



# HISTORY AND DEVELOPMENT OF THE LAWS RELATING TO DRUGS

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## ABSTRACT

*The subject of this paper is to set forth an outline of the historical development of legislations intended to counter the misuse of dangerous drugs and in general the policies and the need that gave rise to those legislations. I must stress that no mention will be made of the Poison Act and other similar legislations, which are mainly concerned with regulating the supply by pharmacists of various medicinal drugs that are not generally the subject of misuse.*

## ABSTRAK

*Kertas kerja ini bertujuan menggariskan sejarah perkembangan perlembagaan yang berkaitan dengan undang-undang bagi mencegah penyalahgunaan dadah berbahaya dan polisi serta keperluan yang berkaitan dengannya secara umum. Kertas kerja ini tidak akan menyentuh Akta Racun dan akta-akta lain yang berkaitan dengannya sama sekali kerana akta-akta tersebut lebih berkaitan dengan pembekalan beberapa jenis dadah yang digunakan dalam perubatan dan bukannya berkaitan dengan penyalahgunaan dadah.*

The use of drugs for non-medical purposes is not a new phenomenon. The powers of opium to include euphoria have been known for hundreds of years and coca leaves have been chewed in South Africa since the sixth century. In Malaysia, the drugs menace has a long history. Much of what is seen today is inherited from the economic development of our country and it was escalated and fuelled by the social development in the 1960s. In "The History of Drug Abuse in Sarawak" in the PENGAMAN,

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H. Wong said *“the migrant population brought with them their opium smoking and cannabis consuming habits”*. The problem of opium addiction became evident towards the end of the nineteenth century. This led the British in the Straits Settlement to begin controlling the importation, sale and distribution of opium.

In 1925, the International Opium Convention was signed in Geneva. The convention thus encouraged the government’s control and restriction on opium smokers or authorized consumers as in the *Chandu Enactment*. The authorized consumer was defined as *“an adult person registered as a consumer of chandu.”* Statistics showed that in the 1930’s there were about 60,000 registered opium smokers in Malaya and this remained until the Second World War. In the year 1943, Tan Cheng Lock in his writing of the *“Malaysian Problem”* said *“through the history of Malaya during perhaps the last one hundred years or more, a very substantial portion of its revenue was derived from the opium consumed by the Chinese population of the country. The pernicious habit of opium smoking should be completely done away with, and more drastic steps should be taken to eradicate the evil which has caused a marked deterioration in the character and physique of the Chinese who indulge in it ...”*

After this, that is at the end of the Second World War in 1945, opium was completely banned in Malaya. But the illicit use of opium continued nonetheless. The ban by the Government however failed to deter the smuggling of drugs into the country.

Besides nicotine and alcohol, serious abuse of drugs – that is, the widespread abuse and the productive social upset did not occur in Malaya before the 1950’s. Long before then, of course there were periods when particular drugs were to some extent abused as the existence of some well-known abusers. After the 1950’s, the drug-taking problem did not appear to recede. Prosecution for drug offences never dropped. There was an increase in the number of drug addicts. However, during this time there was a growing national and international awareness on the dangers of drug abuse, and actions were taken to control the situation. However, whatever action taken had little practical effect and the use of drugs continued unabated. This was the scene against which the Dangerous Drug Ordinance 1952 was set; this ordinance which was passed repealed all previous enactment and ordinances viz:-

SS Cap. 190

SS Cap. 223

FMS Cap. 134

Deleterious Drugs Ordinance

Chandu Revenue Ordinance

Opium and Chandu Enactment



FMS Cap. 183	Deleterious Drugs Enactment
Johore En. 96	Deleterious Drugs Enactment
Johore En. 111	Opium and Chandu Enactment
Kedah En. 3 of 1348	Deleterious Drugs Enactment (En. No. 29)
Kedah En. 8 of 1356	Chandu Enactment
Kelantan En. 3 of 1928	Opium and Chandu Enactment 1928
Kelantan En. 15 of 1938	Deleterious Drugs Enactment
Trengganu En. 2 of 1352	Chandu Enactment
Trengganu En. 62 of 1356	Deleterious Drugs Enactment
Perlis En. 10 of 1356	Chandu Enactment 1356
Perlis En. 2 of 1348	Deleterious Drugs Enactment 1348
BMA Proclamation No. 49	Opium and Chandu Proclamation

