sektor tenaga dan sektor komunikasi. Pada masa itu, tiada undang-undang persaingan nasional yang meliputi semua sektor perdagangan kecuali kedua-dua sektor yang disebut di atas. Ini dapat dilihat melalui kenyataan YB Menteri semasa pembentangan Rang Undang-Undang Persaingan 2010 semasa bacaan kali kedua dan ketiga di Dewan Rakyat:

Untuk makluman Ahli-ahli Yang Berhormat, Malaysia kini mempunyai perundangan undang-undang berkenaan amalan anti persaingan dalam bidang-bidang khusus seperti tenaga dan komunikasi, tetapi tidak ada sesuatu undang-undang persaingan yang menyeluruh bagi semua sektor (Dewan Rakyat, 20.4.2010 hlmn. 128)

Menurut YB Menteri lagi, penggubalan rang undang-undang persaingan dibuat bagi tujuan kepentingan negara dan ia tidak sama sekali digubal berdasarkan gesaan dari mana-mana pihak luar terutama sekali dari negara maju. Tambahan pula, ASEAN menggalakkan agar negara-negara anggota mewujudkan dasar persaingan di negara masing-masing menjelang tahun 2015. Memandangkan telah terdapat lebih daripada 105 buah negara yang telah menguatkuasakan undang-persaingan, maka Rang-Undang-Undang Persaingan Malaysia telah digubal dengan mengambil kira amalan-amalan terbaik di peringkat antarabangsa bagi tujuan rujukan dan penambahbaikan serta mengadakan konsultasi dengan pihak-pihak yang terlibat contohnya, syarikat kerajaan dan swasta serta pengguna. Selain itu, faktor Malaysia sebagai sebuah negara yang mempunyai ekonomi yang kecil juga di ambil kira semasa penggubalan Rang Undang-Undang Persaingan 2010(Dewan Rakyat, 20.4.2010 hlmn. 128-129).

Selanjutnya, Akta Persaingan 2010 telah di perkenalkan pada Jun 2010 dan telah berkuatkuasa pada tahun 2012. Ia mengandungi 67 peruntukkan yang dibahagikan kepada 6 bahagian. Menurut Seksyen 2 Akta Suruhanjaya Persaingan 2010, ia memperuntukkan bahawa undang-undang persaingan merujuk pada Akta Suruhanjaya Persaingan 2010 dan Akta Persaingan 2010 serta mana-mana perundangan subsidiari yang dibuat di bawah undang-undang persaingan. Akta Persaingan 2010 menggariskan tiga objektif utama iaitu, pertama menggalakkan pembangunan ekonomi, kedua, menggalak dan melindungi proses persaingan, ketiga melindungi pengguna.

Bagi mencapai objektif dalam menggalakkan pertumbuhan ekonomi, undang-undang persaingan dilihat dapat menarik pelaburan asing serta memberi keyakinan kepada pelabur bahawa amalan-amalan anti persaingan akan di kawal melalui undang-undang persaingan (Dewan Rakyat, 20.4.2010 hlmn. 128).

Selain itu, undang-undang persaingan nasional diwujudkan bagi memastikan persaingan yang sihat wujud dalam pasaran supaya ia dapat mendorong perusahaan untuk lebih inovatif dan efisien bagi tujuan memenangi

pengguna (Dewan Rakyat, 20.4.2010 hlmn. 127-128).

Melalui undang-undang persaingan, pengguna akan memperoleh perlindungan kerana hak pengguna untuk memilih pelbagai barang dan perkhidmatan pada harga yang kompetitif akan terpelihara. Pengguna akan dapat menikmati kepelbagaian pilihan, pada harga yang lebih rendah serta barangan dan berkhidmatan yang lebih berkualiti (Dewan Rakyat, 20.4.2010 hlmn. 127-128).

## **SURUHANJAYA PERSAINGAN MALAYSIA**

Suruhanjaya Persaingan Malaysia (MyCC) ialah badan korporat yang ditubuhkan bagi melaksanakan peruntukan yang terkandung dalam Akta Persaingan 2010. MyCC ditubuhkan dengan matlamat untuk melindungi dan menggalak proses persaingan yang sihat agar dapat membantu meningkatkan ekonomi negara dan melindungi hak pengguna.

