

## PROJEK LEX UPR REPORT | DETAINEE'S CONDITION IN PRISON

### INTRODUCTION

Projek Lex is an initiative and effort brought by the Selangor Law Students Association which aims to provide an intellectual advocacy & edutainment platform that focuses on legal issues in Malaysia in addition to raising awareness of these issues among the community.

Our objectives are :

1. Creating a platform on social media for advocacy purposes regarding the law by students, legal practitioners and consultants.
2. Socialize the law by providing a basic understanding of the law to the community.
3. Strive to improve the literacy of the law by explaining current issues according to the correct understanding of law to the community.
4. Harmonize the understanding of law among the public according to the understanding of Islamic law and Shariah.
5. To produce more legal practitioners who are competent and have a clear understanding of the law that meets with syara' without any compromise.
6. Strive to elevate Shariah as the leading legal system in Malaysia.

Since its inception in 2022, Projek Lex has initiated few efforts to raise awareness regarding human rights including the Uyghur issue and death in detention.

## 1.0 ACCESS TO MEDICAL TREATMENT

### Statement of problem

Including its multiple institutions, Conventions, Treaties, and Resolutions, the United Nations has established guidelines governing the rights of detainees. Article 5 of General Assembly Resolution 45/111 declares unequivocally that, with the exception of those restrictions indisputably imposed by the fact of incarceration, all prisoners will enjoy the human rights and fundamental freedoms enumerated in the Universal Declaration of Human Rights. Hence, the Medical and Health Treatment of Detainees should not differ from that of other members of society.<sup>1</sup>

According to the World Health Organization (WHO), everyone has the fundamental right to the best possible level of health, regardless of their race, religion, political beliefs, economic status, or social standing. This means that every person, without exception, has a fundamental right to the enjoyment of the maximum level of bodily and mental health possible<sup>2</sup> which in line with article 8(1) of the Federal Constitution mentioned that every individual is entitled to equal protection before the law as everyone is equal in the eyes of law.

However, this is not the case for detainees or prisoners. Their medical requirements are frequently ignored which lead them to bear a disproportionately heavy burden of health issues. Since prison health care in Malaysia is alleged to fall below acceptable minimum levels, the idea of the "right to health," independent of a person's legal status, shall thus serve as the guiding principle in creating suitable standards of health care for all, including detainees. This can be proven by the statewide survey conducted by the Human Rights Commission of Malaysia (Suhakam), which involved 6,400 randomly selected participants from 18 prisons in Malaysia (5,482 detainees, 886 personnels, and 52 prison medical staff).<sup>3</sup> There are few main problems highlighted in the report such as lack of well trained medical staff, dual loyalty and inadequate sick bays.

Section 14 of the Prison Act specifies that each prison must have a medical officer and a dental officer, despite the fact that Malaysian prisons attempted to improve the delivery of healthcare by selecting "panel doctors." Nonetheless, the number of doctors assigned to prison was grossly disproportionate to the number of detainees and prisoners. For instance, there were only two doctors accessible in a prison with 4,612 inmates who needed medical attention. A paucity of female medical professionals to handle female detainees is another cause for concern. Based on Prison Department Statistics in 2018, the ratio

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<sup>1</sup> Ritom M. H. (2003). Medical care for people under detention. *The Medical journal of Malaysia*, 58 Suppl A, 72–77.

<sup>2</sup> Admin. (n.d.). *Torture, ill treatment, death in custody*. SUHAKAM. Retrieved March 25, 2023, from <https://suhakam.org.my/portfolio/treatment-of-detainees/>

<sup>3</sup> FMT Reporters. (17AD, May 30). Prisoners' access to healthcare and quality of care is bad, says Suhakam. *Free Malaysia Today*. Retrieved March 25, 2023, from <https://www.freemalaysiatoday.com/category/nation/2017/05/30/prisoners-access-to-healthcare-and-quality-of-care-is-bad-says-suhakam/>.

of doctors to detainees is 1:1000. Comparatively, the ratio of the country's population to doctors is 1:454. The insufficient number of doctors is unable to offer adequate medical care for the vast number of detainees, which could result in substandard medical care.

Further complicating matters is the fact that prison healthcare providers may be in a position of conflict of interest. This was reflected in a report by Suhakam in 2017 asserting that doctors owe more to the Prison Department than to the detainees under their care which was the doctors' original utmost important obligations.

