

## **CHAPTER 2**

### **LITERATURE REVIEW**

This chapter consists of introduction of Padang Terap communities, Kratom as sources of income, regulations against the possession and use of Kratom, reality versus law enforcement, illegalization of Kratom under Dangerous Drug Act 1952, and theories and models pertinent to the study.

#### **2.1 PADANG TERAP COMMUNITIES**

Padang Terap is a district and parliamentary constituency located in Kedah, Malaysia. Padang Terap District is the third largest district in the State of Kedah, covering an area of 1357.0 square km. The location is on the border with Thailand in the north; on the west side, it borders the districts of Sik and Pendang. The total population in Padang Terap District is 70,800 people, of which 36,100 are men and 34,700 are women.

The development of the Padang Terap District is influenced by the economic relationship with the neighboring state of Perlis, which functions as the National Regional Centre for the states in the North of Peninsular Malaysia. The main economic activities are rubber tapping and farming, and the main crop grown is paddy. However, the district's farmers do not plant paddy on a large scale and are highly dependent on the river and rainwater for irrigation.

According to data from the Department of Statistics 2019, the agricultural sector in Kedah only contributes 5.5% to GDP (Gross Domestic Product) compared to states that recorded high growth, such as Sabah 13.9%, Johor 16.3%, and Sarawak 16.5%.

In 2019, the Government set the household income rate for Malaysians to be RM 5,873.00 for the Median category and RM 7,901.00 for the Mean category. For Kedah residents, the set household income rate is RM 4,325.00 for the Median category and RM 5,522.00 for the Mean category. This shows a significant gap in the household income of Malaysians compared to residents in Kedah. The Household income rate for the residents of Padang Terap for the Median category is RM 3,722.00, and for the Mean, a category is RM 4,781.00. The household income rate of residents in Padang Terap for the Median and Mean categories is still below the rate for the entire population of Kedah.

## **2.2 KRATOM AS SOURCES OF INCOME.**

Thailand has criminalized and removed Kratom from the list of dangerous drugs, thus allowing it to be used openly in the country. Indirectly, Kratom has a high export demand, with the market price in Thailand reaching up to RM150 per kilogram (*Daily Sinar*, 2022). The chief minister of Kedah, Datuk Seri Muhammad Sanusi Md Nor, said the permission to grow Kratom would benefit many parties, especially the government through tax collection and entrepreneurs who can earn an average income of RM 1,000.00 per month because of exporting Kratom leaves (*Astro Awani*, 2022).

The leading economy of the people of Kedah, oriented towards paddy and rubber agriculture, coupled with the change in the uncertain economic climate, has affected many parties, especially those living in rural areas. This situation becomes more urgent when rubber prices decrease to a deficient level. The unpredictable weather changes have also affected the income of rice farmers affected by the sudden drop in the price of the commodity.

According to a statement from the Ministry of Plantation Industries and Communities, Datuk Hajah Zuraida Kamaruddin, the price of rubber dropped from RM2.50 to RM2.80 per kilogram compared to RM3.00 per kilogram previously due to factors such as the increase in the cost of raw materials, the increase in the world's natural rubber stock surplus and the deterioration of prospects crude oil price (*Berita RTM*, 2022).

According to a study (Hussin & Wahab Mat, 2013) on the Socio-Economic topic Level of Paddy Farmers under The Management of MADA: A Case Study in The Pendang District, Kedah, the results show that about 54 per cent of farmers get net income more than RM1,000 per month. Many paddy farmers work on rented fields or lease from other owners.

As a result of the economic pressure, small rubber and paddy farmers choose to sell Kratom leaves as their side income (Sukor, et al., 2017). This financial situation has forced the people of Padang Terap, who depend on the agricultural sector, to seek alternatives to get additional income by selling Kratom to overcome financial problems and poverty. According to the statistics released by the Narcotics Criminal Investigation Department, Kedah (NCID), it was found that the total amount of Kratom leaves confiscated in the Padang Terap district in 2019 amounted to 18,958.08 kilograms and increased by 28,319.00 kilograms in 2020.

