

Dispute Law Model: Implications from the Implementation of Law on Kratom in Malaysia

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Abstract

Kratom that known as Ketum or Biak are plants found in abundance in the northern states of the Peninsular Malaysia especially in Kedah. Government has gazetted Kratom into the Poisons Act 1952 in 2003 due to the abuse of Kratom. Yet, the Act appears to be insubstantial. Consequently, the government declare the kratom stakeholders of the Dangerous Drugs Act 1952. This article reveals the light kratom stakeholders the mean of the reasonableness of the government's move. A total of twenty respondents were interviewed and a Focus Group Discussion (FGD) was implemented. The results of the interviews and group discussions showed that the majority appears to agree that government should not implement the law on Kratom as traditional herbal medicine in energy recuperating, remedy for diseases like diabetes, hypertension and hemorrhoids. Utilizing the Law Model, the findings show that majority are disagreed with the government's act to ban kratom in Malaysia. Hence, implementation of the government on this Act might trigger the stakeholders in opposing the Barisan Nasional in the next general election.

Keywords: Drug Act 1952; Kratom; Law Model; Stakeholders

Introduction

Legal controls on Kratom have been executed since 1943 again. In the State Thailand was the first country to announce density in the official Law the Kratom Plant Act B.E. 2486 (1943). Kratom of the State Myanmar also follow step by proclaiming Kratom into the Narcotic Drugs and Substances Law 1993. The country subsequently takes the same measure is Malaysia. In 2003, the government amended the Poisons Act 1952 to include the Kratom in the act (Tanguay, 2011). The same article added that the government’s actions in Thailand put the Kratom in the Narcotics Act B.E. 8522 (1972). Table 1 shows about the offense and the punishment of the “Offender Kratom”.

Table 1 : Offenders Punishment Under the Naorcotic Act B.E. 2522 (1972)
Over KratomIn Thailand.

Type Of Offense	Sentence
Product, Exsport an Import (Section 75)	Imprisonment not exceeding 2 years and a fine not exceeding 200,000 baht or USD 6,168
Selling, owners for sale (Section 76/1)	For quantity less than 10 kg; imprisonment not exceeding 2 years and a fine not exceeding 40,000 baht or USD 1,234. or both For quantities of 10 kg and more; imprisonment not exceeding 2 years and a fine not exceeding 200,000 baht or USD 6,168.
Owners (Section 76)	Imprisonment not exceeding one year and a fine not exceeding 20,000 baht or USD 617
Users (Section 92)	Imprisonment not exceeding one year and a fine not exceeding 2,000 baht or USD 62.

Source: Tanguay P. (2011)

In Malaysia, Kratomoffender are defined as an individual or group that violates the Poisons Act 1952 and not the criminals because their have not been enforced Drugs Act. The impact of this control law will result in a total ban on coriander. If implemented against Kratom Drugs Act, the

term has changed the density of offenders to criminal density. These categories are to be subject to the provisions contained in the Dangerous Drugs Act 1952.

Background and Literature Riview

Malaysia, Thailand and Myanmar are neighboring countries in Southeast Asia. That all these three countries have been proclaiming Kratom into the control law is more stringent. Prior to 2003, anyone can use Kratom in Malaysia without worrying or fear. After Kratom gazetted in the Poisons Act 1952 in 2003, related consumption of Kratom starts Psychotropic substances controlled overall by the amendment of the Act under Section 30 (5). Under Section 30 (5), it provides for the type of charges and penalties imposed on offenders who use, possess and sell (Tanguay, 2011). Table 2 shows the punishment of the guilty use of Kratom.

Table 2 : Offenders Punishment OverKetum in Malaysia

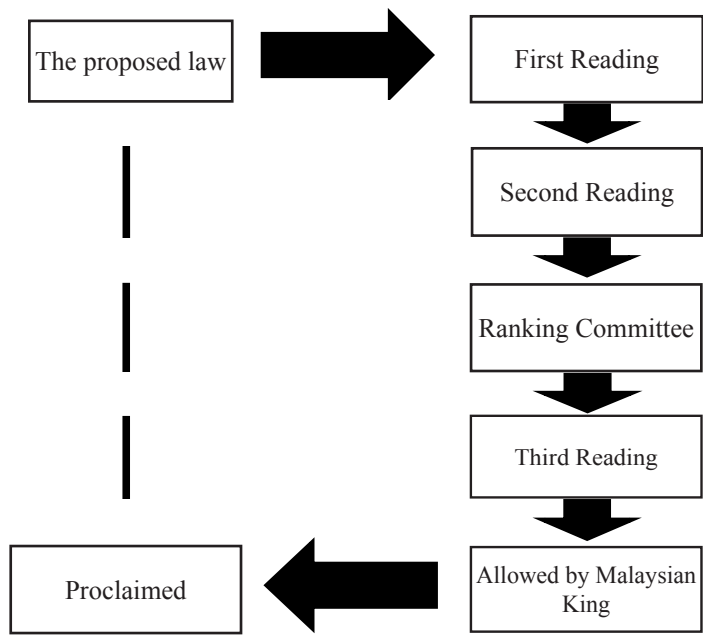
Type Of Offense	Sentence
New Kratom offenders	Minimum sentence
Repeat offenders Kratom	Heavy penalties
Offenders Who Owns The Many Quantity Kratom	Maximum penalty

