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Kleptocracy and foreign policy change: a political-administrative relations account

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Chapter Six¹

Kleptocratic Bargains and Foreign Economic Policy Change

“He [Najib] also caused amendments to be made to the articles of the company to place himself in sole control of important matters concerning the business and affairs of the company. In short, he was its plenipotentiary. Additionally, he was the chairman of the company’s board of advisers. He used that position and that of Prime Minister and Minister of Finance to do certain acts and to exert influence over the board of 1MDB to carry out certain abnormal transactions with undue haste. The ultimate aim of the accused was to obtain gratification for himself. He succeeded in achieving that aim”.

(Gopal Sri Ram, Lead Prosecutor)

“The worst thing about 1MDB was that they had not even a single representative [bureaucrat] from the Ministry of Finance”.

(Senior officer at the MACC)

“EPU was brave enough to stand their ground, but they were powerless to stop the 1MDB-China fast-tracked loans through the ICBC Bank”.

(Senior Officer at the MOFA)

6.1 Introduction

This chapter addresses the first empirical case of the proposed kleptocracy–PSBs–foreign policy change framework, namely the impact of kleptocracy on a country’s foreign economic policy. For that purpose, this chapter focuses on Malaysia’s loan and divestment policy change toward China between 2015 and 2016 amid the 1MDB scandal, which was associated with the country’s former Prime Minister Najib Razak and is regarded as one of the largest cases of kleptocracy. This chapter reveals how a kleptocrat devised both exclusion and inclusion cheating strategies to bypass other influential actors while leveraging his loyalists to fulfill his foreign loans and divestment objectives. The assumption is that the established trustee-type PSB system produced a consistent foreign economic policy, wherein the state’s material gains were accumulated through equity shares and foreign direct investments (FDIs) were attracted while maintaining the state’s autonomy. However, the arrival of kleptocracy that led to the

¹ Part of this chapter has been published in the *Journal of Current Southeast Asian Affairs* (Abadi, 2022).

shift toward kleptocratic-type bargains hampered the foreign economic decision-making process to specifically serve the kleptocrat's private material interests at the expense of the state's sovereignty, autonomy, fiscal position, and long-term debt.

This chapter begins by briefly elaborating the relationship between kleptocracy, PSB, and the foreign economic policy-making. It is argued that the autonomy of bureaucrats who are specifically in charge of foreign economic policy-making under the trustee type of political-administrative bargains are negatively affected as the bargain shifts to partial kleptocratic type after kleptocratic executives deploy their cheating strategies. Next, a section on the background of Malaysia's foreign loan and strategic assets ownership is discussed as an introduction for the selected empirical case. The fourth section covers Najib's 1MDB scandal, followed by a discussion on five 1MDB-related foreign loan and divestment deals with China. Two of these—Edra Global Energy and Bandar Malaysia Project—were in the form of divestment, and the following three were related to foreign loan: ECRL, TSGP, and MPP. While Najib's move to establish 1MDB has specifically shifted the Malaysia's foreign loan and divestment policy-making from the trustee type to the partial kleptocratic type of bargain, Malaysia's trustee-based bargain bureaucracy system has been left intact, to the extent that the bureaucrats from EPU, Malaysian Central Bank, MACC, Malaysian Attorney-General, and the Royal Malaysian Police managed to launch attempts, albeit unsuccessful, to block and prosecute Najib prior to the 2018 General Election.

6.2 Kleptocratic-type Bargains and the Foreign Economic Policy-making

Small, developing states generally use different options to secure foreign capital, for example, foreign loan, FDI, foreign portfolio investment, and divesting equity and nonfinancial assets (IMF, 2013; Nunnenkamp, 1989). Usually, such states prefer FDI over other options due to the higher financial and political risks involved with foreign debt inflows and non-financial assets divestment, respectively, (Katzenstein, 1985; Lin & Sosin, 2001; Magcamit, 2016). High interest rates and the pressure to comply with structural adjustments, such as privatization and austerity programs, have often been cited as imminent threats of foreign loan (Edwards, 1983; Orelus & Chomsky, 2014a). Privatization/De-nationalization or divestment of strategic assets to foreign countries is also considered as a threat to a country's sovereignty as such decisions are often associated with the fall of debt-ridden leaders and regimes in Third World countries (Orelus & Chomsky, 2014b; Pepinsky, 2009). This phenomenon has been observed in countries with weak institutions and inefficient bureaucracy, such as countries in Latin America, Sub-Saharan Africa, and Suharto's Indonesia (Edwards, 1983; Pepinsky, 2009). Nevertheless, the

sudden increase in Malaysia's foreign loans and divestment of strategic assets to China in 2015–2016—amid Najib's 1MDB scandal—was a puzzling incident.

Consequently, it is argued that kleptocracy affected the Malaysian government's foreign economic decision-making process in the context of Najib's deals with China in 2015–2016. The assumption is that the established trustee-type PSB system in Malaysia has produced a consistent foreign loan and divestment, wherein the state's material gains are accumulated through equity shares and FDI's are attracted while maintaining the state's autonomy (Daud, 2020, 2004; Embong, 2008; Gomez, Padmanabhan, Kamaruddin, Bhalla, & Fisal, 2017; Lafaye de Micheaux, 2019). However, the arrival of kleptocracy that led to the shift toward kleptocratic-type bargain hampered the foreign loan and divestment decision-making process to specifically serve the kleptocrat's private material interests at the expense of the state's sovereignty, autonomy, fiscal position, and long-term debt.

It is argued that the autonomy of bureaucrats who are specifically in charge of foreign economic policy-making under the trustee type of political-administrative bargains are negatively affected as the bargain shifts to partial kleptocratic type after kleptocratic executives deploy their cheating strategies. The risks incurred by kleptocracy threaten not only political executives' position and bureaucrats' autonomy but also the state's strategic resources and assets when it involves foreign investigation and pressure to clear foreign debts, respectively. In such kleptocratic bargains, even worse than in an agency bargain, kleptocratic executives can easily undermine their bureaucratic counterparts' capacity to influence both foreign loan and divestment policy-making for the sake of preserving their interests, notably because of the limited autonomy possessed by bureaucrats under this bargain. The differences in the assessment of foreign loans and divestment of strategic assets logically compel kleptocrats, whose interests are already threatened, to abandon the established trustee-type PSB system. This move is accompanied with the primary objective to change the state's foreign loan and divestment decision-making process, even at the cost of risking the country's downfall into colossal foreign debt. This is precisely where different manipulation strategies, elaborated in the previous chapter, come into play. On the one hand, internally, both exclusion and inclusion strategies alter the established system of bargains in the decision-making process. On the other hand, externally, decision related to foreign loans and divestment can be altered. Nevertheless, a kleptocrat's capability to achieve their interest defers depending on the actors involved in the decision-making process, specific foreign loan and divestment decision in question, and its implementation.

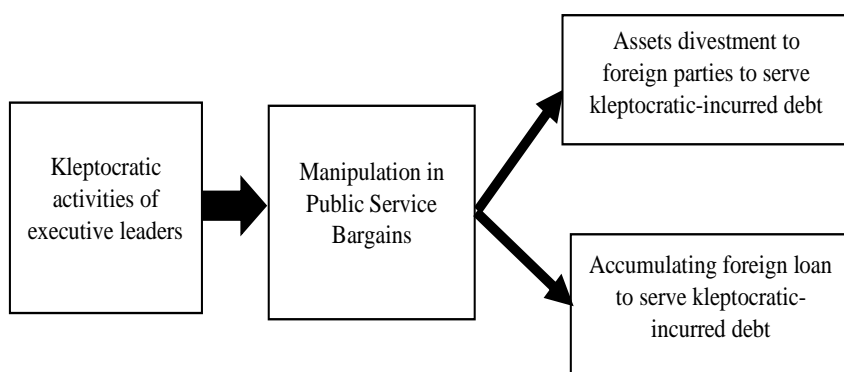


Figure 6.1. The impact of kleptocracy on the foreign loan and divestment policy change.

