

KETUM ABUSE IN MALAYSIA: ITS LEGAL STATUS AND PROPOSED SOLUTION

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Abstract

*The time is right for the relevant authorities in the country to find concrete solution over the issue concerning abuse of Ketum in the country. For many years, there have been many debates in the country over the legal status of Ketum especially on the issue of its abuses. Scientifically known as *Mitragyna speciosa*, Ketum is a tropical deciduous and evergreen tree in the coffee family native to South East Asia (SEA). It has been a long time used in traditional medicine by which it is often used by workers in laborious or monotonous professions to stave off exhaustion as well as a mood enhancer or as a typical painkiller. Though it has potentially been used as traditional medicine, there are many reported cases over the recent years over its abuse especially among the youth due to its characteristic which said to be similar to other illegal and addictive substance like drug. There have been many studies conducted on the effects over the abuse of Ketum ranging from classical addiction up to chronic symptoms. Drinking Ketum water obtained by boiling the Ketum leaves in water is said to adversely affect the nervous system and make the abuser addicted to the drink. Due to this study revelation, many people in the country especially parent started to feel worried over the wide spread used of Katum particularly among children. Based on the mentioned negative effects over the abuse used of Ketum also there have been a proposal to consider Ketum as a drug and been regulated under Dangerous Drugs Act 1952 [Act 234], Malaysia toughest law dealing with drug abuse cases. It is the objectives of the paper to examine further the issue of Ketum, effects and causes over its abuse, its legal status and finding concrete solution to the ongoing issue. This paper will adopt pure library research as its methodology. Various sources of references both in the form of primary or secondary legal sources will be adopted in this paper. At the end of the research, this paper will able to produce several solutions in form of suggestion or proposal in dealing with the ongoing issue concerning Ketum abuse in the country.*

Keywords: Ketum, Abuse, Solutions, Coffee, Medicine.

INTRODUCTION

Ketum or its scientific name *Mitragyna Speciosa* (*Mitragyna Speciosa*. Germplasm Resources Information Network (GRIN), 2019) has become a very hot issue in Malaysia in recent years. Though this unique tree has

existed in the country and in the countries within South East Asia (SEA) region for many centuries and perhaps thousands of years (Rech, MA; Donahey, E; Cappiello Dziedzic, JM; Oh, L; Greenhalgh, E, 2015) yet the debate concerning this particular tree has

become the main topic of discussion not only in Malaysia but in surrounding countries within the region.

The main reason why this tree received huge spot light in the countries and in surrounding countries within the region is due to the fact that the trees are hugely existed within these countries and they have been used as part of traditional medicine by local inhabitant (Hassan, Z; Muzaimi, M; Navaratnam, V; et.al, 2013).

However, sadly in recent years it has been subjected to abuses. Some even regard the tree similar to drug due to the side effects it can bring to the abuser. Since some people consider the tree to be similar with drug, the debate over the existence and use of such tree has been put into question by many.

MALAYSIA AGAINST DRUG ABUSE

Malaysian Government has always against drug abuse. It has been the long term goal of the country Government to create a country where there is no drug abuse. Such long term goal is widely known as “Drug Free Malaysia” (NADA, 2019).

The main reason why the Malaysian government against the drug abuse in the country is due to the fact the negative impact it can bring to its people and the country as a whole. The issue concerning drug abuse had escalated in the country since the 1970s. Such escalation not only effect the life of adult, but also has effected the life of the country youth even young children (Farhana Syed Nokman, 2016).

Such escalation over the abuse of drug had prompted Malaysia to declare drugs abuse as the “Nation’s Number 1 Enemy” to this day (NADA, 2019, Afzan Ayub, 2011, Sarina Mohamed, 2012 and Mohamed Ibrahim, Razak Lajis, and Mohd Isa Abdul Majid, 2004).

Since Malaysia has declared drug abuse as the country number one enemy, steps must be taken to ensure the Malaysian society are protected from being exposed to any illegal substance or any substance which might bring potential harm to them like Ketum.

This is why there is a huge concern over the use of Ketum tree in the country. Such concern is not only being felt in the country but by many societies in many countries across the world.

It would be very difficult to go deeper into this research without having a deep understanding over the nature of the tree, its cultivating areas, and its potential use. It is very important for us to know the background about the Ketum tree. According to a study conducted by the European Monitoring Centre for Drugs and Drugs Addiction (EMCDDA), Ketum or widely known in the scientific world as *Mitragyna Speciose* is a 4 to 16 metre high tropical tree.

