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# PROCEDURE FOR COLLECTION OF URINE SAMPLES FOR DRUG CASES IN MALAYSIA

**[1]Muhamad Helmi Md Said, [2]Anusha Asokakumar,**
**[3]Bong Jia Er,**
**[4]Nurul Arwani Zafirah Biamin,**
**[5]Muhammad Khabir Hariz A Rahim,**
**[6]Nurin Athirah Mohd Alam Shah & [7]Awathif Azman**
Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia

*[1]Corresponding author: mhelmisaid@ukm.edu.my*

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## ABSTRACT

This research focuses on the position of the relevant procedures concerning arrests for drug cases in Malaysia. There are three relevant acts that provide for arrest procedures of drug related cases in Malaysia. They are the Dangerous Drugs Act 1952 [*Act 234*] (DDA 1952), the Criminal Procedure Code (CPC) [*Act 593*] and the Drug Dependants (Treatment and Rehabilitation) Act 1983 [*Act 283*]. However, there are conflicts between the application and interpretation of the relevant provisions under each of these acts. Hence, this article outlined three objectives: (i) to identify various provisions relating to drug cases in Malaysia; (ii) to analyse the position and interpretation of the Malaysian criminal procedure law with regard to arrests on drug

related cases linked to urine samples; and (iii) to suggest improvements that can be made to the law governing arrests relating to drug cases in Malaysia. In order to achieve these objectives, the research used a qualitative approach via pure legal method with statutes and legal cases used as primary sources. The research found that the courts have not been able to come to a conclusion on whether one or two bottles of urine samples is needed for an examination. This research also found that under the 1983 Act, there has been no recent case that discussed the procedures for arrest or the number of urine samples that needs to be collected as most of the recent cases were tried under the DDA 1952. Finally, this research found existing conflicts in determining the manner of arrest relating to drug cases under the DDA 1952. Thus, this research suggests an amendment to the DDA 1952. The issue of how many bottles of urine samples that need to be collected as well as the issue of whether the Ministry of Health (MOH) Guidelines and the Inspector-General Standing Orders (IGSO) have the relevant force of law must be addressed in this amendment. Next, this research also suggests that the 1983 Act be reviewed and updated due to the issues that have arisen.

**Keywords:** Urine test, arrest, drug, criminal procedure code.

## INTRODUCTION: RELEVANT ACTS THAT PROVIDE FOR PROCEDURES OF ARREST FOR DRUG CASES IN MALAYSIA

The article outlines three objectives (i) to identify various provisions relating to drug cases in Malaysia; (ii) to analyse the position and interpretation of the Malaysian law of criminal procedure with regard to arrests on drug related cases linked to urine samples; and (iii) to suggest improvements that can be made to the law governing arrests relating to drug cases in Malaysia. There are three relevant acts that provide for arrest procedures on drug related cases in Malaysia. They are the Dangerous Drugs Act 1952 [*Act 234*] (DDA 1952), the Criminal Procedure Code (CPC) [*Act 593*] and the Drug Dependants (Treatment and Rehabilitation) Act 1983 [*Act 283*] (1983 Act). This introduction will briefly highlight the relevant provisions under these acts and the procedures for arrest laid down in the provisions.

Firstly, the relevant provisions and procedures for arrest in the DDA 1952 (Malay: Akta Dadah Berbahaya 1952) will be examined. The DDA

1952 is a Malaysian legislation, enacted to ensure better provisions for regulation on the importation, exportation, manufacture, sale, and use of opium and certain other dangerous drugs and substances, to make special provisions relating to the jurisdiction of the courts in respect of offences thereunder and their trial, and for purposes connected therewith (Dangerous Drugs Act 1952).

Cases involving self- administration of drugs usually fall within the ambit of section 15, section 31, and section 31A of the DDA 1952. Section 15 of the Act provides that any person who consumes or administers to himself dangerous drugs will be guilty of committing an offence under this Act (Section 15(1) Dangerous Drugs Act 1952). An accused convicted under this section will be liable to punishment of a fine not exceeding five thousand ringgit or imprisonment not exceeding two years (Section 15(1) Dangerous Drugs Act 1952). Section 31 of the DDA relates to persons or bodies who have the power to arrest and seize in drug cases (Section 31 Dangerous Drugs Act 1952). Section 31(1) states that an arrest without warrant can be made by any police officer or customs officer provided that he reasonably believes that an offence under this Act has been committed (Section 31(1) Dangerous Drugs Act 1952). For the purposes of the CPC, an offence under this Act shall be deemed to be a seizable offence. Meanwhile according to section 31(2), an arrested person and his articles shall be taken to a police station or any customs office and can be searched at any place provided a female can only be searched by another female official (Section 31(2) Dangerous Drugs Act 1952). Section 31(3) gives power to the police and customs officer to seize and detain any article involving drugs where there is reasonable grounds to believe that it is important for investigation (Section 31(3) Dangerous Drugs Act 1952).

Section 31A of the DDA 1952 touches on the examination of an arrested person (Section 31A Dangerous Drugs Act 1952). An examination of an arrested person can be conducted by a few categories of authority including a medical officer upon request of any police officer ranked Sergeant and above, any police officer in charge of a police station, any customs officer or any person assisting the medical officer. Under section 31A (1A), a police officer ranked Sergeant and above or a customs officer can take a specimen of urine of the arrested person for examination if it cannot be done by the medical officer. Section

31A (1B) stipulates that failing to provide a specimen of urine is an offence.

The next act is the Drug Dependants (Treatment and Rehabilitation) Act 1983 (1983 Act). This Act was enacted to provide for the treatment and rehabilitation of drug dependants in accordance with the Drug Dependants (Treatment and Rehabilitation) Act 1983. The relevant provision of this Act that touches on procedures for drug related arrests is section 3. According to section 3(1), an officer may take into custody any person whom he reasonably suspects to be a drug dependant as stipulated in Section 3(1) Drug Dependants (Treatment and Rehabilitation) Act 1983. It is further provided in section 3(2) that a person taken into custody under subsection (1) may be detained for a period not exceeding 24 hours at any appropriate place for the purpose of undergoing tests as contained in Section 3(2) Drugs Dependants (Treatment and Rehabilitation) Act 1983.

The final act is the Criminal Procedure Code (CPC or the Code). Arrests on drug related cases usually fall within the ambit of section 15 of the CPC. Section 15(1) lays down the general procedure for making an arrest. According to section 15(1), in making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested unless there is a submission to the custody by word or action in accordance with Section 15(1) CPC. Meanwhile, according to section 15(2) of the CPC, if such a person forcibly resists the endeavour to arrest him or attempts to evade arrest, such officer or other person may use all means necessary to effect the arrest as stipulated in Section 15(2) Criminal Procedure Code. However, according to section 15(3), this section does not give the right to cause the death of a person who is not accused of an offence punishable by death or imprisonment for life in accordance with Section 15(3) CPC).

