DRUG LAWS IN MALAYSIA: WHETHER THE DRUG LAWS HAVE BEEN EFFECTIVE IN CURBING THE DRUG MENACE IN MALAYSIA

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I. INTRODUCTION

The phenomenon of drug abuse is really a global problem that has haunted modern society. Its notoriety practically does not confine itself within specific geographical borders nor differentiate its numerous victims in terms of ethnicity or the socio-economic status of nations. Malaysia itself is no exception because each year the statistics of new drug addicts identified has steadily given rise to staggering drug laws around the world, whereby trafficking in drugs carries the mandatory death penalty or life imprisonment in most of the countries in South East Asia. Nevertheless, the drug problem seems to have persisted unabated. The problem is considered more challenging, largely due to its close proximity to the Golden Triangle, the main heroin-producing region. However, the development of Amphetamine-Type Stimulants (ATS) such as methamphetamine, which has a bigger market and offered high profits, contributes to the higher prices in Malaysia. This makes Malaysia particularly attractive for the operation of international drug trafficking syndicates, thus presenting a big challenge for the Royal Malaysia Police (RMP), in particular the Narcotics Crime Investigation Department (NCID).

The Royal Malaysia Police (RMP), in particular the Narcotics Crime Investigation Department (NCID), is always serious and committed in combating illicit drug production, manufacturing, trafficking and abuse in the country. The drug situation in Malaysia is very much under control with regular detection and disruption of drug trafficking syndicates, dismantling of clandestine laboratories, seizures of drugs and illegal proceeds of drug traffickers mainly by the NCID, as well as other enforcement agencies such as the Royal Malaysia Customs, National Anti-Drugs Agency (NADA), the Malaysia Maritime Enforcement Agency and the Malaysia Border Security Agency (AKSEM).

The objective of this paper is to discuss the issue of the effectiveness of the country's various drug laws, particularly the *Dangerous Drugs Act 1952*, in combating the drug menace. It is fervently hoped that such discussion will be able to greatly provide an insight to assist the respective authorities in tackling and curbing the nation's drug problems more effectively. The arguments raised in discussing this issue are primarily based on statistical data obtained from the NCID of the RMP. Despite their deficiencies, police statistics are closer to the real amount of crime than other statistics.

II. MALAYSIA DRUG SITUATION: *THE FOUR DRUG WAVES*

During the nineteenth century, the colonial British master that governed Malaya, as Malaysia was then known, recruited labourers from China and India respectively to develop the abundant tin mines and rubber plantations. These labourers brought along with them their habits of opium smoking and marijuana. This period, which can be identified as the country's first drug wave, has now almost vanished except for marijuana abuse.

Subsequently the trend of drugs has changed from being opiate-based (heroin, morphine, marijuana) which are depressants to amphetamine-based (ecstasy, amphetamine, yaba pills), which are stimulants regarded as the country's second and third drug waves. The emergence of *New Psychoactive Substances* (NPS) in the world, in what can be called now the fourth drug wave, was first detected in Europe about three years ago, and about 800 types have been in the market. In Malaysia, we have already traced 20 types of NPS, but we can only take action on seven of them, as they are listed under the Poisons Act 1952. Although the Malaysian

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authorities have been working round the clock to combat the spread of illegal drugs, the fight is hampered by global demand.

III. DOMESTIC DRUG LAWS

In order to control and curb the drug menace, Malaysia enacted the following five relevant drug laws namely:

A. Dangerous Drugs Act 1952

This is the country's main drug law which regulates the importation, manufacturing, selling, possessing, exporting and usage of all types of drugs. Besides, that, it also provides for the punishment for various drugs offences under the Act, which includes the mandatory death sentence for drug trafficking. Recently there are many significant developments in this Act which have drastically transformed the legal jurisprudence in this branch of the criminal law. One such significant change is the amendment to Section 39B of the Act of which the judge has discretionary power to impose life imprisonment and not less than 15 strokes on conviction instead of the death penalty. However, the court's discretionary power is subject to certain conditions, and, importantly, the accused has an obligation to assist the enforcement agencies, particularly the NCID, in disrupting drug trafficking within or outside of Malaysia (*see Appendix 1*). Prior to the amendment, the trial judge had no discretionary power even if the accused may have assisted the enforcement agencies. The trial judge handling the case is forced to impose the death sentence on conviction since there is no other penalty provided in that law. With this amendment, the accused has the option to cooperate with the enforcement agencies for a lighter sentence. The word "*assist*" is not defined in the Act and this may lead to some uncertainty, and perhaps controversies, in determining to what extent the accused needs to assist the enforcement agencies. This new amendment came into force on 15th March 2018.

