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# ปกิณกะกฎหมาย

## Cannabis Deregulated for Recreational Use? A Review of Related Regulations and Offences in Thailand

(เสพ) กัญชาเสรี? ทบทวนกฎหมายและฐานความผิด  
ที่เกี่ยวข้องในประเทศไทย\*

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### 1. Introduction

Since 8 June 2022, cannabis is no longer considered to be a narcotic in Thailand.<sup>1</sup> Predictably, the decriminalisation of cannabis has resulted in a new social trend: cannabis everywhere. This has led to a belief that Thailand is now in a state of

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\* This paper was written on 13 August 2022, thus the regulations named herein reflect the regulations up until this date.

<sup>1</sup> There is an extent that what type of cannabis is not considered as Narcotics Type 5, to be discussed below. See Notification of the Ministry of Public Health Regarding Type of Narcotics Type 5 B.E. 2565 (2022).

‘deregulated cannabis’, wherein cannabis can be freely used for recreational purposes, but is that really the case?

This article aims to explore current regulations and offences which relate to the recreational use of cannabis in Thailand: the current status of cannabis, distribution of cannabis, smoking of cannabis, cultivation of cannabis and driving under the influence of cannabis. It sets out to understand just how deregulated cannabis for personal use really is in Thailand. Furthermore, it also aims to remind the reader that, although cannabis can be used for recreational purposes, involvement with cannabis in some instances may be a criminal offence. Lastly, this article aims to clarify the issues regarding cannabis for personal, and recreational use. Therefore, it is beyond the scope of this article to cover other matters such as the commercial use of cannabis as an ingredient in food, drink or cosmetics and the distribution or sale thereof.

## 2. Cannabis deregulated for recreational use? A review of related regulations and offences in Thailand

Generally, cannabis is no longer considered to be a Type 5 Narcotic under the Narcotics Code B.E. 2564 (2021). Nonetheless, cannabis extract which contains a tetrahydrocannabinol (THC) level of more than 0.2% is still considered to be a narcotic.<sup>2</sup> Since the direct law that aims to control cannabis (the ‘Cannabis Act’) is not yet endorsed, as it is still undergoing the legislative process,<sup>3</sup> it leaves the problem of cannabis control in Thailand in limbo.

That does not mean, however, that cannabis can be used freely for recreational use. Using cannabis in some instances may constitute offences, according to specific laws, which may result in a penalty. Therefore, this section aims to explore these instances.

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<sup>2</sup> Ibid.

<sup>3</sup> The Draft of the Cannabis and Hemp Act B.E. .... (Anutin Charnvirakul and others) <[https://www.parliament.go.th/section77/manage/files/file\\_20220218082928\\_1\\_193.pdf](https://www.parliament.go.th/section77/manage/files/file_20220218082928_1_193.pdf)> accessed 13 August 2022; On 8 June 2022, the House of Representatives approved the draft of the Cannabis and Hemp Act on the first agenda. See ‘The Draft of the Cannabis and Hemp Act passed the first agenda. Approved 403 votes’ (Springnews, 8 June 2022) <<https://www.springnews.co.th/news/825622>> accessed 13 August 2022.

## 2.1 The status of cannabis under Thai law: a ‘Controlled Herb’

First, it is important to identify the status of cannabis in Thailand. The Notification of the Ministry of Public Health Regarding Type of Narcotics Type 5 B.E.2565 (2022), dated 8 February 2022, states that cannabis which contains less than 0.2% THC, extracted from cannabis plants which are grown uniquely in Thailand is not considered to be a narcotic of Type 5. Nonetheless, it should be noted that cannabis extract which contains THC of more than 0.2% or cannabis which contains less than 0.2% THC, but extracted from cannabis plants which are not grown in Thailand, is still considered to be a narcotic.<sup>4</sup>

Thus, generally speaking, the only form of cannabis which may be considered to be a narcotic is the extract of cannabis. Meaning that any other form of cannabis such as leaves, flowers, stems, seeds, etc. is not a narcotic, no matter how much THC it might contain, as long as it is not an extract.