It is important to note that the primary purpose of the 1952 Ordinance and the subsequent amendments was to control the usage and the supply of drugs considered to be dangerous and also in order to minimize the risks of abuse and addiction. The awareness and publicity of the dangers of drugs had been increasing for quite sometime. The Dangerous Drug Ordinance 1952 banned the use, manufacture, sale and importation of all these drugs. The punishment imposed is a maximum of 5 years or a fine of up to RM20, 000.00 or both for the possession of heroin or morphine should the weight be more than 5 grams. On the 19<sup>th</sup> of September 1966, the Dangerous Drugs Ordinance 1952 was amended to include a provision for forfeiture of the things and vehicles used in the drug offence. The subsequent legislation was either an extension or a modification of the existing restrictions. The number of dangerous drugs offences increased steadily. Therefore, the Parliament in 1972 amended the ordinance, which gave the police more power in investigating drug offences including the power to obtain search warrants in certain circumstances. The ordinance was then further amended to include other drugs as dangerous drugs as well.

Notwithstanding the government's effort in combating the drugs menace, the problem of drug taking never appeared to recede. Prosecution for drug offences did not reduce. The number of drug addicts had increased. The amendments so far had brought little practical significance. Therefore, to fight the drug abuse, in June 1973 (Abt A 194) was passed to amend the 1952 Ordinance to include Section 39A, "*those found guilty for possession of heroin or morphine weighing 5 grams or more shall be punished with 3 years imprisonment and maximum 14 years of imprisonment*".

The drug misuse in Malaysia had escalated since the early 1972's and had increasingly affected younger people and school going children. This caused considerable concern among all parties. On 29<sup>th</sup> April 1975 [Act 293] was passed to increase the punishment under Section 39A with 6 strokes of *rotan* (cane). The Act 318 was passed in the same year with new provisions in Section 39B which had the added punishment of the life sentence or the death sentence for the traffickers. To ease the prosecution, presumptions were introduced in the 1952 Ordinance. The law on Dangerous Drug which was originally enacted as the Dangerous Drugs Ordinance 1952 [No 30 of 1952] came into force on 1.11.1952 and extended to Sabah and Sarawak with effect from 1.6.1978. The ordinance was revised in 1980 and published as Dangerous Drugs Act 1952 [Act 234] and since that date of coming into force till to date, the law has been amended 47 times with the latest amendment being the Dangerous Drugs (Amendment) Act 2002 [Act A1167].

The enactment of a comprehensive legislation was felt appropriate in view of the increase in the cases of drug abuses and illegal trafficking in dangerous drugs and substance and the need to combat this menace by introducing stringent measures for the control and regulations of operators relating to the importation, exportation, manufacture, sale and the use of dangerous drugs and substance. One must not lose sight of the amendment to DDA 1952, which was done in 1983, which enhanced the sentence for drug traffickers and had the mandatory death sentence in it. This was done in a genuine attempt to combat the drug menace.

The Dangerous Drug Act 1952, made provisions for drug offences and drug related offences. The main drug offences are as follows:-

1. Importation Offence:-  
Section 4(1), 9(1)(a), 12(1)(a), 20
2. Exportation Offence:-  
Section 5(1), 9(1)(a), 12(1)(a), 19
3. Possession Offence  
Section 6, 9(1)(b), 10, 12(2)(a)
4. Trafficking – Section 39B
5. Planting / Cultivation Offence :- Section 6B
6. Manufacturing / Sale:-  
Section 9(1)(c), 16(1)
7. Consumption/ Administration Offence:-  
Section 10(20)(b), 14, 15
8. Control of:-  
Section 10, 13



9. Prohibition to Trade: Section 17
10. Transit Offences:  
Section 21, 22, 23, 24

The drug related offences are incidental to the enforcement of the law under this act. Such offences are as follows:-

- Section 28 - obstructing inspection/search/seizure
- Section 32 - making false declaration
- Section 33 - abetting any offence
- Section 34 - abetting or procuring offence abroad
- Section 35 - liability of offences of company, employer and servant of the company which committed the offence

Provisions are made in the act for enforcement agencies to facilitate their investigations. Powers are given for arrest without warrant, search, seizure, forfeiture, interception of communication etc. Therefore, I humbly wish to stress here that the purpose of this DDA 1952 is to eradicate the menace of dangerous drugs and to empower the law enforcement agencies to act promptly in the public's interest within the parameters of the law.

In the course of enforcing the law relating to drugs, the agencies must not ignore the safeguards for the accused person, which may bring about the "miscarriage" of justice.

Having dealt with the DDA 1952, I wish to touch on the Forfeiture Laws and Anti-Money Laundering Act 2001 relating to drug offences and drug trafficking.