Non-farm income is one of the factors that can increase income and further reduce poverty. Studies have shown that non-agricultural income is increasingly vital in increasing income among farmers. Many studies on the role of non-farm income activities in rural areas conclude that non-farm activities are particularly beneficial for increasing household income. Most studies have proven the need for non-farm income to increase earnings and reduce poverty.

This statement has been supported by a study made by (Mat et al., 2012) which examines how non-farm income contributed towards poverty reduction among agricultural households in Kedah. The results of a survey of 384 household agriculture in Kedah found, non-farm income sources contributed significantly towards poverty reduction and increased income inequality.

It is supported by (Nathan & Mohd Rosli, 2016), who studied the effects of non-farm incomes on the income distribution of farm households in rural areas of the paddy farmer in Malaysia. The study's results found that 71% of 356 households in the sample had at least one source of non-farm income and contributed about 33% to total household income.

According to research (Damena & Habte, 2017), the relationship between household livelihood and non-farm employment and income was examined using survey data collected from 170 strategically chosen households from four villages in the Moyale district of the Oromia Regional state, Southern Ethiopia. According to the study, having a non-farm employment increases a farmer's ability to pay for their essential requirements, such as food, education, housing, and health care. According to the study's findings, nonfarm income significantly affects how households can support themselves and how their level of living increases.

A study (Harry, 2021) examines the connections between economic circumstances, crime, and women. The study used data from 47 "elite" interviews and legal and media database searches (resulting in information on 146 cases). Many women who have received death sentences in Malaysia were employed in precarious jobs. Drug trafficking was a way for them

to make "quick money to address economic insecurity that has led to participation in the drug trade (knowingly or unknowingly),"

## 2.3 REGULATIONS AGAINST THE POSSESSION AND USE OF KRATOM IN GLOBAL SETTING

According to the United Nations Office on Drugs and Crime (UNODC), Kratom is the most sold plant-based Novel Psychoactive Substance (NPS) (UNODC 2018). Between 2009 and 2017, 31 nations have so far reported having Kratom-related goods on the market (UNODC 2018). These are frequently marketed as risk-free "herbal treatments" for a variety of illnesses, including the treatment of opiate withdrawals, chronic pain, or the promotion of weight reduction. Over 500 tons of Kratom were seized by international authorities in 2016, triple the quantity from the previous year, indicating an enormous rise in its popularity outside of its initial geographical limitations (UNODC 2018). The United Nations Office on Drugs and Crime (UNODC) has asked all UN members to track and monitor Kratom trends within their own borders even though the UN has not designated Kratom to be a restricted drug or psychotropic substance under international conventions (UNODC, 2018). There are essentially three legal classifications for Kratom in the world.

- 1) **Completely Legal:** Kratom is legal to buy, sell, and use in the Netherlands (Bergencico & Macclurg, 2016). Use and possession of Kratom are legal in Germany. However, advertising it as a medicine or cosmetic is not permitted.
- 2) **Partially Legal:** In the United States of America, Kratom was previously listed as a "drug and chemical of concern" by the US Drug Enforcement Administration (DEA, 2017, 2020), and the US Food and Drug Administration (FDA) also includes it on its list of drugs that have not yet been approved for medical use (Shah et al., 2021)

- 3) **Illegal:** In Singapore, Kratom use, possession and sale are strictly prohibited. In Thailand, Kratom is classified as a Category 5 narcotic under the Narcotic Drugs Act 1979 (NDA, 1979). Kratom is illegal in Malaysia due to Section 30 (3) of the Poisons Act of 1952. (Veltri & Grundmann, 2019).

In the United States, Kratom remains legal, except in Alabama, Florida, Indiana, Arkansas, Wisconsin, and Tennessee have passed legislation banning the local sale and possession of Kratom. (Shah et al., 2021). According to studies by Shah et al (2021), The US Drug Enforcement Administration (DEA) originally planned to restrict access to the active alkaloids of Kratom, by adding them to Schedule I of the Controlled Substances Act in August 2016, however the proposal was later dropped. Kratom is currently recognized by the DEA as a drug and chemical of concern. Kratom was not given the go-ahead for medical usage by The US Food and Drug Administration (FDA), and it was added to the list of unapproved medications (Shah et al., 2021).