## RESEARCH METHODOLOGY

This article is focused on researching cases that discussed issues on procedures of arrest for drug cases in Malaysia and the conflicting legal provisions that exist in the Malaysian legislation. For the purpose of this article, the method of research used was a qualitative approach. Hence the research methodology used was pure legal research.

Two primary sources used for the purpose of conducting relevant research to write this article were statutes and decided cases. The Malaysian statutes analysed were the Dangerous Drugs Act 1952 [*Act 234*] (DDA 1952), the Criminal Procedure Code [*Act 593*] (CPC) and the Drug Dependants (Treatment and Rehabilitation) Act 1983 [*Act 283*] (1983 Act). Meanwhile, Malaysian decided cases relating to this issue were also examined. Besides, the researchers also conducted their research using secondary sources: journals, articles and books found in the library and via online search to facilitate in the writing of this article.

The method used to analyse the data was critical analysis. This method was used to determine and understand the position concerning the issue at hand in the Malaysian legal system. This article shall now move on to the research and analysis of the relevant provisions under the stated acts, cases in which provisions are elaborated and finally the conflicts between these acts.

**The Dangerous Drugs ACT 1952**

The issue on whether there is a need for two bottles of urine samples during a urine test has been discussed by the Court of Appeal in a few cases. The Court of Appeal (CA) in the case of *Noor Shariful Rizal Noor Zawawi v. PP* [2017] 4 CLJ 434 ruled that two separate urine samples contained in two separate bottles were to be used for each test (two-bottle samples). The CA held that the 'two bottles samples' was in conformity with the two administrative guidelines, that is, the Inspector-General of Police's Standing Orders (IGSO) F103 item 8 of the 1983 Act and the Ministry of Health (MOH) Guidelines No. 6/2002. However, the same Court in the case of *PP v. Rosman Saprey* [2018] MLRAU 130 had departed from the decision in *Noor Shariful Rizal* and was of the opinion that the MOH Guidelines and the IGSO had no force of law as these two instruments only served as guideline and administrative order, respectively.

To acquaint the reader, the following section begins with a general introduction of section 15, section 31, and section 31A of the Dangerous Drugs Act 1952 (DDA), the Guidelines for Testing Drugs Abuse in Urine No. 6/2002 by the Ministry of Health (MOH Guidelines), and the Inspector-General Standing Orders F103 (IGSO F103) in order to dissect this issue in detail.

**Section 15, Section 31, and Section 31A of the Dangerous Drugs Act 1952 (DDA)**

The above-mentioned introduction has adequately highlighted the relevant sections under the DDA 1952. The process of collecting and keeping specimens of urine and the authority to collect it has been stated in the DDA 1952. However, the Act is silent on the number of bottles needed for a urine test. Therefore, reference shall be made to other guidelines that provide for detailed procedures on the taking of urine samples for the purpose of examination. The other guidelines that will be referred to include the Guidelines for Testing Drugs of Abuse in Urine No. 6/2002 by the Ministry of Health (MOH Guidelines) and the Inspector-General Standing Orders F103 (IGSO F103).

**Guidelines for Testing Drugs of Abuse in Urine No. 6/ 2002 by the Ministry of Health (MOH Guidelines)**

This guideline was prepared by the MOH as reference by all agencies. It describes the necessary procedure in ensuring optimum validity of the drug detection results. This guideline prescribes the procedures for collection, transportation, analysis, reporting of results and other processes in the urine testing process. This discussion will focus on item (c), that is, on the collection procedure. It is provided that:

> ***c) Collection Procedure***
>
> (i) *At least 30 ml urine sample shall be collected in one bottle or duplicate if screening and confirmation are conducted at two different places. The requesting officer/ referring centre shall keep the second urine sample and shall send the urine sample to the confirmation centre if the screening result is positive*; (Guidelines for Testing Drugs of Abuse in Urine by MOH).
> ii) Both the collection personnel and the donor shall keep the urine samples in view at all times prior to it being sealed or labelled. If the second bottle cannot be provided (sample is 30 ml only), testing shall be conducted on the first sample. Absence of a second sample shall be recorded (Guidelines for Testing Drugs of Abuse in Urine by MOH).

> (iii) At the collection site, if the volume is less than 30 ml, the donor may be given a reasonable amount of liquid to drink e.g. 240 ml of water every 30 minutes, but not to exceed a maximum of 720 ml. The second urine sample shall be collected and mixed with the previous sample, by the donor himself/herself or the collection personnel in front of the donor (Guidelines for Testing Drugs of Abuse in Urine by MOH).

Based on paragraph (i), it is understood that the MOH Guidelines stresses on the need for two bottles of urine specimens to be collected for examination when the examination is conducted at two different places. Paragraph (ii) explains further the procedure of storing the urine sample collected as well as the applicable procedure in case of a failure to collect a second bottle of urine sample, that is, the absence of the second sample must be recorded. Meanwhile, paragraph (iii) explains the volume of urine specimen needed. It is clear that the requirement for two bottles of urine specimens is needed only when the examination of the urine specimen is conducted at two different places. This means that when the urine is to be examined at one particular place, 'the two-bottles sample' requirement is not applicable. The requirement under paragraph (i) has raised the issue on the need of two bottles of urine specimens when a urine test is conducted. However, as mentioned, this requirement is only applicable in situations where the specimens are to be examined at two different places. Thus, there seems to be a different interpretation by judges on this particular requirement that raises the issue on the requirement of one or two bottles of urine specimens as discussed in the cases involving *Noor Shariful Rizal* and *Rosman Saprey*.

**Inspector-General Standing Orders F103 (IGSO F103)**

Besides the MOH Guidelines, the IGSO F103 also prescribes the procedure for the collection of urine samples in a urine test. This Order aims to ensure that the conduct upon drug dependants recognized under the Drug Dependants (Treatment and Rehabilitation) Act 1983 (1983 Act) would be in accordance with the provision and procedure stated in the Act (Paragraph 1 of the IGSO F103). For the purpose of this discussion, paragraph 8 of the IGSO F103 focuses on the procedure in taking a urine specimen from a suspected drug dependant as the main

subject. Under Paragraph 8.1, it is provided that a urine sample needs to be taken as soon as possible after an arrest to ensure effectiveness of the test (Paragraph 8.1 of the IGSO F103).

Meanwhile, paragraph 8.2 specifies that the suspected drug dependant be given the freedom to choose his/her own bottles (IGSO F103). Two bottles are needed as one bottle will be used for the test by the police and the second would be sent to hospital for further examination (IGSO F103). Paragraph 8.3 explains the procedure for the collection of urine specimens for women and paragraph 8.6 specifies the amount of urine specimens needed (IGSO F103).