The other change is the introduction of a new section 37A in the Dangerous Drugs Act 1952 which allows the invocation of multiple presumptions. These multiple presumptions have indeed been effectively buried in *Muhammad bin Hassan v PP*[1]. In that case, the court gave a clear distinction between the word "deemed" used in s. 37(d)[2] and the word "found" employed in s. 37(da)[3] of the Dangerous Drugs Act 1952. The court was of the view that the word "deemed" possession in section 37(d) is by operation of law and there is no necessity to prove how that particular state of affairs is arrived at. There need only be established the basic or primary facts necessary to give rise to that state of affairs, *i.e.* the finding of custody or control. The word "found" in the operative phrase of section 37(da), on the other hand, connotes a finding after a trial by the court. Thus, to come to the presumptions of possession and knowledge under section 37(d), one need only to arrive at a finding of having had "in custody or under control anything whatsoever containing" the drug (as opposed to the drug itself), whereas to arrive at the presumption of "trafficking" under section 37(da), a finding of being "in possession" of the drug is necessary, in addition to proof of the relevant minimum quantity specified. To conclude, the court opined that once the presumption of possession under section 37(d) has been invoked, then the prosecution cannot resort to another presumption of trafficking under section 37(da) of the Act. The introduction of double presumption in Section 37A of the Dangerous Drugs Act 1952 is indeed a setback to Malaysian jurisprudence and impliedly overruled the decision made in *Muhammad bin Hassan v PP*[4].

It has been claimed that the law nowadays has become more draconian, but in a series of recent decisions from the superior courts which, in essence, ruled that the accused is entitled to a fair trial and if those rights are violated, the conviction cannot be sustained, may bring comfort to some. Some of these cases include *Prasit Punyang v PP*[5] and *Zulkefly bin Had v PP*[6]. They echoed the "right to a fair trial" principle propounded in *Lee Kwan Woh v PP*[7].

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[1] (1988) 2 CLJ 170
[2] Section 37(d) any person who is found to have had in his custody or under his control anything whatsoever containing any dangerous drug shall, until the contrary is proved, be deemed to have been in possession of such drug and shall, until the contrary is proved, be deemed to have known the nature of such drug;
[3] Section 37 *(da)* any person who is found in possession of :-
[4] *Supra*, n. 1.
[5] (2014) 7 CLJ 392
[6] (2014) 6 CLJ 64.
[7] (2009) 5 CLJ.

In *Prasit Punyang v PP*[8], the court opined that there was merit in the contention of the appellant. In accordance with the provisions of s. 182A (1) of the Criminal Procedure Code[9], it was the duty of the presiding Judge, at the conclusion of the trial, to consider all the evidence adduced before him. The legislature had advisedly used the term "all the evidence". The emphasis must be on the word "all". The cautioned statement tendered by the appellant was evidence which the Judge should have taken into consideration in order to make a finding whether or not the prosecution had proved its case beyond reasonable doubt.

The Judge must consider carefully whether the cautioned statement was capable of raising a reasonable doubt as to the prosecution's case. The appellant's cautioned statement was recorded a day after the arrest of the appellant. It was important, therefore, to point out that the appellant had mentioned the basic facts of his defence at a very early stage of the police investigation against him that the drugs found in his bag belonged to him, and they were brought upon request by one "Mail" and he has no idea about the drug hidden in the boat. Accordingly, the defence of the appellant was not something that was sprung for the first time in the defence case. The evidence led by the prosecution left questions unanswered, especially the role of "Mail". The fact that the defence was not a recent fabrication was supported by the contents of the appellant's cautioned statement which was substantially similar to the defence advanced.

