

Reforming Mental Health Law & Policy at Work Place: Better Late than Never

Noraziah binti Abu Bakar¹, Mohd Faizul bin Hassan², Hariati
binti Mansor³, Rozlinda Abdullah⁴, Norliza binti Abd Hamid⁵

¹Faculty of Law, Universiti Teknologi MARA, Shah Alam, ²Faculty of Business and
Management UiTM Puncak Alam, ^{3,4,5}Faculty of Law, Universiti Teknologi MARA, Shah Alam
Email: noraziah@uitm.edu.my

To Link this Article: <http://dx.doi.org/10.6007/IJAREMS/v11-i2/13130>

DOI:10.6007/IJAREMS/v11-i2/13130

Published Online: 09 April 2022

Abstract

Mental health issues are increasing in society that needs to be addressed accordingly. It happens in daily life and the workplace setting. Mental health and law intersect in a multitude of ways. Legally, the Mental Health Act 2001 references "mental disorder," where mental health has been substantially impaired. Globally, 74% of people with mental health problems are out of work for more than a year. Every employee is entitled to safe workplace surroundings in conditions of security and human dignity. For people with mental health problems, achieving this right is particularly challenging and may caused the employees going on sickness absence leave due to stress and anxiety. Of course, employers need to be allowed to run their businesses and apply formal procedures, but to do so without understanding an individual's particular personal and medical situation have adverse impact and could expose that employer to various claims. This paper aims to explore the issues related to mental health from the legal perspective to safeguard an employee's legal rights suffering from mental health at the workplace. The paper employs doctrinal legal research as a systematic means of legal resources relating to mental health law in handling mental health issues that occurs in a workplace to examine the existing legal framework in addressing the workplace's provisions and issues on mental health. For the doctrinal legal research method, the relevant statutes relating to the workplace are reviewed, besides the literature on mental health issues globally and domestic are being analysed. Depression or anxiety could affect the employees' performance. Instead of terminating the employee for being absent, the law should make provisions for rehabilitation of the employee affected with mental health. Neglecting the mental health in the workplace will affect the employee as well as the employers because it affects the organisation. Besides promoting the physical health, the law and the relevant authority in Malaysia should hold mental health-related activities. For future research, exploration of theory related towards the mental health can be suggested and the comparison study between a country on the implementation of mental health law and policy for the purpose of securing the workplace's safety, health, and welfare.

Keywords: Mental Health, Mental Disorder, Depression, Termination, Workplace, Policy

Introduction

Mental health issues can affect an individual's functional and work abilities in various ways. In Malaysia, the prevalence of mental disorders is increasing, and there is a growing need to improve access to timely and efficient mental healthcare to alleviate this burden. Mental health disorders are a significant contributor to the global disease burden, and these issues in the world are increasing. 17.3% or 84 million people in Europe succumbed to depression. Depression & Anxiety are most of the frequent mental health disorders. Global health data exchange (GHDx, 2018). According to the Malaysian Ministry of Health's most recent epidemiological data, the prevalence of mental disorders among adults was nearly 29.2%, a 3-fold increase from 1996. According to this statistic, one out of every three Malaysians has had mental health issues.

Surprisingly, by 2020 mental health illness is expected to be the second contributor to health problems after heart disease. In addition, Mental disorders were most prevalent in rural East Malaysia, at 43%, followed by the capital Kuala Lumpur, where 40% of the population fulfilled the criteria for a mental disorder (Howes et al., 2016). The comparison of rural east higher can be illustrated by rural areas facing more adversity on a socioeconomic level, with higher poverty and unemployment rates. Because stigma has been highlighted as a significant obstacle to seeking help and receiving therapy. Seeking alternatives care from religious practitioners or shamans is the priority rather than modern treatment by psychiatric (CK & Marhani, 2011). The issues reforming mental health Law & Policy at the workplace is less to be highlighted. A study conducted by Ram (2019) revealed that Malaysia's government or private sector is currently facing health problems, especially mental health. The trend keeps increasing impact by the stress level at work has been rising.

