

# National Narcotics Agencies in Southeast Asia: Relics of the Regional ‘War on Drugs’

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## I. Introduction

From the 1990s to the early 2000s, Southeast Asia was unique as a world region where penal laws on drugs tended to become more, rather than less, punitive (Baldwin 2013; Coca 2018). During that period, the work of national narcotics agencies was central to the public discourse in Southeast Asia, flooding the region’s visual, virtual and news media spaces.<sup>1</sup>

This chapter focuses on the role played by Southeast Asia’s national narcotics agencies in drug policy and enforcement in the region. The four most prominent national narcotics agencies within Association of Southeast Asian Nations (ASEAN)<sup>2</sup> are the Central Narcotics Bureau (CNB) in Singapore, the Office of the Narcotics Control Board (ONCB) in Thailand, the Agensi Antidadah Kebangsaan (AADK) in Malaysia,<sup>3</sup> and the Badan Narkotika Nasional (BNN, National Narcotics Board) in Indonesia. Each play roles in law enforcement, rehabilitation, and anti-drug education. Although there are some nuances between countries, this chapter will show that: (a) these four national narcotics agencies, counterintuitively given their powers and public prominence, are mere ‘cogs in the wheel’ of national drug policymaking, the direction of which is instead determined by political actors; and (b) these agencies and their staff support the death penalty for narcotics crimes and more generally espouse a punitive approach towards

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<sup>1</sup> During my first (2004) and second (2011) ever trips to Singapore, anti-drug advertisements featuring the agencies’ names were a frequent sight by the roadside. I saw the same during fieldwork travel to Indonesia’s capital Jakarta in 2013, whether at the city’s international airport, or on giant billboards beside highways.

Further striking examples from the web are the following:

Badan Narkotika Nasional (2023) (anti-drug fun run, advertised on Instagram, Indonesia); *Asia Views* (2022) (press conference proudly announcing drug seizures, Badan Narkotika Nasional, Indonesia); *Ebay* (2022) (set of CNB 50<sup>th</sup> anniversary commemorative stamps reading ‘stay away from drugs’, Central Narcotics Bureau, Singapore); Central Narcotics Bureau (2021c) (glossy television advert, Singapore); Zulkifli (2019) (militarised photo op, Agensi Antidadah Kebangsaan, Malaysia); Government of Malaysia (2020) (downloadable app to volunteer for the AADK-backed NGO ‘Skuad Antidadah’, Agensi Antidadah Kebangsaan, Malaysia); *Facebook* (2020) (sponsorship of the national youth football league, Office of the Narcotics Control Board, Thailand); Arayasukawat (2021) (auction of anime figures seized in drug cases, Office of the Narcotics Control Board, Thailand).

<sup>2</sup> National anti-narcotics agencies or committees also exist in Brunei, Cambodia, Laos, Myanmar, Philippines and Vietnam. The leaders of these bodies form part of ASEAN’s Senior Officials on Drug Matters (ASOD) grouping. See ASEAN (2022).

<sup>3</sup> Sometimes the Malaysian agency is referred to in English language literature as the National Anti-Drug Agency (NADA).

drug offenders, reflecting the Southeast Asian agencies' standing as institutional relics of the region's 'War on Drugs' which began in the 1970s.

The CNB, ONCB, AADK and BNN were chosen for analysis for three reasons. First, Singapore, Thailand, Malaysia and Indonesia together make up around 57 percent of ASEAN's population. Second, these four states, as compared with remaining members Brunei, Cambodia, Laos, Myanmar, the Philippines and Vietnam, are each right-of-centre 'flawed' democracies and, most importantly, all still retain and use the death penalty for drug offences (Pascoe 2019).<sup>4</sup> Third, the four states' anti-narcotics policies and institutions are also broadly comparable arising from their common ratification of the three UN drug control treaties, concluded in 1961, 1971 and 1988.<sup>5</sup> The need to adopt a regionally comparative approach in criminal justice research is well established (Johnson and Zimring 2009): comparison between the different national agencies creates context, demonstrating what is normal and what is exceptional (Nelken 2011). Comparison aids explanation, and even cautious prediction of social phenomena (Steinmo 2008; Kohli et al 1995). Finally, comparison can also assist policy assessment such that agencies may learn from the best practices of others (Pakes 2015).

The research presented in this chapter relies upon different sources including legislation, policy statements, media reports and in-country fieldwork interviews with 'elites' conducted between June and September 2023.<sup>6</sup> Arguably, previous NGO reports and academic studies on comparative Asian and Southeast Asian drug policy, while serving as important starting points and as advocacy tools (e.g. Miao and Lai 2023; Sachsenröder 2022; Lasco 2020; Pardo et al 2019; Miao 2017; Rahman and Crofts 2013; Baldwin 2013), have neglected the inner workings of national narcotics control bodies and their relative position within the state's policy power structure. This study aims to rectify this blind spot in the literature. 'Elite' interviews are a key means to this end, helping to reveal the reasons behind the official decisions and agendas of

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<sup>4</sup> Each are classified by Amnesty International as 'retentionist' states (Amnesty International 2023). The most recent execution for drug offences took place in Indonesia in 2016, in Malaysia in 2017, in Singapore in 2023 and in Thailand in 2009. Vietnam is also classified as a retentionist state. However, Vietnam's criminal justice system is more closely comparable with those of other hard-line socialist nations: China, Laos, and North Korea within the Asian continent (Pascoe 2019; Johnson and Zimring 2009).

<sup>5</sup> These are: The Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1972 (both being ratified by Singapore in 1975, Thailand in 1975, Malaysia in 1978 and Indonesia in 1976); the Convention on Psychotropic Substances 1971 (ratified by, Singapore in 1990, Thailand in 1975, Malaysia in 1986 and Indonesia in 1996); the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (ratified by Singapore in 1997, Thailand in 2002, Malaysia in 1993 and Indonesia in 1999). Armentra and Jelsma (2015: 1) summarise the effect of the three multilateral treaties:

The purpose of these treaties is to establish internationally applicable control measures with the aim of ensuring that psychoactive substances are available for medical and scientific purposes, while preventing them from being diverted into illegal channels. The treaties also include general provisions on the trafficking and use of psychoactive substances.

The 1961 and 1971 Conventions classify controlled substances in four lists or Schedules, according to their perceived therapeutic value and potential risk of abuse. Included in an annex to the 1988 Convention are two tables listing precursor chemicals, reagents and solvents which are frequently used in the illicit manufacture of narcotic drugs and psychotropic substances. This treaty also significantly reinforced the obligation of countries to establish criminal offences in order to combat all aspects of the illicit production, possession and trafficking of psychoactive substances.

<sup>6</sup> Ethics approval for the interviews was granted by the Human and Artefacts Ethics Sub-Committee of City University of Hong Kong, with the application number HU-STA-00000399. After obtaining informed consent from participants, interviews were conducted face to face with manual note-taking.

those individuals from politics, law and the civil service who shape government policy (Lilleker 2003).