Meanwhile in *Zulkefly bin Had*[10], the trial judge failed to appreciate and give due consideration to the defence's evidence adduced by the appellant. The issue or fact of whether the drugs were found in car PBH 1632 or AEQ 5321 was a pivotal and primary fact in this case. The trial judge had also failed to consider the testimony of the accused's wife, which had supported that of the appellant about his involvement with the car in which the drugs were found. Even though the prosecution witness who acted as *Agent Provocateur* (AP) had testified that he had constantly contacted the appellant *via* mobile phone until the later stage before the arrest and an ambush was carried out, there was no mobile phone belonging to the appellant tendered in evidence or any seizure made of the said mobile phone. The seizure form had also not disclosed any mobile phones seized from the appellant. Doubt as to this AP's veracity was raised, and the trial judge had not taken this witness statement into consideration at all. The failure of the trial judge in making a critical analysis of the AP's evidence, which was the main thrust of the prosecution's case against the appellant, was also an oversight and a fundamental failure warranting appellate intervention.

In *Lee Kwan Woh*[11], at the close of the prosecution's case, the learned trial judge ruled that he did not wish to hear submissions as he was satisfied that the prosecution had made out a *prima facie* case as required by s. 180(1) of the Criminal Procedure Code[12]. This ruling formed the first ground of complaint in this case. The second complaint is that the learned trial judge failed to judicially appreciate the evidence, thereby misdirecting himself, which misdirection has occasioned a miscarriage of justice. Taking the first ground, the issue here is whether a court acting under s. 180(1) is entitled — to quote from the subsection — to "consider whether the prosecution has made out a *prima facie* case against the accused" without affording the accused an opportunity to make a submission of no case. No doubt the subsection does not expressly confer such a right upon an accused. However, counsel submitted that his client has a constitutionally guaranteed right to a fair procedure by virtue of Article 5(1) of the Federal Constitution. He argued that this right had been

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[8] *Supra* n. 2.

[9] (1) At the conclusion of the trial, the Court shall consider *all* the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.
(2) If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it.
(3) If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal

[10] (2014) 6 CLJ 64.

[11] (2009) 5 CLJ 631.

[12] (1) When the case for the prosecution is concluded, the Court shall consider whether the prosecution has made out a *prima facie* case against the accused.
(2) If the Court finds that the prosecution has not made out a *prima facie* case against the accused, the Court shall record an order of acquittal.
(3) If the Court finds that a *prima facie* case has been made out against the accused on the offence charged the Court shall call upon the accused to enter on his defence.
(4) For the purpose of this section, a *prima facie* case is made out against the accused where the prosecution has adduced credible evidence proving each ingredient of the offence which if unrebutted or unexplained would warrant a conviction.

violated by reason of the learned judge's ruling. This is an important submission and calls for careful consideration. Whether the right claimed in the instant case exists at all turns on the interpretation of Article 5(1) which provides that: "*No person shall be deprived of his life or personal liberty, save in accordance with law*". Before we embark upon that interpretive exercise, it is important to bear in mind the principles that govern the interpretation of the Federal Constitution.

In the first place, the Federal Constitution is the supreme law of the Federation. Though by definition it is a written law, it is not an ordinary statute. Hence, it ought not to be interpreted by the use of the canons of construction that are employed as guides for the interpretation of ordinary statutes. Indeed the prismatic interpretation of the Constitution gives life to abstract concepts such as "life" and "personal liberty" in Article 5(1), and it confers on our citizens the most cherished of human rights—it must on no account be given a literal meaning. It should not be read as a last will and testament.

More importantly, the majority of the court also accepted the omnipresence of Article 8(1) of the Constitution[13] when interpreting its other provisions. And that brings us to the next principle of interpretation.

The third principle in this case is when interpreting the other provisions of the Federal Constitution, in particular, those appearing in Part II[14] thereof, we must do so in light of what has been correctly referred to as the humanising and all pervading provisions of Article 8(1). That article reads: "All persons are equal before the law and entitled to the equal protection of the law". That article guarantees fairness of all forms of State action. When Article 5(1) is read prismatically and in the light of Article 8(1), the concepts of "life" and "personal liberty" housed in the former are found to contain in them other rights. Thus, "life" means more than mere animal existence and includes such rights as livelihood and the quality of life. "Personal liberty" includes other rights such as the right to travel abroad. In *Loh Wai Kong v. Government of Malaysia*,[15] the court said that "personal liberty" includes "liberty to a person not only in the sense of not being incarcerated or restricted to live in any portion of the country but also includes the right to cross the frontiers in order to enter or leave the country when one so desires."