It can clearly be seen that under the IGSO F103 the requirement is two bottles of urine specimens for a urine test. This is in line with the MOH Guidelines which also stipulates the same requirement. However, under the MOH Guidelines, two bottles of urine samples are only needed when the examination of urine specimens are conducted at two different places. The IGSO F103, on the other hand, does not have such a pre-condition for the purpose of examination.

**Issues Arising**

With reference to the MOH Guidelines and IGSO F103, it is clear that there is a requirement that two bottles of urine specimens be collected for a urine test. Thus, the main issue arising in these circumstances is whether these orders and regulations have any force of law. It is vital that this issue be determined in order to ascertain whether the need of two bottles of urine is or is not mandatory.

## CASE DISCUSSION

**Two Bottles of Urine Samples in a Urine Test is Mandatory**

The Court of Appeal, on 22 February 2017, in the case of *Noor Shariful Rizal Noor Zawawi v. PP* [2017] 4 CLJ 434 decided that two separate urine samples in two separate bottles were to be used for each test. The two bottles requirement was in conformity with two administrative guidelines namely the IGSO F103 item 8 of the Drug Dependants (Treatment and Rehabilitation) (Act 1983) and the MOH

Guidelines No. 6/2002. The Court of Appeal in that case decided that the two administrative directives had the relevant force of law. In deciding that those directives/standing orders were binding, the Court of Appeal stated on pp. 23 and 24 that:

> "[50] The appellant was deprived of the procedural law which gives him the right of a second test—confirmation test. The Magistrate and learned JC, by ruling that one bottle of the appellant's urine sample was sufficient, was contrary to the IGSO F103 and the MOH Guidelines No. 6/2002."

The Court of Appeal further stated that the requirement of two bottles of urine samples was mandatory due to the use of the word "shall" in the MOH Guidelines and the IGSO F103. Meanwhile, the standing orders made by the Inspector-General of Police, which necessarily includes the IGSO F103 acquires its statutory power from section 97 of the Police Act 1967, thus giving it the relevant force of law (Noor Shariful Rizal Noor Zawawi v. PP [2017] 4 CLJ 434). The MOH Guidelines have been formulated in line with the DDA 1952 and 1983 Act which give it the relevant force of law (Noor Shariful Rizal Noor Zawawi v. PP [2017] 4 CLJ 434). Moreover, the Court emphasized that section 31A of the DDA 1952 is a general provision regarding the urine test thus justifying the non-specification on the number of bottles of urine specimens needed (Noor Shariful Rizal Noor Zawawi v. PP [2017] 4 CLJ 434). Hence, the MOH Guidelines and IGSO F103 are guidelines and specific standing orders, respectively dealing with the procedure for collecting and testing of drugs of abuse using urine samples.

In this case, the appellant was suspected of abusing drugs and detained by the police. Upon his detention, the appellant was given one bottle to provide his urine specimen. A screening test revealed that his urine contained methamphetamine and the same bottle containing the balance of his urine sample was handed over to the Pathology Department. The Department, upon examination confirmed the same (Noor Shariful Rizal Noor Zawawi v. PP [2017] 4 CLJ 434). He was then charged under section 15 (1) (a) of the DDA 1952. At the Magistrates' Court, the learned Magistrate found that the prosecution had established a *prima facie* case and the appellant was called upon

to enter his defence but he chose to remain silent. The appellant was found guilty and convicted of the offence and sentenced to seven months of imprisonment (Noor Shariful Rizal Noor Zawawi v. PP [2017] 4 CLJ 434).

Dissatisfied with the decision, the appellant appealed to the High Court on the grounds that the procedure of collecting the appellant's urine sample was in contravention of the Inspector-General Standing Orders F103 ('the IGSO F103') and the Ministry of Health Guidelines No. 6/2002 ('the MOH Guidelines') as two bottles were needed as required in the MOH Guidelines and the IGSO F103 (Noor Shariful Rizal Noor Zawawi v. PP [2017] 4 CLJ 434). The Judicial Commissioner affirmed the decision of the Magistrate and held that section 31A of the DDA, which concerned the collection of urine samples for examination, made no provision that the urine sample must be collected in two bottles. His Lordship further held that non-compliance of the IGSO F103 and the MOH Guidelines did not jeopardise the prosecution's case as they were not binding on the court (Noor Shariful Rizal Noor Zawawi v. PP [2017] 4 CLJ 434).

The appellant then appealed to the Court of Appeal on the same grounds as in the High Court. The deputy public prosecutor (DPP) in the case contended that section 31A only requires one bottle for the urine specimen. It was further contended that the IGSO F103 and the MOH Guidelines were both administrative orders and served as guidelines thus they had no force of law. The learned counsel of the appellant submitted that the act of taking only one bottle of urine specimen was in contravention with the MOH Guidelines and also international procedural standards. The counsels invited the court to take judicial notice on the practice of the international anti-doping law in sports where two urine samples were required (Noor Shariful Rizal Noor Zawawi v. PP [2017] 4 CLJ 434).

The Court of Appeal in this case allowed the appellant's appeal and set aside his conviction and sentence. The judgement also stated that it was necessary for a police officer or person in authority to fully comply with the MOH Guidelines and IGSO F103 which demanded two bottles of urine samples during the urine test. The two bottles requirement was held to be a mandatory one. The principles in the case was then followed by a few cases involving similar issues such

as in the case of *PP v. Sazali Abdullah* [2017] MLRSU 50, *PP v. Izzad Holmi bin Ab Suki* [2019] 1 LNS 820 and *PP v. Mohd Farid Farhan* [2018] 1 LNS 1177.

The Court of Appeal's decision in *Noor Shariful Rizal Noor Zawawi* (C-09-16104/2016) was quoted in the case of *PP v. Mohd Arabi Aminudden* [2017] MLRHU 689 by the High Court of Malaya, Kota Bharu. However, the High Court ruled that it was not bound by the Court of Appeal's judgement in the case of *Noor Shariful Rizal Noor Zawawi* (C-09-16104/2016). The learned High Court Judge in *Mohd Arabi Aminudden* managed to depart from *Noor Shariful Rizal Noor Zawawi* because the latter was decided on 22 February 2017 while the former was tried and decided earlier i.e. on 20th December 2015. In the same vein, the offence in *Mohd Arabi Aminudden* was committed on 30th October 2013 well before the case of *Noor Shariful Rizal*. Thus, this case ruled that this principle did not apply reciprocally.

This case of *Noor Shariful Rizal*, its decision being rendered by the apex court, had set a benchmark on the requirements of two bottles of urine specimens for examination. This case had been referred to and followed by numerous cases as mentioned. The arguments by the defence counsel in this case, that prompted the court to take judicial notice of the anti-doping law at the international level in sports, is a matter of interest. The arguments sparked interest because according to international standards, two bottles of urine samples are indeed required for a urine examination. A few examples of Malaysian athletes involved in anti-doping tests were highlighted by the defence counsel as well as the importance of the anti-doping test to be conducted with two bottles of urine to ensure its finality. There seems to be merit and significance of the requirement of two bottles of urine samples for an examination to be conducted in ensuring our law meets international standards. However, this requirement should be stated clearly in the Act itself in order to avoid confusion and to ensure a certain uniformity in its application and compliance. It is also important to avoid misinterpretation and divert any potential conflict or issue.