Source: Division of Narcotics District Padang Terap, Kedah. Malaysia

According to Table 2, there are three categories of offenses specified in Section 30 (5) of the New Offender and Repeat Offender. The sentences also depend on the type of offense committed by the offender Kratom. However, the government's view of the Act is still not strong enough to control the abuse Kratom. Therefore, the Government proposes to proclaim to the Kratom in the Dangerous Drugs Act 1952 (Journalists Report, 2014).

The legal process has several stages that need to be done in Parliament. Among the ranks of the legal process it is start with the legislative proposal by the presenter motion. The next motion is read for the first time until the third time. After that the proposed law was

submitted to the power of the King to proclaim the consent of the proposed legislation. Figure 1 is a legal process that is practiced in Malaysia.



Source: Malaysian Parliament

Figure 1 : Legal Processs in Malaysia

At the Thirteenth Meeting of the Parliament, the First Meeting of the Third Session, Bills. 15, In Wednesday, April 1, 2015, a motion proposed Amendment Bill Dangerous Drugs (Amendment) (No.2) was presented by the Deputy Minister of Health Dato ‘Seri Dr.Helmi Bin Yahaya. The proposed amendment is the proposal seeks to amend Section 2, Section 4, Section 5, Section 6, Section 6B, and Section 7 of the First Schedule to the Dangerous Drugs Act 1952 (Act 234). Amendments to this Act made as a result of the use of coriander has been widely discussed by the mass media and even in debates in Parliament. He added that the amendment is as following statements.

“The need for amendments to the Schedule of Act 234 is to list Kratom and alkaloid Mitragynine as dangerous drugs. While Amendment Section 2 is to include a new definition of Kratom. The

need to amend Section 4, Section 5, Section 6, Section 6B, and Section 7 is to establish control over the raw opium, coca leaves, poppy straw and cannabis that is allocated to restrict the importation, exportation, Owner, Ownership, Investment and Entrepreneur kratom.” (Parliament, 2015)

The amendment would impact directly on the other party dealing with coriander. If the amendment is successful done, the penalties imposed on offenders Kratom will be heavier than those of the Poisons Act 1952.

The basis of these government’s actions is discredited by various parties, especially those who practice Kratom for traditional medicinal purposes. In addition, 100% of respondents said that they never found by any party to get the opinion of or endorsement of the Dangerous Drugs Act 1952 (In-depth interview and FGD, 2015 and 2016)

The actions of the government ignore the voice of the grassroots viewed as a conflict of legal systems that do not emphasize social norms. Ellickson (1991) in his theory, he asserts there is a discrepancy in the model-making system of criminal law although much has been written about the punishment and regulations on drugs and its misuse. But none of those who extend their writing and explain the results of the inspection, farmaceutical and so on drugs. In addition, the method used to label the drug as a medical or criminal is also seen as contradictory.

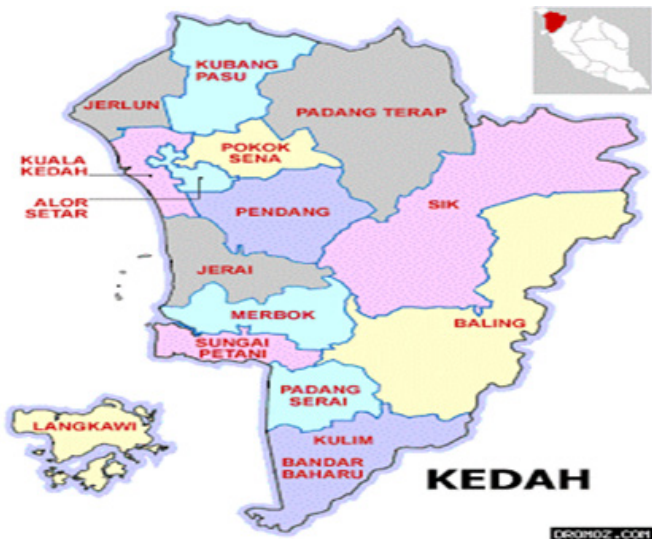
Moreover, Bray (2010) pointed out that there is no legal system that solely focus on the provision of protection and no legal system is trying to protect from all hazards. Bray’s assertion shows that the system of justice in making law is still weak. Therefore, the government should consider aspects thoroughly before the law is to be implemented. The involvement of stakeholders necessary to strengthen the involvement of all parties in the legal system. The role of MPs in parliament should be extended so that no one is left out in participating in the process of making law.