The tree has been identified to be indigenous to the South East Asia (SEA) region particularly in Thailand, Malaysia, Philippines and New Guinea. Due to the advancement in agriculture technology, the tree had also been cultivated elsewhere beyond the South East Asia (SEA) region which has similar climate suitable for its growth and cultivation. In Thailand, the tree and leaf – preparations from it are called “Kratom”.

Traditionally, fresh or dried Kratom leaves are chewed or made into tea. They are seldom smoked. At a low dose, Kratom has stimulant effects and is used to combat fatigue during long working hours. At high dosages, however, it can have sedative – narcotic effects.

It is also used in traditional medicine and as an opium substitute. The phytochemicals isolated from various parts of the tree include over 40 structurally related alkaloids as well as several flavonoids, terpenoid saponins, polyphenols, and various glycosides. The main psychoactive components in the leaves are *mitragynine* and 7 – *hydroxymitragynine*, both found only in *mitragyna speciosa*. (European Monitoring Centre for Drugs and Drugs Addiction (EMCDDA), 2019).

It would be very challenging process to regard Ketum as part and parcel of drug due to its present legal status. Various countries have their own legal approach over the status of Ketum.

As of January 2018, neither the tree nor its alkaloids were listed in any of the Schedules of the United Nations Drug Conventions like the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (Kratom (*Mitragyna Speciosa*) Drug Profile, 2019). Due to the lack of international consensus over the status of Ketum, many countries in the world do not regard Ketum as a drug.

Normally, it's just being regarded as a tree which subject to certain control for its sale and used by the people. As such, we cannot regard Ketum as similar to other commonly used illegal drugs like marijuana, heroin, cocaine, amphetamines and methamphetamines and club drugs without approval given by the country government.

Though Ketum is not widely consider as a drug in most countries including Malaysia, it is interesting to note Ketum has been considered as one of illegal substances which being used by drug abuser in the country. According to the statistic provided by the National Anti - Drug Agency (NADA), Ketum has been considered as one among many types of drug which subjected to abuse in the country (NADA, 2019).

EFFECT AND CAUSE OF KETUM ABUSE

Though Ketum tree might be subjected to abuse, however it has been accepted by many community that Ketum tree has its own potential value which if being used properly can bring benefits to the people especially in the area of medicine and pharmaceutical According to the Malaysian Ministry of Health (MOH).

For many years Ketum tree, particularly its leaves have been used traditionally for general health and for energy boost to do heavy jobs. Besides that, Ketum leaves have also been used as a traditional medicine to treat diseases such as back pain, fever, cough and worms as well as other diseases such as

diabetes and high blood pressure (MyHealth, Ministry of Health, 2014).

Sadly, such potential for medicine tree has been subjected to abuse by irresponsible people in the country particularly by the drug addict or abuser.

According to the Malaysian Ministry of Health (MOH), drug addicts have abused Ketum tree, especially its leaves because Ketum leaves contain psychoactive ingredients that believe to give the effects of stimulating, sedative and euphoric feeling to the abuser similar like drug (MyHealth, Ministry of Health, 2014).

If the substance being taken for every long period of time, it can also lead to addiction similar like drug addiction. For the abuser, the Ketum leaves are boiled to produce a Ketum drink which is usually packed in small packets for sale among the drug abusers. What is becoming worrying trend now in the country such substance also has reached the hand of the youth and young children.

It is very important for us to note that, the main active ingredient in Ketum leaves is mitragynine which is a psychoactive alkaloid. Mitragynine is controlled under the Poisons (Psychotropic Substances) Regulations 1989 under the Poisons Act 1952 [Act 366].

According to Section 30 (3) of the Poisons Act 1952 [Act 366], "Notwithstanding any other provisions in this Act, no person shall import, export, manufacture, compound, mix, dispense, sell, supply, administer, possess or use any psychotropic substance otherwise than in accordance with any regulations applicable thereto made under this Act".

Section 30 (4) of the Poisons Act 1952 [Act 366] further stipulates "In any prosecution for an offence under this section, any person who is found to have in his custody or under his control any psychotropic substance shall be deemed to have been in possession of the substance and to have known the nature of the substance, until he proves to the contrary".

