

Decriminalization of Minor Drug Offenders in Malaysia Enhances the Rehabilitative Aspect of Drug Addicts, Reduces the Problem of Prison Overpopulation and the Treatment Gap between the Arrested and Volunteered Drug Addicts

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Abstract

Every year, there is an average of about 25,000 drug addicts are arrested nationwide as it is a crime to use or possess drugs under Malaysian law. A new law is expected to be tabled in Parliament to change the approach towards drug users and addicts. Drug abusers and addicts will be rehabilitated instead of being sent to jail when the proposed Drugs and Substance Use Act replaces the Drug Dependents (Treatment & Rehabilitation) Act 1983. Applying qualitative study, this article will discuss the present laws on drug abusers and addicts especially the conviction under section 15 of Dangerous Drugs Act 1952 (DDA) and the application of the Drug Dependents (Treatment & Rehabilitation) Act 1983 (DDTR). The authors support the decision to decriminalize possession and self-administration of small quantities of drugs in order to enhance the rehabilitative aspect in overcoming relapse cases as well as to reduce the prison overcrowding problem and the gap in treatment between the arrested and volunteered drug addict.

Keywords: Drug, Addicts, Rehabilitation, Prison, Overpopulation

Introduction

Drug-dependant means a person who through the use of any dangerous drug undergoes a psychic and sometimes physical state which is characterized by behavioral and other responses including the compulsion to take the drug on a continuous or periodic basis in order to experience its psychic effect and to avoid the discomfort of its absence (Section 2 DDTR). Drug-dependant is commonly known as a drug addict or drug abuser. Drug abuse is the action of consuming drugs extremely and continuously for the sake of self-pleasure and reward, not

for medical purposes. A person who is tested positive for drug without any legal justification is liable to be charged and sentenced under section 15 of DDA on self-administration or consumption of drugs. Malaysian government is proposing a new law to change the approach towards drug users and addicts from punitive to harm reduction. Drug addicts will be rehabilitated instead of being sent to jail when the proposed Drugs and Substance Use Act replaces the Drug Dependents (Treatment & Rehabilitation) Act 1983. This study highlights important aspects which the government must take into consideration when proposing a new law relating to the decriminalization of drug addict and minor possession of drug for personal use.

Methodology

This study utilized a qualitative method to gain an understanding of the laws pertaining to the rehabilitation of drug addicts in the Malaysian criminal justice system. It encompasses a doctrinal analysis in which a qualitative data collection method will be conducted by collecting information from the relevant statutes, codes, and regulations as the primary sources of the secondary data. In addition, the literature on the number of arrests relating to drugs and the prison population was also conducted as part of the secondary data collection. This study is significant to show that the proposed change of the law in decriminalizing small-scale possession of drug for personal use and drug addict is laudable on three points. Firstly, to improve the rehabilitative aspects of drug addict as many countries have treated drug addiction as illness rather than criminal. Secondly, the prison-overcrowding issue and the negative impact of prison on the inmates. Lastly, the difference in rehabilitation treatment between the arrested and the volunteered drug addict. In addition, this study also addressed the areas that need to be revisited when moving from the punitive approach towards decriminalization of certain drug offences.

Drug Dependency

According to Fauzi et al (2023), the country's drug abuse problem is worsening over time, and it will be impossible to address it without a concerted effort from all members of the community. In Malaysia, drug dependency is a very serious issue and it remains a threat to national security, social, health, and the economy. The recent statistics by the National Anti-Drug Agency, Ministry of Home Affairs, showed that in 2021, a total of 123,139 individuals had been identified as drug users and addicts in Malaysia. This finding indicated that there were 377 drug abusers and addicts in the 100,000 population in 2021 with a ratio of 1 drug addict for every 265 individuals. Out of 123,139 individuals who were identified as drug and substance abusers and addicts, 94,840 of them received treatment and rehabilitation programs. It is also recorded that youth between the age of 19 – 39 years old recorded the highest number as drug abusers and addicts. They contributed the biggest percentage (65.9%) of all drug and substance addicts. Ismail et al (2022), in their study also drew attention to the urgent need to strengthen existing intervention programs, drug policies, and professional supports, or to devise improved ones, with the aim of reducing uncontrolled drug and substance use among youths in Malaysia.