Additionally, poor mental health can lead to employee burnout, affecting their ability to make significant contributions to their work and personal lives. In an organisation, employees' innovativeness is an intangible asset that provides the best idea to remain competitive (Siti Nuraishah et al., 2021). Hameed and Waheed (2011) revealed that employees are the key ingredient to an organisation, and it is the employees' performance that will determine the organisation's success or failure. Thus, a workplace needs to ensure that the employees' welfare is paramount to deter mental health issues.

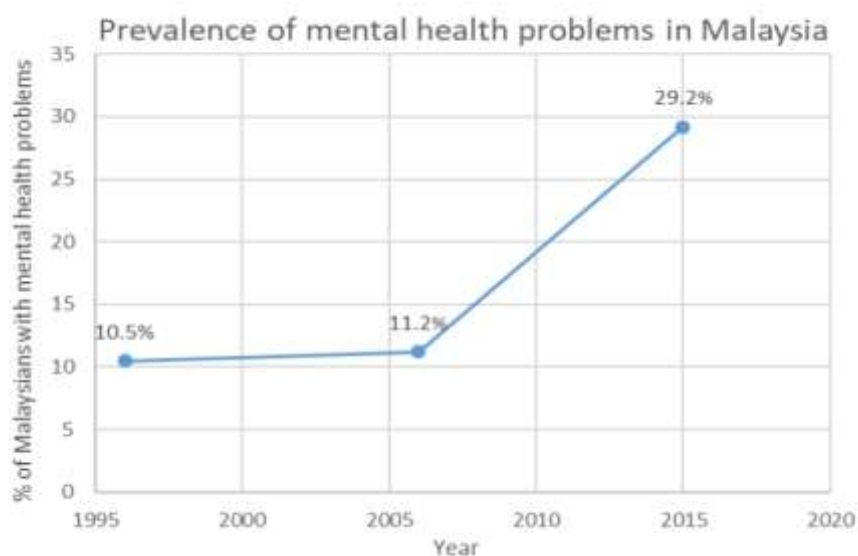


Figure 1 Percentage of Malaysians with mental health issues from 1996 to 2015 (Ministry of Health Malaysia)

Literature Review

Mental health and law intersect in a multitude of ways. In addition, The World Health Organization (WHO) defines Mental Health as a condition of wellbeing in which an individual understands their potential to cope with the demands of life and contribute to their community. Stressed at work have been reported by (Idris et al., 2010), whereby the employees worldwide keep increasingly. Generally, Malaysia's workforce comprises both public and private sector employees. Nevertheless, for an employee from the private or public sector, statistics showed a high risk of mental health problems in Malaysia that increased stress levels at the organization (Ram, 2019). In Malaysia, a rising number of executives and workers are reported to be suffering from anxiety, depression, and mental stress due to their occupations and working lives (Azmi et al., 2020). So that, Workplace policies on occupational stress should be a highlight in the organization to prevent before it cost a lousy impact on the productivity level of the employees. On the other hand, legislation should support employees by establishing a safe and healthy working environment.

Every member of society may face the depreciation of mental health for many reasons, including current competition inability to cope with social and economic pressure. Thus, safeguarding and improving mental health is one of the crucial agendas, especially at the workplace. The International Labour Organisation's (ILO) decree on disability issues is laid down in the ILO Convention concerning Vocational Rehabilitation and Employment of Disabled Persons No. 159 (1983) Conventions (1998), which founds the principle of equal treatment and employment for workers with disabilities. The convention defines a disabled person includes a person with mental impairment. Article 17 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2006 and ratified in 2010 by Malaysia, has provided that every person with disabilities has a right for his or her physical and mental integrity on an equal basis with the other members of the society. This international convention was adopted at the national with introducing the Persons of Disabilities Act 2008 (Act 685). According to (Montagna 2014), the mentally ill employee has the right to work in a safe environment free from discrimination and harassment.