The chapter proceeds as follows. After the present introduction, Part II summarises the findings from the relevant academic literature on law enforcement agencies and their internal culture, with a particular focus on drug policing. Part III proceeds to relay the history of each of the four Southeast Asian anti-narcotics agencies, together with the origins of their punitive policies on drugs. Part IV describes the present organisation, functions and powers of each agency, to address the relative power of the agencies vis-à-vis politicians and other public bodies in shaping drug policy. Part V then discusses agency and officer views on punitive approaches to drug offending. Finally, the conclusion in Part VI summarises the research findings, and discusses the related policy implications.

## **II. Previous Literature**

The academic literature covering police and other law enforcement agencies is the most relevant frame through which to consider the position of Southeast Asia's national narcotics agencies within the state's power structure. Law enforcement bodies, together with social services and public health agencies are typically located in the executive branch of government, with their staff being public employees. Within their operational discretion, they implement the policy priorities of the government of the day (Caplan 1971; Ritter and Lancaster 2013). Occasionally, specialised law enforcement agencies such as anti-corruption bodies may be established outside this typical structure and even form their own distinct 'fourth branch' of government, in order to maintain their financial and structural independence, to keep watch over misconduct within the police, military, civil service and by elected politicians (Quah 2014; Howe and Haigh 2016). Yet such 'fourth branch' institutions are typically limited to those with an 'integrity' function, and are usually still beholden to the authority of the head of state and to the courts via judicial review (Howe and Haigh 2016).

With politicians more directly accountable to the public as they make decisions,<sup>7</sup> police and related government departments do not see their role to lead in terms of policy, but rather to follow. Law enforcement agencies generally have little room to come up with criminal justice policies themselves, with national-level politicians from the executive or legislative branch instead playing the leading role in setting policy priorities in response to state security concerns (Babor et al 2018; Sacco 2014). Southeast Asia's national narcotics agencies provide an important test of these assumptions, due to their prominent public profile, and vast powers and responsibilities that they have accumulated since the early 1970s.

Furthermore, recent policing literature has emphasised the organisational missions of law enforcement agencies and the personal viewpoints of law enforcement staffers as being pro-'law and order' or as focused on 'crime control' (O'Sullivan 2005; Silvestri 2003; Prenzler 1997; Loftus 2009) including when policing drugs (Bacon 2022; Burris and Burrows 2009; Crofts et al 2013). On specific punishments, previous literature from both retentionist and abolitionist nations tends to have found that law enforcement officers favour maintaining or re-establishing capital punishment for murder, if not for other crimes (Mapstone 1992; Bedau

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<sup>7</sup> Even though Singapore, Thailand, Malaysia and Indonesia hold regular elections for national and sub-national political offices, each of them are (sometimes very) flawed democracies. In 2023 NGO Freedom House classified Singapore, Malaysia and Indonesia as 'Partly Free' jurisdictions (Freedom House 2023). Thailand was classified as 'Not Free', although a May 2023 election has since ended direct military rule.

1973; Colman and Gorman 1982; Fagan 1986; Wallace 2024). A less-punitive self-image, seeing such agencies as community-rooted providers of public services, is popular within the writings of policing theorists but tends to be less popular within the agencies themselves (e.g. Loader and Mulcahy 2003; Ponsaers 2001).

What explains the discrepancy between theory and practice? Law enforcement bodies are institutions which develop their own working culture within which new recruits are socialised (O’Sullivan 2005; Silvestri 2003). Rational self-interest plays a part in developing such ‘law and order’ views: supporting harsher punishments for crimes and a lesser use of lenient discretion are the most risk-averse position to take vis-à-vis one’s superiors within the organisation and in relation to the law-abiding public (Crofts et al 2013; Burris and Burrows 2009), a majority of whom might not closely identify with the suspects targeted by police investigations, particularly in light of ethnic, class and age differences. An established agency staff member or new recruit who publicly espoused a view contrary to that of the majority would likely find his or her path to promotion more difficult (Crofts et al 2013).

Rational self-interest also extends to the mission of the institution as a whole. A law enforcement organisation whose official position on the death penalty or other harsh punishment approaches was at odds with that of politicians from the executive or legislative branch would soon risk budget cuts, dismissal of its personnel, or its decisions being undermined, or reversed. Furthermore, promoting and enforcing harsh punishments for drug crimes arguably feeds into the ‘prison industrial complex’ in the modern state, whereby the prison economy justifies more arrests and convictions, which in turn justifies ever more money being spent on corrections (Cummings 2012).

In short, there are powerful incentives for individuals to toe the line within law enforcement organisations, and for the organisations themselves to adopt a position, often punitive, that accords with the government of the day (Prenzler 1997). In jurisdictions where officers are ordered to take on a multi-faceted role in dealing with drugs, incorporating law enforcement, rehabilitation, education and harm reduction, such as within a national narcotics agency, mission confusion may result (Hai, this volume). As Crofts et al (2013: 73) observe:

Where this has been studied, the overwhelming finding is of a perceived and often severe conflict between unresolved and competing imperatives of the dual roles police are asked to fulfil – drug crime policing and support for harm reduction.

In the Southeast Asian context, Part V of this chapter considers the available evidence for punitive views on the part of the agencies and their staff. Nevertheless, brandishing punitive views towards drug offenders and users is not quite the same as pulling the key policy levers that determine how punitive the criminal justice system can be in practice.

### **III. History**

Since the 1970s, the decade during which the first permanent national narcotics agencies were founded in Southeast Asia, drug crimes have been seen by Southeast Asian governments as some of the most serious crimes on the statute book, if not *the* most serious category (Petcharamesree 2023). The regional political consensus was that widespread illicit drug use would form a kind of wider sabotage of productivity and family values, and created a countercultural threat to state survival (Kananatu, this volume; Pascoe 2019). In all four jurisdictions in the present study, the establishment of the current national narcotics agency or

a precursor institution embodied government desires to incorporate the most coercive components of the 1960s to 1980s UN narcotics control treaties (Gunawan and Lai 2018).<sup>8</sup> Across the ASEAN bloc, accession to these multilateral agreements eventually led to mass anti-drug education efforts in schools and universities, confined rehabilitation for regular users, the destruction of drug crops like opium and cannabis, and legislating to allow or mandate the death penalty for drug traffickers and manufacturers (Hoyle and Jabbar, this volume; Baldwin 2013). In the aftermath of the American war in Vietnam, Southeast Asia had begun its own ‘War on Drugs’ (Kananatu, this volume).