In 2020, the Asean Drug Monitoring Report viewed that Malaysian remains steadfast in protecting its nation particularly the youth and vulnerable communities from illicit drug trafficking and drug abuse. This is undisputable as evident from several offences relating to drug under the Malaysian laws. For instance, prohibition on major trafficking under section

39B, major possession under section 39A (2), minor possession under section 39A(1). In addition, section 6 prohibits possession of raw opium, coca leaves, poppy-straw and cannabis, section 6B restricts the planting and cultivating of certain plants, section 9 possession, import, manufacture, sell or deal in opium, section 12 restriction on import and export of certain dangerous drugs and section 15 on self-administration or consumption of drug. The summary of the drug offences and its punishment can be seen in Table 1.

Table 1
List of offences under DDA

SECTION	15(1)(a)	6	12(3)	39A(1)	39A(2)	39B
Heroin / Morphine	Drug Addict	-	0-2 gm	2-5 gm	5-15 gm	15 gm or more
Methamphetamine	Drug Addict	-	0-5 gm	5-30 gm	30-50 gm	50 gm or more
Cocaine	Drug Addict	-	0-5 gm	5-15 gm	15-40 gm	40 gm or more
Cannabis	Drug Addict	0-2- gm	-	20-50 gm	50-200 gm	200 gm or more
PUNISHMENT	fine not exceeding RM5,000 or to imprisonment for a term not exceeding 2 years.	fine not exceeding RM20,000 or to imprisonment for a term not exceeding 5 years or to both.	Fine not exceeding RM100,000 or to imprisonment for a term not exceeding 5 years or to both.	imprisonment for a term which shall not be less than 2 years but shall not exceed 5 years, and he shall also be punished with whipping of not less than 3 strokes but not more than 9 strokes.	imprisonment for life or for a term which shall not be less than 5 years, and he shall also be punished with whipping of not less than 10 strokes.	Death or life imprisonment and not less than 15 strokes.

Malaysia drug laws does not compromise the act of consuming or administrating to any person of certain prohibited drugs. Consumption of drugs can be in the form of eating, chewing, smoking, swallowing, drinking, inhaling or introducing into the body in any manner by any means whatsoever. In other words, being addicted to drug is an offence as prescribed under section 15 of DDA which may be punished with fine, not exceeding RM5,000 or to an imprisonment for a term not exceeding 2 years. Besides punitive approach, the government also emphasize the rehabilitation of the drug addicts. Hence, this category of person is also

subject to be treated under the Drug Dependents (Treatment & Rehabilitation) Act 1983 which require him to be given treatment and rehabilitation for his addiction.

Rehabilitation of Drug Addict

Malaysia is well-recognized for its persistent effort to combat drug addiction and drug-related crimes (Mallow, 2020). One of the efforts is to establish National Anti-Drug Agency (NADA), a non-profit government agency under the Malaysian Ministry of Home Affairs (MOHA), which is responsible for managing and rehabilitating non-criminal drug addicts who are teenagers and adults (Nawawi et al., 2024). The NADA has established 30 narcotic addiction rehabilitation centers known as PUSPEN. Drug addict charged under section 8 of the DDTR will undergo rehabilitation treatment at voluntary rehabilitation. On the other hand, drug addicts charged under section 6 are placed at the mandatory rehabilitation centers. To further improve its effectiveness, NADA has transformed its existing centers to an open-concept approach with five different specialization centers. The institution-based centers are Clinic Cure and Care 1Malaysia (CNC) as a place where drug addicts voluntarily participate in therapeutic programs, such as methadone replacement therapy (Jo Jo & Ali, 2021). Second is Cure and Care Rehabilitation Center (CCRC) is a place where drug addicts initially receive treatments. Once they have completed their treatment in CCRC, they then enter Cure and Care Service Centers (CCSC) which focuses on conducting and providing aftercare programs through three major components: psychosocial, health and medical care and skills and vocational training. Apart from the three specialization centers, there is also Cure and Care Vocational Center (CCVC) and Caring Community House (CCH). Apart from the institution-based centers, there are four community-based centers under NADA. These centers are the district NADA office, NADA Service Center, Integration Center Client and Community House. Nawawi et al., (2024) regardless of the categories and specialization, all the rehabilitation centers under NADA provide opportunities for drug addicts who are without any criminal offence to receive treatment and allow them to improve their quality of life. Nonetheless, drug addicts with criminal offences are not allowed to undergo therapeutic programs at any of the rehabilitation centers under NADA. They however, are required to undergo rehabilitation programs at the Malaysian Prison Department organized by the Prisoner Management Section.