6.3 Malaysia's Trustee-type Bargain in Foreign Economic Policy

This section introduces the background of Malaysia's foreign loan and strategic assets ownership policy prior to Najib's kleptocracy case. Prior to the 2015–2016 deals, the Malaysian government had preserved its optimal external debt and ownership over strategic assets amid the three economic crisis in the 1980s, 1990s, and 2008 (Daud, 2020; Embong, 2008; Mansor & Noriza, 2015). While there have been other legitimate Chinese investments in Malaysia (Abadi, 2019; Liu & Lim, 2019; Shaomin & Jiang, 2020; Singh, 2020; Tham, 2018), Najib's 2015–2016 deals cannot be considered a part of those investments. From the perspective of Malaysian foreign loan and asset divestment, Najib's deals with China marked a significant shift in terms of the decision-making process, the loss of the country's strategic assets, and the magnitude of negative implications they cast upon tax-payers' money (Mohamad, personal communication, August 24, 2017). Prior studies on Malaysian debt have proved that increase in the country's debt has adversely affected its economic performance (Choong, Lau, Leew, & Puah, 2010; Dauda, Ahmad, & Azman-Saini, 2013). In fact, Malaysian bureaucrats became perceptive of external debt risks after the following incidents: First, in 1985, following the Plaza accord, the G-7 raised the value of Japanese yen against the US dollar, doubling Malaysia's yen-dominated sovereign debt in ringgit (Jomo & Way, 2003); second, Malaysia refused to take loans from the IMF during the 1997 Asian Financial Crisis (Beeson, 2000; Krugman, 1999). Moreover, Malaysian bureaucrats were said to possess "significant technocratic capacity" and were called a group that "issues bonds and borrows internationally, operates state-invested

banks and corporations, and adequately regulates macroeconomic policy” to the extent that “defaults on government debt have been assiduously avoided and credit worthiness protected” (Case, 2017, p. 637). Malaysian bureaucrats also function as vanguards to national strategic assets. On the one hand, they work with the government-linked companies and government-linked investment companies to increase the government’s revenues through equity ownership and investments (Ahmad, Mansor, & Ahmad, 2003; Gomez et al., 2017; Hussain, 2008; Lafaye de Micheaux, 2017). On the other hand, they execute politically-sensitive duties, for example, rescuing problematic or mismanaged strategic assets by re-nationalizing privatized assets such as the Malaysia Airlines System, Malaysia International Shipping Corporation, Light Rail Transit, and Perwaja Steel (Gomez et al., 2017; Gomez & Jomo, 1999). While such measures have been criticized as tactics to use public funds in order to bail executives’ cronies, the government could prevent the assets from being sold to foreign entities (Mohamad, 2017). To this end, this chapter addresses the following question: How did kleptocracy affect foreign loan and divestment policy change?

Most studies on 1MDB and Najib have focused on the domestic political struggle (Case, 2017; Gabriel, 2018), financial perspective (Ali, 2016, 2018, 2019; Jones, 2020), or media reporting (Nazmi & Helmi, 2016) in Malaysia; however, no research till date has been conducted on kleptocracy as a factor influencing the foreign loan and divestment decision-making process to understand the critical connection between the 1MDB scandal and Najib’s deals with China in 2015–2016. In addition, most of the literature on the subject has neglected the role of top bureaucrats in the foreign loan and divestment decision-making process. This lacuna is the result of the treatment of bureaucrats as insignificant in the literature on kleptocracy vis-à-vis kleptocratic executive leaders since most of them emerged from institutionally weak Third World countries (Acemoglu et al., 2004; Andreski, 1968; Rose-Ackerman, 1999). However, this was not the case with Malaysia. It emerged as the new “Asian Tigers” economy during the peak of “Asian Miracles” in the 1980s, with highly professional bureaucrats at the apex of its administration (Daud, 2020; Embong, 2008; Gomez & Jomo, 1999; World Bank, 1993). Malaysian bureaucracy—a merit-based and highly-modernized British model of public administration system—was constructed based on its colonial Western heritage (Esman, 1972; Funston, 2001; Mansor & Noriza, 2015; Sarji, 1996; Siddiquee, Xavier, & Mohamed, 2019). This chapter fills this gap by assessing the role of not only a kleptocratic leader involved in the 1MDB scandal and the deals with China in 2015–2016 but also Malaysian bureaucrats in the decision-making process. For this, kleptocracy is identified as a critical factor affecting the PSB change that consequently influences the foreign loan and divestment

decision-making process under a kleptocratic regime.

6.4 Najib's 1Malaysia Development Berhad Kleptocratic Scandal

This section provides a brief account of Najib's 1MDB kleptocracy case. 1MDB is a Malaysian state-owned strategic development corporation established by Najib when he assumed premiership in 2009. Unlike the Khazanah—Malaysia's sovereign wealth fund, which is funded by and invests on the government's behalf—1MDB is regarded as a separate entity from the state (Gomez et al., 2017). While 1MDB has to find and invest its own funds, its loans are guaranteed by the government. 1MDB's Board Chairman, Wok Lodin Kamaruddin, has described 1MDB as a "strategic investment company" that was "set up to drive the country's economy and long-term development," driven by private sector thinking and practices (Ali, 2016). Since its inception, 1MDB has rapidly raised its own funds through issuing bonds and borrowings (Case, 2017). Nevertheless, the then Minister of EPU, Abdul Wahid Omar, has openly criticized 1MDB's business model; according to him the "model of low capitalization and huge borrowings" was never sustainable (CNBC, 2016). Ultimately, 1MDB was proven later as a vehicle used by Najib to siphon off public resources and funds raised through his government-guaranteed bonds for the purpose of enriching himself; this is part of the reason Najib was sentenced to 12 years of jail, fined RM 210-million, and instructed to pay RM 1.69 billion in tax for offence related to: abuse of power (Section 23 of the MACC Act 2009), three criminal breach of trust offences (Section 409 of the Penal Code, to serve 10 years for each count), and 10 years jail for each of the three counts of money laundering (Section 4(1)(b) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 AMLATFPUAA) (*New Straits Times*, 2020).

The list of luxury assets owned by Najib seized both in Malaysia and abroad has been documented by the Deputy Commissioner of MACC, Mohamad Zamri Zainul Abidin (2019), as well as the US DOJ (2016). Among the long list of assets forfeited are Park Lane Hotel (380 million USD), Time Warner Penthouse (30 million USD), Park Laurel Condo (33 million USD), Walker Tower Penthouse (50 million USD), Viceroy L'Ermitage Hotel (44 million USD), Beverly Hills Mansion (31 million USD), Montalban House (38 million USD), London Town House (41 million USD), Red Granite Pictures' investment in *The Wolf of Wall Street* (100 million USD), Bombardier 700 Jet (35 million USD), Van Gogh's drawing (5 million USD), and Monet's paintings (92 million USD; US DOJ, 2016).

Initially, when Najib endowed 1MDB with strategic assets in real estate and power stations financed through foreign borrowings, he claimed that most of its borrowings would

only yield long-term returns. Among its acquisitions were the Bandar Malaysia Project in Sungai Besi near Malaysia's capital city and energy companies under Edra Global Energy Bhd. The Bandar Malaysia project was planned on a federal government-owned land at a strategic location. Edra Energy was a consolidation of the following three major independent power producers in Malaysia: Powertek Energy Group, Kuala Langat Power Plant, and Jimah Energy Group. Edra Energy constituted a key part of the 1MDB as it operated eight power plants and had investments in Bangladesh, Pakistan, Sri Lanka, Egypt, and the United Arab Emirates apart from Malaysia (Edra Energy, 2016). However, 5 years after its inception, 1MDB defaulted on a payment to its bondholders. This was followed by the 2015 explosive revelation by the *WSJ* and Sarawak Report that more than 700 million USD from 1MDB's funds had been traced back to Najib's private account (Case, 2017; Sarawak Report, 2015; Wright & Clark, 2015). Eventually, the US DOJ launched a formal investigation and criminal lawsuits in 2016 and 2017, which sought to recover 4.5 billion USD stolen from 1MDB's funds between 2009 and 2015 in the form of assets found in the United States through its Kleptocracy Asset Recovery Initiative. The US Attorney General, Loretta E. Lynch, provided the details of 1MDB's misappropriated assets in three schemes:

“1MDB officials and their associates embezzled approximately \$1 billion that was intended to be invested to exploit energy concessions purportedly owned by a foreign partner. Instead, the funds were transferred through shell companies and were used to acquire a number of assets....The co-conspirators misappropriated more than \$1.3 billion in funds raised through two bond offerings in 2012 and \$1.2 billion following another bond offering in 2013. As further detailed in the complaints, the stolen funds were laundered into the United States and used by the co-conspirators to acquire and invest in various assets. These assets allegedly included high-end real estate and hotel properties in New York and Los Angeles, a \$35 million jet aircraft, works of art by Vincent Van Gogh and Claude Monet, an interest in the music publishing rights of EMI Music and the production of the 2013 film *The Wolf of Wall Street*” (US DOJ, 2016).