The early stage of the depreciation of mental health could occur, such as depression and anxiety, leading to an advanced stage. A statistic from the World Health Organization (WHO) estimated that the burden of mental disorders would grow in the coming decades. Globally, one in six workers suffer from anxiety, depression, and unmanageable stress each year, and 74% of people with a mental health problem for more than a year are out of work. Mental health problems are common in the workplace, which signifies a growing concern, with probable impacts on an employee such as discrimination, employer for loss of productivity, workplace health, and compensation authorities for increased job stress-related claims (LaMontagne et al., 2014).

With such an alarming statistic, employers should take proactive steps to identify mental health early so that the affected employees can be given appropriate treatment. Legally, the Mental Health Act 2001 includes references to "mental disorder," which means any mental illness, arrested or incomplete development of the mind, psychiatric disorder, or any other disorder or disability of the mind. It implies a situation where mental health has been substantially impaired. Thus, the law only protects the severely impaired person at a workplace where the employees shall no longer continue working or be absent from work. If an employee suffers depression or anxiety, that may affect his work performance or be absent from work. The Mental Health Context produced by the World Health Organization (WHO) has identified that the burden of mental disorders does not uniformly affect all sections of

society. Groups with adverse circumstances and the least resources face the highest-burden of vulnerability to mental disorders. Thus, most of the B40 group is the most vulnerable part of society in Malaysia. They are more susceptible to social and economic pressure that may be caused them to suffer mental health. Absence from work due to mental health may cause them to be terminated from their job as prescribed under Sections 10 and 14 of the Employment Act 1955 (Act 265).

A study done by (Herek & Herek, 1998) found that people with mental health problems suffer higher stigmatisation and discrimination in several areas of their life, such as in social relationships and employment. In Malaysia, the above findings are confirmed in research carried out by (Mubarak et al., 2003). They found that approximately one-third of the respondents were dissatisfied with their overall quality of life employment and described their experience of significant exploitation in the workplace. In a study by (Hanafiah & Van Bortel, 2015), almost half of the mental health professionals (7 out of 15) reported that their patients complained about active stigma and discrimination by their employers. It was described by the respondents of the study that the employees with mental health have to face negative behaviours in the workplace.

A study (Herek & Herek, 1998) found that people with mental health problems suffer higher stigmatisation and discrimination in several areas of their lives, such as social relationships and employment. In Malaysia, the above findings are confirmed in research carried out by (Mubarak et al., 2003). They found that approximately one-third of the respondents were dissatisfied with their overall quality of life employment and described their experience of significant exploitation in the workplace. In a study by (Hanafiah & Van Bortel, 2015), almost half of the mental health professionals (7 out of 15) reported that their patients complained about active stigma and discrimination by their employers. It was described by the respondents of the study that the employees with mental health have to face negative behaviours in the workplace.

Methods

The paper employs doctrinal legal research to examine the existing legal framework in addressing the workplace's provisions and issues on mental health. For the doctrinal legal research method, the relevant statutes relating to the workplace are reviewed, besides the literature on mental health issues globally and domestic. Doctrinal legal research is research into legal doctrines by analyzing statutory provisions by applying the power of reasoning (Vibhute and Aynalem, 2009). Even though it is less rigorous, it is in-depth and flexible that provides room for critical analysis of the issue of mental health at a workplace from the legal perspective. In conducting this legal research, the literature review is carried out on digital and non-digital libraries that comprise primary sources. Primary sources include conventions, statutes, codes, regulations, non-legislative texts, guidelines, and reports. Secondary sources consist of textbooks, law journals, and international and national statistics on mental health. The fundamental objective of this type of research is to discover, explain, examine, analyze, and present in a systematic manner fact, principles, provisions, concepts, or the operation of specific laws and legislation in protecting and safeguarding the welfare of persons with mental health at the workplace.

The qualitative methodology was selected for this research as it visualises the most appropriate way to obtain pertinent data to answer the research questions above. Silverman (2010) opined that the qualitative method would offer a flexible option in gathering information from the respondents and secure a deeper understanding of the social

phenomena on the study of the underlying factors of corruption in land transactions due to the occurrences of fraudulent land transactions in Malaysia. Creswell (2013) views the qualitative method is employed because there are several justifications. Hammarberg (2016) summarised several reasons why a researcher should adopt a qualitative method because the qualitative methodology effectively reveals potential problems in the implementation of the law and practices.