Rehabilitation of Drug Addicts Upon Arrest by the Police or Drug Rehabilitation Officer

As mentioned earlier, the rehabilitative approach differs between the criminal and non-criminal. The criminal drug addict will receive their treatments at the prison. The crime committed by the drug addict was not defined and it could mean commission of any type of crime such as theft, causing hurt, robbery. Inevitably, the type of offence committed may also be related to drug offences under the DDA in particular the drug abuse or addiction charged under section 15 DDA. Hence, the drug addict who is being arrested and convicted for drug abuse under section 15 may not receive treatment at the NADA rehabilitation centers compared to drug addict who was not arrested by the authority for drug abuse. This is because, when labelling as drug addict with criminal offences, they have to serve imprisonment sentence under section 15 DDA as prescribed by section 6 of DDTR.

Currently, the court has the power to order treatment of arrested drug addict found to be tested positive for drug upon being produced before him for an offence including section 15 of DDA. This is shown in section 38A of DDA in respect of drug dependants below the age of

18 on being found guilty of an offence against this Act other than section 6B or 39B of the DDA, the court may if it is satisfied that such person is a drug dependant as certified by a government medical officer or a registered medical practitioner and that it is inexpedient to inflict the punishment provided, deal with such person under section 6 of the DDTR. Similarly, in section 38B of DDA, where an adult person is found guilty of an offence under section 15 of DDA, he shall immediately after having undergone the punishment provided upon him in respect thereof, undergo supervision by an officer for a period of not less than three years as may be determined by the court.

Operation of Section 6 Drug Dependants (Treatment & Rehabilitation) Act 1983 (DDTR)

Part 2 of DDTR comprises of section 3 until section 7, relates to treatment and rehabilitation of drug dependants under the court order. Section 3(1) an officer may take into custody for a period of twenty-four hours any person whom he reasonably suspects to be a drug dependant for the purpose of undergoing tests. If the test cannot be completed within twenty-four hours, the person needs to be produced before the magistrate according to section 4. Upon being produced before the magistrate, section 6 will operate. The magistrate may if it is satisfied that such person is a drug dependant as certified by a government medical officer or a registered medical practitioner and that it is inexpedient to inflict the punishment provided, deal with such person under section 6 of the Drug Dependants (Treatment and Rehabilitation) Act 1983.

According to section 6 (1) (a) of DDTR, the drug dependant (below 18 years) could be ordered to undergo treatment at a rehabilitation center for a period of two years and thereafter to undergo supervision by an officer at the place specified in the order for a period of two years. If detention at the rehabilitation center is not necessary, he may be required to undergo supervision by an officer at the place specified in the order for a period of not less than two and not more than three years. Section 6 (1) of the DDTR is operative when there is a certification by a medical officer that the person is a drug dependant and upon the recommendation by a rehabilitation officer to order such person to undergo treatment and rehabilitation at a rehabilitation center for a period of two years and/or subject to the supervision by an officer at the place specified in the order for a period of two and not more than three years.

As mentioned earlier under section 38B DDTR, for adult drug dependant (above 18 years), he must complete the punishment imposed on him under section 15 DDA, either fine or imprisonment, before undergoing supervision by an officer for a period of not less than two and not more than three year as provided under section 6 of the DDTR. This means, an adult drug dependant aged 18 years and above if found guilty under section 15 of DDA for consumption of drug, is not bound to immediately undergo rehabilitation at the center under section 38B of the DDA. This is because, he has to serve the punishment provided under section 15 DDA, namely fine or imprisonment. Therefore, the rehabilitation of the drug offender on failure to pay fine or sentenced to imprisonment would only begin at the prison.