Those who is found guilty for committing the offense stated under above section shall be subjected to a fine, imprisonment or both. This has been clearly provided under Section 30 (5) of the Poisons Act 1952 [Act 366] which states “Any person who contravenes subsection (3) or any regulations made under this Act relating to psychotropic substances shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding four years or both”.

Besides mitragynine, there are also 24 other chemical ingredients inside Ketum leaves which includes ajmaline, corynanthedine, mitaphylline, paynanthesine, speciophylin and speciogynine.

According to the Third Schedule of the Poisons Act 1952 [Act 366], psychotropic substances which being covered under the Section 30 of the Poisons Act 1952 [Act 366] includes as follows: *Barbituric acid* and other substances structurally derived therefrom; their compounds, *Benzphetamine*, *Brotizolam*, *Buprenorphine*, *Cathine*, *Clobazam*, *Clotiazepam*, *Diazepam* and other substances structurally derivated from 1, 4- *benzodiazepine* except *flumazenil*, *flunitrazepam*, *nimetazepam* and *pirenzepine*, *Ethchlorvynol*, *Ethilamphetamine*, *Fencamfamin*, *Fenetylline*, *Fenproporex*, *Glutethimide*, *Lefetamine*, *Mazindol*, *Mecloqualone*, *Mefenorex*, *Meprobamate*, *Mesocarb*, *Methaqualone*, *Methylphenidate*, *Methyprylone*, *Mitragynine*, *Pemoline*, *Pentazocine*, *Phencyclidine*, *Phendimetrazine*, *Phenmetrazine*, *Phentermine*, *Pipradrol*, *Propylhexedrine*, *Pyrovalerone*, *Zipeprol*, *Zolazepam*, *Zolpidem*, and *Zopiclone*.

Form this given schedule under the Poisons Act 1952 [Act 366] it is clear to us that mitragynine which is one of the ingredients which can be found inside the Ketum leaves been covered under the given schedule and to be regarded psychotropic substances. Such psychotropic substances are subjected to

control under the Poisons Act 1952 [Act 366].

According to the Malaysian Ministry of Health (MOH) the effects of mitragynine excessive intake would create or generate the feeling unreal (euphoria), feeling dizzy, drowsiness, and in worst case scenario lead to vomiting. Adverse effects of taking Ketum continuously would lead to addiction (similar like drug abuse) (Marx, John; Walls, Ron; Hockberger, Robert, 2014), the lips and skin become dark that looks like bruises and burns, especially on the cheeks, the skin becomes dry, constipation (Constipation refers to bowel movements that are infrequent or hard to pass), and insomnia (Sleeping disorder) (MyHealth, Ministry of Health, 2014).

Due the severe effects it can bring to the abuser, the Malaysia government along with the enforcement agencies like the Malaysia Royal Police take the issue over the abuse of Ketum tree seriously.

Stern legal action has been taken many times for the last many years against those who violated the laws and abusing Ketum tree. News over the enforcement taken against those abuses Ketum leaves has make headlines in the country for many years.

On June, 2019, Malaysians have been exposed with the story of one Ketum abuser who was only 17 years old who have been caught by the police, put to trial and eventually be send to prison for the crime involving among other abusing Ketum tree. It was reported by a local media that such person to score a very good marks in the country Sijil Pelajaran Malaysia (SPM) examination.

According to the news report, he landed behind bars for Ketum addiction after picking up the habit from his friends following the examination in 2017. Interviewed by Bernama reporter at the Marang Prison, Terengganu he expressed regret over his actions as he was an exemplary student at a secondary school in Kota Bahru, Kelantan. He was put into prison for a year after he pleaded guilty to possessing 1kg of Ketum leaves in 2018 and has to

undergone the sentence until August 2019.

During the interviewed session with the reporter, he expressed his regret over his action and only wanted to blame himself for all the things he had done which put him into prison. This exposure really touched the heart and mind of many Malaysian people. The effect over Ketum abuse should have not been regarded lightly or worst be ignored as it could reaches into the hand of the youth and young children (Free Malaysia Today, 2019).

In November 2016, a father and a son were arrested by the police for the crime of running Ketum juice business. According to the reported news, the 56 years old lorry driver and his 21 years old son were arrested for selling Ketum juice and being in possession of 100 packets of the beverage, worth RM300 (Around USD90), at Kampung Gertak Seratus, Kuala Besut, Terengganu.