In Indonesia, Badan Pengawas Obat dan Makanan (POM), has issued an order prohibiting the use of Kratom in traditional treatments and health supplements in 2016 (Riyanti Maharani et al. n.d). Meanwhile the agency of Badan Narkotika Nasional (BNN) stated that the proposal to place Kratom under Schedule 1 is still in process and still categorized as New Psychoactive Substance (NPS). (CNN Indonesia, 2022).

In Thailand, Kratom has been decriminalized and considered partial legalization by allowing its use for medical and research purposes and personal and traditional purposes in line with cultural rights. If a Kratom plant is found growing on private property in Thailand, the landowner is in possession of the drug under the Thailand National Drug Act 1979 (NDA). In



accordance with the Thailand Forest Act of 1975 (FA), the destruction of Kratom requires special authorization (Charoenratana et al., 2021).

In Singapore, according to the Singapore Misuse of drugs Act 1973 (MDA), Kratom contains 'Mitragynine' and '7-Hydroxymitragynine', which are both Class A controlled drugs under the Misuse of Drugs Act. Conviction for importing these Class A banned substances into Singapore entails a mandatory minimum of 5 years in jail and 5 strokes of the cane (MDA, 1973). To those found guilty of controlled substance possession or use, the penalties include a fine of \$20,000 and a jail sentence of one year to ten years (MDA, 1973).

The Malaysia Poisons Act of 1952 governs the use of Kratom in Malaysia. The psychotropic substances Mitragynine and 7-Hydroxymitragynine, which are found only in Kratom leaf (Mallow, 2020). Psychotropic substances are to be classified as psychotropic substances and have been listed under the Third Schedule of the Poisons Act of 1952. In fact, according to Section 30 (3) of the Poisons Act 1952, “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 there to made under this Act”.

Section 30 (4) of the Poisons Act 1952, 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 found guilty of the offence described in the preceding section shall be punished by a fine, imprisonment, or both.

This has been clearly provided under Section 30 (5) of the Poisons Act 1952 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”.

Therefore, Kratom offenders in Malaysia are characterized by the Poisons Act (1952), not the Drugs Act, which has not been implemented. The government's interpretation of the Act is still insufficient to stop Kratom abuse. Because of this, the government suggests including Kratom in the Dangerous Drugs Act of 1952.

#### **2.4 REALITY VERSUS LAWS ENFORCEMENT OF KRATOM IN MALAYSIA**

The proliferation of Kratom drink misuse or abuse among the youth in Malaysia is an alarming social problem, especially in the northern states of Peninsular Malaysia. The drink, which is widely taken by older folks for boosting energy and mood altering, has been tried by youth in their social activities. The misuse of mixing Kratom drink with dangerous substances, gained its popularity among youth in the northern states of Malaysia.

A prolonged use of Kratom can cause symptoms of addiction or addiction itself, and nowadays youth are said to be the group most affected by Kratom abuse. Kratom abuse among the youth has caused apprehension among parents, schools, and community leaders, especially in the northern Malaysian states of Kedah and Perlis, where Kratom grows naturally. The abuse issue is critical since the involvement of youth in its usage is rampant. Most youth misuse Kratom by mixing the Kratom drink with all sorts of other substances to obtain a hallucinatory



or opiate-like condition. This scenario is worsening since Kratom is easily accessible and cheap (Kamarudin Ahmad & Zorah, 2012).