As a result, it could be concluded that rehabilitation although compulsory imposed, still has some differences. For the arrested and convicted drug addict above 18 years who was sentenced with imprisonment, the rehabilitation process starts in prison. There is a difference between drug treatment in rehabilitation centers and prison since prison is a place

for incarceration for all type of offenders. However, drug rehabilitation center is under the responsibility of National Anti-Drug Agency (NADA), focusing mainly on the treatment of drug addicts. This aspect of rehabilitation at the prison raises our concern considering the problem of prison overpopulation and the large number of the inmates were drug addicts. Notably, the effectiveness of the drug treatment is important to reduce the potential relapse cases among the drug addicts.

Rehabilitation of Volunteered Drug Addicts

While section 6 DDTR operates for arrested drug addict, volunteered drug addict is treated according to section 8 of DDTR. Section 8 is a procedure for treatment and rehabilitation of drug dependant who volunteers for treatment. The person may apply to a rehabilitation officer to be provided with treatment and rehabilitation in respect of his drug dependency, in which the rehabilitation officer shall as soon as possible make arrangement for the applicant to undergo tests. If certified to be drug dependant, the rehabilitation officer shall decide whether such person should undergo treatment at the rehabilitation center for a period of two years and thereby undergo supervision by an officer for a period of two years; or be placed under the supervision of a rehabilitation officer for a period of not more than three years and be subject to such conditions as the rehabilitation officer may consider necessary for his treatment. It could be seen that the volunteered person will not be charged under section 15 of the DDA despite his drug addiction. In contrast to drug addicts who were arrested for his drug addiction, they will be penalized by the law with fine or imprisonment when charged and convicted under section 15 of the DDA, It seems that individuals who are also drug addicts and volunteered to undergo treatment will escape the punishment under section 15 of the DDA.

In summary, the rehabilitation not only differ depending on the age (either below 18 or above) but also whether the person volunteers for rehabilitation or being arrested by the police or rehabilitation officer as ordered by the magistrate.

Importance of Rehabilitation/Treatment

The international standards of the World Health Organization and the United Nations Office on Drugs and Crime for the treatment of drug use disorders under the Principle 3, promotes treatment for drug use disorders through effective coordination between the criminal justice system and health and social services. Drug use disorders should be considered primarily as health problems rather than criminal behaviors, and as a rule, people with drug use disorders should be treated in the health care system rather than the criminal justice system.

The essential need towards rehabilitative effort in reducing the risk of relapse cases among drug addicts is reflected in several literatures. Durst (2022), viewed that because of the intense physical dependence and overdose risk inherent to opioid use, treatment involving medication statically produces the best patient outcome.

Sabri (2021), Deputy Director (research), Islamic Science Institute, Associate Researcher, Malaysia Substance Abuse Council (MASAC) mentioned in her article when responding to the Ministry of Health's proposal to treat drug addicts as patients, that for a very long time, Malaysia has been treating drug addicts as criminals by imprisoning them. This provided the addicts with limited intervention and treatment appropriate for drug addiction, let alone

evidence-based treatment. The Ministry of Health proposal on a new policy to treat drug addicts as patients and not criminals, it does not only involve physicians and pharmacists, but also other experts such as counsellors, psychologists, and social workers. For this new policy to work, the government should also focus on developing these resources in order to treat drug addiction problems effectively in Malaysia.