Struktur MyCC terdiri daripada seorang pengerusi, empat anggota yang mewakili kerajaan dan tiga hingga lima orang anggota lain yang berpengetahuan dalam bidang perniagaan. Selain itu, Menteri akan melantik Ketua Pegawai Eksekutif (CEO) yang juga merupakan kakitangan Suruhanjaya dan bertanggungjawab dalam menyelia pentadbiran dan pengurusan Suruhanjaya.

MyCC mempunyai kuasa untuk menguatkuasakan undang-undang persaingan mengikut peruntukan dalam Akta Persaingan 2010 (Seksyen 16(d) Akta Suruhanjaya Persaingan 2010). Di antara hak-hak penguatkuasaan MyCC ialah kuasa untuk mengenakan penalti kepada pesalah serta pengurangan geran penalti di bawah rejim kelonggaran. Penglibatan MyCC dalam penganjuran seminar mengenai undang-undang persaingan pada September 2013 menunjukkan bahawa MyCC juga berperanan sebagai sebuah badan yang mendidik dan meningkatkan kesedaran undang-undang persaingan di kalangan orang awam terutama sekali ahli perniagaan. Di samping penganjuran seminar, MyCC juga diberi mandat untuk terlibat dalam mengemukakan syor bagi pembaharuan undang-undang persaingan sekiranya perlu, sebagai contoh mengeluarkan garis panduan untuk melaksanakan peruntukan-peruntukan dalam Akta Persaingan 2010 di samping menjalankan kajian am berhubung perkara-perkara yang berkaitan dengan undang-undang persaingan (Seksyen 16 Akta Suruhanjaya Persaingan 2010).

## **TRIBUNAL RAYUAN PERSAINGAN**

Tribunal Rayuan Persaingan merupakan tribunal yang ditubuhkan di bawah Seksyen 44 Akta Persaingan 2010 agar individu yang kepentingannya terjejas di bawah Seksyen 35 (langkah interim), Seksyen 39 (dapatan tiada pelanggaran) dan Seksyen 40 (dapatan langgaran) boleh membuat rayuan terhadap keputusan yang dibuat oleh Suruhanjaya Persaingan. Tribunal Rayuan mempunyai bidang kuasa eksklusif dan keanggotaannya terdiri daripada seorang Presiden dan 7

hingga 20 anggota lain yang dilantik oleh Perdana Menteri atas syor Menteri. Setiap prosiding Tribunal Rayuan Persaingan akan didengar oleh tiga orang anggota Tribunal Rayuan Persaingan atau apa-apa bilangan ganjil yang lebih besar sebagaimana yang telah ditetapkan oleh Presiden. Tribunal Rayuan Persaingan mempunyai kuasa untuk mengesah atau mengetepikan keputusan yang menjadi subjek rayuan dan keputusan Tribunal Rayuan Persaingan adalah muktamad. Selain itu, keputusan yang diputuskan oleh Tribunal Rayuan Persaingan juga boleh dikuatkuasakan seperti suatu penghakiman atau perintah setelah mendapat kebenaran dari Mahkamah Tinggi.

## **AKTA PERSAINGAN 2010: PEMAKAIANNYA TERHADAP SEKTOR KOMERSIL**

### **Skop Pemakaian Akta Persaingan 2010**

#### **i. Sektor Komersil**

Menurut Seksyen 3 Akta Persaingan 2010, Akta Persaingan 2010 adalah terpakai bagi apa-apa aktiviti komersial. Seksyen 3(4) Akta Persaingan 2010 memperuntukkan bahawa aktiviti komersial bermaksud apa-apa aktiviti yang bersifat komersial. Melalui peruntukan tersebut, aktiviti komersil merujuk pada aktiviti komersil yang dijalankan oleh perusahaan tanpa mengira status milikan atau entiti. Sebagai contoh, Syarikat Pautan Kerajaan (GLC), perusahaan kecil dan sederhana serta persatuan juga tidak terkecuali dari peruntukan Akta Persaingan 2010.