### **DANGEROUS DRUGS [FORFEITURE OF PROPERTY] ACT 1988**

The illicit trafficking generates large financial profits and wealth and is able to penetrate, contaminate and corrupt people with the use of ill-gotten profits. Therefore, domestically confiscating the proceeds of trafficking provides the obvious example with the passing of Dangerous Drugs {Forfeiture of Property} Act 1988 [Act 340] Regulations 1989. Under this Act provisions are made for seizure and forfeiture of property that are connected with any activities related to the offence under this act that is the Dangerous Drugs Act 1952, or any foreign law corresponding to these acts or to the provisions for offences under these acts; etc.



The procedures are set out clearly in Part V of the said act in particular Sections 25, 26 and Section 32 of the Act.

I must say the laws relating to this forfeiture are complex in nature and much of the sections are not tested in courts. Problems are then encountered by the enforcement agencies.

### **ANTI-MONEY LAUNDERING ACT 2001**

This act provides for the offence of money laundering, the measures to be taken for the prevention of money laundering and also provide for the forfeiture of property derived from or involved in money laundering.

The Sections 4, 5, 12, 19(4), 20(5) and section 39B under the Dangerous Drugs Act 1952 are serious offences under this act. The accused involved in the aforesaid offences can be charged under this act. Before embarking on the law relating to drug dependants, I would like to touch on the law relating to the Dangerous Drugs {Special Preventive Measure} Act 1985.

It has been said that the leaders of drug trafficking syndicates operate very smoothly and in a sophisticated manner, making it very difficult for the enforcement agencies to detect them. Often the lack of evidence linking them to the crime has hampered and obstructed police investigations. Seldom are the traffickers caught for the trafficking offences. Nonetheless, their association and activities in the trade are well known to the Police Intelligence. Therefore, to curb this serious threat, in 1984 the bill was first tabled before the Dewan Rakyat and much opposition was encountered because of the deprivation of a person's liberty without a trial. A Special Select Committee was formed and subsequently pursuant to Article 149 of the Federal Constitution, the Dangerous Drugs (Special Preventive Measures) Act 1985 was passed and enforced on 15.6.1985 - which provides for preventive detention of persons associated with any activity relating to or involving the trafficking in dangerous drugs. Section 3 and 4 of the act provide for special powers of detention by the police for investigation prior to the issue of the detention order. Under Section 3, the police officer can detain a suspected person for a maximum of 60 days provided the provisions are fully complied with.



Section 5 of the act provides for the inquiry officer to inquire whether there are reasonable grounds for believing that such a person has been or is associated with any activity relating to or involving the trafficking of dangerous drugs.

Section 6(1) of the act allows the Minister after considering the complete report on the investigations and the report of the inquiry officer and is satisfied in respect to any person that such a person has been or is associated with any activity relating to dangerous drugs, can issue a detention order for a period of two years or issue a restriction order under Section 6(3) of the act.

Now I will discuss the Drug Dependency Law, that is, the Drug Dependents (Treatment and Rehabilitation) Act 1983 (Act 283)

According to the Health Organisation, drugs are defined as “*any substance taken into an organism that may modify one or more of its functions*”. “Drug abuse” is defined as “*self-administration of drugs for non-medical reasons in quantity and frequency which may impair an individual’s ability to function effectively and which results in social, physical and emotional harm.*”

Drug addiction has a disastrous effect on the mental and physical health of the addict, resulting in emotional distress and physical illness of the drug addict. According to WHO, drug dependence means “*psychic and sometimes physical dependence resulting from the entire action between all the living organisms and a drug, characterized by behavioural responses which includes a compulsion to take the drugs on a continuous or periodical basis in order to experience its psychic effect*”. This leads to eventual consequences in the form of craving tolerance for drugs which occurs rapidly and makes it necessary to take increasing doses of the drug to achieve the same effect. So, drug dependence actually results in harm not only to the individual but also to the society as a whole.

It also results in adaptive changes in the body tissues and when the drug is withheld, the adaptive changes are left unopposed leading generally in a rebound over activities.

This evil has to be nipped in the bud, more so because the desire to become rich overnight allows some people to indulge in drug trafficking in different capacities.

WHO defined "drug dependence" in the following manner:-

*"A state, psychic and sometimes also physical, resulting from the interaction between a living organism and a drug, characterized by behavioural and other responses that always includes a compulsion to take the drug on a continuous or periodic basis in order to experience its psychic effects, and sometimes to avoid the discomfort of its absence".*

There are 3 types of dependence, namely;

1. psychological or psychic dependence
2. behavioural dependence
3. physical dependence

Psychological or psychic dependence - an individual is driven to take drugs for the relief of emotional symptoms and to maintain an optimal sense of well-being or a particular state of perception.