Despite Najib's efforts to deny the US DOJ's charges, the financial reality had already hit 1MDB. The company had faltered on its debt payments in billions and the Najib-led government—as the guarantor of 1MDB—was desperately looking for foreign loans and capital to salvage 1MDB. The US DOJ's investigation revealed that one of the most pressing foreign debt pressures on 1MDB came from International Petroleum Investment Co (IPIC). For the acquisition of two power plants, 1MDB along with IPIC's subsidiary Aabar had issued two 10-

year bonds of 1.75 billion USD each in 2012. In this arrangement, 1MDB had to pay 1.37 billion USD to Aabar as a security deposit. However, IPIC insisted that neither it nor Aabar received any payments from 1MDB, and the company that did—Aabar Investments PJS Ltd (Aabar BVI)—was not part of their group (The Edge Markets, May 11, 2017). 1MDB's delay in paying off IPIC's debt led to the devaluation of bonds issued by the Malaysian government, creating a widespread political controversy (Sarawak Report, 2015). IPIC declared that 1MDB had defaulted on its 1.1-billion-USD debt and interest obligations (Reuters, April 18, 2016). IPIC's statement was considered as "a bombshell" since it confirmed the allegation that 1MDB had paid 3.5 billion USD to a British Virgin Islands shell company called Aabar Investments PJS Ltd., owned by Najib's close aid and advisor Low Taek Jho (Jho Low),² instead of the real IPIC-owned company (Wright & Clark, 2015). After Najib-led government's collapse in May 2018, the former chief executive officer of 1MDB, Shahrol Azral Ibrahim, testified in the High Court that in 2014, the company's funds had been embezzled in two tranches into the fake Aabar (*Sinar Harian*, August 17, 2020; The Edge Markets, September 2, 2020).

Ultimately, Najib was desperate to embark on a "rationalization plan" related to 1MDB's assets to cover the company's debts to IPIC (Pua, 2017). The plan chaired by Najib sold a series of assets to one country in particular: China. China had already invested billions in Malaysia through its expansionary Belt and Road Initiative (BRI) prior to the 1MDB debacle (Gong, 2019; Liu & Lim, 2019; Tekdal, 2018). However, those investments did not involve massive asset ownership like the 2015–2016 deals. In fact, when the divestment of 1MDB's assets were insufficient to cover the accumulated debts, Najib and his close aide Jho Low applied for several loans disguised as mega infrastructure loans under China's BRI investment scheme.

6.5 Malaysia's Foreign Loan and Divestment to China in 2015–2016

6.5.1 100% divestment of Edra Global Energy to China General Nuclear Power Corporation.

In November 2015, all of 1MDB's power assets under Edra Global Energy Bhd were sold to China General Nuclear Power Corporation (CGN) for RM9.83 billion in cash. Initially, 1MDB had paid RM12 billion for the equity shares of Edra's power assets and accumulated a debt

² Jho Low is a Chinese-Malaysian financier who is charged by both Malaysian and US investigators as one of the masterminds who worked on behalf of Najib in the 1MDB scheme. He is regarded as "the connecting point between everyone involved in the 1MDB fund and the only one with a 360-degree view of the multi-billion dollar scheme" (BBC, 2019).

worth RM6 billion (*The Star*, November 23, 2015). It must be noted that the creation and involvement of 1MDB in the energy sector was already under great scrutiny:

“1MDB was never supposed to exist. We already have Khazanah and PNB to invest on behalf of the government and people, we already have TNB [Malaysia’s government-linked electricity utility] and Petronas [Malaysia’s national petroleum company] to manage our energy sector”.

(Interview, former TNB officer, Rotterdam, December 25, 2019).

This divestment strategy marked a significant departure from the norm by the Najib-led Malaysian government; there were no precedents of selling strategic assets to foreign entities since Malaysia’s independence in 1957, and the strategy violated the country’s foreign ownership policy under the New Economic Policy 1971. It was the largest merger and acquisition in Malaysia and one of the largest in the Asian power sector that year (1MDB, 2015). The transaction was also inked amidst Malaysia’s struggle with a depreciating ringgit, which was emerging as “Asia’s worst-performing currency—down nearly 19 percent against the dollar—and political uncertainty caused by 1MDB” (Reuters, November 23, 2015). This triggered a strong response from the opposition because it reflected critical problems around 1MDB’s rocketing debt apart from violating the country’s foreign ownership laws (*Straits Times*, 2015). Rafizi Ramli, the secretary-general of the then opposition, Parti Keadilan Rakyat, said that the decisions “go against the existing rule that allows foreign investor to hold up to a maximum of 49 percent equity stake in the energy sector to protect national interests”. This was echoed by Najib’s fellow cabinet member, the Minister of Energy Maximus Ongkili (Ramli, 2015). The Chinese acquisition of Edra was murky because the national energy supplier, the TNB, had also submitted a bid for the assets, which was valued at a little over RM8 billion (*The Edge Financial Daily*, November 5, 2015). In principle, Najib-controlled 1MDB should have sold Edra to the TNB instead of the Chinese. In fact, a former TNB officer disclosed that TNB was willing to bid higher, but Najib decided to sell Edra to China instead:

“I remember that TNB was willing to bid higher but they [1MDB] sold it [Edra Energy] to China anyway because they need big, fast, cash to pay the 1MDB debt”.

(Interview, former TNB officer, Rotterdam, December 25, 2019)

In an interview with the author, Melaka’s chief, Adly Zahari, regarded the divestment of Edra to a Chinese company as a loss of the country’s assets and deprivation of future developmental opportunities in the energy sector for local Malaysian talents:

“Their [1MDB] business model was very problematic...they [1MDB] sold Edra Energy just for cash without any long-term benefit for local Malaysian or Melaka’s talents in the energy sector”.

(Interview, Adly Zahari, Chief Minister of Melaka, The Hague, September 12, 2019)

6.5.2 24% divestment of the Bandar Malaysia Project to China Railway Engineering Corp.

Najib’s second critical divestment to China occurred in December 2015—a month after China’s acquisition of Edra Energy. Sixty percent of 1MDB’s stake in the Bandar Malaysia Project was sold to a consortium that was 40% owned by the China Railway Engineering Corp (CREC), one of China’s largest state-owned enterprises (Liu & Lim, 2019). CREC invested in 1MDB’s assets five months after the explosive WSJ report more than 700 million USD from 1MDB’s funds had been traced back to Najib’s private account (Liu & Lim, 2019). The Bandar Malaysia Project is a mixed development project of about two million square meters in the heart of Malaysia’s capital, Kuala Lumpur, encompassing both residential and commercial properties. Initially, as part of Najib’s 15–20-year plan of “Greater Kuala Lumpur” transformation, 1MDB’s subsidiary company, Real Estate Sdn Bhd, was supposed to develop Bandar Malaysia. The former senior executive of a Malaysian government-linked investment company (GLIC) validated in an interview with the author that Najib decided to divest 1MDB’s stake in the project to pay off the debts.