In this case the court[16] also considered the expression "according to law" appearing in Article 5(1). The expression "law" includes procedural law. Here the point is not whether the question of procedure is more important under one Constitution than under the other. If the expression 'in accordance with law' were to be construed as to exclude procedure, then it would make nonsense of Article 5 of the Federal Constitution.

The law on the identity of exhibits has also undergone a radical change. A discrepancy in weight alone is not sufficient to dislodge the case for the prosecution. The question the court has to ask itself now is, whether the exhibit produced has passed the test of reliability? If the answer is in the affirmative, the identity is no issue as stated in *Lew Wai Loon v PP*[17] . In this case the appellant, charged with the offence of trafficking in 2,831 grams of heroin under section 39B(1)(a) of the Dangerous Drugs Act 1952, was sentenced to death by the High Court upon being found guilty as charged. The Court of Appeal dismissed his appeal and hence, appeals to the apex court. The appellant's appeal was confined to one ground, *i.e*., that there existed serious doubt as to the identity of the drug exhibit. The appellant submitted that there were discrepancies in the gross weights of the drug exhibits. The three different gross weights of the drug exhibits alleged by the appellant were, *inter alia*: (i) 3.5 kg given by SP1, the Head of the Narcotics Department at Kuala Lumpur International Airport (KLIA) who found the drugs with the appellant; (ii) 3,720 grams given by SP9, the forensic unit officer; and (iii) 3,703.8 grams given by SP3, the chemist. The appellant further submitted that the mere statement by the investigating officer ('SP7') and SP9, that the weighing scales used by them were not calibrated, without scientific evidence to show that the scales were not accurate, was not good law. The appellant also submitted that there was a break in the chain of evidence in the handling of the drug exhibit as there was no explanation given on the movement of the drug exhibit. On the other hand, the prosecution

[13] Article 8(1) of the Federal Constitution says, "All persons are equal before the law and entitled to the equal protection of the law".
[14] Part II of the Federal Constitution is pertaining to Fundamental Liberties from Article 5 to 13.
[15] *[19781] LNS 106*; [1978]2 MLJ 175.
[16] Lee Kwan Woh (2009) 5 CLJ 631.
[17] (2014) 2 CLJ 649.

submitted that the relevant witnesses had explained the discrepancies on the drug exhibit. It was submitted by the prosecution that the differences in the weights given was due to the types of weighing machines used by the respective witnesses and as such, there was explanation given for the variations in the weights. In dismissing the appeal the court opined that the discrepancy in the weight of the drug alone should not *ipso facto* cast doubt on its identity. There are other primary factors to consider such as the facts and/or events that form the foundation for its admission as a piece of evidence. One fact and/or event to consider was whether there was any break in the handling or custody which tantamount to a break in the chain of evidence which, if occurred, should cast doubt in the exhibit as a reliable and trustworthy piece of evidence. In the instant case, the discrepancies as to the weight of the drugs, although not necessary, were explained by SP1, SP7 and SP9. The obvious explanation for the discrepancies in the weight of the drug exhibit as obtained by SP1, SP7 and SP9 was due to their use of uncalibrated weighing machines as compared to the weight obtained by SP3 who used a calibrated weighing machine. Although their explanations might not have been necessary, the explanation was given or could easily be inferred from their testimonies.

Further the drug exhibit admitted in evidence in this case was the same as those seized by SP1 at the KLIA. SP1 who marked the drug exhibit before passing it to SP7 testified and confirmed that it was the same drug exhibit that he seized from the appellant at KLIA. The unchallenged confirmation by SP1 should be given due consideration in determining that there was no issue of doubt in the identity of the drug exhibit. This was one of the facts and events that formed the foundation not only for the admission in evidence of the drug exhibit but also its reliability and trustworthiness as a piece of evidence.