Southeast Asia’s oldest surviving anti-narcotics agency was established in Singapore. The CNB’s origin story is typical of counter-narcotics efforts across the region. As part of an effort to deal with opium, cannabis and methaqualone from the Golden Triangle entering the region during the Vietnam War, the Singaporean government established the CNB as a specialised anti-narcotics law enforcement and preventive agency in November 1971 (Central Narcotics Bureau 2021a; Sachsenröder 2022). Parliament thereafter increased the penalties for drug offences by enacting the Misuse of Drugs Act in 1973. The culmination of Singapore’s punitive turn was the Misuse of Drugs (Amendment) Act 1975 which imposed the mandatory death penalty for drug crimes for the first time. On the CNB’s 50<sup>th</sup> anniversary in 2021,<sup>9</sup> the Singaporean government was quick to praise the agency’s work as a reason that the country is ‘largely drug free. They [CNB officers] have saved tens of thousands of young people from a life of drugs and crime’ (Central Narcotics Bureau 2021a: 5).

In Thailand, although a police-led Central Narcotics Board was established as far back as 1961, it had no permanent legislative basis and was abolished and reconstituted with every following government (Ministry of Justice, n.d.). With the Narcotics Control Act 1976, the Cabinet-level Narcotics Control Board (NCB) and its secretariat, the ONCB, were established. Shortly afterwards, the Narcotics Act 1979 first introduced the judicial death penalty for narcotics crimes, although the Thai Constitutions of 1976, 1977 and 1978 had each made provision for arbitrary executions (i.e. executions without trial) which could be applied to drug dealers (Pascoe 2019). It is significant that both Singapore and Thailand were, effectively, authoritarian states at the time their narcotics agencies came into being. Singapore’s politics was dominated by its founder and first prime minister, Lee Kuan Yew. Thailand’s was a military dictatorship headed by a caretaker prime minister, Thanin Kraivichien.<sup>10</sup> While at its foundation the ONCB was formed as an independent department under the Office of the Prime Minister, a ministerial reorganisation in 2002 affiliated the agency with the Ministry of Justice (UNODC 2008). In more recent years, whereas disrupting methamphetamine importation and repurposing rural opium plantations remain as ONCB law enforcement priorities (Laohong 2016; United Nations Thailand 2022), the agency has supported the legalisation of kratom (Tanguay 2011) and cannabis for medicinal (but not recreational) use (Laohong 2018). It has become the only regional agency under study here to adopt both positions. Thailand’s new Narcotics Code, purportedly consistent with the result of the UN General Assembly Special Session on the

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<sup>8</sup> See n 5.

<sup>9</sup> See also n 1.

<sup>10</sup> In 1961, Thailand was also run by a military government, headed by Field Marshal Sarit Thanarat.

World Drug Problem (2016) (Office of the Narcotics Control Board, n.d.), was passed in November 2021 (see Bunmee, this volume).

In Malaysia, an anti-drugs committee has existed at Cabinet level in one form or another since 1975 (National Anti-Drugs Agency 2021a). However, it was not until 1996, following a Ministry of Home Affairs proposal, that a National Drug Agency was established, by amalgamating several agencies which focused separately on enforcement, prevention and rehabilitation for drug crimes and drug use across separate government departments (Azizan et al 2018; National Anti-Drugs Agency 2021a; Muniandy and Jalil 2010).<sup>11</sup> It was only some years after its founding that the newly-named AADK received its own dedicated statute, in 2004, with the National Anti-Drugs Agency Act. In one key respect, Malaysia is the odd nation out within this study: its current national agency was formed long after the country's peak in terms of drug punitiveness. In the other three jurisdictions under study, the establishment of the present agency or a national precursor came before the nation's most punitive period, which its enforcement work then contributed to, whether that was the mid-1990s (Singapore), the late 1990s to early 2000s (Thailand), or the mid-2010s (Indonesia) (Pascoe 2019). Malaysia reached its own punitive apex under Prime Minister Mahathir Mohamad as the chair of the UN's International Conference on Drug Abuse and Illicit Trafficking, held in Vienna in 1987 (Harring 1991), without the input of an integrated national agency for implementing drug policy.

The example of Malaysia shows that putting into practice a strongly coercive drug policy does not necessarily require an all-encompassing national drugs agency. Separate government departments and agencies in the fields of health, law enforcement, corrections, education and prosecutions can implement policies such as compulsory rehabilitation for users, fervent anti-drug education in schools, and most strikingly enforce the mandatory death penalty for traffickers and manufacturers (Harring 1991). Today, the AADK is mainly known for its rehabilitation and education work,<sup>12</sup> with its law enforcement functions primarily limited to actions against individual drug users (The Malaysian Administrative Modernisation and Management Planning Unit 2021). Nevertheless, as will be shown in Parts IV and V, the way the AADK carries out its functions still reflects a 'War on Drugs' mentality.

The history of Indonesia's national narcotics board, Badan Narkotika Nasional, is longer than it first appears. The present agency was only established in 2002. However, the BNN's conceptual origins are, as with its Singaporean and Thai equivalents, in Indonesia's 1970s reforms to drug laws under the authoritarian government of President Suharto. By that time Indonesia had started to see drugs as a threat to individuals, to communities and to the state (Lindsey and Nicholson 2016; Havenhand 2020). The death penalty for narcotics crimes was introduced by legislation in 1976, directly after Indonesia's ratification of the UN Single Convention, however no trafficker was executed until 1995 (Pascoe 2019).

From 1971, the mitigation of drug use in Indonesia fell under the authority of the National Intelligence Coordination Agency (Badan Koordinasi Intelijen Negara – BAKIN), a small

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<sup>11</sup> A Central Narcotics Bureau, although established in 1972 and sharing a name with its Singaporean counterpart, had an enforcement focus and was accordingly based within the Ministry of Law (National Anti-Drugs Agency 2021a; United Nations 1974).

<sup>12</sup> Interviews (Malaysia, 25 July 2023, 26 July 2023, 28 July 2023b).

coordinating body made up of representatives from the Ministries of Health, Social Affairs, Foreign Affairs, and the Attorney-General's Office, among others. However, this BNN antecedent agency had no direct funding via the national budget, and limited authority to conduct its own operations (Badan Narkotika Nasional 2022a). A National Narcotics Coordinating Board (Badan Koordinasi Narkotika Nasional – BKNN) combining representatives from 25 government agencies was established by Presidential decree in 1999 (Badan Narkotika Nasional 2022a), but the BNN was not founded as a separate institution with its own budget and its own staff until 2002 (Badan Narkotika Nasional 2022a).

BNN was initially governed by a Presidential decree and regulation rather than by its own dedicated statute (Lindsey and Nicholson 2016), and was first headed by the serving Chief of Indonesian Police, rather than by an in-house leader (Baldwin 2013). Its institutional evolution only became complete with the passage of Law 35/2009 on Narcotics. Since then, its authority has grown rapidly. BNN is now one of the most powerful and vocal non-ministerial agencies in Indonesia (Honna 2011; International Drug Policy Consortium 2017). Its two founding purposes are to coordinate: (a) relevant executive agencies in the formulation and implementation of the national drug prevention policy, and (b) the implementation of the national drug control policy (Badan Narkotika Nasional 2022a).