“Bandar Malaysia was divested just for the sole purpose of covering previous 1MDB’s debt. 1MDB created other debts before, and try to cover with a new debt. A larger debt. As if they were digging a new hole to cover their previous hole. They even try to increase the Bandar Malaysia’s real estate value on paper just to secure bigger cash”.

(Interview, former senior executive of a Malaysian government-linked investment company (GLIC), Rotterdam, August 18, 2019)

This divestment marked the first instance of selling a significant share of Malaysia’s federal land to a foreign consortium. Furthermore, Bandar Malaysia is not ordinary federal land; it is at the heart of Kuala Lumpur and was used to station the Royal Malaysian Airforce’s Sungai Besi Airbase.

6.5.3 East Coast Rail Link (ECRL) contract to China Communication Construction Company.

Najib procured his largest loan from China four months after the US DOJ launched its official

investigation on 1MDB in July 2016. During his visit to Beijing in November 2016, Najib awarded the RM55 billion ECRL project to the highly controversial China Communication Construction Company (CCCC). The selection of CCCC as the project's main contractor was criticized as it "does not produce trains" (*The Malaysian Reserve*, 2017). Moreover, it had been barred from conducting business on some World Bank projects for eight years because of "a corruption scandal, played a leading role in building artificial islands in the South China Sea" (Bogdanich & Forsythe, 2018). At a staggering cost of RM91.67 million per kilometer, the ECRL project is considered one of the most expensive interstate rail and cargo line establishments in the world. It is also the largest rail link contract financed by Chinese loans under the Chinese BRI (*The Edge Markets*, November 8, 2016). Najib committed to pay a 3.5% interest rate with 85% loans from Chinese Export-Import (EXIM Bank) seven years after construction started (Jomo, 2017). Further, amid the project's "uncertain" impact and financial feasibility, the government's fiscal position could be "weakened" if the project—amounting to almost 8% of the country's public debt—"fails to generate sufficient returns to service and repay the debt incurred" (Lee, 2016).

In addition, most feasibility studies conducted for such a railway project in the East Coast in 1984 concluded that such a project was financially unviable (Jomo, 2017; *Malaysiakini*, April 21, 2019; Muhammad, 2019).

"We simply cannot afford this rail link [ECRL] financing scheme. It will greatly burden the government and the people to shoulder the debt...and high-interest rate were imposed without viable return. Years ago, I wrote a letter to Chinese President proposing him to build a "super railway" project to connect the whole Asia Continent, but not like this project [ECRL]. It should be a win-win situation, not a one-sided deal". (Interview, Mahathir Mohamad, Kuala Lumpur, August 24, 2017)

An opposition MP, Tony Pua, revealed that the latest feasibility studies conducted by HSS Integration from 2009 to 2015 estimated that such a project would cost around RM30 billion, far less than the RM55 billion figure announced by Najib (*The Edge Markets*, November 15, 2016). Furthermore, Najib's administration refused to make HSS's feasibility studies public. Eventually, the Sarawak Report exposed the details of Najib's plan. The premier had inflated the cost of the ECRL by billions with the consent of its Chinese counterpart to cover 1MDB's debt to IPIC (Sarawak Report, 2016). Najib's close aide Amhari Efendi's testimony in the High Court during the 1MDB trial in September 2019 and the WSJ's report on the ECRL backdoor deal in January 2019 confirmed this accusation. While Najib was able to pay a part of 1MDB's debts to IPIC through the inflated cost of the ECRL, China would clearly benefit

massively in terms of strategic and economic returns from the project, at the Malaysian taxpayers' expense (Evers, 2017; Jomo, 2017; Mohamad, 2017).

6.5.4 Trans-Sabah Gas Pipe and multi-product pipeline contracts to China Petroleum Pipeline Bureau.

There are no records of open calls for tender or feasibility studies on the Trans-Sabah Gas Pipe (TSGP) and Multi-Product Pipeline (MPP) projects prior to Najib's visits to Beijing in 2016. The MPP involved a 600 km multi-product petroleum pipeline connecting Melaka and Port Dickson to Jitra in northern Kedah and costing 4.53 billion yuan and RM2.53 billion, or approximately RM5.35 billion. The TSGP was a 662 km gas pipeline from the Kimanis Gas Terminal to Sandakan and Tawau, costing 3.08 billion yuan and RM2.14 billion, or approximately RM4.06 billion (*The Star*, June 5, 2018). Following Najib's defeat in 2018, the new Finance Minister Lim Guan Eng discovered that 88% of the total funds for both projects had been utilized but only 13% of the work had been completed (*The Star*, June 6, 2018). Both projects were "kept hidden" under the red files, away from the scrutiny of most officials in the Treasury during Najib's premiership. Lim revealed that the ministry was shocked to discover that RM4.71 billion and RM3.54 billion for the TSGP and MPP projects, respectively, had already been paid to the China Petroleum Pipeline Bureau (CPPB) despite the fact that at the end of March 2018, the projects had achieved only 14.5% and 11.4% completion, respectively. In total, RM8.25 billion had been spent, a staggering 87.7% of the projects' total value, despite an average completion rate of only 13% and two years remaining of the contracts. This also marked another deviation in Malaysia's foreign loan decision-making process because it was based entirely on time-based milestones and not on progressive work completion milestones (*The Star*, June 6, 2018).

The new Ministry of Finance Malaysia published a media release on June 11, 2018: "The RM9.4 Billion Suria Strategic Energy Resources Sdn Bhd (SSER) Pipeline Scandal: Payment Of RM8.3 Billion Or 88% Of The Project Value Made Despite Only 13% Of Progressive Work Has Been Completed, The Land Has Not Been Acquired And The Laws Were Not Complied With." The release provides the following critical details:

"We have sought the assistance of the Treasury officials and the Chief Secretary to the Federal Government to determine the veracity of former Prime Minister's claims that the trillion of US dollars commitments made by China to Malaysia were linked to the signing of the two pipeline agreements worth RM9.4 billion. All officials asked have stated that these claims by Dato' Seri Najib are untrue. There was no mention of the

various ‘commitments’ made by China as claimed by Dato’ Seri Najib in any of the Cabinet papers presented in 2016 and 2017, which approved the SSER projects. We have also discovered that for some reason, the East Coast Rail Link (ECRL) projects and the SSER projects were always presented together in the same Cabinet paper by Dato’ Abdul Rahman Dahlan, the then Minister in the Prime Minister’s Department for Cabinet approval. This raises red flags as the ECRL and the SSER projects are vastly different in nature and business, involving different companies, contractors and geography, even if they were financed by the same China EXIM Bank. Dato’ Seri Najib has deliberately refused to respond to the principal question of this RM9.4 billion scandal as to why payment of RM8.3 billion which is equivalent to 88% of the project value were made even though only 13% of progressive work had been completed. Why did he permit such disbursement to be made within the first year of a 3-year contract? Worse, we have since discovered that SSER has failed to secure any rights from Petronas as required by law to lay the pipes for MPP, and has also failed to acquire the necessary land in Sabah to do the same for TSGP. Despite such shocking revelations, Dato’ Seri Najib’s still claims that all the necessary processes, procedures and laws had been complied with in relation to the signing of these two pipeline projects”.

Lim also stressed that a Treasury official who worked on SSER was the same official who dealt with SRC International, the former 1MDB unit under investigation over a RM42 million deposit into Najib’s account:

“The president of SSER is Datuk Mohammed Azhar bin Osman Khairuddin, who is also a company director. He is also on the board of Putrajaya Perdana Sdn Bhd, a company with direct ties to Mr Low Taek Jho [Jho Low]”.