**Two Bottles of Urine Specimens in a Urine Test is Not Mandatory**

The Court of Appeal's decision in the case of *Pendakwa Raya v. Rosman Saprey* [2018] MLRAU 130 was distinguished from the

judgement of the same court in the case of *Noor Shariful Rizal Noor Zawawi v. PP* [2017] 4 CLJ 434.

The same issues regarding the mandatory requirement of two bottles of urine samples in a urine test as stated by the IGSO F103 and the MOH Guidelines was discussed in the case of *Rosman Saprey*. The respondent in this case was also charged under section 15 of the DDA 1952 (Pendakwa Raya lwn. Rosman Saprey [2018] MLRAU 130). The respondent was convicted at the Magistrates' court, and sentenced to 10 months' imprisonment and to two years of police supervision under section 15 of the DDA 1952. The respondent then appealed to the High Court of Malaya in Ipoh on the grounds of non-compliance with the MOH Guidelines and the IGSO F103. The High Court was guided by the Court of Appeal's decision in the case of *Noor Shariful Rizal* and concluded that the prosecution had failed to prove a prima facie case as the procedures in the MOH Guidelines and IGSO F103 were not adhered to. The respondent was acquitted and discharged (PP v. Rosman Saprey [2018] MLRAU 130).

The public prosecutor then appealed to the Court of Appeal. The court in this case observed that section 31A used a singular verb with reference to the urine specimen. If the Parliament intended that two bottles were needed, it must have been inserted in the said provision. The requirement of two bottles is not mandatory as the MOH Guidelines stipulate two bottles are needed only if the test were to be conducted at two different places (PP v. Rosman Saprey [2018] MLRAU 130).

The court was also of the opinion that the MOH Guidelines and IGSO F103 had no force of law as these two instruments only served as a guideline and administrative order, respectively. The failure to comply with the requirements under the instruments would not be fatal to the prosecution's case (PP v. Rosman Saprey [2018] MLRAU 130). The relevancy of the requirement of two bottles was not explained under the MOH Guidelines and the court was of the opinion that the need for two bottles was a prudent practice thus diluting the force of law (PP v. Rosman Saprey [2018] MLRAU 130). It was also held that the DDA 1952 and 1983 Act only provide that the power to make orders and rules regarding the procedures is vested exclusively upon the ministry and none is found on both instruments thus rendering it without the

force of law. Besides, these instruments are not gazetted to give them any force of law. Based on these reasons, the appeal was allowed and the conviction and sentence passed by the Magistrates' Court was affirmed (PP v. Rosman Saprey [2018] MLRAU 130).

This case was referred to in the case of *PP v. Shahrul Azlan Abdul Jaafar & Ors* [2019] MLRAU 220, and *PP v. Shamsul Ariffin Bakar* [2019] MLRHU 10. The court in these cases basically held that the MOH Guidelines and IGSO F103 did not have the relevant force of law regarding these issues and compliance with the same were not mandatory. The non-compliance with these guidelines would not be fatal to the prosecution's case.

The researchers are of the opinion that, invocation of these guidelines by the defence counsel should not be allowed to easily tarnish the prosecution's case, hence leading to the acquittal of the accused. Firstly, there is a certain conflict with regard to these guidelines. The MOH Guidelines specify that two bottles of urine samples need to be collected only when examination of the urine specimen is conducted at two different places. However, according to the IGSO F103, such a condition does not exist for the purpose of examination. As such, there is now a conflict between the guidelines themselves, because under the MOH Guidelines, only one bottle of urine sample needs to be collected if the urine test is conducted at one place. On the other hand, the IGSO F103 requires collection of two bottles of urine samples, regardless of the situation. This in itself is an issue as both guidelines provide for the procedures differently.

Hence, if these guidelines were to be invoked by the counsels in court, it would lead to endless conflict which could ultimately let the accused off the hook for drug abuse offence due to mere procedural failure. The MOH Guidelines and the IGSO F103 should not have any force of law as these instruments only serve as soft law. Thus, it should not be binding and have the same force as hard law such as the statutes.

In the High Court case of *PP v Izzad Holmi ab Suki* [2019] MLRHU 679, the respondent, a Lance Corporal in the Royal Malaysia Police Force attached to Balai Polis Jelapang, Perak, was charged with an offence under section 15(1)(a) of the Dangerous Drugs Act 1952 ("DDA 1952") on 29 May 2014 ([2019] MLRHU 679). The

prosecution filed an appeal at the High Court because the respondent was acquitted and discharged by the learned Magistrate at the end of the prosecution's case.

The impugned legislation in this case was section 31A of DDA 1952, in addition to the IGSO F103, the MOH Guidelines, and the Criminal Investigation Department or Jabatan Siasatan Jenayah (PJSJN) No. 9/2007. The PJSJN No. 9/2007 is aimed at guiding police officers in the taking of urine samples from persons suspected of consuming or self-administering drugs within the meaning of the DDA 1952 and the 1983 Act. Paragraph 3 of this Instruction states that this Instruction shall form an integral part of the IGSO F103 as stipulated in the DDA 1952 and the Drug Dependants (Treatment and Rehabilitation) Act 1983, para 3.

The learned deputy public prosecutor (DPP) in his appeal stated that the case of *Rosman Saprey* should take precedence over *Noor Shariful Rizal* as *Rosman Saprey* was the latest decision of the Court of Appeal on this issue. Mohd Radzi Harun JC of the High Court concluded in his judgement that this statement was clearly erred ([2019] MLRHU 679). It was clear that the Court of Appeal in deciding the case of *Rosman Saprey* (supra) had taken into consideration its earlier decision in the case of *Noor Shariful Rizal* (supra). The High Court referred to the applicable principles on this circumstance which was laid down in *Dalip Bhagwan Singh v. PP*. ([1997] 1 MLRA 653; [1998] 1 MLJ 1; [1997] 4 CLJ 645; [1997] 4 AMR 4029). Peh Swee Chin, FCJ in delivering the decision of the Federal Court held that:

> *"[1a] The Court of Appeal is, as a general rule, bound by its own decisions.*
> *The three exceptions enunciated in Young v. Bristol Aeroplane Co Ltd are:*
> *(i) a decision of the Court of Appeal given per incuriam need not be followed;*
> *(ii) when faced with a conflict in respect of its own previous decisions, the Court of Appeal may choose which decision to follow irrespective of the dates of those decisions; and*
> *(iii) the Court of Appeal ought not to follow its own previous decisions if such decisions are, expressly or by necessary implication, overruled by the Federal Court, or if they cannot stand with a decision of the Federal Court.*

> *In respect of exception (i) above, the words per incuriam are to be interpreted narrowly to mean a '... decision given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding in the court concerned...'"*

Hence the High Court in this case concluded that when there exist two decisions on a similar issue by an appellate court of competent jurisdiction, both decisions of the Court of Appeal are good law and applicable, until it is decided otherwise by the Federal Court ([2019] MLRHU 679).

