



The Overview of Mental Health Issues from the Legal Perspective and its Importance to Community's Well-Being

Mental health has become a global attention with the increasing number of people suffering from mental illness. Mental illness can impinge on anyone regardless of age, sex, social background, race, or religion and belief. In June 2019, statistics from a survey have shown that in Malaysia, 11% of the respondents aged from 18 to 24 years old have stated that they have experienced mental health problems as compared to 2% of those aged from 55 years old and above¹. The most common mental illnesses that we may already have encountered include psychotic disorders namely Schizophrenia and Dissociative Identity Disorder (DID) which is also frequently known as split personality, as well as common mental disorders ("CMD") namely anxiety and depression. It is also worrying where all of these mental illnesses can ultimately lead to suicide.

In Malaysia, after a comprehensive psychological screening, people who are proven suffering from these severe illnesses can be institutionalized at a specialized psychiatric hospital with force even if it is against their own will or the wishes of their families and relatives². This is governed under the Mental Health Act 2001 which came into power under the Mental Health Regulations 2010. Section 11 of the said Act allows police or social welfare officers to apprehend people whom they believe are suffering from mental disorder and pose a threat to other people and the property. However, it is only applicable to those who show the suicidal tendencies and that they can harm themselves or the society. Most people who have been institutionalized are cases with patients that suffer from schizophrenia. On the other hand, it is a reassurance to acknowledge that it is an offence for any care staff to mistreat a mental patient that has been admitted. It is stated under Section 86 where, '*A person who ill-treats or willfully neglects a mentally disordered person who is in his custody or under his care and protection commits an offence*'. If any care staff who is found guilty under the said section can be fined up to RM10,000.00 or 2 years of jail or both.

Nevertheless, until the present day, we still hear about people who are committing suicide due to mental illness issues. It is said that at least five people are committing suicide daily and that is equivalent to around 1,760 preventable deaths in a year but these are conservative estimates and the true suicidal numbers are probably twice as mentioned³. Every day, among those who have suicidal thoughts, not everyone will succeed in fighting it.

¹ Statista Research Department, (June 24, 2019). "*Prevalence of mental health issues in Malaysia as of June 2019, by demography*", retrieved from <https://www.statista.com/statistics/1019587/malaysia-prevalence-of-mental-health-issues-by-demography/>, on 28/3/2020.

² (Adib P., The Athira Y. & Kalbana P.) (January 13, 2019). "*Mental health and awareness: Law allows forced hospitalization*", retrieved from <https://www.nst.com.my/news/nation/2019/01/449985/mental-health-and-awareness-law-allows-forced-hospitalisation>, on 28/3/2020.

³ Wong, N. (September 10, 2019). "*This world suicide day, work together to prevent suicide*", retrieved from <https://www.freemalaysiatoday.com/category/leisure/2019/09/10/this-world-suicide-day-work-together-to-prevent-suicide/>, on 30/3/2020.

There are some who will succumb to the suicide attempt while the rests are ticking like a time bomb, enduring serious thoughts of taking their lives away which definitely needs saving. For that reason we can ask, what is the legal position for attempting suicide in Malaysia? Is it a crime? According to Section 309⁴, it is an offence and is punishable with imprisonment up to one year or with fine or both. This is a heartbreaking fact knowing that attempting suicide is a wrongful act and punishable by law, even though this behavior is highly associated with mental health issue in relation to an unstable state of mind. Hence, they need to be treated, not to be punished.

There are several factors that could trigger mental illness and these need to be highlighted to the general public. Firstly, a stressful work environment. Currently, the issues of mental health are prevalent in the workplace especially when the working environment is highly challenging. Furthermore, mental illness can be built up slowly in a subconscious manner due to prolonged stress from the workplace. Thus, the organization should prioritize mental health issues in the workplace as an integral component of employees' wellbeing. A positive mental health will allow employees to realize their full potential whilst improving their productivity and performance and making meaningful contributions to the communities⁵.