Results/Discussions

Mental Health Policy and Governance in Malaysia

A healthy work environment is necessary for a good workplace. The workplace should be an environment that enables all employees to perform their tasks efficiently and productively. Mental health in the workplace is common nowadays, with no immunity guarantee. The mental healthcare law and policy has commenced in the 1950s and evolved since then. In Malaysia, at an advanced stage of the mental health impairment, the Mental Health Act 2001 (Act 615) provides that a patient can be admitted into a psychiatric hospital upon the order of a medical officer or registered medical practitioner, as a voluntary patient or by order of the Court. A person suspected to be mentally ill may be admitted involuntarily upon an application to the Medical Director by a relative of the person. A medical officer's recommendation or a registered medical practitioner based on a personal examination of the person made not more than five days before admission. Section 13(6) of Act 615 penalises any Medical Director or person in charge of, or an officer or a staff of, or persons otherwise employed in or engaged by, a psychiatric hospital, psychiatric nursing home, community mental health centre, or any other government or private healthcare premises who ill-treats or wilfully neglects a patient under his care or custody is liable to a fine not exceeding RM 10,000 or to imprisonment for a term not exceeding two years or to both.

The Persons of Disabilities Act 2008 (Act 685) adopts the United Nations Convention on the Rights of Persons with Disabilities (CRPD) envisions the legal recognition of the rights of persons with disabilities, including mental disabilities. Act 685 is enacted to provide for the registration, protection, rehabilitation, development, and wellbeing of persons with disabilities, establishing the National Council for Persons with Disabilities. It also defines the persons with disabilities include those who have long-term mental disabilities. Interestingly, Section 29 of Act 685 refers to the right of employment where subsection (1) provides that persons with disabilities shall have the right to access employment on an equal basis with persons without disabilities. Concisely, Section 29 of Act 685 promotes and protects the right of persons with disabilities to just and favourable work conditions, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, protection from harassment, and the redress of grievances. In addition to this protection, employers are also imposed with a legal obligation to promote stable employment for persons with disabilities by properly evaluating their abilities, providing suitable places of employment, and conducting proper employment management. It is also provided and imposed on the private sector to formulate appropriate policies and measures, including affirmative action programs and other efforts under Section 29 (6) of Act 685. In brief, both Act 615 and 685 relate to long-term and permanent mental health impairment. Thus, these laws are the foundation that safeguards the wellbeing of the employee affected with mental health because employment is a fundamental component of quality of life. At the same time, it is also the primary source of income for most people, commonly a significant

influence on someone's social network, and a defining feature of social status (McDaid et al., 2008).

In addition to the above, the Mental Health Regulation 2010 contained detailed policy guidelines for delivering services. The Act consolidates the law concerning mental disorders. It provides admission, detention, lodging, care, treatment, rehabilitation, control, and protection of mentally disordered persons and related matters (Khan & Ho, 2015). Besides the Regulation 2010, other mental healthcare system governance guidelines mainly concentrate on permanent mental disabilities such as autism, bipolar, and schizophrenia.

Rights of Employees with Mental Health to a Healthy Workplace Environment

Globally, the International Labour Organisation's (ILO) decree on disability issues is laid down in the ILO Convention concerning Vocational Rehabilitation and Employment of Disabled Persons No. 159 (1983), which establishes the principle of equal treatment and employment for workers with disabilities. The convention defines a disabled person as an individual whose prospects of securing, retaining, and advancing in suitable employment are substantially reduced due to a duly recognized physical or mental impairment. Among the prevalent type of mental health faced by the employee is depression. The terminology used by the World Health Organization (WHO) and ILO for depression is a species of a mental disorder primarily marked by alterations in mood and loss of interest in activities previously enjoyed. The risk of suicide is high amongst those suffering from depression. According to WHO, the majority of suicides are due to depression (WHO, 2000).