In regard of agent provocateurs, which represent the prosecution's most effective arsenal in drug trafficking cases as the evidence of an agent provocateur is to be given special treatment. Their evidence is always admissible and his credit worthiness presumed. However, in the decision by the apex court in *Wan Mohd. Azman Hassan v PP*[18], apart from its comprehensive discussion on the law on agent provocateurs, it opens a window for the defence to argue that entrapment ought to be considered in determining the culpability of the accused in certain situations. Under section 40A of the Act[19], the evidence of the agent provocateur cannot be excluded in the exercise of judicial discretion. Otherwise admissible evidence such as this one under section 40A[20] of the Act does not become inadmissible merely because it had been improperly or unfairly obtained. Section 40A (2) of the Act[21] affirms this admission notwithstanding any other laws, written or otherwise, to the contrary. He may thus relate the full story of what happened in his negotiations with the drugs seller and any statements made by the latter to him shall be admissible in evidence.

The common law position that entrapment is not a substantive defence remains the law. In any event, it is for the appellant to prove that he committed this offence as a result of an entrapment. This can only be determined from the facts to be evaluated by the trial court. In other words it is a question of fact. As there was no finding of facts on this issue by the trial court the issue of entrapment as a defence did not arise in this case. On this point alone, it demolished the argument raised by the appellant. For the defence to operate at all, the appellant needed to show that he was actually an "unwary innocent" who would not, but for the entrapment, have committed this offence. The facts in this case however show that the appellant was a person with an opposite disposition; *i.e.*, that of an "unwary criminal" who readily participated in the offence. In this case, at worst, SP3's action can only be described as soliciting the appellant to supply the drugs. There was no entrapment as such.

The court[22] was of the view that, in the fight against the drug menace, Parliament has deemed it fit that evidence of an agent provocateur be admissible without any restrictions. The trial judge is no longer vested

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[18] (2010) 4 CLJ 529

[19] Dangerous Drugs Act 1952 – Section 40(1) Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, no agent provocateur shall be presumed to be unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under this Act if the attempt to abet or abetment was for the sole purpose of securing evidence against such person.

[20] *ibid*

[21] *Ibid*-Section 40A (2) Notwithstanding any rule of law or this Act or any other written law to the contrary, and that the agent provocateur is a police officer whatever his rank or any officer of customs, any statement, whether oral or in writing made to an agent provocateur by any person who subsequently is charged with an offence under this Act shall be admissible as evidence at his trial.

[22] *Supra* No. 18

with discretion to exclude such evidence. The court is only to interpret legislation and not to add new elements, especially when the words in statutes are clear and unambiguous. There is thus no further need to subject that evidence to any balancing exercise as proposed by learned counsel in his submission.

However, the presumed credibility of an agent provocateur can be challenged and is usually challenged or for some credible reasons his evidence ought to be received with caution or completely rejected as in *PP v Bird Dominic Jude*[23]. Bird Dominic Jude is an Australian man has escaped the death penalty for a second time after a Malaysian court rejected an appeal by prosecutors against his acquittal on drug charges. He was arrested in March 2012 at a cafe near his apartment in Kuala Lumpur and accused of trying to supply an undercover police officer with 167 grams of methamphetamine, an amount that carries a mandatory death sentence. He was acquitted after the case fell apart amid allegations of corruption on the part of the prosecution's star witness and his entire testimony had been disregarded as his credibility had been destroyed.

B. Dangerous Drugs (Special Preventive Measures) Act 1985

This piece of preventive legislation provides powers to the Executive to detain a drug trafficker for up to two years at a time without going through the process of a court of law. This law provides the Royal Malaysian Police power to detain an individual for not more than 60 days for drug-related offences. Following the preliminary 60-day detention, individuals can be detained for a period of not more than 2 years by the Home Ministry or to be restricted for two years and have been strapped with an electronic monitoring device (EMD) to monitor their movements.

C. Dangerous Drugs (Forfeiture of Property) Act 1988

The aim of this law is to provide the authorities with the powers to trace, freeze and forfeit the assets of the drug traffickers, and the onus is placed on the liable person or drug trafficker to prove that his properties were gained through legal means.