During the raid, the police also arrested a 26 years old customer who was purchasing the juice from both suspects. Further investigation by the police into the suspect's house further found 25 packs of Ketum juice kept in the fridge, while another 75 packs were hidden in a container outside the house.

According to the police, both suspects were processing the juice in bushes located several metres away from their house when the raid began. The initial investigations revealed that the suspects had purchased the Ketum leaves from their counterparts in the area of Pasir Mas, Kelantan, for RM13 (Around USD3) per kilogramme (Zarina Abdullah, 2016).

In October 2016, nine policemen were arrested for gambling and drinking "Ketum Juice" at a stall in Bandar Sunway, Selangor. According to the news report, the nine men – a constable and eight lance corporals aged between 26 and 25 years old, were playing "Blackjack" when a team of policemen from the Integrity and Standard Compliance Department (JIPS) of Bukit Aman, Kuala Lumpur moved in.

One of the policemen fled on foot but was nabbed later when he returned for his motorcycle. Also arrested were the operator of the stall and an assistant after police found Ketum leaves at the premises. All the suspects have since been released on bail pending conclusion of the probe and the cops, who are from various district police stations, have reportedly been suspended from duty.

It is believed the men were under surveillance for several months following a public complain (Free Malaysia Today, 2016 and Mohd Hasbi Sidek, 2016). All three reported cases above clearly highlight the negative impact over the abuse of Ketum tree on Malaysian society. The negative impact over the abuse of Ketum tree not only touches the life of the adult, but has now effected the life of the youth and young children in the country.

Some people even making business by abusing Ketum tree and make a lot of profit by selling the item to the public in the country without having care on the implication over their action to themselves and to other people.

Though the law is clear in the country on the sell and use of Ketum tree, there are still people who still break the rule and continue abusing Ketum tree for their own pleasure and advantage. There are several reasons why Ketum tree still subject to abuse. Among the reasons include lack of awareness over the existing law itself on Ketum.

This happens because the public still confuse over the legal status of Ketum. Unlike other illegal substance of drugs which is commonly been highlighted by the authority and with the existence of specific statute to regulate it like the Dangerous Drug Act 1952 [Act 234].

It is easy for the public to identify such illegal substance as a drug thus it will be legally wrong for them to use it. This is different for Ketum where a highly advance and scientific wording of "Psychotropic Substances" being used under the Poisons Act 1952 [Act 366] in order to regulate the use of Ketum in the country. Due to this, it makes some

people confuse whether or not such wording cover Ketum.

A total lack of proper understanding over the effects of Ketum abuse will give rise to the problem in the country. There are still people who are not aware the serious effects over the long use or reliance on Ketum leaves especially on their health. Due to this lack of proper understanding, people still believe Ketum tree similar like other trees which can be used for medical purposes and safe to be consumed. There is also weakness on the part of the existing legislation itself namely the Poisons Act 1952 [Act 366].

As stated earlier, Section 30 (3) of the Poisons Act 1952 [Act 366], only covered the area on import, export, manufacture, compound, mix, dispense, sell, supply, administer, possess or use any psychotropic substance. However, it does not include the area of planting (Blake Chen, 2016).

As a result, some individuals are willing to plant Ketum instead of continuing with padi or rubber cultivation on their land in order to earn a higher income. (Borneo Post, 2015). There is also an issue over the punishment provided by the existing law which regulate the use of Ketum tree in the country namely the Poisons Act 1952 [Act 366].

As mentioned earlier in this paper, any person who is found guilty for offence provided under Poisons Act 1952 [Act 366], a fine not exceeding RM10,000 or 4 years imprisonment or both penalty will be imposed. The amount of penalty which been provided under this particular section is very small. This by taking into account the amount of money or the profit the culprit able to generate from the Ketum selling business.

LEGAL STATUS OVER KETUM

As mentioned earlier in this paper, neither the Ketum tree nor its alkaloids were listed in any of the Schedules of the United Nations Drug Conventions namely the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, the Convention on Psychotropic

Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (Kratom (*Mitragyna speciosa*) drug profile, 2019).

Due to this reason, countries all over the world have different approach in dealing with Ketum. In 2013, Ketum was listed by the Association of Southeast Asian Nations (ASEAN) in its annex of products that cannot be included in traditional medicines and health supplements that to be trade among the ASEAN countries (Annex I: ASEAN Guiding Principles For Inclusion into or Exclusion from the Negative List of Substances for Traditional Medicines and Health Supplements, 2014).