#### **IV. Organisation, Functions and Powers**

Unlike the more specialised US drug agencies (US Department of Justice 2023) or those found in other regions, a common distinguishing feature of the four Southeast Asian agencies is the extremely wide powers that they enjoy, extending on paper to prevention not only through law enforcement, but also via publicity, education, community empowerment, and rehabilitation. In jurisdictions around the world, these functions are often divided among different ministries and agencies (Greenwald 2009; Scorzelli 1992), whose conflicting priorities and competition with one another may in some cases compromise the effectiveness of drug control or harm-reduction efforts. By contrast, the four Southeast Asian narcotics agencies considered here possess a (mostly) all-encompassing agenda, often achieved through the amalgamation of smaller precursor agencies that dealt with more specific policy areas. They are not merely specialised law enforcement vehicles analogous to anti-corruption bodies, customs and excise agents or even 'morality police' in Islamic-majority countries, but rather institutions that aim to coordinate entire governmental and societal responses to illicit drugs and their use. At first glance, the vast array of responsibilities accorded to the Southeast Asian agencies appears to challenge the conception that such bodies are merely 'cogs in the wheel' bringing to life drug policies which are devised by political actors. Yet, the agencies' decision-making reality is far more circumscribed than their widespread powers suggest on paper.

In Singapore, the CNB's stated functions are to enforce the nation's narcotics laws, to train its own enforcement officers, to run publicity campaigns aiming to create public opinion against drug abuse and trafficking, to collect intelligence on drug trafficking in coordination with Singapore's other law enforcement agencies, and to act as a liaison with the international drug control bodies (Central Narcotics Bureau 2021b; UNODC 2008). When it was first established in 1971, the Bureau consisted of just three sections: enforcement; administration; and research, training and publicity. Thereafter, its responsibilities expanded over time, concomitant with the rise of Singapore's now pervasive anti-drug 'ideology' (Miao 2017: 64). Five years after its founding, the agency's powers expanded by subordinate legislation to reflect the importance of rehabilitating drug users and minimising their relapse rate. The Director of the CNB was

empowered to seek confined treatment for arrested drug users (Central Narcotics Bureau 2021a; Chok 2017). In November 1993, the CNB was further entrusted with additional powers by the Drug Trafficking (Confiscation of Benefits) Act, allowing the agency to trace, freeze and confiscate those assets identified as proceeds from drug trafficking.

As the CNB's powers have expanded, it is also notable that, over the years, its primacy in anti-drug education has waned. This function is now shared with the Singapore Anti-Narcotics Association (SANA) (an NGO), the Ministry of Education, and the Singapore Armed Forces, although the CNB retains a coordinating role (Central Narcotics Bureau 2018; Zhang 2022; Quah 2008). The overall vision is for the CNB to play a central role in a 'whole of society' strategy to combat drug addiction and distribution in Singapore, albeit in cooperation with other government agencies and closely regulated by primary and subordinate legislation. Drug policy is initially formulated by the Minister of Home Affairs, with input from fellow Cabinet ministers. It is the CNB which is tasked with implementing this policy, albeit within a reasonable margin of professional judgement.<sup>13</sup>

The Director of the CNB is appointed by the Singaporean Minister of Home Affairs and has significant powers under the Misuse of Drugs Act in its most recent (2020) iteration.<sup>14</sup> CNB agents possess all the same powers available to police officers to investigate an offence under the Act, including entrapment, searching suspects and the ability to conduct random drug tests in public places.<sup>15</sup> Legislation specifically states that its officers shall be armed.<sup>16</sup> However, the CNB's law enforcement operations against drug traffickers and users are shared with other law agencies, particularly the Singapore Police Force, Singapore Customs and the Immigration and Checkpoints Authority (Lindsey and Nicholson 2016; ASEAN 1991). The CNB also works closely with foreign drug enforcement agencies, with Interpol and with industry leaders to control access to precursor chemicals (Lindsey and Nicholson 2016; Quah 2008; ASEAN 1991). Despite its prominent public reputation then, the CNB is but one facet of the Singaporean government's eradication-centred response to drugs in the city-state.

In Thailand, day-to-day work on drug control is carried out by the ONCB, which acts as a secretariat for the more powerful NCB, the committee which controls drug policy and strategy (Office of the Narcotics Control Board 2020; Bunmee, this volume).<sup>17</sup> While the ONCB is made up of civil service professionals across various fields, the NCB is formulated as essentially an 'anti-drugs Cabinet', headed by the prime minister. Among the NCB's other members are key government ministers, the attorney general, the leaders of the Thai police force and Customs Department, and the NCB secretary-general. The latter concurrently supervises the activities of the ONCB (Ministry of Justice n.d.). Thai drug policy, ultimately

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<sup>13</sup> Interviews (Singapore, 23 June 2023, 28 June 2023, 30 June 2023).

<sup>14</sup> Misuse of Drugs Act 2020, s 3(1), 24-26.

<sup>15</sup> Misuse of Drugs Act 2020, s 31, 31A, 31B, 32; Interviews (Singapore, 28 June 2023, 30 June 2023).

<sup>16</sup> Misuse of Drugs Act 2020, s 32A.

<sup>17</sup> Narcotics Control Act 1976, s 5, 11-13.



directed from the political level, has until recently been criticised as being conservative and antiscientific (Windle 2016; Pardo et al 2019).<sup>18</sup>

In contrast with the NCB, the ONCB is tasked with narcotics policy implementation, including inter-agency coordination, surveillance and intelligence, conducting arrests, forcible rehabilitation, preventive education, minimising the transmission of HIV through intravenous drug use, drug research and also coordinating with its international equivalents and with local NGOs (Office of the Narcotics Control Board 2014; ASEAN 1991). That is not to say, though, that the ONCB plays no role at all in policy formulation. The NCB has in the past approved or endorsed policy ideas originating from the ONCB.<sup>19</sup> One prominent recent example was kratom decriminalisation in 2021.<sup>20</sup> Thailand's new Narcotics Code (2021) was first drafted by the ONCB, before its ratification by Cabinet and Parliament (Office of the Narcotics Control Board 2020). Increasingly, Thailand's political decision-makers seem more willing to trust the ONCB's subject-specific expertise in devising drug policy.