D. Drug Dependents (Treatment and Rehabilitation) Act 1983

This law deals specifically with the treatment and rehabilitation of drug dependents. The RMP, particularly the NCID, have power to enforce this law. But with effect from 14th January 2017, all investigations relating to drug dependents' cases are now enforced by the National Anti-Drug Agency (NADA) in the Ministry of Home Affairs, which was aimed to reduce the burden on the police force. NADA has adopted a paradigm shift in transforming the treatment and rehabilitation services into a more accessible one and providing people with drug-related problems an opportunity to undergo drug treatment and rehabilitation services on a voluntary basis known as Cure & Care 1Malaysia Clinic. It is an alternative to compulsory drug rehabilitation centres, which involve the process of arrests, court orders and legal implications. It has received recognition and is regarded as one of the best practice to be followed in the whole region.

E. Poison Act 1952

This law meanwhile provides for the control, sale, import and export of poisons, precursors and other essential chemicals.

IV. CURRENT DOMESTIC DRUG SITUATION

In 2017, NCID seized a larger amount of drugs in 2017 as it intensified enforcement against drug syndicates. This includes improving the security checks at Malaysia's international airports and the country's border entry points. Methamphetamine and heroin remain as the two most commonly abused drugs in Malaysia respectively made up seizures of 1,258.33 kg and 653.79 kg compared to last year of 653.79 kg and 425.24 kg respectively. The total drug value seized in 2017 is worth about RM 198.54 million compared to RM 188.97 million in year 2016.

In 2017, the number of persons arrested for possession of drugs was 82, 866 compared to 72, 675 in 2016. As for drug abuse cases, the RMP have arrested 84, 006 persons in year 2017 compared to 128, 031 in year

[23] [High Court Kuala Lumpur Criminal Trial No: 45A-13-05/2012]

2016. Those who were arrested by the RMP in 2017 are indeed not for rehabilitation purposes but merely for punishing them for administrating drugs, which normally the court imposes either fine or imprisonment.

On the other hand, 2017 marked a higher number of people arrested under the Dangerous Drugs Act (Special Preventive Measures) 1985. A total of 1237 people were arrested under the preventive laws, compared to 1015 in 2016.

Meanwhile the total value of properties seized under the Dangerous Drugs (Forfeiture of Property) Act 1988 continued to increase from 2016 with RM 99.4 million to RM 113.7 million in 2017. However, the amount of the value of properties forfeited in 2017 decreased to RM 7.03 million compared to RM 15.1 million in 2016 as most the cases are pending for process of court.

Intensified enforcement efforts done by the NCID had resulted in many successes in tackling the supply dimension of the drug problem. The drug trafficking syndicates continue to adapt their manufacturing strategies in order to avoid detection which resulted in the syndicates changing their modus operandi. Rather than conducting their operations in state-of-the-art facilities, these syndicates conduct their operations in smaller labs to avoid detection by authorities. With drug processing methods at their fingertips, these syndicates resort to constructing 'kitchen labs' in order to produce the drugs to cater to their customers. These labs, easily constructed and requiring less manpower to be operated than an advanced lab, pose a threat for the local drug enforcement agencies as it is far more difficult to be located. The construction of these kitchen labs contributes to the higher number of clandestine laboratories dismantled by NCID as well as the increase in the number of people arrested in recent years. In 2016, a total of 14 manufacturing facilities and pill processing operations, primarily crystalline methamphetamine and ecstasy facilities, were dismantled. Due to the continuous robust enforcement, the number of arrests in clandestine laboratories in 2017 has decreased to 73 persons compared to 130 persons in 2016.

From the statistics of the drugs seized by the NCID from the year 2016 to 2017, they clearly show there was a hike in drug activities which mainly contributed to the *International Drug Trafficking Syndicates* (IDTS). The IDTS are known to use Malaysia as a temporary hub to transport these substances to other countries, especially Indonesia, China, Japan, Korea and Australia. NCID, however, continues to monitor these illicit activities with active enforcement actions and joint operations with local authorities and cooperation from international drug enforcement agencies. This resulted in the numerous successes in operation which contributes to the figure of seized drugs in recent years.