Behavioural dependence - a desire or wish to be preoccupied with being stimulated by dramatic procurement with the use of drugs.

Physical dependence - is a state in which the normal biological processes are altered by the continued heavy use of a drug and is associated with a substance or withdrawal syndrome when the drug is abruptly withdrawn.

There are also many different types of users - experimental users, casual or occasional users, regular users and heavy or compulsive users. According to the Drug Dependents (Treatment and Rehabilitation) Act 1983 - DDTRA "A *drug dependant*" is a person who through the use of any dangerous drug undergoes a psychic and sometimes physical state which is characterized by behavioural and other responses including the compulsion to take the drug on continuous or periodic basis in order to experience its psychic effect and to avoid the discomfort of its absence".

Nowhere in WHO or DDTR's definition is the word "addict" or "addiction" mentioned.

The treatment and rehabilitation of drug dependents was first introduced into legislation in 1975 through the Dangerous Drug [Amendment Act] 1975 (Act 293) which took effect on 30.05.1975 and was initiated by the Ministry of Welfare Services. At that time, there was an increasing problem of drug dependency among the local youths. Then, Section 37B was introduced which covers the power to take dependents



into custody either under compulsion or voluntarily. However, supportive infrastructure and machinery for the treatment programmes were not provided for.

Two years later Dangerous Drugs [Amendment] Act 1977 was passed repealing Sec. 37B which took effect on 15.11.1977 and introduced a new Part VA comprising of 15 Sections. This act allowed institutional treatment and rehabilitation for 6 months for both voluntary and non-voluntary dependents.

The volunteers or their parents needed to apply to a social welfare officer and they can be detained until tests are conducted on them, before they are admitted to the rehabilitation centre. In non-voluntary cases, the social welfare officer or police officer (not below the rank of a Sergeant) can report the person to be medically examined or observed after which he could be detained at a centre (see Section 25A and 25B of the act).

Section 25B provides for persons who are under 21 years old and found guilty of offences against the act. Those who were dependents can be released on probation, undergo treatment as well as aftercare treatment. Some defects in the act before the enforcement of this amendment allows the Social Welfare Officer to detain suspects for medical examinations or observation which could take more than 24 hours.

Section 25A was amended because it was ultra vires the Article 5 of the Federal Constitution. Therefore, the new section requires a suspect to be brought before the Magistrate for further detention for a medical examination.

In 1979, the Drug Dependents (Treatment and Rehabilitation) (Forms) Rules were passed. The Dangerous Drug Rehabilitation Centre Rules were also made. Part VA of DDA was in force for approximately 5 ½ years. In 1983, the problem of drug abuse, drug dependency and drug trafficking showed no signs of abating. The Government declared drugs to be the nation's number one enemy as the drug problem had evolved from a social problem to a security problem. This was the time the DDA was amended to enhance the punishment for drug trafficking which is the death sentence. This was when the treatment and rehabilitation of drug dependents was shifted to the Ministry of Home Affairs.

On 15.04.1983 Act 283 i.e. Drug Dependents [Treatment and Rehabilitation] Act 1983 was passed. The Part VA of the DDA was

repealed. Under the new act, the mode of treatment and rehabilitation were improvised to become more military oriented. It was intended to give due attention to the individual and this could help combat the drug dependency problem. One can identify that whilst DDA 1952 concentrates on offences, punishments and the control of use, possession, manufacture and distribution of drugs, DDTRA concentrated on a person who was already dependent on drugs.

Rules were made pursuant to the 1983 Act. Under the new act – the staying period was extended to 2 years. The act provides for 3 types of centres which are the rehabilitating centre, aftercare centre and the day centre. There are also provisions for the committed offences. Provisions for bails are dependent on the results of tests. This then causes the congestion in police lock-ups and detention centres.

Drug Dependents may undergo compulsory treatment

- under the order of the Magistrate – Sec. 6
- Section 38A and 38B of DDA

The DDTRA also went through amendments under the Act A1018. Now, the first procedure requires the legal custody of a suspect by either a rehabilitation officer or a police officer. Section 19 of the act defines the lawful custody which includes the situation as found in Section 3 of the act.