One of the ONCB's major functions remains law enforcement. While the agency's focus is on transnational cases, the Narcotics Suppression Bureau (NSB) of the Royal Thai Police is responsible for domestic (street-level) drug crimes. Both agencies work closely together, with the police force providing manpower when necessary (*Global Security*, n.d.).<sup>21</sup> The NSB is just one of the many executive agencies working alongside the ONCB to pursue drug control in Thailand (US Department of State 2001).<sup>22</sup>

Moving to Malaysia, the AADK is directly responsible to the Cabinet's Committee on the Eradication of Drugs and acts as its secretariat (UNODC 2008), with much the same relationship as the ONCB and NCB, respectively, in Thailand. The Cabinet Committee is chaired by Malaysia's deputy prime minister and includes the AADK's director in its membership (Chan 2023), along with the Minister of Home Affairs, whose portfolio includes responsibility for the AADK (National Anti-Drugs Agency 2022). The agency's Director General is appointed by Malaysian King on the advice of the prime minister.<sup>23</sup> Although the AADK provides expert policy advice to the Minister of Home Affairs and to Members of Parliament on new legislation,<sup>24</sup> the ultimate balance between reducing supply and demand, between law enforcement, education and rehabilitation is carved out at the Cabinet level (Abdullah 2023; *Al Jazeera*, 28 June 2019). Any major changes in direction are achieved by the passage of new primary or subordinate legislation, rather than the agency working within

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<sup>18</sup> Corroborated by Interviews (Thailand, 23 August 2023).

<sup>19</sup> Interviews (Thailand, 24 August 2023, 28 August 2023).

<sup>20</sup> Interviews (Thailand, 23 August 2023). See also Tanguay (2011) and Office of the Narcotics Control Board (2020).

<sup>21</sup> Corroborated by Interviews (Thailand, 24 August 2023).

<sup>22</sup> Corroborated by Interviews (Thailand, 23 August 2023).

<sup>23</sup> National Anti-Drugs Agency Act 2004, s 4-5.

<sup>24</sup> Interviews (Malaysia, 27 July 2023a, 29 July 2023a). The agency advises the Minister of Home Affairs 'on policies relating to prevention of misuse of dangerous drugs, treatment and rehabilitation of drug dependants, special preventive measures of persons associated with trafficking in dangerous drugs and the forfeiture of property connected with dangerous drugs offences' (National Anti-Drugs Agency Act 2004, s 6(i)).

the existing legislative framework.<sup>25</sup> Prominent examples are the mooted reforms towards decriminalisation of minor drug possession, and voluntary rather than mandatory rehabilitative detention for drug users. Both may soon be realised with the replacement of the Drug Dependents (Treatment and Rehabilitation) Act 1983, enacted during Malaysia's most punitive era on drugs under Prime Minister Mahathir, with the the Misuse of Drugs and Substances (Prevention, Treatment and Rehabilitation) Act, which is being debated at the time of writing.

Malaysia's stated National Drug Policy aims to 'create a Malaysian nation and society that is free from the threat of [narcotic] drugs to ensure the well-being of community life, [and to] maintain national stability and resilience' (Agensi Antidadah Kebangsaan 2019: 1). The main method through which AADK tries to achieve this is through addiction prevention, via both reductions in drug demand and in drug supply (International Society of Substance Abuse Professionals 2017). Like the other national agencies, the AADK does not act alone in pursuing the state's narcotics policy goals. As part of its work, it organises interdepartmental and international cooperation to counter drug production and distribution (UNODC 2008). As with their CNB equivalents, AADK agents have all the same powers and immunities as police officers in dealing with drug cases, yet their law enforcement role is circumscribed by legislation, so as to focus on individual users.<sup>26</sup> It is instead the Royal Malaysia Police's Narcotics Division that investigates and enforces major drug crimes under the Dangerous Drugs Act 1952.<sup>27</sup>

One component of the AADK's agenda already exhibits an important difference from the other three agencies under study. It is only the AADK whose mission statement currently extends to harm reduction,<sup>28</sup> which is broadly defined as a recognition that drug use cannot be eliminated but that its harms to human health and social and legal wellbeing can be lessened by shifting the focus of operations (Pardo et al 2019; Miao and Lai 2023). In cooperation with the Royal Malaysia Police, Ministry of Health, Prisons Department, academics and NGOs, the AADK's harm reduction strategy began in 2005 with a methadone therapy programme (Lee et al 2013), but has not yet progressed beyond this to encompass needle exchanges, for example. Nevertheless, in an apparent contradiction, the stated goals of the AADK still include freeing Malaysia from narcotic drugs entirely (National Anti-Drugs Agency 2021b), starting with anti-drug education for preschool-age children (Agensi Antidadah Kebangsaan 2019). In practice, the agency continues to favour a coercive, abstinence approach to drug control, while merely paying lip service to the international discourse on harm reduction.<sup>29</sup>

Finally, in Indonesia, the BNN's main roles are to prevent and eradicate the use and illicit trafficking of narcotics, psychotropics, drug precursors and other addictive substances,

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<sup>25</sup> Interviews (Malaysia, 24 July 2023, 25 August 2023).

<sup>26</sup> National Anti-Drugs Agency Act 2004, s 6(a), 7(2); Interviews (Malaysia, 24 July 2023, 27 July 2023a).

<sup>27</sup> Interviews (Malaysia, 24 July 2023, 27 July 2023a).

<sup>28</sup> 'Harm reduction' can be contrasted with references to 'harm prevention' found within materials published by the other agencies. For example, see Central Narcotics Bureau (2018: 2) and Central Narcotics Bureau (2023). Thailand's ONCB has also moved in the direction of harm reduction, although it does not form part of the organisation's mission statement: Interviews (Thailand, 23 August 2023, 28 August 2023). See also Baldwin (2013); Pardo et al (2019).

<sup>29</sup> Interviews (Malaysia, 26 July 2023, 27 July 2023a, 27 July 2023b).

excluding tobacco and alcohol. To this end, apart from law enforcement, BNN also conducts work towards community empowerment, education, rehabilitation of users, and drug research (Badan Narkotika Nasional 2022b; Alam et al 2020).<sup>30</sup> As examples of its work practices, BNN has in the recent past conducted user surveys, drug seizures, assessments of international trafficking routes, bilateral cooperation with other nations' narcotics agencies, and assessments of the impact of illicit drugs on the Indonesian economy (Lindsey and Nicholson 2016).

As a Non-Ministerial Government Institution, BNN is independent of all government ministries and is directly accountable to the President of Indonesia (Lindsey and Nicholson 2016). BNN officials provide advice directly to the President (International Drug Policy Consortium 2017), including on clemency applications in drug cases (Pascoe 2019). There have even been occasions where BNN leaders have criticised the President for commuting the death sentences of convicted drug traffickers, and for failing to prioritise drug enforcement within the national political agenda (McRae 2013).