Methodology

This article is based on a study carried out for the reaction Kratom stakehoders to be harmful Drugs Act 1952. The study was conducted using

a qualitative approach. The sample is composed of the Kratom Place. Stakeholder category Kratom such, the density of users, owners and distributors. While the study is in Kedah. The instrument used in this study interviewed Depth and Focus Group Discussions. This study is an analysis method using a thematic approach. Table 3 and 4 shows that respondents who were interviewed and participants in focus group discussions.

Figure 2 is a map of the state of complete and updated according to the parliamentary elections as a guide to the location where the study was conducted. Overall respondents who obtained permanent residency consists of Kubang Pasu constituency, Temes, Annotated Limavady, Jerai and Ship. The samples are collected by the use of the purposive sampling and the snowballing techniques. The purpose of the two samples has to get targeted respondents in this study. The use of sampling methods aim is to set the main criteria in the selection of respondents. In general selected respondents is made up of stakeholders associated with Kratom namely, Users, owners, and distributors, as well as community leaders. Whereas snowballing methods used to obtain the desired respondents with the help of various parties.



Sources: Google Images www.google.com

Figure 2 : Map of the State of Kedah Regional Parliamentary Elections

Justification for the choice of the area based on the parliamentary elections are due every representatives they serve directly in the process of legislation. The process includes amendments to the law Drugs Act 1952 which seeks to proclaim the coriander into the act.

Table 3 : Respondents In-depth Interviews

*R	Gender	Age	Race	Residence	Job
R1	Male	60s	Malay	Yan	Work as home makers
R2	Male	60s	Malay	Kerpan	
R3	Male	40s	Malay	AyirHitam	Pddy Farmers
R4	Male	50s	Malay	Tobiar, Pendang	
R5	Male	50s	Malay	Bayu, Baling	Paddy Farmers
R6	Male	50s	Malay	Naka,	
R7	Male	30s	Malay	Changlun	Paddy Farmers
R8	Male	40s	Malay	Changlun	
R9	Female	40s	Thai	Naka	
R10	Male	50s	Thai	Naka	Rubber Farmers and village leader

Table 4 : Participant Focus Group Discussions

*R	Gender	Age	Race	Residence	Job
R1	Male	40s	others	Padang Terap	Rubber Seller
R2	Male	40s	others	Padang Terap	Rubber Seller
R3	Male	30s	others	Padang Terap	Rubber Farmer
R4	Male	30s	others	Padang Terap	Rubber Farmer
R5	Male	30s	others	Padang Terap	Rubber Farmer
R6	Male	20s	others	Padang Terap	Rubber Farmer
R7	Male	20s	others	Padang Terap	Rubber Farmer
R8	Male	20s	others	Padang Terap	Rubber Farmer
R9	Male	20s	others	Padang Terap	Rubber Farmer
R10	Male	20s	others	Padang Terap	Rubber Farmer

Based on Table 3 and Table 4 shows all respondents are people living in rural areas and easily accessing to Kratom. Most of them are self-employed as rubber tappers, farmers, artisan and trade. In addition,

the factors that cause them to be involved with Kratom economic factors and living standards. For example, respondents who live in the cultivation of rice, most of them had to grow and sell Ketum as income from rice is not enough. Furthermore, the dependence on rice yield only to harvest twice a year. But weather factors and diseases of rice plants resulted in rice production quality is deteriorating, and their income is declining.

In addition, for the people living around the area of rubber and oil palm cultivation, they also suffer the same fate as Rice Farmers. Dependence on rubber yield only when the weather is good, the market price of rubber increased. However, rubber prices are low and the weather is not seeking causing them to grow and sell Kratom to cover their daily needs

Result

The findings of the in-depth interview show all respondents recognize that Ketum has been allocated under the Poisons Act 1952. The majority of their own people know that the Kratom will be gazetted under the Dangerous Drugs Act 1952 or other purposes Kratom is illegal and against the Drug Act.

Awareness of the existence of laws against Kratom shows they are sensitive to the current situation. In addition, there are also those who did not bother with the implementation of the law on Kratom, for them, is the Kratom as drugs and can be used for traditional treatments such as stomach pain, mental energy recovery and so on.