#### **ii. Pemakaian Bersifat Luar Wilayah**

Menurut Seksyen 3(1) dan 3(2) Akta Persaingan 2010, ia memperuntukkan bahawa Akta Persaingan 2010 adalah terpakai bagi apa-apa aktiviti komersil samada di dalam atau di luar Malaysia, jika aktiviti komersil luaran tersebut memberi kesan kepada persaingan di dalam Malaysia. Sebagai contoh, sekiranya ada pakatan yang dibuat di luar Malaysia berhubung dengan pasaran kenderaan jenama ABC di Malaysia dan pakatan tersebut mendatangkan kesan terhadap pasaran kenderaan jenama ABC di Malaysia, maka, tindakan boleh di ambil terhadap pakatan tersebut di bawah seksyen 3(2) Akta Persaingan 2010.

#### **iii. Kekecualian Sektoral**

Akta Persaingan 2010 memperuntukkan tentang kekecualian sektoral bagi tiga sektor berikut iaitu sektor telekomunikasi dan multimedia, sektor tenaga dan sektor petroleum di bawah Jadual Pertama Akta Persaingan 2010. Seksyen 133 Akta Komunikasi dan Multimedia 1998 menyediakan peruntukan untuk menghalang anti-persaingan yang “akan mengurangkan persaingan dalam

sektor komunikasi dan multimedia dengan lebih berkesan” manakala dalam sektor tenaga, Suruhanjaya Tenaga diperlukan untuk memantau persaingan dan monopoli sepertimana yang diperuntukkan di bawah seksyen 14(h) Akta Suruhanjaya Tenaga 2001. Bagi sektor petroleum, berkuatkuasa pada Januari 2014, Akta Kemajuan Petroleum 1974 [Akta 144] dan Peraturan-Peraturan Petroleum 1974 [P.U. (A) 432/1974] telah diletakkan di bawah senarai Jadual Pertama Akta Persaingan 2010 yang membolehkan sektor petroleum dikecualikan daripada peruntukan dalam Akta Persaingan 2010.

#### **iv. Kecualian Yang Melibatkan Kuasa Kerajaan Secara Langsung Atau Tidak Langsung**

Seksyen 3(4) Akta Persaingan 2010 menyenaraikan beberapa aktiviti yang bersifat komersil namun tidak tertakluk pada mana-mana peruntukan Akta Persaingan 2010. Aktiviti komersil tersebut terdiri daripada aktiviti komersil yang dibuat bagi tujuan menjalankan kuasa kerajaan, aktiviti yang dijalankan yang berasaskan pada prinsip perpaduan dan juga pembelian barangan atau perkhidmatan yang bukan bagi maksud untuk menawarkan barangan atau perkhidmatan sebagai sebahagian daripada suatu aktiviti ekonomi.

#### **v. Aktiviti Yang Tidak Tertakluk Pada Bahagian II Akta Persaingan 2010**

Seksyen 13 Akta Persaingan memperuntukkan bahawa larangan yang terkandung di dalam Bahagian II Akta Persaingan 2010 iaitu larangan tentang perjanjian anti-persaingan serta penyalahgunaan kedudukan dominan adalah tidak terpakai bagi aktiviti yang terkandung di dalam Jadual Kedua Akta Persaingan 2010. Jadual Kedua Akta Persaingan 2010 menyenaraikan tiga jenis aktiviti yang tidak tertakluk pada Bahagian II Akta Persaingan 2010 iaitu; (a) suatu perjanjian atau perlakuan setakat yang ia terlibat dalam suatu perintah untuk mematuhi suatu kehendak perundangan, (b) aktiviti perundingan kolektif atau perjanjian kolektif berkenaan dengan terma dan syarat penggajian dan yang dirunding atau diikat antara pihak yang termasuk kedua-dua majikan dan pekerja atau organisasi yang ditubuhkan untuk mewakili kepentingan majikan atau pekerja, sebagai contoh perjanjian di antara persatuan pekerja dengan majikan, (c) suatu perusahaan yang diamanahkan dengan pengendalian perkhidmatan yang berkepentingan ekonomi am atau yang mempunyai ciri monopoli pengeluaran hasil setakat yang larangan di bawah Bab 1 dan Bab 2 Bahagian II akan menghalang pelaksanaan, di sisi undang-undang atau hakikat, tugas tertentu yang diberikan kepada perusahaan itu, sebagai contoh, perkhidmatan Pos Malaysia.