Reverting to the urine test, the two main issues in this appeal are as follows:

(i) whether one or two urine samples should be taken from the respondent pursuant to subsection 31A(1A) of the DDA 1952; and
(ii) the non-compliance with the legal requirement of subsection 31A(1A) of the DDA 1952.

The High Court came to the conclusion that *Noor Shariful Rizal* and *Rosman Saprey* cannot have a retrospective effect and application to this instant appeal. In other words, neither *Rosman Saprey* nor *Noor Shariful Rizal* were applicable to this current appeal. Thus, it goes back to the interpretation of section 31A of DDA 1952, the IGSO F103, and the MOH Guidelines itself.

This High Court ruled that the learned Magistrate had erred for not accepting the evidence of SP5 that as the respondent was arrested for an offence of self-administering drugs, an offence under section 15(1)(a) of the DDA 1952, the procedure that governs the taking of the respondent's urine sample can be found in PJSJN No. 9/2007. Paragraph 5.2 of the said PJSJN No 9/2007 provides that such urine samples can be taken either using the one bottle or two-bottle method. The decision by SP5 to choose the one-bottle method was well within the procedure ruled by this court that he had complied with the said procedure.

Notwithstanding the compliance with the requirement of the said PJSJN No. 9/2007, the court found that the appellant had failed to

comply with another substantive procedure, that is the statutory requirements of subsection 31(1A) of DDA 1952 ([2019] MLRHU 679).

In interpreting the intent and purpose of subsection 1A of section 31A DDA, the court referred to the High Court's decision in *PP v. Samsul Ariffin Bakar* [2019] MLRHU 10; [2019] 2 CLJ 692 which discussed and decided on the same issue. The court in this case held that subsection 1A of section 31A was not a standalone provision ([2019] MLRHU 679). It was "subservient" to the main provision, subsection 31A (1). The main component of subsection 31A(1A) is the phrase "if it is not practicable for the medical officer or the person who is acting in aid of or on the direction of a medical officer to obtain the specimen of the urine within a reasonable period (Section 31(1A) of the Dangerous Drugs Act 1952)" found in the last sentence of the subsection.

The court held that the law required the medical officer to determine that "it is not practicable for him or the person who is acting in his aid or under his direction to obtain the specimen of the urine within a reasonable period," due to whatever reasons he (the medical officer) deemed fit and appropriate. Only when the medical officer had made such a determination would the provision be triggered and only then could the police officer take the urine specimen for the purpose of preservation of evidence ([2019] MLRHU 679).

It follows that the police officer shall show proof that he had taken the necessary steps to request the medical officer to take the urine sample ([2019] MLRHU 679). Not only that, the police officer shall also show proof that the medical officer had informed him that it is not practicable for that medical officer or the person who is acting in his aid or under his direction to obtain the specimen of the urine within a reasonable period ([2019] MLRHU 679).

Such non-compliance of a substantive procedure provided by statute is fatal even if it is not regarding the matter of bottle of urine test. The court in this case referred to the decision of the Federal Court in *Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 1 MLRA 692; [2005] 2 MLJ 631; [2005] 3 CLJ 914; [2005] 4 AMR 724 where the Federal Court said:

> *"... It is not for the courts to create procedural requirements because it is not the function of the courts to make law or rules. If there is no such procedural requirement then there cannot be non-compliance thereof. Only if there is that there can be non-compliance thereof and only then that the courts should consider whether, on the facts, there has been non-compliance…"*

Premised mainly on this ground, the Court found that non-compliance with the mandatory statutory requirement of subsection 31A (1A) of the DDA 1952 was fatal to the prosecution's case. Hence, the appeal was dismissed and the acquittal and discharge of the respondent at the end of the prosecution's case was affirmed.

Back to the issue of the number of bottles of urine samples needed in a urine test, the current situation remains at the Court of Appeal's decision of one bottle of urine sample in the case of *Noor Shariful Rizal*, and the decision of two bottles of urine samples in the case of *Rosman Saprey.* As per the High Court in the case of *PP v. Izzad Holmi ab Suki* [2019] MLRHU 679, both decisions of the Court of Appeal to interpret section 31A of the DDA 1952 are good laws and applicable until it is decided otherwise by the Federal Court. However, two approaches on the same section have led to a complicated situation in practice. Each party will just adopt the decision that favours them to plead their case.

The effect in the interpretation of section 31A of the DDA 1952 may also lead to a situation whereby the Court decides to settle this issue by virtue of another Act. In the case of *PP v. Izzad Holmi ab Suki* [2019] MLRHU 679, the court referred to the PJSJN No. 9/2007 to settle the issue. Paragraph 5.2 of the said PJSJN No. 9/2007 provides that such urine samples could be taken either using the one bottle or two-bottle method. Thus, the urine test procedure will be complied with no matter what method the person in charge chooses. This may be a good solution but it is doubted whether this decision does resolve the problem regarding the interpretation of section 31A of the DDA 1952. This can only be seen as a temporary solution to this problem before a permanent solution can be found and rightly implemented. An amendment to section 31A of the DDA 1952 is a must to ensure certainty in the requirement of the number of bottles of urine samples.

Hence, lawmakers play a vital rule to correct as well as to prevent this current dilemma.

## SECTION 3 OF THE DRUG DEPENDANTS (TREATMENT AND REHABILITATION) ACT 1983

Section 3 of the Drug Dependants (Treatment and Rehabilitation) Act 1983 (the 1983 Act), explains the detention of a suspected drug dependant for the purpose of conducting tests. An officer may take into custody any person whom he reasonably suspects to be a drug dependant. According to section 2 of the 1983 Act, "drug dependant" means a person who through the use of any dangerous drugs undergoes a psychic and sometimes physical state which are characterised by behavioural and other responses including the compulsion to take drugs on a continuous or periodic basis in order to experience its psychic effect and to avoid the discomfort of its absence as stated in Section 2 of the Drug Dependants (Treatment and Rehabilitation) Act 1983.

This definition is supported by the case of *Re Roshidi Bin Mohamed* [1987] 2 MLRH 470 whereby Mohamed Ariff J defined drug dependants to constitute a very wide scope and certain requirements have to be met before a person can be said to fall under that category. Before one can truly say that one is a drug dependant, it would seem that a certain amount of observation must be conducted on the person, and there must be an appearance or symptoms of a "psychic and sometimes physical state which is characterized by behavioural and other responses including the compulsion to take drugs on a continuous or periodic basis in order to experience its psychic effect and to avoid the discomfort of its absence" ([1987] 2 MLRH 470). All of these symptoms would have manifested themselves upon observation or reflected in the medical report, which should not simply rely upon the positive results of one urine test produced by the doctor through a urine sample alleged to have been taken from the detainee and not apparently by the doctor himself but rather by a laboratory technologist ([1987] 2 MLRH 470).