Incorporating its provincial and district components (UNODC 2008), BNN is an organisational behemoth, with more than 3,000 staff, regional offices in 33 provinces and more than 100 offices at a local level. Broadly speaking, BNN's status is comparable to that of the national police, armed forces, state intelligence agency, public prosecution service, and the Corruption Eradication Commission (KPK). Despite being formally separate from the Indonesian National Police, both work closely together through a memorandum of understanding (Lindsey and Nicholson 2016). On drug enforcement, the BNN tends to handle large-scale trafficking cases whereas the police handle street-level cases, although their overall responsibilities substantially overlap.<sup>31</sup> BNN also cooperates with the Ministry of Health as the latter classifies drugs and sets standards for rehabilitation and treatment programmes (Lindsey and Nicholson 2016; Havenhand 2020). Moreover, as with several of the other agencies under study, BNN's educational and preventive functions are shared with volunteers from anti-drugs NGOs – most prominently GRANAT and GANNAS (both Indonesian acronyms translated as the National Movement Against Narcotics).<sup>32</sup>

When assessing BNN's broader impact on Indonesia's drug policy, it is notable that its founding functions focus on coordination between different government agencies to implement policy, rather than solely devising the policy itself (Badan Narkotika Nasional 2022a). While BNN is required to provide its own input to the Presidency and Indonesia's Legislature when developing narcotics policy (UNODC 2018),<sup>33</sup> the agency's often shrill public messaging on illicit drugs masks a concerted political plan of action emanating from the elected executive, rather than the other way around.<sup>34</sup> This is a situation replicated in the other three agencies under study.

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<sup>30</sup> Law 35/2009 on Narcotics, art 67, 70.

<sup>31</sup> Interviews (Indonesia, 10 August 2023b, 14 August 2023, 15 August 2023a).

<sup>32</sup> Interviews (Indonesia, 10 August 2023c, 18 August 2023, 5 September 2023). See also Ministry of Social Affairs (2019) and Kantor Kementerian Agama Kabupaten Purbalingga (2021).

<sup>33</sup> Corroborated by Interviews (Indonesia, 10 August 2023b, 10 August 2023c, 15 August 2023b).

<sup>34</sup> Interviews (Indonesia, 10 August 2023a, 11 August 2023, 18 August 2023).

### *Common Themes*

In terms of functions and powers, one initial commonality is that all four agencies focus their attention on illicit drugs (i.e. narcotics), to the exclusion of tobacco, alcohol and prescription drug abuse. This reflects their primary role in law enforcement, rather than a deeper concern with human health and the substances which actually cause the most harm in each jurisdiction. At present, harm reduction from tobacco and alcohol use in Southeast Asia falls within the province of separate government departments (such as health ministries) and community and religious-based NGOs (Amul and Pang 2018; World Health Organization 2017). Whereas tobacco and alcohol (mis)use are largely normalised across the non-Muslim populations of the region, the national narcotics agencies exist in their current form to perpetuate the coercive goals of the American-led and narcotics-focused ‘War on Drugs’, starting from the 1970s. Lasting change will likely require the relocation of the Singaporean, Thai, Malaysian and even Indonesian agencies to their respective governments’ Ministries of Health, a move that will surely prompt fierce internal resistance.<sup>35</sup> In Indonesia, every chair of BNN has thus far come from a police background, rather than from a health background (Badan Narkotika Nasional, 2020).

Nevertheless, the most significant common theme across all four agencies is that major changes to the scope of their responsibilities and the policies that they are tasked with implementing must come from the political level. This is readily explicable in Southeast Asia, a region where drug control is often portrayed as an issue of national importance – a very threat to the survival of the state, according to prominent current or former leaders like Lee Kuan Yew (Singapore, 1965-1990), Thaksin Shinawatra (Thailand, 2001-2006), Mahathir Mohamad (Malaysia, 1981-2003; 2018-2020) and Joko Widodo (Indonesia, 2014-2024) (Pascoe 2019; Human Rights Watch 2004; Sachsenröder 2022). Whereas agency staff often supply data or direct drafting input into the early stages of a new policy proposal or in helping to tweak existing laws, the final decision on an issue of such magnitude is not delegated to the unelected civil servants staffing an executive agency. A clear concern with this approach is that political leaders may have different short-term objectives, such as ensuring their continued popularity and re-election, and catering to donors and vested business or political interests, rather than formulating an evidence-based drug policy that best meets the needs of the public.

Four specific ways in which the political dependence of national narcotics agencies play out are the following. First is the very detailed legislative regulation of the agencies concerned, with their responsibilities, powers and their limits spelt out precisely in primary or subordinate legislation, and subject to amendment from time to time. While their powers are wide, they are not plenary. Significantly, none of the agencies are afforded any constitutional recognition, either as a ‘fourth branch’ of government or otherwise. Second are the various veto points in the system still accorded to political actors. Examples include ministerial or presidential appointment of agency leadership plus ultimate oversight of agency activities and budgets,<sup>36</sup>

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<sup>35</sup> Interviews (Malaysia, 26 July 2023, 27 July 2023a; Thailand, 23 August 2023; Indonesia, 10 August 2023b, 11 August 2023).

<sup>36</sup> Whereas there are national agencies accountable to the relevant Minister of Home Affairs (Singapore and Malaysia), or the Minister of Justice (Thailand), and/or a Cabinet-level anti-drugs committee (Thailand and Malaysia), Indonesia’s is the only agency under study that is *not* similarly accountable through its relevant institutional arrangements. The BNN reports directly to the President of Indonesia, which may explain its relative assertiveness in recent years.

and even executive discretion in granting clemency to ‘thwart’ an agency’s desired case outcome. Third is the cooperation necessary with other law enforcement bodies (for example, overlapping responsibilities with the police force and customs agents), prosecutors and with government ministries in fields such as health and social welfare, each of whom are helping to implement a political programme of action, albeit through a division of labour across government. Fourth, although national narcotics agencies cooperate closely with their counterparts abroad and with Interpol, the framework for international cooperation in drug control is set mainly through bilateral and multilateral treaties,<sup>37</sup> which fall within the prerogative authority of the elected executive. In each of these ways, the capacity of the national agencies to operate truly autonomously is circumscribed by national laws and policies.

## **V. Severe Punishments, Including the Death Penalty, for Drug Crimes**

In each of the four jurisdictions under study, the death penalty, life or long terms of imprisonment, detention without trial and confined rehabilitation for users are or were until recently standard state responses to drug crimes (UNOHCHR 2018; Baldwin 2013; Rahman et al 2016). Singapore and Malaysia remain two of the few nation-states that also impose corporal punishment on drug offenders, through caning or whipping (Farrell 2021). Agency views on punishment are important, given their initial input into policy formulation as discussed above, and their role as law enforcers for serious drug crimes, either on their own or in conjunction with the relevant national police force.

Thus, an unexpected starting point is that, according to several interviewees, for each of the four agencies, their official position is *neutral* with regards to capital punishment.<sup>38</sup> The agencies’ role, in accordance with this official position, is to enforce the law of the land, and if that includes the death penalty for drug crimes, then they will devote their resources to ensuring that drug traffickers and manufacturers are punished in this manner.<sup>39</sup> The same logic applies to life without parole,<sup>40</sup> corporal punishment, confined treatment for users or administrative detention, in cases where these are authorised by national law. Officially, the agencies are each concerned with drug control, rather than with the method by which this is achieved. For advocates of a more parsimonious approach toward punishment, this is both a blessing and a curse. Good news in the sense that there is apparent room for evolution in the way these organisations carry out their mission; bad news because the agencies and their staff have been so used to putting into practice maximally punitive approaches to narcotics control ever since their foundation.