At the very beginning, possession of Ketum leaves is illegal in Thailand. The Thai government passed the Kratom Act 2486, effective August 3, 1943, which made planting the tree illegal. However, in recent years, there was a change of attitude over the use of Ketum leave in Thailand. In 2018 the Thailand government legalized the production, import, export, possession and use of Ketum products for medicinal purposes.

Thailand is the first country to take such action in South East Asia, a region with some of the world's strictest drug laws. The latest move taken by Thailand on this issue is under consideration by Malaysia. Prior to the latest move taken by Thailand on this issue, New Zealand's government has enacted a law liberalising the medical use of cannabis, which had previously been tightly restricted in their country (Al-Jazeera, 2018).

Beginning January 2015, Ketum was controlled as a narcotic in Australia and under their country Medicines Regulations 1985 (Amended August 6, 2015). In Canada, as of October 2016, it was not legal to market Ketum for any use in which it was ingested, but could be marketed for other uses, such as incense. The health authority in Canada has taken action against companies marketing it for ingestion (Coles, Terri, 14 October 2016).

Starting 2011, Ketum was controlled in Denmark, Latvia, Lithuania,

Poland, Romania and Sweden (Kratom (*Mitragyna speciosa*) drug profile, 2019). Since 2016, in the United Kingdom, the sale, import, and export of Ketum have been prohibited under their Psychoactive Substances Act 2016. In 2017, Ketum was designated a Schedule 1 illegal drug (the highest level) in Ireland, under the names 7-hydroxymitragynine and mitragynine. (Misuse of drugs (Designation) Order 2017).

As for United States of America (USA), in general, the use and possession of Ketum are legal in the United States of America. However, it is important to note that the federal law in their country is generalized, while each of their own state has its legal system. This means that even though the national government places no regulations or bans on the use and possession of Ketum, the same does not apply to all the states.

The United States of America Food and Drug Administration (FDA) issued a health warning on Ketum claiming it had “potential deadly risks”. Presently, it is only in the following states in USA where Ketum is illegal to use, purchase or possess. Those states includes Alabama, Arkansas, Wisconsin, Tennessee, Vermont, and Indiana. Interesting to note, the United States of America Armed Forces has been prohibited from using Ketum in any form or for whatever reason (EndoNurse, 2019).

FINDING SOLUTIONS

The issue concerning Ketum abuse in the country cannot be treated lightly due to the serious and negative implication it brings to our society especially towards our youth and young children. This issue must be dealt immediately by all relevant agencies and authorities in the country. All relevant ministries must work together so that our society will not becoming a victim to this substance.

The Malaysian Ministry of Education (MOE) along with school administrations must include Ketum topic in any of their existing educational syllabus so that pupils in school are able to know about such substance closely

and at early stage. Early exposure over the issue is vital in order for the youth and young children to get a clear picture over Ketum, its potential use as well as its abuses.

The Malaysian Ministry of Health (MOH) must work together with relevant the agencies like the Malaysia Royal Police, National Anti – Drug Agency (NADA), Malaysian Drug Prevention Association (PEMADAM) to constantly create an awareness among the Malaysian public about Ketum abuse issue.

The focus on creating such awareness should include areas on types of abuses which can be done towards Ketum, the effects over Ketum abuse and the existing law to deal with Ketum abuses in the country. This can be carried out through any media, conferences, public forum, discussion, and others.

Having a proper education and creating an awareness over the issue would not be completed without having a good law in the place. Our country needs to consider creating a specific law or a stand – alone legislation to deal with Ketum along with all the abuses under it.

Having a comprehensive law on such issue will make matter clearer to the public and ease the enforcement authorities to carry out their enforcement duties on such issue. Before creating such legislation, all relevant parties must be consulted including experts on Ketum, individual who has used such items as part of traditional medication, academic as well all enforcement agencies.

Due to benefits it can bring to the world of medication, a total ban on such item is not the best solution. A deep study needs to be carried out about the potential use of Ketum. The time has also come for the international community to have a uniform attitude towards such matter.

The relevant international agency like the World Health Organization (WHO) must conduct a deep study over the substance and produce a clear guideline for all countries to follow. Being an Islamic country, Malaysian

National Fatwa Council must clearly decide over the status of Ketum so that Muslim in the country will have a clear idea over the use of Ketum.

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