Next, according to section 3 subsection (1) of this Act, a person that is taken into custody may be detained for a period not exceeding 24 hours at any appropriate place for the purpose of undergoing tests.

Basically, this section allows a police officer to conduct a urine test if the police have good reasons to suspect someone for being a drug user. Under this law, the Royal Malaysia Police or Polis Diraja Malaysia (PDRM) must detain and take the person into custody before getting the detained person to do a urine test. This can be seen through the case of *Suzana Md Aris v. DSP Ishak Hussain & Ors* [2009] 4 MLRH 244.

The plaintiff in this case sued in her capacity as the wife and the administrator of the estate of her husband, Mohd Anuar bin Sharip, who died while being detained under section 117 of the CPC at the police lock-up in Rawang ([2009] 4 MLRH 244). The deceased was arrested on 10 August 1999 at his house on suspicion of being a drug addict under section 3 of the Drug Dependants (Treatment and Rehabilitation) Act 1983 ([2009] 4 MLRH 244). Generally, in this case the defendants claimed that the deceased was arrested pursuant to section 3 of the Drug Dependants (Treatment and Rehabilitation) Act 1983 and had been lawfully remanded for 14 days pursuant to the Rawang Magistrates' Court Order under section 4 of the same Act ([2009] 4 MLRH 244). The evidence clearly showed that the deceased was lawfully arrested pursuant to section 3 of the Drug Dependants (Treatment and Rehabilitation) Act 1983 where the deceased was arrested in his house on suspicion of being a drug addict.

The deceased was awakened from his sleep by the police and he was in a dreamy state when he was arrested. The circumstances may have justified his arrest on reasonable suspicion that he was a drug addict. Nonetheless he was informed of the reason for his arrest. He was then taken to Balai Polis Selayang where his urine sample was taken for testing. Therefore, in this case, there was no issue on urine test as it was properly conducted according to the procedure and therefore the suspect could not challenge it in court.

The next case relating to arrest under section 3 of the Drug Dependants (Treatment and Rehabilitation) Act 1983 is the case of *PP v. Zainal Arpan Molana* [2012] 1 MLRA 168. In this case, the respondent was arrested on allegations that he had acted in a suspicious manner when walking towards a car. He looked wary and frightened. The police then instructed him to drive the car to the police headquarters. Upon his arrival, the police at the headquarters searched his car. The police

found no drugs in it. The police then informed the respondent that he would be detained under section 3(1) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 for a urine test ([2012] 1 MLRA 168). The prosecution contended that the respondent refused to undergo the urine test and told the police that he had drugs in his house. His words were as follows, "*saya ada menyimpan dadah di rumah*" ([2012] 1 MLRA 168). After those words were uttered, in accordance with section 37A (1) of the Dangerous Drugs Act 1952, police claimed that there was no legitimate reason for him to undergo a urine test as he had already confessed to having drugs. This case clearly showed that a police officer cannot force an accused to go for a urine test under section 3(1) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 if the accused had already admitted that he/she had drugs in his/her possession. This was to ensure that their rights were maintained.

Lastly, the case of *Mohd Zainoldeen Abidin v. Pengerusi Lembaga Tatatertib & Ors [*2013] MLRHU 766 where the applicant was charged for an offence under Reg 7(1) of the Public Officers (Conduct and Discipline) Regulations 1993 (Amendment) 2002 ('the Regulations') after a urine test was conducted by the "*Agensi Anti Dadah Kebangsaan*" (AADK) on 4 November 2009 which showed that the urine of the applicant contained the dangerous drug, *cannabis* ([2013] MLRHU 766). However, the AADK report/form that was exhibited showed that there was no urine test result obtained on 25 January 2010 and 4 November 2009. The urine test result was actually issued on 11 November 2009 ([2013] MLRHU 766). The applicant also contended that '11-nor-delta-9 tetrahydrocannabinol' or 'THC' and 'cannabis' were clearly two different and distinct types of dangerous drugs with reference to the Dangerous Drugs Act, 1952 ('DDA').

As such, the charge which was based on the urine test by the AADK was flawed and incorrect as the result of the urine test only confirmed the presence of the drug 'THC' whereas the charge was for being tested positive for the drug, cannabis. In the First Schedule of the DDA these drugs are listed separately - while 'cannabis' appears in Parts I and II, 'THC' appears in Part III. Hence, considering the urine test report of the AADK, the court upheld the contention of the applicant that the charge alleging that the applicant was tested positive

for cannabis was baseless and unsustainable ([2013] MLRHU 766). It was rendered defective and *void ab initio* on these grounds. Hence, it can be seen that a charge on an accused must be framed correctly and all the necessary preparations must be carried out cautiously to ensure that it survives despite all the challenges in court.

The next issue that arose in this case was regarding the reliability and credibility of the AADK urine test result that came together with the certificate by the medical officer as evidence against the applicant ([2013] MLRHU 766). The date on the certificate was tampered with while the AADK urine test form contained a cancellation of a rubber-stamp which stated negative for 'THC' and replaced by a rubber-stamp stating positive for THC ([2013] MLRHU 766). These features in the crucial documents raised doubts as to their veracity which was not addressed by the 1st and 2nd respondents ([2013] MLRHU 766). More importantly, the medical officer's certificate made no reference whatsoever to the AADK urine test instead, it referred specifically to necessary tests carried out on the applicant by the medical officer, herself upon which her findings were based ([2013] MLRHU 766). Hence, on the face of it, the certificate cannot be regarded as a confirmation of the AADK urine test result, as nowhere in the certificate was there any statement to this effect ([2013] MLRHU 766).

Therefore, the court gave judgement that the respondents had committed several errors of law in their decision-making process including jurisdictional errors. The charge was defective and bad in law for being tainted with illegality and procedural impropriety. In conclusion, according to this section, a urine test result must be properly organised and checked according to the procedure so that justice can be upheld without prejudice to anyone. Therefore, read together with Article 5(1) of the Federal Constitution, the applicant should have the right to a fair trial, which stems from the principles of natural justice and rule of law.

In conclusion, section 3 of the 1983 Act is no longer used for current cases. The most recent case that used this section was reported in 2013. This proves that this Act or particularly this section is no longer relevant in this current age. This Act is only used as supporting evidence for new cases. Based on the abovementioned cases, an

accused can escape from undergoing a urine test if he/she confessed to drug possession. It indicates that there has been no coercion by the police and that our criminal system upholds the rule of natural justice and gives it due importance. In addition, it is vital for police officers to follow steps or procedures when conducting urine tests to absolve any impending negligence or liability. With regards to the future, the researchers suggest that this Act be revised and used in current cases so that the rights of the accused can be protected.