Furthermore, Suhakam revealed that sick bays, one of the most crucial amenities in the healthcare industry to ensure the efficiency of the treatment, are lacking from Malaysia's prisons. It was made clear that prisoners or detainees who need hospitalization will be admitted to the prison sick bay at the prison doctor's request, but there aren't enough sick bays to accommodate everyone. Although a sick bay is present in the majority of prisons, some don't. As a result, sick prisoners and sick detainees continued to stay in their cells and could have infected other persons.

The situation deteriorated during Covid 19, as the aforementioned issues were not resolved during post-covid. The spread of Covid-19 has hastened these downward health trends. There was a 40 percent increase in prison and detention clusters in Sarawak, which was confirmed on April 4, 2021 by the Sarawak State Disaster Management Committee.<sup>4</sup> It should not come as a surprise given the inadequate health care facilities supplied.

## **Recommendations**

1. Ensure decent detention conditions including provision of access to medical facilities under Rule 10 of the Lock-up Rules 1953, as well as legal and judicial remedies in compliance with the international standards, in follow-up to recommendations in paragraph 115.114 of the Third Cycle.
2. Assure there should be an adequate number of medical officers assigned to each prison in accordance with the number of detainees and prisoners housed there.
3. Cooperate between ministries involved to ensure that prison conditions in Malaysia are constitutional and consistent with health, safety, and human dignity.
4. Develop a detailed budget for the detainees and prisoner's medical system to ensure that their health problems are treated effectively.

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<sup>4</sup> Raj, S., Kheng, K. S., & Suhaidah, Z. (2021, May 31). Letter | How to reduce Covid-19 in Malaysian prisons. *Malaysia Kini*. Retrieved March 26, 2023, from <https://www.malaysiakini.com/letters/576855>.

## **2.0 ISSUE ON OVERCROWDING IN PRISON**

### **Problem statement**

Prison overcrowding is generally defined with reference to the occupancy rate in relation to the official capacity of a prison, where the number of prisoners or detainees exceeds the official capacity that a prison could hold. It is to be noted that prison overcrowding, though having some correlation with rate of imprisonment, could not be automatically equated with it as there are multiple manipulatives to be taken into consideration, namely lack of adequate prison infrastructures and geographical distribution of prisons. Malaysia, though having only around 0.229% of rate of imprisonment, had some distinct problems with prison overcrowding.

The current total prison population in Malaysia numbered around 76,000 individuals, with an occupancy rate of 113.5%. In fact, throughout the years, data shows that the prison occupancy rate in Malaysia had exceeded the official capacity of a prison. For instance in 2018, the occupancy rate of a prison had plunged to 188%, almost doubling the official prison capacity. By referring to the definition provided above, it is to be said that prison overcrowding is an imminent problem in Malaysia.

The overcrowding issues led to several impacts. The first impact is safety and security of prisoners, detainees and staff, whereby the risk of violence and prisoner disturbance is acute in overcrowded prisons, as well as increasing the risk of vulnerable prisoners and detainees to be abused. Secondly is malnutrition problems, whereby the increased occupancy rate might not be in proportion with the budget allocated to feed the prisoners and detainees. Thirdly is health problems, namely due to the numbers of prisoners and detainees exceeding the capacity of water, sewage and sanitation system of a particular prison could hold, the increase of risk of epidemics and communicable diseases, and inadequate healthcare support in the prison.

This imminent impacts of overcrowding prisons in Malaysia could in seen in an instance occurred on end of 2020, whereby the crux of spikes on numbers of covid-19 infected persons is due to overcrowding of detainees in two prisons in northern region of Malaysia, namely Penjara Alor Setar and Penjara Seberang Perai. This is as the prisons were overcrowded, inmates are kept in close proximity with each other, which renders any means of social distancing to be almost practically impossible.

### **Recommendation**

1. Provide an increment of fiscal allocation, in improving the condition and capacity of prisons in Malaysia.

### 3.0 DEATH IN DETENTION

#### Statement of problem

The issue of death in custody has become more frequent day by day. As of September 2021 alone, there have been 10 deaths in police custody<sup>5</sup>. In fact every year we will hear the news of those who died in custody. Up until July 2022, there have been 19 deaths that have been reported in the custody of authorities<sup>6</sup>. These frequent numbers give the interpretation that there is something wrong in the police detention system because it is possible that a place is often a place where someone's life is lost unless there is a cause there. This does not mean that we are dismissive of all the deaths caused by the hands of the police. But if we listen to the expressions of the deceased's family members, there are things to think about. For example, in April 2021, it was reported by family members that the late Ganapathy was beaten by the police with a rubber pipe before being sent to Selayang Hospital for treatment<sup>7</sup>.