#### **vi. Aktiviti Percantuman Dan Pengambilalihan**

Memandangkan Akta Persaingan 2010 masih baru, maka peruntukan tentang aktiviti percantuman dan pengambilalihan tidak dimasukkan dalam Akta

Persaingan 2010 bagi tujuan menggalakkan pasaran modal di Malaysia Menurut YB Menteri semasa pembentangan rang Undang-Undang Persaingan 2010 di dewan rakyat, keputusan untuk tidak memasukkan peruntukkan berkaitan percantuman dan pengambilalihan adalah setelah mengambil kira pandangan dari pelbagai agensi contohnya Bank Negara Malaysia serta Suruhanjaya Sekuriti Malaysia. Selain itu, ia selaras dengan dasar kerajaan Malaysia yang masih menggalakkan percantuman dan pengambilalihan bagi tujuan memperkukuh ekonomi Malaysia serta memaju persaingan korporat global ( Dewan Rakyat, 20.4.2010, hlmn. 129).

## **Larangan Dalam Akta Persaingan 2010: Perjanjian Anti Persaingan**

### **i. Ciri – ciri perjanjian anti-persaingan**

Seksyen 4(1) Akta Persaingan 2010 memperuntukkan tentang larangan terhadap perjanjian anti-persaingan seperti berikut:

Suatu perjanjian mendatar atau menegak antara perusahaan adalah dilarang setakat yang perjanjian itu mempunyai matlamat atau kesan menghalang, menyekat atau mengganggu persaingan secara signifikan dalam apa-apa pasaran bagi barangan atau perkhidmatan.

Melalui Seksyen 4(1) Akta Persaingan 2010, terdapat beberapa ciri-ciri perjanjian anti persaingan iaitu:

#### **(a) Perjanjian Mendatar Atau Menegak**

Seksyen 4(1) Akta Persaingan 2010 memeruntukkan bahawa “ suatu perjanjian mendatar atau menegak antara perusahaan adalah dilarang...” Perjanjian dalam konteks Akta Persaingan 2010 mempunyai maksud yang luas kerana ia merangkumi “apa-apa bentuk kontrak, perkiraan atau persefahaman, keputusan oleh persatuan dan amalan bersepadu” tanpa mengira samada ia boleh dikuatkuasakan oleh undang-undang atau tidak. Perjanjian mendatar pula bermaksud perjanjian “perjanjian antara perusahaan yang setiapnya beroperasi pada peringkat yang sama dalam rangkaian pengeluaran atau pengedaran.” Perjanjian menegak ialah “perjanjian antara perusahaan yang setiapnya beroperasi pada peringkat yang berlainan dalam rangkaian pengeluaran atau pengedaran.” Bagi kebanyakan negara seperti Singapura dan juga United Kingdom, perjanjian menegak adalah dikecualikan daripada undang-undang persaingan namun ini tidak berlaku di Malaysia. Melalui peruntukkan Akta Persaingan 2010, ia tidak memperincikan jenis-jenis perjanjian menegak yang dianggap sebagai anti-persaingan kerana perjanjian menegak hanya akan mewujudkan kesan ketara anti-persaingan sekiranya sesuatu perusahaan itu memperolehi kuasa besar

dalam pasaran (Massimo Motta, 2007, hlmn. 32). Namun begitu, sesetengah perjanjian menegak seperti perjanjian yang melibatkan harga jualan semula atau perjanjian eksklusif akan dinilai oleh MyCC bagi memastikan sama ada ia mewujudkan kesan ketara anti-persaingan atau sebaliknya.

### **(b) Mempunyai ‘Matlamat’ Atau ‘Kesan’ Menghalang Persaingan**

Seksyen 4(1) Akta Persaingan 2010 menjadikan syarat samada ‘matlamat’ atau ‘kesan’ perjanjian tersebut akan menyebabkan anti-persaingan. Sekiranya ‘matlamat’ perjanjian tersebut dikenalpasti bersifat anti persaingan, maka ‘kesan’ perjanjian tersebut tidak akan dinilai lagi oleh MyCC bagi tujuan mengenalpasti samada perjanjian tersebut bersifat anti-persaingan atau tidak (Artikel 2.14 Garispanduan Bab I Larangan Perjanjian Anti-Persaingan).