## CRIMINAL PROCEDURE CODE

Section 15 of the Criminal Procedure Code (CPC) lays down the principles on how an arrest must be made. The police have the right to use reasonable force to arrest a person if the person tries to resist an arrest. However, in drug cases the manner in which an arrest is made, whether it is a constructive arrest or an actual arrest, if the arrest can lead to the attainment of a urine sample. The different types of arrest and whether the attainment of urine sample can be regarded as an arrest are discussed in the following cases.

### *PP v. Ezani Ismail* [2017] MLRSU 86

The accused was charged under section 15(1)(a) of the Dangerous Drugs Act 1952 with the offence of self-administration or consumption of dangerous drugs that is, methamphetamine. If found guilty, the accused would be liable under the same act read together with section 38B (1) of the same act. On 3rd August 2015, Inspector Mohd Faizal bin Fauzi (PW3) together with Sergeant Roslan bin Adam (PW2) and a few others went to Balai Polis Tanjung Rambutan for the purpose of conducting a urine screening test on each of the policemen. A total of 19 policemen were involved in the urine screening test, including the accused. The accused was given the liberty to choose the bottle to be used for the urine test. Only one bottle was needed. Escorted by PW2, the accused was directed to give his urine sample in the said bottle for screening test purposes. The screening test was carried out by PW3, and it revealed that the sample contained traces of methamphetamine. The same bottle containing the balance of the urine sample of the accused was then closed and sealed by PW3. PW3 then handed the bottle over to the investigating officer, Inspector Muhammad Nabil

Afif bin Abdul Rahman (PW5) for onward transmission to Kuala Lumpur Hospital for further confirmation. On 7th of August 2015, upon the instruction of PW5, PW1 handed the urine sample over to the Pathology Department, Kuala Lumpur Hospital for a confirmation test. The bottle was received in good condition by Puan Aida Wani binti Mohd Yusof, (PW4). Upon analysing the balance of the urine in the same bottle, the Life Science Chemistry Officer (Pegawai Sains Kimia Hayat), Encik Kamarulzaman bin Hussin (PW6) confirmed that the urine sample of the accused contained methamphetamine. He then prepared a report and tendered it in court as exhibit P11 [2017] MLRSU 86.

One of the important issues in this case was whether the collection of the urine sample can be regarded as an arrest? PW2 and PW3 stated that the accused had not been arrested until his urine was tested as positive. However, Magistrate Siti Salwa Ja'afar stated that it was in contravention of section 31A of the Dangerous Drugs Act 1952 as the provision clearly states that a person has to be arrested under the Dangerous Drugs Act 1952 before the person can be asked to do a urine test. For that, the prosecution could not rely on the presumption under section 37K of the same act. However, the learned deputy prosecutor submitted that the accused was not allowed to go anywhere during the urine screening test, therefore he was deemed to have been arrested pursuant to section 15 of the CPC ([2017] MLRSU 86). This submission was contrary to the evidence of the witness. PW2 stated in his examination that the accused was free to move around and therefore he was not arrested during the urine screening test. PW3 also agreed to the fact that the accused was not arrested or being handcuffed ([2017] MLRSU 86).

Referring to section 15(1) of the CPC, the police officer or other person making the arrest shall actually touch or confine the body of the person to be arrested unless there is a submission to custody by word or action by the accused. Magistrate Siti Salwa Ja'afar stated that she could not find any evidence which showed that there was a submission to the custody by word or action by the accused. There was no actual arrest made to the accused as indicated by PW2 and PW3. Since section 31A of the Dangerous Drugs Act 1952 had not been complied with, the prosecution's reliance on presumption under section 37K was wrong.

Another issue ventilated in this case was whether the use of only one bottle for the urine screening test was sufficient. PW3 agreed that IGSO Chapter F 103 was of high applicability than Practice Direction JSJN 20017 as IGSO Chapter F 103 was an order by the Inspector-General of Police while Practice Direction JSJN 2007 was a practice direction issued by the Narcotics Department. Furthermore, even though the Practice Direction 2007 has been circulated to be read together with IGSO F 103, it can never replace or prevail over the MOH Guidelines. This guideline by MOH is intended to be used by all relevant agencies including the PDRM.

Magistrate Siti Salwa Ja'far stated that even if there is now the "*Practice Direction 2007*", it shall be read together, with the MOH Guidelines 2002 which still requires the collection of two bottles of urine. In fact, the two bottles of urine samples are in conformity with the international procedure of collecting urine samples as discussed in the case of *Noor Shariful Rizal* [2017] 4 CLJ 434. The evidence given by PW3 that one bottle of urine sample was sufficient only showed that he himself contravened the guidelines provided by the MOH ([2017] MLRSU 86). The case of *Noor Shariful Rizal* was applicable and the Court was bound by the decision of the Court of Appeal since nothing in this case provided facts contrary to those of *Noor Shariful Rizal*. Hence, the non-compliance with the MOH Guidelines on the part of the prosecution was still fatal as decided by the Court of Appeal ([2017] MLRSU 86). The explanation by PW6 that the use of two bottles was not necessary, was to the Court's view, his own interpretation of the MOH guidelines. However, the Court in this case, followed the interpretation by the Court of Appeal judges in the case of *Noor Shariful Rizal* that bound this Court. The accused was acquitted and discharged without being called upon to enter his defence.

In conclusion, a urine test can only be made on an arrested person. It does not matter if it was an actual or constructive arrest, as long as the person has been arrested, only then can the urine test be conducted. According to section 15 of CPC, an arrest should be considered as an arrest if a person's freedom has been restricted by order of the police officer and his or her body touched or confined for the purpose of arrest. Another form of arrest is when a person submits himself/herself to the police officer by word.

Meanwhile, with regard to the issue of the number of bottles of urine samples needed, the Court in this case is bound to follow a higher Court's decision in deciding on how many bottles should be sufficient for the urine test procedure. However, as stated earlier, under the MOH Guidelines, two bottles of urine samples will only need to be collected when the examination is conducted at two different places. The court in the case of *PP v. Ezani Ismail* seemed to have interpreted this under the MOH Guidelines, that collection of two bottles of urine samples was mandatory. Hence, it can clearly be seen that the various guidelines and statutes have resulted in severe conflict and confusion. A solution to this issue is vital in order to avoid further confusion and conflict.

***PP v. Mohd Safwan Husain* [2017] 7 CLJ 285**

In this case, a sub-police inspector known as SP2 had the respondent undergo a urine test under suspicion of drug abuse. The test results came up positive and the respondent was charged at the Magistrates' Court under section 15(2) of the Dangerous Drugs Act (DDA) 1952. However, the respondent was acquitted after the prosecution had failed to establish a prima facie case. An appeal was later lodged to the High Court to review the Magistrate's decision. The High Court however dismissed the application hence the appeal to the Court of Appeal. Among the issues raised before the appellate bench was whether the respondent was constructively arrested when asked to undergo a urine test and whether the term "arrested person" outlined in section 31A(1A) of DDA 1952 also included a person who was constructively arrested.