Although the agencies do not officially take sides in Southeast Asia’s polemical death penalty debate, in practical terms it is clear that they still support capital punishment for drugs offences,

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<sup>37</sup> See note 5.

<sup>38</sup> Interviews (Singapore, 30 June 2023; Malaysia, 25 July 2023, 26 July 2023; Thailand, 23 August 2023, 24 August 2023; Indonesia, 10 August 2023c). See also Taher (2018) and Havenhand (2020) on Indonesia’s BNN. Nevertheless, on several occasions around the time of controversial executions, the CNB has issued statements signalling that the death penalty is an essential part of Singapore’s deterrence strategy. See, e.g., Central Narcotics Bureau (2023).

<sup>39</sup> Interviews (Singapore, 28 June 2023; Malaysia, 25 July 2023, 26 July 2023; Indonesia, 10 August 2023c, 15 August 2023a). On Thailand, see Frankel (2001).

<sup>40</sup> As of April 2023, the natural life sentence has now been abolished in Malaysia.

or at least do not morally oppose it, in cases where that sentence is available.<sup>41</sup> Socialisation and rational self-interest within a pro-death penalty culture and a selection bias in hiring, including recruitment from national police forces, ensures the agency employees have the same views.<sup>42</sup> Above all, agency employees see their law enforcement function as the main priority, and the drug problem through a purely criminal lens, emphasising deterrence.<sup>43</sup> Two interviewees in Singapore described the self-image of CNB officers as ‘guys on the ground just doing their jobs’, with little time to question the morality of punishments like the death penalty.<sup>44</sup> For officers in more senior positions in the various agencies, their presumptive security background and proximity to the country’s political establishment usually help to engender the same set of punitive views.<sup>45</sup>

As part of their work, there are even 21<sup>st</sup> century examples of Southeast Asian agencies aiding extrajudicial killing schemes first initiated by politicians. In Thailand, the ONCB helped to compile blacklists of people involved in the drugs trade for summary execution by police officers during 2003, under the policy of former Prime Minister Thaksin Shinawatra (Dorabjee et al 2013). In Indonesia, BNN leaders gave enthusiastic support to President Joko Widodo’s infamous 2017 exhortation for law enforcement officers (including BNN officers themselves) to kill drug traffickers if they resist arrest (*The Jakarta Post*, 27 March 2017; McRae 2017), mirroring the position of former Philippines President Rodrigo Duterte (Domingo-Cabarrubias and Sato, this volume).<sup>46</sup> This is not the work of organisations and individuals which conscientiously reject premeditated state killing.

It remains to be seen whether the agencies and their employees, having committed for so long to punitive tactics, will find it possible to pivot to a different model within countries like Thailand and Malaysia as they move to abolish the death penalty for drug crimes in its entirety and to refocus on voluntary rather than court-ordered rehabilitation.<sup>47</sup>

## VI. Conclusion

While Southeast Asian politicians do rely on the advice and expertise of national narcotics agencies in first developing and then tinkering with drug policies, the chapter’s first major finding is that national narcotics agencies are simply ‘cogs in the wheel’ of a politically chosen direction on narcotics control. This finding is significant for future advocacy. Progressive

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<sup>41</sup> Interviews (Singapore, 28 June 2023; Malaysia, 26 July 2023; Indonesia, 10 August 2023a, 18 August 2023). On Thailand, see Frankel (2001) and Pascoe (2019).

<sup>42</sup> Interviews (Singapore, 23 June 2023, 30 June 2023; Malaysia, 29 July 2023a; Indonesia, 10 August 2023b).

<sup>43</sup> Interviews (Singapore, 28 June 2023, 30 June 2023; Malaysia, 26 July 2023, 29 July 2023a; Indonesia, 10 August 2023b, 15 August 2023a; Thailand, 23 August 2023).

<sup>44</sup> Interviews (Singapore, 23 June 2023, 30 June 2023).

<sup>45</sup> Interviews (Singapore, 23 June 2023; Malaysia, 28 July 2023b; Thailand, 23 August 2023, 24 August 2023; Indonesia, 10 August 2023b, 14 August 2023).

<sup>46</sup> In a remarkable contrast with Indonesia and Thailand, the Philippines own agency, the Dangerous Drugs Board, bravely opposed Duterte’s ‘shoot to kill’ policy in 2017 (Kine 2017).

<sup>47</sup> Malaysia has already done so for the mandatory death penalty, but retains the discretionary death penalty, corporal punishment and administrative detention as punitive tools against drug offenders (Human Rights Watch 2023; Kananatu, this volume). Thailand retains the death penalty for drug crimes but in 2022 decriminalised the recreational use of cannabis (Bunmee, this volume).

change toward a harm-reduction based model, potentially including a shift in the agencies' main focus to alcohol and tobacco as legal yet harmful drugs, must ultimately come from Southeast Asia's political leadership. One of the more radical suggestions posed by several interviewees across jurisdictions would be to reconstitute the agencies within respective national health ministries. Such significant reorientations away from the established 'War on Drugs' approach are unlikely to be supported by agencies which are housed in the law and security-focused government ministries (i.e. CNB, ONCB, AADK), or indeed BNN, a non-ministerial body whose senior staff all possess a law enforcement background and mindset. Lasting change must come from the top.

In turn, Southeast Asia's political leadership may be inclined to adopt a less punitive approach if the multilateral consensus changes, either at the ASEAN level or, more likely, at the United Nations (Baldwin 2013). Ultimately, it is from the 1961 and 1971 UN drug control conventions that Southeast Asia's current, punitive, model first originated, a drug control model that was officially endorsed at the regional level in 1976 with the ASEAN Declaration of Principles to Combat the Abuse of Narcotics Drugs (Gunawan and Lai 2018; Pardo et al 2019).<sup>48</sup> Notably, the 1976 Declaration and its successor statements promoting an eradication-centred position in 1997, 1998, 2000 and 2012 were all made by ASEAN heads of state, government, or foreign ministers (The ASEAN Secretariat 2020).

The finding that Southeast Asia's key national narcotics agencies are bureaucratic bodies implementing priorities set at the political level broadly resonates with the existing academic literature on policing and law enforcement. What then explains the apparent mismatch between their ubiquitous public profile as leaders of the fight against drugs and their reality as lower-level policy advisors and implementers? Partly it is due to their very status as national coordinating agencies, playing a multidimensional role in reducing drug supply and demand and thus appearing more often in the public discourse. A useful contrast can be made with the specialised narcotics divisions of Southeast Asian police forces,<sup>49</sup> and with volunteer-staffed anti-drugs NGOs.<sup>50</sup> Each possess a far lower profile both domestically and internationally.