On April 5, 2019, the SSER was fined RM18 million by the Malaysian Sessions Court for “failing to comply with Malaysian Central Bank (Bank Negara Malaysia BNM) conditions” in which the offences were that “SSER had issued loan funds from The Export-Import Bank of China not based on the progress of the Multi-Product Pipeline (MPP) and Trans-Sabah Gas Pipeline (TSGP) projects and paid RM8.3 billion or 88 per cent of the cost of construction of RM9.4 billion for the two projects to the contractor, China Petroleum Pipeline Engineering Co Ltd (CPP) when work progress was only at 13 per cent” (*The Edge Markets*, April 5, 2019). Judge Manira Mohd Noor stressed that the offence committed by SSER could “give negative impact to the country’s public and economic interests and the punishment was a lesson to SSER and other companies not to commit the same offences.” According to the first three charges, SSER was charged for failing to comply with conditions in the written approval by BNM under

Subsection 214(2) of the Financial Services Act 2013 (dated April 13, 2017) to acquire foreign currency loans from non-residents, for which SSER had issued loan funds from the EXIM Bank not based on the progress of the MPP project (*The Edge Markets*, April 5, 2019). SSER also failed to ensure good and effective governance in managing the implementation of the MPP project and to obtain the written approval of BNM for the change in information regarding the timeline for the implementation. For the fourth to sixth charges, SSER was levied the same charges: failure to comply with BNM conditions, that is, issuing loan funds from the EXIM Bank not based on the project progress for the TSGP project; the failure to ensure good and effective governance in implementing the TSGP project; and the failure to obtain written approval from BNM for change in information regarding the implementation timeline. In fact, the BNM prosecution officer Nurdeenie Abdul Rashid pushed for a commensurate punishment over the seriousness of offences, which led to a depreciation of the ringgit against other currencies (*The Edge Markets*, April 5, 2019).

Tommy Thomas, the Malaysian Attorney-General tasked with prosecuting Najib and his allies in the 1MDB case, wrote in his autobiography:

“Undoubtedly, the MPP [Multi-Product Pipeline] and TSGP [Trans-Sabah Gas Pipe] projects are linked to 1MDB. They were planned at a time when 1MDB and its subsidiary company were in deep financial crisis. These projects were structured to generate funds rapidly, no doubt to plug the losses in 1MDB. These facts help to explain all the anomalies, starting with the unprecedented payment terms, wherein huge payments were quickly disbursed without regard to the amount of work done, the open defiance of Central Bank’s approval condition, the lack of extensive negotiations preceding the signing of the multi-billion contracts and the amazingly short space of time spanning the date of SSER’s incorporation and the signing of the contracts. Clearly, the projects were not the intended end product. They were merely a means to an end. The end game was to rescue 1MDB from drowning in its own debt. Obviously, all that effort only bought 1MDB a couple of months. In the end, 1MDB could not be saved. It was hopelessly insolvent” (Thomas, 2021, p. 329).

6.6 Najib Razak’s Manipulation Strategies and Partial Kleptocratic Bargains

In the established Malaysian foreign economic policy-making process, Malaysian executives, such as the Prime Minister and Finance Minister, provide a high degree of autonomy to their bureaucratic counterparts, such as the Treasury Secretary-General at the MoF and the Economic Planning Unit (EPU). This “trustee-type” bargain results from the political-economic system

that allocates foreign loan and divestment decision-making responsibilities to the following three central agencies: “Federal Treasury, which deals with budget and loan approval; EPU, which is responsible for government allocations and project approval; and Public Implementation Co-ordination Unit, whose function is to monitor and evaluate the performance of public enterprises in the country” (Rugayah, 1995, p. 68). According to a senior EPU official, Malaysian executives allocated such autonomy to the EPU to increase the local equity share vis-à-vis foreign ownership (Senior officer at the Economic Planning Unit (EPU), interview, September 11, 2020; see also Mehmet, 1986; Puthuchery, 1960). The institutional strength of Malaysian bureaucrats under the “trustee-type” PSB is recognized by Hood and Lodge (2006) and well-documented in the “developmentalist state” literature on political economy (Daud, 2020; Embong, 2008). However, Najib’s 1MDB scandal and subsequent deals with China altered Malaysia’s foreign loan and divestment policy-making system specifically from trustee-type to partial-kleptocratic type bargaining through a series of manipulations while leaving the rest of Malaysia’s trustee-based bargain bureaucracy system intact.

When Najib established 1MDB in 2009, he not only endowed it with public strategic assets, but also ensured his complete control over the company, which was a departure from conventional economic decision-making in Malaysia. Court documents show that on September 2, 2009, the Najib-controlled Ministry of Finance Inc. included Article 117 in the 1MDB contract, which made Najib the sole stakeholder in decision-making related to the company’s investments and gave him the power to overrule board decisions (*The Edge Markets*, September 12, 2019). This article replaced Article 9A, which gave the decision-making authority to the “Federal Government”, not the “Prime Minister” (*The Edge Markets*, October 17, 2019). While 1MDB officially had a three-level corporate structure, including a management tier, board of directors, and advisory board, Najib—as Prime Minister, Minister of Finance, and chairman of 1MDB’s advisory board—was the sole signatory of all 1MDB investments. The former chief executive officer of 1MDB, Shahrol Azral Ibrahim Halmi, revealed that the transfer of decision-making power from the federal government to the Prime Minister was made at Jho Low’s advice. The lead prosecutor against Najib, Gopal Sri Ram stated in his opening statement about the relationship between Najib’s control over 1MDB and his kleptocratic goals:

“He [Najib] also caused amendments to be made to the articles of the company to place himself in sole control of important matters concerning the business and affairs of the company. In short, he was its plenipotentiary. Additionally, he was the chairman of the company’s board of advisers. He used that position and that of Prime Minister and Minister of Finance to do certain acts and to exert influence over the board of 1MDB to

carry out certain abnormal transactions with undue haste. The ultimate aim of the accused was to obtain gratification for himself. He succeeded in achieving that aim”.

(Sri Ram, 2019)

During his premiership, Najib appointed Ahmad Husni Hanadzlah as the Second Finance Minister (April 10, 2009–June 27, 2016), who later resigned from this post amid the 1MDB scandal. Five months later, in November 2016, Hanadzlah and the ex-Deputy Prime Minister Muhyiddin Yassin—who was sacked by Najib—were investigated under the Sedition Act 1948 for allegedly revealing 1MDB’s secrets (*Free Malaysia Today*, October 31, 2016; *New Straits Times*, October 29, 2016; *The Edge Markets*, November 8, 2016). This indicated Najib’s use of inclusion and exclusion as manipulation strategies. An examination of the composition of actors involved in the decision-making process revealed two clear patterns. First, certain actors were usually involved in the discussion but excluded from the decision-making process. Second, those actors were deliberately excluded by virtue of Najib’s authority. In fact, even the CEO of 1MDB, Shahrol Azral Ibrahim Halimi, testified at the High Court in 2019 that he had been “discouraged” from inquiring about matters not under his purview and “everyone within the company had worked in their own ‘silos’” (*The Malaymail*, October 21, 2019).

6.6.1 Exclusion strategy.

The extent of Najib’s exclusion strategy is widely acknowledged by several bureaucrats and uncompromised executives. The 100% divestment of 1MDB’s stake in Edra Energy in 2015, for instance, was not only made against the wishes of the Energy Minister Maximus Ongkili, but also by excluding the Second Finance Minister Ahmad Husni Hanadzlah, who rallied for 1MDB’s retention of a 30% stake in Edra (*The Edge Markets*, September 12, 2019). A former TNB officer emphasized in their interview:

“The [Najib’s] decision to divest 100% of Edra’s equity to China was an evidence of his blatant disregard of the 49% foreign ownership cap law in the country’s energy sector”.

(Interview, former TNB officer, Rotterdam, December 25, 2019)

A senior officer at the Malaysian Anti-Corruption Commission emphasized:

“The worst thing about 1MDB was that they had not even a single representative [bureaucrat] from the Ministry of Finance”.

(Interview, a senior officer at the Malaysian Anti-Corruption Commission [MACC], Skype, June 8, 2021)

After Najib's defeat in 2018, Ahmad Husni Hanadzlah testified in the High Court that Najib was instrumental in "getting the Finance Ministry tangled up with 1MDB and its subsidiary companies" (*New Straits Times*, September 4, 2019). He also described Najib as an "autocratic person in his dealings with 1MDB" who treated him "like an office boy in matters relating to 1MDB" (*The Edge Markets*, August 6, 2019).