According to Choudhary (2021), legal ways are not the only ways to curb drug abuse. This is social problem and so shall socio-legal ways be implemented to curb this menace. Sonjaya, A. (2020), wrote on the Indonesian position on drug abuse that narcotics or drugs addicts or the like are basically victims of the abuse of narcotics crimes that violate state laws, and they are all Indonesian citizens who are expected to be able to build this country from a downturn in almost all fields. In connection with the problem of narcotics abuse, a criminal law policy is needed that positions narcotics addicts as victims and not criminals.

lyalomhe (2022), stated globally, drug misuse and its attendant consequences have become the bedrock of social ills such as gangsterism, rape, prostitution, kidnapping, armed robbery, assault and assassinations, thus constituting a universal challenge plaguing many nations and causing concern to both Governments and the people. The misuse of these drugs has increased dramatically, resulting in immense health and socioeconomic consequences to which every healthcare professional and Government must recognize and respond.

Meanwhile for relapse cases, Amat et al (2020), viewed it is important to understand the risk factors and causes that usually contribute to relapse in order to prevent relapse. To avoid the possible risk of relapse during or after treatment, knowing risk factors will benefit them. This again strengthen the need to treatment for drug addicts.

Prison Overpopulation

As it stands, Malaysian prisons are overcrowded. On July 3 2024, Deputy Home Minister Datuk Seri Dr Shamsul Anuar Nasarah reported there were 6,450 in prison for drug offences under the DDA, including those on remand. In August 2024, it was reported that sixty prisons nationwide are currently housing approximately 75,000 inmates, surpassing the capacity limit of 71,000 prisoners. In another finding tabled by William Leong, the chairman committee of the Parliamentary Special Committee on Human Rights Elections and Institutional Reforms on 28 Nov 2023, citing the Penang prison as being overcrowded as there were 1,262 inmates although the prison can only house a maximum of 1,100 inmates. Of these, 65% of the inmates were on remand while 35% were convicts serving their sentences. On overcrowding in prisons, Leong said that this was due to the high number of drug addicts. He said that between 60,000 and 70, 000 inmates, or between 60% and 65%, were drug addicts.

Table 2

Number of Arrest under DDA 1952, 2017 – 2021

Section/Year	2017	2018	2019	2020	2021
Section 39B DDA 1952 (trafficking)	6759	6884	6829	6709	7250
Section 39A DDA 1952 (Major Possession)	4140	3997	3986	3427	3336
Section 39A DDA 1952 (Minor Possession)	13583	14691	16044	13441	14664
Other sections under DDA 1952 [including section 6/section 9/section 6B/section 9/section 12(2)]	5297	56640	58623	48309	44853
Section 15 (1)(a) DDA 1952 (Self administration)	80925	75465	80386	65724	52631
Total	158386	157677	165868	137610	122734

The negative impact of imprisonment may not be good on the drug addicts who were detained for small offences. Putting criminals together could promote bad behavior among troubled people and lead to more crimes. For drug users with records, they may have hard time to secure a job. Consequently, the financial pressure and lack of options will tempt them into relapsing.

Conclusion

As a result, the move to decriminalize drug addiction not only contribute in enhancing the rehabilitative aspect of the drug addicts but at the same time overcome the problem of prison overpopulated by the drug addicts. As shown in Table 2, the drug addicts convicted under section 6, 6B, 9, 12 and section 15 contribute the largest component of those arrested according to the DDA offences. In the midst of preparing the new law, Kamarulzaman (2024), a commissioner of the Global Drug Policy Commission in a National Conference on Addiction Medicine recommended that in addressing such a complex issue, collaboration among stakeholders, including the Home Ministry, the National Anti-Drugs Agency (AADK), the Ministry of Health (MOH), health care professionals, civil society, academics, and individuals with lived experiences is necessary. In addition, they propose collaboration with the government to study successful decriminalisation policies implemented in other countries and adapting them to the Malaysian context. Palani Narayanan, Malaysia AIDS Foundation, Director of Drug Policy viewed that drug reform requires a holistic approach, requiring amendments to all legislations that involve drug use and offences. Besides DDA and DDTR, Registration of Criminals and Undesirable Persons Act and Poisons Act 1952 must also be revisited. This in a way will assist those rehabilitated drug addict who managed to stay clean for certain period, to secure a job after their record is expunged or sealed. As of to date, the bill has yet ready to be tabled. It is hope that the government is able to address the suggested issues before finalizing the laws to ensure effective implementation of the new laws.

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