V. DRUG LAWS VERSUS MINIMAL MANPOWER

In formulating the strategies in combating the country drug problems the Government has adopted the following approaches:

(a) Supply Reduction

(b) Demand Reduction

Supply reduction is principally aimed at stopping the inflow of drug supplies into the country due to the reason that Malaysia is a country which does not produced her own drug supplies. On the other hand, demand reduction deals with the treatment and rehabilitation of drug addicts including preventive education to the society. In respect of supply reduction the tasks are shouldered by various enforcement agencies such as the police (NCID), Customs Department and the Malaysia Border Security Agency (AKSEM).

By and large, the NCID is the backbone and lead agency in the fight against drug trafficking activities. Even though the RMP has a workforce of approximately of 104,000 personnel (as of 2017), the NCID itself is hardly made up of 4,160 (4%) personnel of the total workforce throughout the country.

The point raised above is to indicate that to enforce the drug laws with such minimal manpower would clearly entail a heavy responsibility. As such to gauge whether the drug laws are effective in such a state would not fair judgement by itself.

VI. CONCLUSION

It can be seen from the above arguments that the drug problems posed a rather unique situation whereby, despite Malaysia's very stringent drug laws, it does not seem to have been effective in curbing the drug menace. All available statistics show the discouraging situation whereby there is a constant increase in all types of arrests. As such it can be concluded that the present drug laws of the country have not been effective in curbing the nation's drug problems. Illicit drug smuggling and trafficking cannot be overcome by a country alone. Drug syndicates operate without boundaries and continue to find new markets and expand their activities. To combat the drug problem effectively, more initiatives have to be aggressively planned and executed to ensure successes in combating the drug menace.

Cooperation among international organizations and regional counterparts is vital to overcome the illicit drug trafficking in Malaysia. The RMP, particularly the NCID, will continue to cooperate with foreign counterparts in their continuous effort to overcome illicit drug activities in the country. Thus, it is imperative to enhance the intelligence, enforcement and drug detection capabilities with a view of serving the main purpose of identifying and crippling the drug syndicates in this region.

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5. Dangerous Drugs Act (Special Preventive Measures), 1985

6. Dangerous Drugs Act (Forfeiture of Property) 1988

7. Drugs Dependents Act (Rehabilitation & Treatment), 1983

8. Poisons Act, 1952

Appendix 1

DANGEROUS DRUGS ACT 1952 (REVISED 1980)
ACT 234

39B Trafficking in dangerous drug

(1) No person shall, on his own behalf or on behalf of any other person, whether or not such other person is in Malaysia-

(a) traffic in a dangerous drug;

(b) offer to traffic in a dangerous drug; or

(c) do or offer to do an act preparatory to or for the purpose of trafficking in a dangerous drug.

(2) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence against this Act and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, be punished with whipping of not less than fifteen strokes.

[(2) Subs. Act A1558:s.2]

(2A) In exercising the power conferred by subsection (2), the Court in imposing the sentence of imprisonment for life and whipping of not less than fifteen strokes, may have regard only to the following circumstances:

(a) there was no evidence of buying and selling of a dangerous drug at the time when the person convicted was arrested;

(b) there was no involvement of agent provocateur; or

(c) the involvement of the person convicted is restricted to transporting, carrying, sending or delivering a dangerous drug; and

(d) that the person convicted has assisted an enforcement agency in disrupting drug trafficking activities within or outside Malaysia.

[(2A) Ins. Act A1558:s.2]

(2B) For the purposes of subsection (2A), "enforcement agency" means-

(a) the Royal Malaysia Police;

(b) the National Anti-Drugs Agency;

(c) the Royal Malaysian Customs Department;

(d) the Malaysian Maritime Enforcement Agency; or

(e) any other enforcement agency as may be determined by the Minister.

[(2B) Ins. Act A1558:s.2]

(3) A prosecution under this section shall not be instituted except by or with the consent of the Public Prosecutor:

Provided that a person may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not be further prosecuted until the consent has been obtained.

(4) When a person is brought before a Court under this section before the Public Prosecutor has consented to the prosecution the charge shall be explained to him but he shall not be called upon to plead, and the provisions of the law for the time being in force relating to criminal procedure shall be modified accordingly.