### **(c) ‘Matlamat’ Atau ‘Kesan’ Tersebut Mestilah Signifikan Dalam Apa-Apa Pasaran**

Akta Persaingan 2010 tidak mendefinisikan terma ‘signifikan’ seperti yang diperuntukkan di bawah Seksyen 4(1). Walaubagaimanapun, MyCC di dalam Artikel 3.4 Garispanduan Bab 1 Larangan Perjanjian Anti Persaingan menyatakan bahawa perjanjian anti-persaingan adalah tidak signifikan sekiranya:

- Pihak pada perjanjian tersebut merupakan pesaing dalam pasaran yang sama dan gabungan bahagian pasaran dalam pasaran yang berkaitan tidak melebihi 20%
- Pihak pada perjanjian tersebut bukan pesaing dan kesemua pihak secara individu mempunyai kurang daripada 25% dalam mana-mana pasaran berkaitan.

Di samping itu, bagi tujuan menilai samada ‘matlamat’ atau ‘kesan’ perjanjian tersebut signifikan terhadap pasaran atau tidak, terma ‘pasaran’ yang diperuntukkan oleh Akta Persaingan 2010 mempunyai definisi khusus. Menurut Seksyen 2 Akta Persaingan 2010, pasaran bermaksud seperti berikut:

Pasaran di Malaysia atau di mana-mana bahagian Malaysia, dan apabila digunakan berhubungan dengan apa-apa barangan atau perkhidmatan, termasuklah suatu pasaran bagi barangan atau perkhidmatan itu dan barangan atau perkhidmatan yang boleh digantikan, atau selainnya bersaing dengan barangan atau perkhidmatan yang mula-mula disebut itu.

Penilaian lanjut berhubung dengan pasaran telah disediakan oleh MyCC di dalam buku Garispanduan Definisi Pasaran.

## **ii. Klausula Andaian Bagi Perjanjian Mendatar**

Bagi perjanjian mendatar, Seksyen 4(2) Akta Persaingan 2010 memperuntukkan bahawa sekiranya perjanjian mendatar mempunyai matlamat seperti a) penetapan harga, b) berkongsi pasaran atau punca bekalan, (c) menghadkan atau mengawal pengeluaran, capaian pasaran, pembangunan teknikal atau teknologi atau pelaburan atau (d) tipuan bida, maka perjanjian tersebut disifatkan mempunyai matlamat menghalang persaingan secara signifikan dalam pasaran barangan atau perkhidmatan.

## **Kesan Keterlibatan Dalam Perjanjian Anti-Persaingan**

### **i. Pengecualian**

Pengecualian di bawah Seksyen 5 Akta Persaingan 2010 akan diberikan sekiranya suatu pihak yang didapati bersalah dibawah peruntukan yang terkandung dalam Seksyen 4 Akta Persaingan 2010 berjaya memenuhi empat syarat kumulatif berikut:

- (a) perjanjian tersebut mempunyai faedah signifikan yang dikenalpasti dari segi teknologi, kecekapan atau sosial;
- (b) manfaat tidak boleh semunasabahnya disediakan tanpa apa-apa sekatan
- (c) kesan buruk perjanjian anti-persaingan itu adalah berkadar dengan faedah dan
- (d) amalan sekatan tersebut tidak membawa kepada penghapusan lengkap persaingan dari segi barang-barang atau perkhidmatan.

Namun begitu terdapat satu lagi keperluan tambahan yang perlu dipenuhi sebelum mendapatkan pengecualian di bawah Seksyen 5 Akta Persaingan 2010, iaitu pihak berkenaan perlu membuktikan bahawa bahawa faedah yang disebut dalam Seksyen 5 Akta Persaingan 2010 adalah untuk pengguna (Artikel 5.2 Garispanduan Bab I Larangan Perjanjian Anti-Persaingan). Sehubungan dengan itu, jika suatu pihak berjaya membuktikan unsur di bawah Seksyen 5 Akta Persaingan 2010 serta membuktikan bahawa faedah akan diserahkan kepada pelanggan, pelepasan liabiliti yang diberikan oleh Suruhanjaya sama ada melalui pengecualian individu, pengecualian blok atau memohon di bawah seksyen 5 Akta Persaingan 2010. Pengecualian blok ialah satu keadaan di mana industri-industri tertentu diberi pengecualian daripada peruntukan Akta Persaingan 2010 walaupun industri tersebut merupakan pihak kepada perjanjian yang bersifat anti-persaingan. Dalam keadaan di mana sesuatu industri gagal memperolehi pengecualian blok, alternatif lain ialah memohon pengecualian individu daripada MyCC. Berbeza dengan negara-negara lain, Malaysia hanya memberi pengecualian blok dalam industri perkapalan yang melibatkan Perjanjian Perkongsian Kapal dan Perjanjian Sukarela Perbincangan berkenaan perkapalan liner.