Najib had also deployed the strategy of exclusion in other unprecedented foreign loan deals—the 2016 China deal—while he was being investigated by the US DOJ. The 2016 deals can be considered the most controversial breach of Malaysia's established trustee-type bargains system. The EPU bureaucrats were excluded from the process of designing loan proposals, and their advice and warnings against this loan were also rejected (*MalaysiaKini*, April 21, 2019). In their interview with the author, a senior officer at the Malaysian Anticorruption Commissioner (MACC) emphasized the problematic "reporting lines" in Malaysia's foreign economic deals involving 1MDB; no representative from Ministry of Finance (MoF) had been included during the decision-making process (Senior officer at the Malaysian Anticorruption Commissioner, interview, June 8, 2021). This was supported by an officer from the Malaysian Ministry of Foreign Affairs who described such exclusion as "unethical", which "violated the procedure", and something that was "not supposed to happen" (Senior officer from the Malaysian Ministry of Foreign Affairs, interview, July 2, 2019). Daim Zainuddin, who was appointed as the Special Envoy by the new Malaysian government to renegotiate with China, further exposed this process of exclusion. He criticized Najib for pushing for the old ECRL project at a hefty cost of more than RM55 billion at the people's expense and "neglected good advice" from the EPU bureaucrats. He emphasized: "Did the EPU not make clear its objections and concerns over the paper that was presented to the cabinet, and why were these objections and concerns ignored?" (*MalaysiaKini*, April 21, 2019). In an interview, a senior EPU official revealed that it is common practice for the EPU Director-General to "write a letter to object the Prime Minister's plan" if the "facts and figures" are against the plan. This explains why Najib did not extend the then EPU Director-General Rahamat Bivi Yusoff's contract. A former senior executive at the Malaysian sovereign wealth fund described Rahamat Bivi Yusoff as "the bravest and strongest bureaucrats" who dared to speak out against the Prime Minister's China deals (Former senior executive of a Malaysian government-linked investment company (GLIC), interview, August 18, 2019). A senior bureaucrat at the Ministry of Foreign Affairs emphasized:

"EPU was brave enough to stand their ground, but they were powerless to stop the 1MDB-China fast-tracked loans through the ICBC Bank".

(Interview, senior bureaucrat at the Ministry of Foreign Affairs, August 1, 2021)

Additionally, the Malaysian parliament was excluded from the project altogether. Unlike other mega-infrastructure projects in Malaysia that involved foreign companies, no parliamentary approval was ever requested for the ECRL deals (*The Edge Markets*, November 8, 2016). In contrast to the establishment of special purpose vehicles that are “usually formed as a subsidiary of a big corporation with a strong built-up capital or a legal body that is affiliated with the government to ease transaction into business deals” (*The Malaymail*, November 8, 2016), the one established to operate the ECRL, known as the Malaysia Rail Link (MRL), was made in a rush with a mere budget of RM2.00. A former officer at the Malaysian Ministry of Finance admitted in an interview that MRL was approved by the MoF, indicating Najib’s control as the Finance Minister (former officer at the Ministry of Finance, interview, September 11, 2020).

In his autobiography, the Malaysian Attorney-General Tommy Thomas indirectly exposed the details of Najib’s exclusion strategies against different bureaucratic actors, such as the Ministry of Finance (MOF) bureaucrats:

“Considering the magnitude of the contracts, one would have assumed that the MOF would have exercised oversight over its subsidiary entity, SSER and possibly involved other relevant government ministries, departments, or agencies to help assess the financial and commercial viability as well as the technical feasibility of the projects. However, no supervision or oversight occurred. Instead, a newly incorporated company, with no track record or prior expertise in any business, secured cabinet approval for both projects in July 2016, just two months after its incorporation”.

(Thomas, 2021, p. 326)

Another exclusion target was the BNM:

“Next, the source of financing the RM8 billion. Again, the Chinese connection: through EXIM Bank China. As SSER was borrowing massively from a foreign bank, the law required prior written approval from Malaysia’s Central Bank, Bank Negara. The latter, not surprisingly, insisted that payments should be made by SSER to CPPB on work progress, and not on a fixed-time basis. This express term was imposed by Bank Negara in its approval letter to SSER. SSER’s decision to openly defy Bank Negara’s condition imposed on it can only lead to the conclusion that the absurd payment terms in the contracts were not a product of bad legal advice, oversight, negligence, or even woeful incompetence on the part of SSER’s management, but rather the result of a deliberate and calculated decision made with the sanction of a voice more powerful than Bank

Negara. Only one candidate exists: the Minister of Finance, Najib, who was also the Prime Minister”

(Thomas, 2021, pp. 236–237).

In 2015, the BNM recommended that the Attorney General initiate criminal prosecution against the Najib-controlled 1MDB for breaches under the Exchange Control Act 1953 (ECA), stating that their investigations had found that permissions required under the ECA for 1MDB’s investments abroad were “obtained based on inaccurate or without complete disclosure of material information relevant to the ban’s assessment of 1MDB’s applications” (*The Sun Daily*, 2015). Subsequently, the BNM revoked three permissions granted to 1MDB under the ECA for investments abroad totaling USD1.83 billion (RM7.55 million) and issued the company a direction under the Financial Services Act 2013 to repatriate the same amount to Malaysia (*The Sun Daily*, 2015). However, the contract of the then BNM Governor Zeti Akhtar Aziz was not extended, while the services of the then Attorney-General Tan Sri Abdul Gani Patail, who was preparing to press charges against Najib, were terminated “due to health reasons” (*The Edge Markets*, 16 May, 2016).

6.6.2 Inclusion strategy.

Amid the pressure against his kleptocratic 1MDB debts, Najib employed the aggressive “inclusion” manipulation strategy; he managed to place his loyalists in strategic positions and divested two 1MDB assets to China. In an interview, a senior officer at the Malaysian Anti-Corruption Commission (MACC) described how the reporting line of Malaysia’s foreign economic policy was bypassed:

“The loans and deal with China was not following the supposed reporting line...those deals were secured by Jho Low, directly from Najib. The Head of Mission [bureaucrat] was kept in the dark, while those deals contrast the EPU [Economic Planning Unit]”.

(Interview, a senior officer at the Malaysian Anti-Corruption Commission [MACC], Skype, June 8, 2021)

The sale of the Bandar Malaysia project endowed certain actors—who were not supposed to be involved—with important decision-making authority, an act that could be approved primarily by Najib. A former investment director of the Malaysian sovereign wealth fund under the MoF revealed how Najib’s aide, Jho Low, was “omnipresent in the Ministry of Finance” and assisted Najib to “inflate the Gross Development Value of Bandar Malaysia to cover Najib Razak’s 1MDB’s loopholes”. This was also the case in 1MDB’s 100% divestment of its stake to China’s CGN. A former TNB officer admitted that he was approached by Jho

Low prior to the Edra deal in 2015.

Najib also managed to position his loyalists strategically in his attempt to break the established trustee-type PSB. These included the appointment of a top bureaucrat, Irwan Serigar Abdullah, as the Treasury Secretary-General (involved in TSGP, MPP, and Bandar Malaysia projects) and Abdul Rahman Dahlan as the Economic Planning Minister (involved in the ECRL and pipelines decision). Jho Low's ally, Terence Geh (1MDB Director of Finance) was appointed as the project secretariat for all loans from China in 2016, including those for the ECRL, TSGP, and MPP projects (*New Straits Times*, September 4, 2019). During the 1MDB trial, the ex-1MDB CEO Mohd Hazem Abdul Rahman, testified that Jho Low was responsible for appointing the 1MDB board of directors, which can be considered an inclusion strategy that secured Najib's proxies in the 1MDB financial decision-making process (*Sinar Harian*, September 14, 2020).