A second likely explanation is the political legitimacy that the regional 'War on Drugs' has brought for Southeast Asian politicians since the 1970s (Kananatu, this volume). Drug traffickers and users have, until recent years, largely served to replace communist insurgents as convenient state enemies for Southeast Asian governments (Pascoe 2019). Absent democratic legitimacy through winning free and fair elections against credible opposition, combatting drugs in a very public way both contributes towards a perceived 'performance legitimacy' in governance (Dupont 2001; Miao 2017), and helps to distract voters from policy shortcomings in other areas. The national narcotics agencies are the institutional face of

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<sup>48</sup> The Declaration 'calls for [ASEAN member states] to strengthen cooperation on vigilance and preventive and penal measures, drug research and education and improvements in national legislation in the fight against drug abuse' (The ASEAN Secretariat 2020).

<sup>49</sup> e.g., Narcotics Suppression Bureau of the Royal Thai Police; Narcotics Crime Investigation Department of the Royal Malaysia Police; Directorate of Drug Investigation of the Indonesian Regional Police. Each of the seven Land Divisions of the Singapore Police Force conduct drug operations alongside the CNB, in addition to their other work.

<sup>50</sup> e.g., SANA in Singapore, GRANAT and GANNAS in Indonesia, SKUAD Antidadah in Malaysia.

Southeast Asian governments' drug-fighting efforts on the ground (UNODC 2008), in jurisdictions where there is already an outsized political focus on narcotics.

This apparent mismatch between public profile and policy-setting powers may serve as a starting point for future reforms. Two clear solutions present themselves. The national narcotics agencies could either share the public limelight more widely if they are not really masters of the state's drug agenda, or else could demand and be granted more autonomy from political leaders, in order to pursue their own specialised vision for drug policy.

In the way they are structured, conceive of and conduct their work, the Southeast Asian national narcotics agencies are institutional relics of the region's 'War on Drugs', the political consensus for which is now fraying.<sup>51</sup> Across all four jurisdictions under study, one of these organisational attributes still appears to be a belief in the necessity and effectiveness of harsh coercive measures against drug crimes. Such measures extend to confined rehabilitation for drug users, to corporal punishment, long-term imprisonment and the death penalty in trafficking and manufacturing cases and even to extrajudicial killings where judicial punishment is assumed to have failed to deter. Absent a mass turnover of staff, this aspect of the agencies' working culture will be extremely difficult to change. Training or retraining narcotics officers 'to ensure that positive policy change and law reform is translated into [their] operational consciousness' (Crofts et al 2013: 75) is a minimum pre-requisite for organisational evolution.

Of the four nations under study here, it is Thailand and Malaysia that are furthest along the path to abolishing the death penalty for drug crimes and adopting a harm-reduction model for users of drugs (Mayberry 2018). In Indonesia and Singapore there are no imminent plans to abolish capital punishment, whether for drug trafficking and manufacturing or for other crimes (Chan and Hor, this volume; Pascoe 2023). Indonesia has just passed a new penal code, the nation's first since independence in 1945, which still provides for the death penalty as a punishment of last resort. Although Indonesian death sentences are now imposed with a mandatory ten-year suspension period, the new penal code may have strengthened capital punishment as a 'normal' judicial remedy, including for drug crimes (Pascoe 2023). Aside from a methadone program and risk-based needle exchanges (Havenhand 2020), the Indonesian executive is yet to favourably consider harm reduction as a policy response to narcotics use.<sup>52</sup> In Singapore, the Prison Service continues to make up for 'lost time' during the Covid-19 pandemic by executing a backlog of drug prisoners on death row at a rapid rate (*The Standard*, 17 May 2023). Moreover, any steps towards harm reduction tend to be scorned by the Singaporean government as 'enabling' drug use (Ministry of Home Affairs 2020).<sup>53</sup>

Based on the findings presented in this chapter, in countries such as Indonesia and Singapore, limited mitigative measures are ironically best placed to come from *within* the existing narcotics control bureaucracy, rather than from intransigent politicians. Although national narcotics agencies and the departments they work alongside cannot directly abolish the death penalty, sympathetic insiders can at least 'throw sand in the machine' of death,<sup>54</sup> including

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<sup>51</sup> Interviews (Thailand, 23 August 2023; Malaysia, 25 August 2023).

<sup>52</sup> Interviews (Indonesia, 10 August 2023c, 11 August 2023).

<sup>53</sup> Corroborated by Interviews (Singapore, 23 June 2023).

<sup>54</sup> This is the phrase Sarat and Scheingold (1998: 20) attribute to anti-death penalty lawyers in the United States when faced with a hostile political situation that prevents abolition.



through the use of discretion in arresting and charging. It is also within the agencies' considerable power to moderate their public statements on illicit drugs and drug users, to treat users ordered to undertake compulsory rehabilitation with dignity and respect, to work with civil society and other government departments to obtain data supporting harm reductive policies on narcotics and likewise to lobby political decision-makers to reallocate their resources to tobacco and alcohol – the two recreational drugs that cause by far the most harm to consumers in Southeast Asia. Whether the agencies' long-established coercive internal culture and careerist leadership will permit such modest changes is another matter entirely.

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## **Interviews Conducted**

Interview with Singaporean NGO Staff Member, 23 June 2023

Interview with Singapore-based Academic, 27 June 2023

Interview with Three Singaporean Criminal Lawyers, 28 June 2023

Interview with Singaporean Researcher, 30 June 2023

Interview with Malaysian Criminal Lawyer, 24 July 2023

Interview with Former Malaysian Prosecutor, 25 July 2023

Interview with Malaysian Criminal Lawyer, 26 July 2023

Interview with Malaysia NGO Staff, 27 July 2023a

Interview with Malaysian NGO Staff #2, 27 July 2023b

Interview with Malaysian NGO Staff #3, 28 July 2023a

Interview with Malaysian Academic and NGO Staff, 28 July 2023b

Interview with Malaysian Former Prosecutor and Malaysian Former AADK Staff, 29 July 2023a

Interview with Malaysia-based Academic, 29 July 2023b

Interview with Indonesian Civil Servant, 10 August 2023a

Interview with Indonesian Academic, 10 August 2023b

Interview with Indonesian Academic #2, 10 August 2023c

Interview with Indonesian NGO Staff, 11 August 2023

Interview with Indonesian former BNN Staff, 14 August 2023

Interview with Indonesian BNN Staff, 15 August 2023a

Interview with Indonesian NGO Staff #2, 15 August 2023b

Interview with Indonesian former BNN Staff #2, 18 August 2023

Interview with Thailand-based NGO Staff, 23 August 2023

Interview with Thai ONCB Officer, 24 August 2023

Interview with Malaysian Academic, 25 August 2023

Interview with Thailand-based IGO Staff, 28 August 2023

Interview with Indonesian NGO Staff #3, 5 September 2023