The officer pursuant to this act can detain him for not more than 24 hours to undergo the tests and when completed shall be brought before the Magistrate and obtain the relevant order under Section 6(1) of the Act.

If the test cannot be completed within 24 hours, he shall be brought before a Magistrate who then may order that he be detained for a further period of 14 days to undergo the tests or may release him on bail subject to him attending a place for the purpose of undergoing such tests. If he has undergone such tests, and the result could not be obtained, the Magistrate can afford him bail.

If the result of the test indicates that one is dependent on drugs, the person will be produced before the Magistrate. The Magistrate, upon the recommendation of the rehabilitation officer and after giving the person an opportunity to make his representation, shall make an order as appropriate and as provided for by Section 6(1) of the act.

The procedure for volunteer dependents is found in Section 8 and Section 9 of the act.



## IDENTIFIED PROBLEMS

1. Certain terms need clarification and judicial interpretation – there is lacuna in the law. Therefore the officers who perform in the capacity of the act often find themselves handicapped in their enforcement.
2. Abused by Officers – There is no proper definition for the phrase “*reasonably suspect*” in the act. What is the basis for the officer to act? Can the decision of the officer be challenged?
3. Period of detention for tests. The approach in 117 CPC should be taken.
4. There is no definition for the phrase “*appropriate place*” that is mentioned in Section 3(2) of the act.
5. The sort of tests required to be carried by a medical officer before he can confirm the suspect as a drug dependent ought to be clarified and ascertained. The questions that need to be addressed are; what are the acts or procedures that ought to be carried out for the purpose of determining whether a person is a drug dependant or not? Is the urine test alone sufficient enough? Is the certification by the medical officer after looking at the biochemist’s report which states that the urine contained cannabis or morphine, enough to qualify a person to be a drug dependant?
6. The duration to be spent in the centre ought not to be 2 years for all offences. Instead, for experimenting users, it could be just be 6 months whereas hardcore users may be given 2 years.

Finally, but most importantly, I would like to say that the magnitude and the ever increasing rise found in the illicit manufacturing, production and trafficking in dangerous drugs poses a serious threat to our youngsters and our society as a whole. If I am permitted to suggest, I want to emphasize the following actions to be taken:-

- a. There should be someone in the authoritative body to be in charge of keeping the law relating to drugs under review. This would enable the related authorities and parties to move quickly and efficiently in accordance with the changes in the drug-related problems.
- b. This particular body may concentrate and pay particular attention to the following specific areas:-
  - i. restricting the availability of such drugs or supervising the arrangements for their supply;
  - ii. enable problem drug users to obtain advice and treatment urgently;



- iii. promote co-operation among appropriate bodies concerned with drug abuse;
- iv. educate the public about the dangers of drug abuse;
- v. promote research in areas relevant to drug abuse.

### CASES

1. Yong Pik Sing v The Pengarah, Pusat Pemulihan Akhlak  
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2. Muhammad Atam bin Abdul Wahab v Minister of Home Affairs  
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[2001] 1 AMR pg. 237
3. Che Ibrahim bin Che Ismail v Menteri Hal Ehwal Dalam Negeri  
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[2001] 4 AMR pg. 4830
4. Mohd Nazir bin Badar Shair v Timbalan Menteri Dalam Negeri &  
2 Ors.  
[2000] 3 AMR pg. 2864
5. Sazali Mat Noh v Timbalan Menteri Dalam Negeri, Malaysia  
[1998] 5 CLJ pg. 460
6. Sivaraman Nair v Menteri Dalam Negeri, Malaysia & Anor  
[2000] 7 CLJ pg. 140
7. Rajasegaran v Pusat Pemulihan Serenti Raub Pahang & Anor  
[2000] 7 CLJ pg. 216
8. Gopinathan Subramaniam v Timbalan Menteri Dalam Negeri &  
Ors  
[1999] 7 CLJ pg. 558
9. Mohd Shahrman Mohd Khairil v Public Prosecutor & Anor  
[1998] 2 CLJ pg. 855
10. Quan Kim Hock v Timbalan Menteri Dalam Negeri & Ors  
[1999] 7 CLJ pg. 585
11. Re Roshidi bin Mohamed  
[1988] 2 MLJ pg. 193
12. Hoo Thian Siong v Public Prosecutor  
[1988] 2 CLJ pg. 401
13. Sanuar Kamarudin bin Ahmad v Menteri Hal Ehwal Dalam Negeri  
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14. Kamaruzaman bin Yahaya v Menteri Hal Ehwal Dalam Negeri,  
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[1997] 5 MLJ pg. 256