Efficacy reason Ketum as traditional medicine caused all respondents disagreed with the government to gazette the Kratom in the Dangerous Drugs Act 1952. The basis of the rejection of the government's actions is as coriander is a herbaceous plant which can cure many diseases, for their medical practice have traditionally used Kratom practiced for generations. Consequently, they feel upset with the government's action to ban the Kratom.

Although disappointed with the actions of the government, all the respondents agreed to continue to use Kratom even against the law. For those practices that for generations must be maintained by all parties, especially those living in the state. The majority of them agreed to reject the Barisan Nasional should Drugs Act apply to the Kratom.

Meanwhile, the results of the study methodology Focus Group Discussion shows that all participants agreed to dismiss the action group wants the government to proclaim the Kratom in the Dangerous Drugs Act 1952. The basis of their refusal same depth interviews of respondents, Kratom are herbaceous plants that can be used for traditional medicinal purposes, To further strengthen their reasons for rejecting the Act, coriander is one source of income. The majority among those dependent on income generated by full rubber. Rubber market price volatility, causing them to choose to grow and sell Kratom to earn extra income.

Discussion, Implication and Suggestion

The results of this study show that the majority of respondents disagreed with the government's move to ban kratom in this country. The factors that led them to reject the government's action because kratom has become part of their lives since time immemorial.

The government needs to do thorough research before making Kratom banned in this country. Practice this tradition will be lost if the government wrongly action. Before this, there has been no negative impact from the use of kratom.

The results of this study proves that there are those who disagree with the government's ban kratom in this country. Therefore, this study has a negative impact on the government. The implication that the government would lose votes in the upcoming elections.

Suggestion

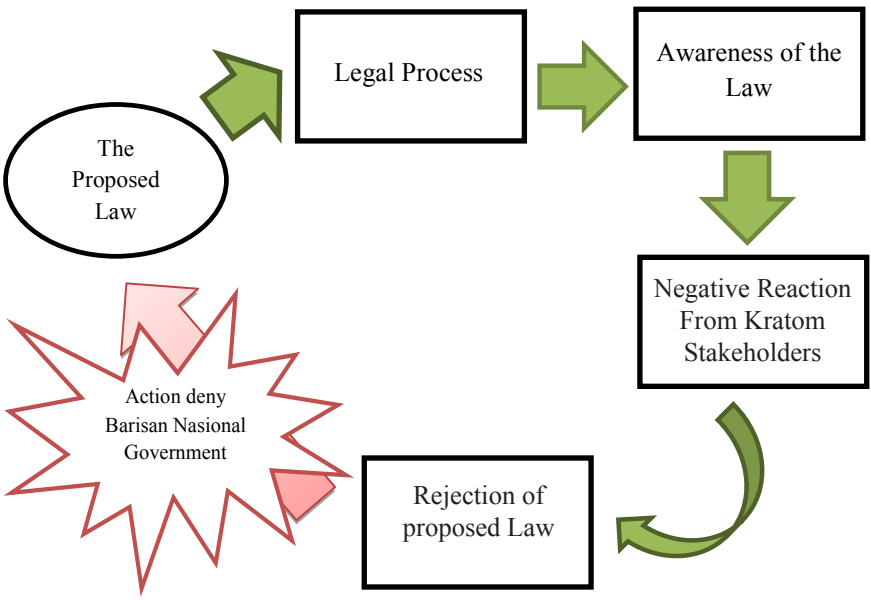


Figure 3 : Disputes Law Model

Results from the study all angles of discussion, there are three useful suggestions to the government to reassess the proposals for the Chairman to declare the Dangerous Drugs Act. The first suggestion, the government should conduct a comprehensive review not only based on media reports alone. The government needs to get down to the grassroots level to listen to the views of them. After that, the government could consider any action wisely. Rejection of the Proposed Model Law by Stakeholder can be used as a guide to see the real situation, which is why Kratom Stakeholders put to do so.

The second suggestion, The government needs to see an example of why the government of Uruguay to lift the ban on marijuana. Marijuana was originally herbaceous plants that can treat a variety of diseases including cancer. The proposal is that the government should not take wrong steps in imposing the law of a herbaceous plant.

The third suggestion, all parties should unite to defend their rights as Kratom practitioner for medical purposes. The government can take

action against abuse Kratom, but not Drugs Act. If the illegal side of religion used as an excuse to implement Drugs Act to be harmful, it's not fair to the Kratom, as cigarettes are entirely illegal, is still permitted by the government to sell it anywhere.

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Conclusion

Adoption of the law on unfair Kratom seen and not just because the base provided is strong and sturdy. Reason harmful and injurious to health is purely superficial. Cigarettes are obviously detrimental and harmful to health permitted by the government to be on the local market, provided that contribute to national tax. The government imposed a law against unfair Kratom clear at all. Kratom should be maintained in order to preserve balance and diversity can be maintained.

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