In determining whether a person who has been arrested in a constructive manner can be considered as an arrested person, the court evaluated the argument of the DPP that stated, "the need to administer caution under section 37A of the Act only arises after an actual arrest and not a constructive arrest." Ab Karim Ab Jalil JCA in delivering his verdict stated that the application of this suggestion may be debated. Debates may be advanced as the fact that the issue regarding arrest does not include any determination on admissibility of statements or any matter from the accused under section 37A of DDA 1952. Hence, the term "constructive arrest" is accepted and considered applicable when it is put within the ambit of section 31A.

By virtue of the principle, the court held that a person required to undergo a urine test when instructed by a police officer is considered to have been under constructive arrest within the meaning of section 31A. The court also touched on the issue of whether the freedom of the accused was restricted. Under the said circumstances, in spite of the cooperation given by the accused in the course of the investigation, the court held that the accused still had his freedom restricted because the accused had been compelled to follow the instructions given by SP2. Citing the case of *Alderson v. Booth* [1969] 2 QB 216 the court affirmed the trite principle that, an arrest was constituted when any form of words had been delivered to notify the person, and by such words, the person "was under compulsion to which he/she thereafter submitted" ([1969] 2 QB 216). This is in line with section 15 of CPC whereby according to subsection (1), a person is considered as arrested when there is a submission to custody by way of word or action ([2017] 7 CLJ 285).

Meanwhile, the court also decided on the issue of whether the sample or specimen obtained for the purpose of investigation is considered as lawful and admissible evidence. Here, the court held that section 31A gives the lawfulness effect to the police officers' conduct or anyone authorised to conduct the urine test ([2017] 7 CLJ 285). This provision also held a different spirit if compared to section 117 of the CPC and section 37A of DDA as section 31A of the latter is silent on whether failure to fulfil the intention in the provision may lead to the evidence and specimens obtained during the investigation being rendered inadmissible. Based on the argument by the DPP, evidence notwithstanding the manner in which it was obtained i.e., whether or not it is legal, shall be admissible as decided in the case of *Karuma v. The Queen* [1955] AC 197 and *Dato' Seri Anwar Ibrahim v. PP & Another Appeal* [2015] 2 MLJ 293.

In summary, the question of whether or not a person shall be regarded as a constructively arrested person shall be determined by the facts of the case, i.e., on a case-by-case basis. The intention of making an arrest under section 15 of the CPC shall merely be understood as making an actual arrest since the provision expressly states the manner in which a person shall be considered as arrested. In relation to the issue of execution of a urine test on an arrested person, the fact of whether or not a person submits himself/herself to the course of the investigation by cooperating with the relevant officials, is a clear indication of a

constructive arrest. This is due to the fact that the person so arrested has his or her freedom restricted in order to allow such investigation to proceed (Muhamad Helmi Md Said et al., 2021).

## CONCLUSION

It is not possible to draw a conclusion regarding the conflict between application and interpretation of the relevant provisions of the various acts, when, there is in fact, conflict in the application and interpretation of the relevant provisions of each act itself. The internal conflict within the acts has been intensified by conflicts between the interpretations of the various guidelines that have been highlighted throughout this article.

Firstly, by looking at the provisions of the DDA 1952, one can clearly see from the case of *Noor Shariful Rizal Noor Zawawi v. PP* [2017] 4 CLJ 434 and *PP v. Rosman Saprey* [2018] MLRAU 130*,* that the courts cannot come to a conclusion on whether the MOH Guidelines and the IGSO have any relevant force of law let alone to rule on whether they are mandatory or not. Both these cases were decided by the Court of Appeal yet the Court of Appeal had contradicted itself and stirred confusion on which decision ought to be followed. Thus, the issue on the number of bottles of urine needed for a urine test and the interpretation of section 31A of the DDA 1952, remain undecided. Perhaps this calls for a final determination by the Federal Court.

Moving on to the Drug Dependants (Treatment and Rehabilitation) Act 1983. Section 3 of this Act allows detention of a suspected drug dependant for the purpose of conducting tests. An officer may take into custody any person whom he reasonably suspects to be a drug dependant. According to section 3(1) of this Act, a person who is taken into custody may be detained for a period not exceeding 24 hours at any appropriate place for the purpose of undergoing tests. Basically, this section allows police officers to conduct a urine test if they have good reason to suspect someone of being a drug user. However, it must be noted that the provisions of this Act have not been used in conducting arrests for drug related cases since 2013. There has been no recent case that discusses the procedures for arrest or the number of urine samples that needs to be collected. Presently, this Act seems to have become redundant as it is more common for cases to be tried

under the DDA 1952 as opposed to this Act. Thus, it would be good to reanalyse the purpose of this Act and its relevance today.

Finally, regarding the manner of an arrest. It is observed that conflicts still persist as to whether an actual arrest has to be made or a constructive arrest should suffice to define the manner of an arrest under section 15 of the CPC. However, the Court of Appeal in the case of *PP v. Mohd Safwan Husain* [2017] 7 CLJ 285 has held that a person who is required to undergo a urine test when instructed by a police officer is considered to be constructively arrested under section 31A of the DDA 1952. The court held that the accused had his freedom restricted because the accused was compelled to follow the instructions given by SP2. This is in line with section 15 of the CPC whereby according to subsection (1), a person is considered as arrested when there is a submission to custody by way of word or action. Although this position of law contradicts the learned Magistrate's decision in the case of *PP v. Ezani Ismail* [2017] MLRSU 86*,* ultimately the decision of the Court of Appeal prevails.

After analysing the relevant provisions of law relating to this matter as well as the various conflicts that exist, the researchers have come up with two suggestions to resolve the issue. First is to amend the Dangerous Drugs Act 1952. The issue of how many bottles of urine samples that need to be collected and the issue of whether the MOH Guidelines and IGSO have the relevant force of law must be addressed in this amendment. When these issues are rightly tackled and the intention of the Parliament is clearly spelt out in the legislation, only then will the courts be able to give effect to the relevant provisions of the law, without any further conflicting interpretations. Until such an amendment is made, this cycle will continue to be repeated because even the judges cannot come to a conclusion on the real intention of the Parliament in enacting the impugned provisions.

Secondly, the researchers would like to suggest that the Drug Dependants (Treatment and Rehabilitation) Act 1983 be reanalysed and revised. The suggestion is put forth because this act seems to have become redundant when trials of drug abuse cases are more commonly pursued under the DDA 1952. Hence, the current purpose and relevance of this Act, has to be determined. If this act is to be maintained, it would be best if the Act is amended to include the specific number of bottles of urine samples required when conducting a urine test to pre-empt any future conflict in the law.

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