Another factor affecting one's mental health revolves around the younger generation, mainly students who are still residing with dysfunctional families. A survey has shown that the leading reason for teenagers to suffer from mental illness is due to family problems such as not having a harmonious family life. Additionally, teachers also play a crucial role to equip themselves with skills to recognize the symptoms of mental illnesses such as depression and anxiety in their students. However, the teenagers themselves are advised to face their problems fittingly in order to relieve the burden and stress. Ways that can be used include talking to a person they trust, or get a professional help such as a peer counsellor⁶.

It is imperative to curb this mental illness issue especially for the community's wellbeing. According to Tan Sri Lee Lam Thye who is a member of the Mental Health Promotion Advisory Council, he stated that mental disorders are a serious issue and needs to be dealt with at the community level due to the homicide cases that allegedly involved suspects with mental disorders. Like a time bomb, those who are suffering from mental health problems are just waiting to explode and might affect their family and the community⁷. If that happens, what usually comes next is the defense of insanity for the wrong doer. The word "insane" is still used from the legal perspective although the actual term used by Malaysian lawyers is "unsoundness of mind". The legal definition of "insane" is derived from the M'Naughten Rules from a classic case from the UK⁸. Referring to Section 84⁹, "*Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing*

⁴ Penal Code

⁵ Mohd Faizul Hasan, Naffisah Mohd Hassan, Erne Suzila Kassim & Muhammad Iskandar Hamzah. (2018). "*Issues and challenges of mental health in Malaysia*", International Journal of Academic Research in Business and Social Sciences, 8(12), 1685-1696.

⁶ Sharifah Sakinah. (2020). "*Malaysian teens are suffering from mental health problems*", retrieved from <https://www.easyuni.my/en/advice/malaysian-teens-mental-health-2444/>, on 31/3/2020.

⁷ (Adib P., The Athira Y. & Kalbana P.) (January 13, 2019). "*Mental health and awareness: Law allows forced hospitalization*", retrieved from <https://www.nst.com.my/news/nation/2019/01/449985/mental-health-and-awareness-law-allows-forced-hospitalisation>, on 31/3/2020.

⁸ Derek, K. (2018). "*Does a Malaysian with mental illness need to be put in a mental hospital?*", retrieved from <https://asklegal.my/p/mental-health-insanity-psychiatric-hospital-bahagia-tanjung-rambutan>, on 31/3/2020

⁹ Penal Code

what is either wrong or contrary to law.” This essentially means a defense lawyer may argue that his client was insane at the time of committing the crime whereby the client did not understand what they were doing or did not understand that the act was wrong. This however needs to be aided by evidence, facts and medical reports.

Another concern of this mental health issue in the legal field involves the contractual issue. One of the requirements of a valid contract is the capacity to contract. Section 12(1)¹⁰ provides that “*A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.*” In other words, the parties to the contract must be sane at the time of executing the contract. According to English Law, a contract made by a person of unsound mind is not invalid contract but voidable at the option of the party who is of unsound mind. In the case of *Asia Commercial Finance (M) Bhd. v Yap Bee Lee & Ors.*¹¹, the Court stated that a person of sound mind who intended to rescind a contract which he had entered into, on the ground of unsoundness of mind must prove two things that are, he was of unsound mind and the fact of the unsoundness of his mind was made known to the other party at the time of entering into the contract.

In conclusion, curbing the mental illness is a combined responsibility as it can affect anyone regardless of victims’ backgrounds. Everyone must join forces to protect our community from the greater damage as mental health issue can contribute to harmful conflicts towards themselves and the community. Initiatives that can be taken include raising awareness by talking openly yet appropriately on mental health, educating ourselves in acknowledging the early signs of mental illness and lastly showing and spreading love, compassion and care for those who are in distress in the family, workplace and community. By working together, we can all make a difference.

¹⁰ Contract Act 1950

¹¹ [1991] 1 CLJ 271

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