## ii. **Rejim Kelonggaran**

Bagi tujuan penguatkuasaan undang-undang persaingan yang lebih efektif di Malaysia, Seksyen 41 Akta Persaingan 2010 menyediakan rejim kelonggaran kepada mereka yang membantu pihak berkuasa mengenal pasti organisasi yang terlibat dalam kesalahan anti persaingan dan juga apabila perusahaan mengakui penglibatannya dalam aktiviti anti persaingan yang diperuntukkan di bawah Seksyen 4 (2) Akta Persaingan 2010. Sekiranya sesuatu perusahaan diberi rejim kelonggaran, maka ia membolehkan perusahaan itu mendapatkan pengurangan maksimum 100 peratus jika terdapat penalti dikenakan ke atas mereka.

## iii. **Bertanggungjawab Bagi Pelanggaran**

Kesan langgaran terhadap peruntukan larangan perjanjian anti-persaingan ialah ia tidak menjejaskan keesahan sesuatu perjanjian meskipun perjanjian tersebut mengandungi peruntukan yang bersifat anti-persaingan. Ia hanya akan menyebabkan perusahaan yang terlibat dengan perjanjian anti persaingan bertanggungjawab bagi pelanggaran larangan tersebut. Seksyen 40 Akta Persaingan 2010 memperuntukkan bahawa dalam kes di mana terdapat pelanggaran, Suruhanjaya Persaingan,

- (a) hendaklah menghendaki pelanggaran itu dihentikan serta-merta;
- (b) boleh menyatakan langkah-langkah dikehendaki supaya perlu diambil oleh perusahaan yang melanggar, yang pada hemat Suruhanjaya adalah sesuai bagi menghentikan pelanggaran itu;
- (c) boleh mengenakan penalti kewangan; atau
- (d) boleh memberikan apa-apa arahan lain yang difikirkannya sesuai.

## **Larangan Dalam Akta Persaingan 2010:Penyalahgunaan Kedudukan Dominan**

Seksyen 10 Akta Persaingan memperuntukkan larangan yang berkaitan dengan penyalahgunaan kedudukan dominan. Untuk memastikan kewujudan penyalahgunaan kedudukan dominan, terdapat dua syarat yang perlu dipenuhi, pertama, sesuatu perusahaan hendaklah berada pada kedudukan dominan dalam pasaran dan kedua, perusahaan yang berada pada kedudukan dominan tersebut menyalahgunakan kedudukan dominan (Massimo Motta, 2007, hlmn. 34). Seksyen 2 Akta Persaingan 2010 memberikan maksud kedudukan dominan sebagai "suatu keadaan yang dalamnya satu perusahaan atau lebih mempunyai kuasa yang signifikan dalam suatu pasaran untuk melaraskan harga atau output atau terma perdagangan, tanpa kekangan yang berkesan daripada pesaing atau pesaing berpotensi."

Beberapa perlakuan yang dianggap sebagai penyalahgunaan kedudukan dominan di senaraikan di bawah Seksyen 10 (2) (a)-(g) iaitu, mengenakan jualan tidak adil ke atas pembekal atau pelanggan, menghadkan pengeluaran, pasaran, pembangunan teknologi atau pelaburan sehingga memudaratkan pengguna, enggan memberi bekalan kepada sesuatu perusahaan atau kelompok perusahaan tertentu serta mengenakan syarat tambahan yang tidak berkaitan dengan kontrak jualan ke atas pembeli apabila pembeli membeli produk daripada penjual.

### **Kesan Pelanggaran Bahagian II Akta Persaingan 2010 (Perjanjian Anti-Persaingan Dan Penyalahgunaan Kedudukan Dominan)**

Pelanggaran Bahagian II Akta Persaingan 2010 boleh mengakibatkan tindakan penalti kewangan dikenakan oleh MyCC terhadap pihak yang didapati bersalah. Menurut Seksyen 40 Akta Persaingan 2010, ia memperuntukkan bahawa dalam kes di mana terdapat pelanggaran, Suruhanjaya Persaingan,

- (a) hendaklah menghendaki pelanggaran itu dihentikan serta-merta;
- (b) boleh menyatakan langkah-langkah dikehendaki supaya perlu diambil oleh perusahaan yang melanggar, yang pada hemat Suruhanjaya adalah sesuai bagi menghentikan pelanggaran itu;
- (c) boleh mengenakan penalti kewangan; atau
- (d) boleh memberikan apa-apa arahan lain yang difikirkannya sesuai.