A workplace that fails to address the mental health issues can exacerbate an existing problem and inadvertently develop a mental health problem. Mental health problems impact employers and businesses directly through increased absenteeism, reduced production, increased costs, reduced profits, and reduced morale of its employee (WHO, Mental Health Policies and Service Guidance, 2005). (Briand et al., 2007) highlighted that the work environment is involved in almost 90% of accounts of people absent from work for mental health reasons.

At the national level, the legislation that provides for a better environment at the workplace is the Occupational Safety and Health Act 1994 (Act 514). Act 514 is enacted to promote and make further provisions for securing the safety, health, and welfare of persons at work, protecting others against risks to safety or health in connection with the activities of persons at work. The objective of Act 514 is provided in Section 4, among others, to secure and protect employees against risks to safety or health at the workplace. Its goals are also to promote an occupational environment for persons at work adapted to their physiological and psychological needs. In order to achieve the objectives, Section 16 of Act 514 imposes on an employer to prepare a general policy concerning the safety and health at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy. If employers fail to comply, Section 19 of Act 514 provides that employers shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding two years or both. However, as noted by Tan Sri Lee Lam Thye, the Patron of the Malaysian Psychiatric Association (MPA), neglect of mental health in the workplace will affect the employee as well as the employers because it affects the productivity, efficiency, and output of each organization (Farid, 2019). Under OSHA, the Safety and Health Committee should play a holistic role by holding mental health-related activities besides promoting physical health activities (Pourranjbar et al., 2019). There

are no specific provisions related to mental health under Act 514, but its preamble reflects the promotion of health that includes psychological or mental health. Thus, implementation could be easily carried out by the National Institute for Occupational Safety and Health (NIOSH), which presently is more focused on safety and physical health at the workplace.

Conclusion

The right to work and employment is indispensable for the social integration of persons with mental health problems (Nardodkar et al., 2016). As viewed by (Wilhelm et al., 2004), a poor working environment can be detrimental to mental health. The pressures such as overworked or daunting work associated with the workplace can also trigger mental health problems (Moreau et al., 2004). It provides an opportunity to earn wages for the individual, which provides greater financial security (McDaid et al., 2008). It also provides social status and identity, a sense of achievement, and a means of structuring one's time (Jahoda, 1981). Mental health problem is a significant public health issue that causes deterioration in the quality of life, function, and financial capabilities (Abd Rahman et al., 2020). There have been significant reforms to mental health legislation in Malaysia, with service level transition from custodial care to community care and developing a foundation of research and organisational development to improve mental health service delivery (Raaj et al., 2021). The legal framework has sufficiently provided the platform for the government and employers to evaluate the protections accorded to employees with mental health.

As Malaysia is still infant stage, it can be said far behind the other countries in terms of Mental Health Law & Policy at Work Place. It is the right time to develop and establish the policy. These issues highlight the importance of promoting the mental health law and policy to combat the stigma and prejudice associated with mental illness at the workplace. It is hoped that the government and employers can improve services to employees who suffer from emotional problems by rigorously implementing and enforcing the law. Comprehensive legal framework and policy should be adapted and adopted from other countries that are well established. For future research, exploration of theory related towards the mental health can be suggested and the comparison study between a country on the implementation of mental health law and policy at workplace.

References

- Abd Rahman, L. R., Idris, I. B., & Ibrahim, H. (2020). Risk factors of depression, anxiety, and stress are risk factors among adults attending primary health clinics in an urban area in Klang Valley, Malaysia. *Malaysian Journal of Medicine and Health Sciences*, 16(1), 240–246.
- Azmi, R., Ahmad, S. N. S., & Kamil, B. A. M. (2020). MENTAL HEALTH ISSUES AT WORKPLACE: AN OVERVIEW OF LAW AND POLICY IN MALAYSIA AND UNITED KINGDOM (UK). *Health*, 5(21).
- Briand, C., Durand, M.-J., St-Arnaud, L., & Corbière, M. (2007). Work and mental health: learning from return-to-work rehabilitation programs designed for workers with musculoskeletal disorders. *International Journal of Law and Psychiatry*, 30(4–5), 444–457.
- CK, P., & Marhani, M. (2011). Help-seeking pathways for in-patients with first-episode psychosis in hospital Kuala Lumpur. *Malaysian Journal of Medicine and Health Sciences*, 37–44.
- Hameed, A., & Waheed, A. (2011). Employee Development and Its Affect on Employee