Najib's Special Officer, Amhari Efendi Nazaruddin, also exposed his inclusion manipulation strategies. Testifying at the Malaysian High Court on September 4, 2019, Amhari revealed that Najib had instructed him and Jho Low to secure the ECRL, TSGP, and MPP loans during his "secret mission" to Beijing to convince China to help pay 1MDB's debts.³ Amhari revealed that he went to China on June 28, 2016, and discovered that Jho Low was also involved in the discussions with the Chinese parties. The duo's trips were to pave the way for Najib's visit to China five months later. The minutes from a series of previously undisclosed meetings on June 28, 2016, reviewed by the WSJ in January 2019, describe "a plan proposed by Malaysian officials for Chinese state companies to build two large projects with funding from Chinese banks", referring to the ECRL and the TSGP-MPP projects, confirming Amhari's account. The document stated that those projects would provide "above market profitability" to Chinese state companies. Xiao Yaqing, the Chairman of China's State-owned Assets Supervision and Administration Commission, emphasized during the meeting that the public must believe "all initiatives are market driven for the mutual benefit of both countries". Xiao

³ Amhari described his "mission" to China: "Although I respected Najib's directive, this is the most difficult moment in my job. I was worried over being involved directly in Najib and Low Taek Jho's plan to cover up on the loss of 1MDB funds and the repayment of the International Petroleum Investment Co (IPIC) debts or the preparation of political funds....Once I was there, [only then] did I know that Jho Low would be present in this discussion. Also, the talking points that were to be discussed were given to me by Jho Low, and it seems these terms had already been discussed beforehand. The confidential instructions from Najib were made after the 1MDB fundraising issue was widely circulated. Najib directed me to China to represent him to confirm the economic relations of both countries including China-Malaysia investments. However, based on what Jho showed me through talking points and action plans, the deal and joint venture is an investment that will help repay 1MDB's bailout like 1MDB's debt repayment to IPIC" (*The Edge Markets*, September 4, 2019).

also informed that he had “cancelled all his key engagements in Beijing to attend” the June 28 meeting because the matter “has been approved by President Xi Jinping, Premier Li Keqiang” and another senior Chinese official (Wright & Hope, 2019). The involvement of the Industrial and Commercial Bank of China (ICBC) in facilitating the ECRL, TSGP, and MPP transactions to pay off 1MDB’s debt was later exposed by the Special Advisor of the new Finance Minister, Tony Pua (2020). Pua provided details of China’s role in facilitating their loans to serve 1MDB’s debt:

“By May 2017, the then Prime Minister Dato’ Seri Najib Razak had signed the Phase I and Phase II of the East Coast Rail Link (ECRL) project with a total value of RM55 billion with China Communications and Construction Company (CCCC). By June 2017, Malaysia had paid CCCC RM1,931.4 million and another CNY17,320 million via a loan from China Exim Bank”.

Pua provides the money flow chart details:

1. August 28, 2017: CNY7,279,500,000 transferred from Multi-Strategic Investments Limited, Hong Kong (MSIL) to Al-Asbah International General Trading, Kuwait (a company with USD1,350 paid up capital). MSIL is a wholly owned subsidiary of Zhen Hua Engineering Co Ltd, which in turn is a wholly owned subsidiary of CCCC.
2. August 28, 2017: CNY7,279,500,000 transferred from Al-Asbah International General Trading to the personal account of its sole shareholder, Sheikh Sabah Jaber Al-Mubarak Al-Hamad Al-Sabah.
3. August 30, 2017: CNY4,253,000,000 transferred from Sheikh Sabah to Silkroad Southeast Asia Real Estate Limited.
4. August 30, 2017: CNY4,253,000,000 transferred from Silkroad Southeast Asia to Sentuhan Budiman Sdn Bhd, a wholly owned subsidiary of the Ministry of Finance holding the 1MDB Air Itam land.
5. August 30, 2017: CNY1,950,000,000 transferred from Sentuhan Budiman to IPIC, Abu Dhabi as part of 1MDB’s debt repayment agreement.

Between September 2017 to March 2018, the balance of the receipt in Sentuhan Budiman was used to service the interest of other 1MDB debts.

“Most critically, all the above transactions were facilitated by the ICBC. The billions of renminbi were transferred from ICBC Hong Kong to ICBC Kuwait to ICBC Kuala Lumpur to ICBC Abu Dhabi over a matter of three days. The transactions, carried out entirely in Chinese yuan, were obviously meant to circumvent the anti-money

launders detection of US dollar transfers in the light of international scrutiny over 1MDB”.

(Pua, 2020)

The former CEO of 1MDB, Mohd Hazem Abdul Rahman, also testified that Jho Low and Najib monopolized the company’s financial decision-making process to the extent that even Rahman was not allowed to manage the company’s funds abroad (*Sinar Harian*, September 17, 2020). If the ECRL was parked under the Najib-controlled special purpose vehicle, the MPP and TSGP projects were handled by another MoF subsidiary, SSER. Initially, SSER was an offshoot of SRC International, a company under the debt-plagued 1MDB (*The Star*, June 6, 2018). Due to 1MDB’s debt problem, SSER was transferred to be a wholly owned subsidiary of the MoF with the specific objective to implement the MPP and TSGP projects in 2016. Similar to the ECRL, both projects were approved by the Cabinet on July 27, 2016, two days after they were presented. Both pipeline projects amounted to RM9.41 billion, which was awarded to the CPPB on November 1, 2016, after the then Treasurer-General and chairman of SSER, Irwan Serigar Abdullah signed off on it (*The Star*, June 6, 2018). This is an example of partial kleptocratic bargains wherein Mohd Irwan Serigar was working with Najib to cover 1MDB’s debts through SSER—led by himself—and was responsible for the TSGP and MPP loans from China. The Malaysian Attorney-General in charge of prosecuting Irwan, Tommy Thomas, stated publicly:

“Tan Sri Dr Mohd Irwan Serigar bin Abdullah signed the construction contracts on behalf of SSER, a week after his appointment. As the principal director of SSER, he was required to exercise reasonable care, skill and diligence, when he signed the two contracts. It would have been impossible for him to have studied the documents, given the magnitude, complexity and phenomenal value of the contracts involved, and to have comprehended the true nature of SSER’s obligations. Tan Sri Irwan is currently facing criminal charges in a 1MDB scandal-related fraud. In 2019, SSER pleaded guilty for “disobeying conditions legally imposed by Bank Negara, and breaching provisions of the Financial Services Act for which it was ordered to pay RM18 million in fines”

(Thomas, 2021, p. 237).

Table 6.1

Findings on Change in Political-Administrative Bargains in Malaysia's Foreign Economic Policy

Findings on Partial Kleptocratic Bargains in Malaysia's Foreign Economic Policy
<ul style="list-style-type: none"> • There were clear differences in terms of political executives' roles in Malaysia's foreign economic policy-making process before and after Najib's manipulation strategies were implemented (from policy endorsement to initiator); EPU bureaucrats retained autonomy in decision areas other than those 1MDB-related. • There were clear differences in terms of the EPU and bureaucrats' roles in foreign economic policy-making process before and after Najib's manipulation strategies were implemented (EPU rejects Najib's deal, is excluded from their formal policy initiator's role in the 2016 deals with China; Secretary General of Treasury Mohd Irwan Serigar accept Najib's deal, assisting Najib's pipelines deal with China through SSER, resulting in partial kleptocratic bargain. [Irwan Serigar accepted Najib's agenda, the EPU rejected it]). • There were different standard operating procedures applied in selective decisions of the foreign economic policy-making process before and after Najib's manipulation strategies were implemented (from the one significantly under the auspices of the EPU and MoF bureaucrats to the hands of Najib, Jho Low, Terence Geh, and Amhari Efendi Nazaruddin; from EPU and MoF to 1MDB). • Kleptocrats' allies were involved in selective decisions of the foreign economic policy-making process (Jho Low, Terence Geh, Amhari Efendi Nazaruddin), while the EPU retained their autonomy and continued to perform their duty in other foreign economic policy decisions. • There was a kleptocrat dominance in 1MDB-related reporting lines; MoF bureaucrats reported directly to Jho Low, Terence Geh, and 1MDB instead of to the Second Finance Minister Ahmad Husni Hanadzlah; the Central Bank (Bank Negara) and the EPU bureaucrats were excluded altogether.