### **APLIKASI PERUNTUKAN AKTA PERSAINGAN 2010 TERHADAP PELBAGAI SEKTOR KOMERSIL DI MALAYSIA**

Terdapat beberapa kes yang telah diputuskan oleh MyCC berhubung dengan pelanggaran peruntukkan yang terkandung dalam Akta Persaingan 2010. Antaranya ialah kes yang diputuskan oleh MyCC yang melibatkan MAS dan AirAsia, iaitu dua gergasi dalam sektor pengangkutan udara di Malaysia. MAS dan Air Asia dikenakan penalti kewangan kerana melanggar Seksyen 4 (2) (b) Akta Persaingan 2010, iaitu penglibatan dalam perjanjian anti-persaingan yang bermatlamat perkongsian pasaran. Dalam kes itu, MyCC membuat keputusan untuk mengenakan penalti kewangan berdasarkan pusingan ganti yang diperolehi antara 1 Januari 2012 dan 30 April 2012 oleh MAS dan AirAsia bagi laluan yang berikut, Kuala Lumpur ke Kuching, Kuala Lumpur ke Kota Kinabalu, Kuala Lumpur ke Sandakan dan Kuala Lumpur ke Sibul (<http://mycc.gov.my/wp-content/uploads/2014/05/final-decision-on-MAS-AIRASIA-PDF.pdf>, perenggan 85).

Selain itu, akibat daripada keputusan Persatuan Pengusaha Lori Malaysia (PMLOA) yang bersetuju untuk menetapkan harga bagi caj penggunaan lori, MyCC telah mengeluarkan amaran terhadap PMLOA agar tindakan PMLOA itu dihentikan serta merta kerana persetujuan penetapan harga oleh PMLOA tergolong dalam kelompok perjanjian anti-persaingan(<http://www.theborneopost>.

com/2014/05/22/mycc-catches-lorry-owners-association-fixing-price/). Selain itu, MyCC telah mengambil tindakan dengan mengenakan penalti ke atas Persatuan Pengeluar Ais Malaysia yang telah bersetuju dengan ahlinya untuk menetapkan harga ais blok dan juga harga ais kiub. Keputusan yang dibuat oleh Persatuan Pengeluar Ais Malaysia tergolong dalam definisi perjanjian anti-persaingan di bawah Seksyen 4(2)(a) Akta Persaingan 2010 (<http://www.themalaysianinsider.com/bahasa/article/mycc-denda-rm283600-kepada-pengusaha-ais-tiub-kerana-tetapkan-harga-bersama>). Aplikasi Seksyen 10 Akta Persaingan 2010 dapat dilihat dalam kes yang melibatkan Megasteel Sdn Bhd yang telah di denda oleh MyCC atas kesalahan di bawah Seksyen 10 (1) Akta Persaingan 2010. MyCC berkata amalan pengecilan margin memberi implikasi anti-persaingan dalam pasaran dan ini merupakan langgaran terhadap Seksyen 10 (1) Akta Persaingan 2010 (<http://www.thesundaily.my/news/872619>)

## **KESIMPULAN**

Akta Persaingan 2010 menyediakan peruntukan yang bertujuan untuk menggalakkan persaingan yang sihat dalam pasaran disamping melindungi pasaran perniagaan dan pengguna. Dua larangan utama iaitu perjanjian anti-persaingan dan penyalahgunaan kedudukan dominan merupakan dua keadaan yang seringkali berlaku dalam amalan perniagaan yang berupaya mewujudkan pasaran perniagaan yang bersifat anti-persaingan. Walaupun peruntukkan yang terkandung di dalam Akta Persaingan 2010 adalah bersifat umum, namun sebagai undang-undang yang masih baru di Malaysia, ia dilihat dapat membantu mengawal dan membanteras amalan anti-persaingan di kalangan peniaga yang menjalankan aktiviti komersil.

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