Khalid et al. (2021) conducted a cross-sectional study which aimed to explore the practice and perspectives of Kratom use and misuse among adolescents in northwest Malaysia. There were 65 (47.8%) Kratom users, while 70 (51.5%) were Kratom-naïve. Among the Kratom users, peer influence was the most common reason they were first involved with Kratom, 26 (41.3%). In contrast, the reasons for Kratom use quoted were to improve physical stamina, 10 (16.4%), as a painkiller, 9 (14.8%), and to be accepted by peers, 7 (11.5%). The emerging trend of Kratom abuse and misuse, especially among Malaysia's younger generation, is raising concern and warrants social and governmental vigilance. For instance, Aizidawanie et al., (2021) conducted a study to explore the abuse of Kratom among Felda teenagers in Perlis and found that several factors influence Felda teenagers in Kratom abuse such as peer factors, the attitude of wanting to try, health, and wishing to gain physical strength.

The phenomena also reflected by the record from The Narcotic Department of Malaysia. To be precise, official data from the Narcotic Department in Kedah were collected in 2018 until 2020 has shown the record of kratom offenses as shown in Table 2.1. These records are generally broken down into the confiscation of Kratom in the forms of leaves and liquid drinks.

**Table 2.1***Kratom offences in Kedah form 2018 until 2020*

| <b>Kratom offences</b>                | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>Total</b> |
|---------------------------------------|-------------|-------------|-------------|--------------|
| Kratom leaves confiscated (in kg)     | 21,870.97   | 18,958.08   | 28,319.00   | 69,148.05    |
| Kratom drinks confiscated (in liters) | 5,235.21    | 7,328.85    | 4,380.46    | 16,944.52    |
| Arrest made (No of persons)           | 501         | 441         | 614         | 1556         |

*Note: Source from Narcotic Department, IPK Kedah, 2020***Table 2.2:***Kratom offences in Padang Terap form 2018 until 2020*

| <b>Kratom offences</b>                | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>Total</b> |
|---------------------------------------|-------------|-------------|-------------|--------------|
| Kratom leaves confiscated (in kg)     | 16,535.33   | 8,239.40    | 15,026.29   | 39,801.02    |
| Kratom drinks confiscated (in liters) | 3200        | 1500        | 1900        | 6,600        |
| Arrest made (No of persons)           | 42          | 49          | 71          | 162          |

*Note: Source from Narcotic Department, IPK Kedah, 2020*

Statistics from the police department show many exciting facts about Kratom offenses.

Table 2.1 shows a significant increase in the confiscation of Kratom in leaves form for 2020

compared to 2018 in Kedah. However, for Kratom drinks, there was a twisted scenario. Suddenly, in 2020 the number of Kratom drinks confiscated in Kedah dropped to 4,380.46 liters compared to 7,328.85 liters in 2019. Meanwhile, as shown in Table 2.2, in Padang Terap particularly shows a similar pattern on the offenses of kratom. There was the highest amount of confiscation of Kratom in 2018 and then dropped almost 50% in 2019 before increasing in 2020 by 15,026.29 kg. For Kratom drinks, in 2020, the Kratom drinks confiscated amounted to 3200 liters and dropped to 1500 liters in 2019 and jumped to 1900 liters in 2020. The record also showed that the high portion of kratom has been confiscated from Padang Terap. However, not many arrests have been recorded in Padang Terap.

The selling of Kratom leaves and drinks generate illicit economic opportunities for citizens who are economically engaged either as laborers and farmers or unemployed (Samihah et al., 2014). Demand for Kratom has attracted local men, despite the law, to commit Kratom illegal activities (Halim et al., 2020). This situation might be influenced by the monetary reward despite the penalty as stated in the Poison Act.

The Malaysian government had listed Kratom in the Poison Schedule List since the introduction of the Poison Act 1952. In the amendment of Malaysia's Poison Act 1952 in 2003, 'Mitragynine', an alkaloid in Kratom leaves, is listed as poisonous in the First and Third Schedules under the Poison Act, because it contains psychotropic substances. Under Section 30 (3) of the Poison Act 1952.

Even with the legal initiatives to classify Kratom (Mitragynine) as poisonous in the First and Third Schedules (psychotropic substances) of the Poisons Act 1952 of January 2003, the level of Kratom abuse has not diminished. This is because the enforcement of the Poisons

Act 2003 mainly focuses on the possession of Kratom rather than consumption (Narcotic officer, personal communication, 2 October 2017). The purpose of the Poisons Act is not to deter consumption and addiction but to control possession and the carrying of poisonous substances. Although law enforcement through the poison act has been enforced for a long time, the abuse of Kratom is still misused, especially in the northern states of peninsular Malaysia.