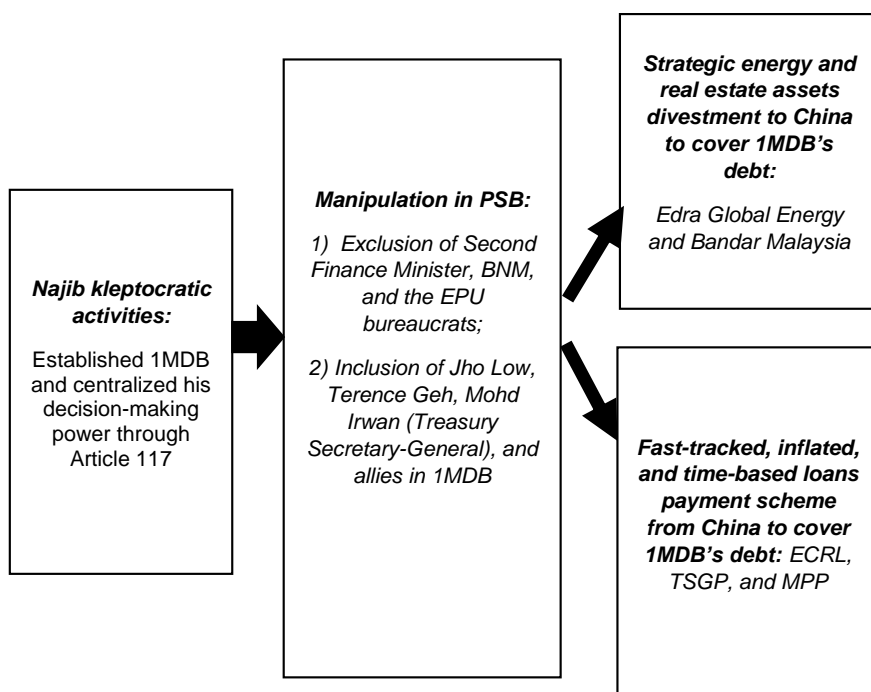


Figure 6.2 Najib Razak’s Kleptocracy, Manipulation Strategies, and Malaysia’s Deals with China in 2015–2016.

6.7 Discussion

This chapter has shown that kleptocracy does affect foreign economic policy changes despite the existence of an established trustee-type political administrative system alongside strong bureaucratic opposition against kleptocrats’ agenda. However, it must be noted that all five selected empirical cases in this chapter represent only part of Malaysia’s overall foreign economic policy at the time. Accordingly, it must be emphasized here that while Malaysia’s foreign loan and divestment policy did change in all five selected cases—ECRL, TSGP, MPP, Edra Energy, and Bandar Malaysia—they can only be regarded as “partial foreign economic policy change” and not “full foreign economic policy change”. In comparison, another high-profile infrastructure project involving a foreign party during the same period—the Kuala Lumpur–Singapore High Speed Rail (HSR)—proceeded with the involvement of the Malaysian MoF through MyHSR Corp. Unlike the hasty approval and large upfront loan disbursement in the ECRL project, the HSR project was carefully planned, and progressed at a reasonable pace, with proactive engagement with the Malaysian and Singaporean public (MyHSR). Another project, the Refinery and Petrochemical Integrated Development (RAPID), also secured equal

ownership and participation for Petroliam Nasional Berhad (PETRONAS), Malaysia's national oil company, with Saudi Aramco, Saudi Arabia's national oil company (Reuters, February 28, 2017). Unlike the Edra Energy, TSGP, and MPP projects that Najib and his kleptocrats allies handed over completely to China, the RAPID project was a joint venture that "allow[ed] the parties equal ownership and participation in the operations of the refinery, cracker and selected petrochemical facilities" in which both Malaysian and Saudi "parties will share the rights to offtake the production of the joint ventures on an equal basis" (Petronas, 2018).

Conversely, those events also attest to the prowess of the bureaucrats under the trustee-type system; despite being excluded from participating in selected 1MDB-related foreign economic policy decisions, their autonomy remained intact. Not only did they continue to perform their policy initiator role (like in the MyHSR and RAPID projects), but they also went to the extent of contesting the kleptocrats' foreign economic agenda (like the BNM did). While Irwan Serigar represents a bureaucrat who accepted (and later assisted) Najib's kleptocratic agenda, other bureaucrats like the then EPU Director-General Rahamat Bivi Yusoff and Kamariah Noruddin stood their ground and defied the 1MDB scheme. Kamariah Noruddin in particular rejected 1MDB's RM3 billion grant application in 2010, arguing that such a "government grant would have meant that the company gets the money with no obligation to pay anything back" and "it's almost like a gift". Kamariah even emphasized that the "EPU did not support for it [1MDB] to get involved in certain sectors like oil and gas as Petronas was already established for this purpose", adding that the EPU also felt that "certain other sectors like iron and steel should be left to the private sector" (*New Straits Times*, May 2, 2019). Elaborating her decision to reject Najib and 1MDB's application in 2010, Kamariah stated that "We [EPU] cannot at that juncture give the grant based on a three-page letter. The entire country's budget is RM42 billion and RM3 billion means it is seven per cent of the entire nation's budget...It would have been negligent of EPU to have done it" (*New Straits Times*, May 2, 2019). The empirical findings of the Malaysian bureaucrats' preserved autonomy—and the decisions by some to consciously reject Najib's agenda—correspond to Carpenter's (2001) arguments on bureaucratic autonomy: "bureaucratic autonomy is politically forged" through "reputations for efficacy, for uniqueness of service, for moral protection, and for expertise" (p. 353)⁴.

⁴ On bureaucratic autonomy, see also Yesilkagit (2004); Yesilkagit & Van Thiel (2008). On expertise, see also Christensen (2017).

6.8 Conclusion

This chapter enumerates the impact of kleptocracy on the foreign loan and divestment policy change of a developing country. It shows that, prior to the 1MDB scandal, Malaysian executives delegated significant autonomy to their bureaucratic counterparts, under the long-established trustee-type bargains system, with the aim to reduce foreign equity in the country. However, Najib and his aides devised a series of manipulations, such as inclusion and exclusion strategies, against non-corrupt and non-compromised bureaucrats.

Since both Malaysian executives (the prime minister, who also was a finance minister, and second finance minister) and bureaucrats (EPU and Treasury Secretary-General) are closely dependent upon one another in long-established “trustee-type” bargains, cheating was the only option for either side to push for their own foreign loan and divestment agenda. This was supported by a number of first-hand witness testimonies at the Malaysian High Court that described how Najib was able to “break the bargain”—marginalizing certain parties while at the same time building a new coalition with others who were willing to play along with his agenda. This cause an alteration of the trustee-type system to the partial-kleptocratic type system, leading to a massive accumulation of foreign loans and selling of Malaysia’s strategic assets to China.

While Najib’s move to establish 1MDB—along with the concentrated decision-making power in his hands through Article 117—shifted Malaysia’s foreign loan and divestment policy-making to the partial kleptocratic type of bargain, the rest of Malaysia’s trustee-based bargain bureaucracy system was left intact. The reasonable progress of another railway project, the Kuala Lumpur–Singapore High Speed Rail (unlike the hasty ECRL), and the equal ownership and participation in the Refinery and Petrochemical Integrated Development (RAPID) between Malaysia-owned Petronas and Saudi Aramco (unlike the Chinese-dominated in the Edra, TSGP, and MPP projects) prove that Malaysia’s foreign economic policy was only partially changed during Najib’s era. This also can be seen in the two attempts by the EPU and the BNM to block Najib’s deal with China, to the extent that the contract of the then Governor of the Malaysian Bank, Zeti Akhtar Aziz, was not extended while the services of the Attorney-General Tan Sri Abdul Gani Patail, who was preparing to press charges against Najib, were terminated.

The next chapter will address another foreign policy area and its sets of political-administrative bargains affected by Najib’s kleptocracy: Malaysia’s foreign defense policy toward China.