This is a case reported in the media. Cases that may occur and are not reported have not yet been counted. If it is true and authentic that such cases exist, know that it is against the law from all aspects. Article 5 of the Federal Constitution, for example, upholds the right of every human being to live and no party can violate this right unless the punishment and guilt have been decided. The existence of this provision in the highest law of the country concludes that the right to life is a fundamental matter and should be rooted in the understanding of all parties.

At the international level, Articles 3 and 5 of the Declaration of Human Rights also state clearly that no human being should be harmed and his life taken before the sentence is decided. In domestic laws such as the Penal Code, it can be found that killing and injuring other human beings is a clearly stated offense as in Sections 302 and 319 and there is no exception to this act if proven guilty.

In reality, we may hear some people say that beating and so on is a necessity for the police to investigate a case. This is because the people who are detained by the police are those who are suspected of being involved in any criminal offense. So, these people only deserve to be kicked.

Even so, this is not a license for them to be beaten and killed immediately. This land is not a lawless country. As long as the court's decision does not convict a person of guilt, as long as he is entitled to be given due justice even if the accused offense is a serious crime. Because of that, the police are not allowed to beat or injure if the accused refuses to make any statement.

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<sup>5</sup> Astro Awani (6 Okt 2021) 69 kematian dalam lokap PDRM sejak 2016 hingga Sept tahun ini, Retrieved from, <https://www.astroawani.com/berita-malaysia/69-kematian-dalam-lokap-pdrm-sejak-2016-hingga-sept-tahun-ini-hamzah-323732>

<sup>6</sup> Bernama (15 Julai 2022) 19 mati dalam tahanan sejak Januari 2022, Retrieved from, <https://www.bernama.com/bm/am/news.php?id=2100594>

<sup>7</sup> MalaysiaKini (30 April 2021) Peguam: Bedah siasat tunjuk Ganapathy mati akibat cedera teruk di kaki, bahu, Retrieved from <https://www.malaysiakini.com/news/572759>

Despite that, in terms of the provisions of the law in Malaysia, the fact is that it is quite complete in safeguarding the basic rights of every prisoner. For example, if an individual is arrested by the police, Article 5(3) of the Federal Constitution says that the reason for the arrest of the individual must be explained to the individual involved. The individual also has the right to call his lawyer for defence. In fact, an individual cannot be detained for more than 24 hours unless the Magistrate allows the person to continue to be detained after 24 hours. During those 24 hours, the police cannot force, beat or compel an individual to give any statement if the individual does not want to cooperate.

We can also see the cases brought by the families of dead detainees where most of the time, the court will ask the government and the police officers involved in the death of the detainees, to pay a large amount of money to the victims. For example, in the case of *Janagi a/p Nadarajah & Anor v Sjn Razali bin Budin & Ors* [2021] MLJU 2023, the High Court ordered the government and the police to pay damages amounting to RM 281,300 to the family of Benedict Thanilas who died at Jinjang Central Lockup due to factors negligence and dereliction of duty by the police that led to Benedict's death.

Even in the case of *Corporal Zainal bin Mohd Ali & Ors v Selvi a/p Narayan) & Anor* [2021] MLJU 377 which involved the death of the late P. Chandran due to not being provided with proper medical needs while in custody, the Federal Court stated that even though the Law Civil 196 prohibits compensation claims against the government, but the heirs of the deceased are entitled to receive such compensation for violating the deceased's right to life as provided under Article 5 (1) of the Federal Constitution. So, from all these cases, it shows that the legal system in this country can be said to be good in ensuring that these prisoners get the rights they deserve.

The problem occurs when it comes to the implementation of the system. Hence, we recommended these suggestions to be executed by the government.

### **Recommendations**

1. Set up a complete and transparent information system, indicating the time and place of detention, as well as names and officers involved in every stage of investigation involving the detainee or prisoner.
2. Initiate the disciplinary proceeding against the officers who violate the standard of procedure in interrogating the detainees.