## **2.5 ILLEGALIZATION OF KRATOM UNDER DANGEROUS DRUG ACT 1952.**

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 gazette 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).

The government's view of the Act is still not strictly to control the abuse Kratom. Therefore, the government proposes to proclaim to the Kratom in the Dangerous Drugs Act 1952. 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 Ministry of Health. The proposed amendment is to list Kratom and Alkaloid Mitragynine as dangerous drugs. (Parliament, 2015). If the amendment is successfully done, the penalties imposed on offenders of Kratom will be heavier than those of the Poisons Act 1952.



In Malaysia, the government is still against the legalization of Kratom due to the negative impact it can bring on its people and the country. Kratom is found in abundance in northern peninsular Malaysia, especially in Kedah. Singh et al. (2020) conducted a study to compare the perceptions toward Kratom use among Kratom users and non-users in Malaysia. Non-users showed higher unadjusted odds of reporting a perception that Kratom use can cause addiction, withdrawal, illicit drug use problems, impaired social functioning, and health problems. Similarly, non-users also viewed Kratom policies differently from Kratom users, displaying increased odds of reporting the belief that Kratom use, and sales must be regulated with stringent laws and Kratom should be regulated instead under the Dangerous Drugs Act 1952 to overcome Kratom use problems.

In addition, uncertain economic climate change has affected many parties, especially people living in rural areas. As a result, some individuals choose to sell Kratom as a source of side and additional income due to economic factors. As stated above, the government has proposed to illegalize Kratom under the Dangerous Drugs Act 1952, which will indirectly affect Kratom stakeholders to be subject to more severe legal action under this section.

To be precise, the Dangerous Drugs Act of 1952 is an act regarding drug control introduced in Malaysia in 1952. This act is the most significant single piece of the legislative effort to control illegal drug use in Malaysia. Under this Act, Section 39B of the Dangerous Drugs Act of 1952 provides for a mandatory death penalty for drug trafficking. Trafficking is defined by the Dangerous Drugs Act 1952 in the Section 2 of the Act states:

Trafficking includes the doing of any of the following act's manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, and



administering, transporting, carrying, sending, procuring, supplying, or distributing any dangerous drug otherwise than under the authority of this Act or the regulations made under the Act.

. Dangerous Drug Act 1952 in the Section 39B as stated: -

No person shall, on his own 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.

## **2.6 THEORIES AND MODELS TO THE STUDY**

According to Albert Bandura's social learning theory suggests that observation and modelling play a primary role in how and why people learn. Bandura's theory goes beyond the perception of learning being the result of direct experience with the environment. Learning, according to Bandura, can occur simply by observing others' behavior.

He explains in his 1977 book *Social Learning Theory*, "most human behavior is learned observationally through modelling: from observing others one forms an idea of how new behaviors are performed, and on later occasions, this coded information serves as a guide for action."

Padang Terap residents mostly cultivate Kratom crops due to the condition of residents who are mostly involved in the activity. It is in line with the "social learning theory" explained above which relates observation from the surrounding situation has become the primary role for the population to follow any action taken by most of the group.

## **2.7 CONCLUSION**

Although the Poison Act of 1952 has been enforced, many parties still use the sale of Kratom as their source of additional income. Government, in 2015, proposed that Kratom be placed under the dangerous drug act 1952 because the government's view of the Poison Act 1952 is still not strong enough to control the abuse of Kratom. It is supported by the arrest and confiscation data of Kratom in 2018 to 2020, which shows a significant increase, as discussed above, insisting that the uncertain economy is the main factor in locals choosing to sell Kratom. Locals see the opportunity to gain additional profit by looking at the high demand rate from neighboring countries, especially Thailand. The different views on the kratom between locals, government, and the decriminalization of kratom in Thailand has shown there is no mutual understanding between government and locals on the usage of kratom.