- Performance: A Conceptual Framework. *International Journal of Business and Social Science*, 2 (13)
- Hanafiah, A. N., & Van Bortel, T. (2015). A qualitative exploration of the perspectives of mental health professionals on stigma and discrimination of mental illness in Malaysia. *International Journal of Mental Health Systems*, 9(1), 1–12.
- Herek, G. M., & Herek, G. M. (1998). *Stigma and sexual orientation* (Vol. 4). Sage.
- Howes, S., Agberemi, R., Edwards, J., & Goldie, I. (2016). *A report into the prevalence of determinants and mental health inequalities in the city*.
- Idris, M. A., Dollard, M. F., & Winefield, A. H. (2010). Lay theory explanations of occupational stress: The Malaysian context. *Cross-Cultural Management: An International Journal*.
- Jahoda, M. (1981). Work, employment, and unemployment: Values, theories, and approaches in social research. *American Psychologist*, 36(2), 184.
- Vibhute, K., and Aynalem, F. (2009). *Legal Research Methods: Teaching Material. Sponsorship of the Justice and Legal System Research Institute*.
- Khan, N. N., & Ho, R. C. (2015). Malaysian mental health law. *BJPsych International*, 12(2), 40–42.
- LaMontagne, A. D., Martin, A., Page, K. M., Reavley, N. J., Noblet, A. J., Milner, A. J., Keegel, T., & Smith, P. M. (2014). Workplace mental health: developing an integrated intervention approach. *BMC Psychiatry*, 14(1), 1–11.
- McDaid, D., Knapp, M., Medeiros, H., & Group, M. (2008). *Employment and mental health: Assessing the economic impact and the case for intervention*. Citeseer.
- Montagna, A. S. (2014). The Legal Rights and Responsibilities of the Mentally Impaired Employee and His/Her Employer. *Her Employer (February 19, 2014)*.
- Moreau, M., Valente, F., Mak, R., Pelfrene, E., De Smet, P., De Backer, G., & Kornitzer, M. (2004). Occupational stress and incidence of sick leave in the Belgian workforce: the Belstress study. *Journal of Epidemiology & Community Health*, 58(6), 507–516.
- Mubarak, A. R., Baba, I., Heng Chin, L., & Hoe, S. Q. (2003). Quality of life of community-based chronic schizophrenia patients in Penang, Malaysia. *Australian & New Zealand Journal of Psychiatry*, 37(5), 577–585.
- Nardodkar, R., Pathare, S., Ventriglio, A., Castaldelli-Maia, J., Javate, K. R., Torales, J., & Bhugra, D. (2016). Legal protection of the right to work and employment for persons with mental health problems: A review of legislation across the world. *International Review of Psychiatry*, 28(4), 375–384.
- Pourranjbar, M., Khodadadi, M. R., & Fathi, F. M. (2019). Correlation between sport participation, psychological wellbeing and physical complaints among students of Kerman University of Medical Sciences. *Journal of Health Promotion Management*, 8(1), 64–73.
- Raaj, S., Navanathan, S., Tharmaselan, M., & Lally, J. (2021). Mental disorders in Malaysia: an increase in a lifetime prevalence. *BJPsych International*, 1–3.
- Ram, B. S. (2019). Survey: Malaysian employees are overworked, sleep deprived, unhealthy. *New Straits Times*.
- Wilhelm, K., Kovess, V., Rios-Seidel, C., & Finch, A. (2004). Work and mental health. *Social Psychiatry and Psychiatric Epidemiology*, 39(11), 866–873.