Nonetheless, this does not mean that cannabis is now ‘deregulated’ since the Notification of the Ministry of Public Health Regarding Controlled Herbs (Cannabis) B.E. 2565 (2022), dated 16 June 2022, states that cannabis is now considered to be a ‘controlled herb’<sup>5</sup> under the Protection and Promotion of Thai Traditional Medical Knowledge Act B.E. 2542 (1999). The Notification itself allows any person, over 20 years old, to possess, use, take care of, store, transport or distribute controlled herbs (cannabis) but, at the same time, it prohibits such person (1) to use cannabis recreationally in public places, (2) to use cannabis if they are pregnant or breastfeeding, (3) from distributing cannabis to those who are under 20 years old or to those who are pregnant or breastfeeding.<sup>6</sup>

Furthermore, the Notification allows medical professionals, including those in traditional Chinese and Thai medical practice, to prescribe cannabis to their patients.<sup>7</sup>

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<sup>4</sup> ‘No.1’ in the Notification of the Ministry of Public Health Regarding Type of Narcotics Type 5 B.E. 2565 (2022).

<sup>5</sup> The Notification of the Ministry of Public Health Regarding Controlled Herbs (Cannabis) B.E. 2565 (2022) ‘‘No.1 Cannabis or its extracts, belonging to *Cannabis genus*, is a controlled herb...’’.

<sup>6</sup> ‘No.2’ in the Notification of the Ministry of Public Health Regarding Controlled Herbs (Cannabis) B.E. 2565 (2022).

<sup>7</sup> ‘No.3’ in the Notification of the Ministry of Public Health Regarding Controlled Herbs (Cannabis) B.E. 2565 (2022).

In this regard, the patients are allowed to possess, use, take care of or store, for 30 days, cannabis that has been prescribed to them.<sup>8</sup>

Nonetheless, it should be noted the Notification does not specify any penalty for those who are in violation of it, such as a person believed to be selling cannabis to those who are under 20 years old. Significantly, this does not mean that cannabis may be freely distributed as cannabis is now a controlled herb under the Protection and Promotion of Thai Traditional Medical Knowledge Act B.E. 2542 (1999). Hence, involvement with cannabis in some instances, including distribution without a licence,<sup>9</sup> may be considered an offence resulting in a penalty according to the Act. Now, it could be seen that the Notification of the Ministry of Public Health Regarding Controlled Herbs (Cannabis) B.E. 2565 (2022), enacted according to Sections 44 and 45 of the Protection and Promotion of Thai Traditional Medical Knowledge Act B.E. 2542 (1999), contradicts the Act itself, especially Section 46. This will be considered in Section 2.3 below.

## **2.2 Cannabis for recreational use which causes a nuisance by its smoke or smell: The Public Health Act B.E. 2535 (1992) and Section 397 of The Criminal Code**

Technically, cannabis for recreational use is not directly prohibited since there is no law to prohibit it; thus no crime, no punishment without law. However, if a person uses cannabis and its smell or smoke causes a nuisance, or is likely to affect the health of those nearby, this may constitute an offence under the Public Health Act B.E. 2535 (1992). The Ministry of Public Health has enacted the Notification of the Ministry of Public Health Regarding the Prescription of Nuisance Caused by Smoke or Smell of Cannabis or Other Plants B.E. 2565 (2022), dated 13 June 2022. Thus, if the smell or smoke of cannabis causes a nuisance to those nearby, or is likely to affect the health of those nearby, Sections 27 and 28 of the Act<sup>10</sup> allow a public officer to give notice to those who created the nuisance. If the alleged

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<sup>8</sup> 'No.4' in the Notification of the Ministry of Public Health Regarding Controlled Herbs (Cannabis) B.E. 2565 (2022).

<sup>9</sup> See Section 46 of the Protection and Promotion of Thai Traditional Medical Knowledge Act B.E. 2542 (1999).

<sup>10</sup> Section 27 is creating a nuisance in public while Section 28 is creating a nuisance in a private area thereby creating a nuisance for other persons nearby.



offender does not comply with the notice, it may result in a penalty according to Section 74, specifically imprisonment for a term of not exceeding three months or a fine not exceeding twenty-five thousand Baht, or both.

Similarly, the use of cannabis in public, causing annoyance to other people, could also be an offence under Section 397 of the Criminal Code and may attract a fine not exceeding five thousand Baht.

It may still be said that cannabis used recreationally is not directly prohibited but, if the smoke or smell of cannabis causes a nuisance or is likely to affect the health of those nearby or if the use of cannabis annoys any member of the public, the user may be held criminally liable. Notably, it does not matter whether a person uses cannabis in a public or private space since an officer enforcing the Public Health Act is allowed to give notice to such a person who causes a nuisance in either place. Failure to comply with such an order may result in a penalty.

### **2.3 The distribution of cannabis: The Protection and Promotion of Thai Traditional Medical Knowledge Act B.E. 2542 (1999)**

Technically, this Act was enacted to protect Thai traditional medical knowledge and Thai herbs from bio-piracy and misappropriation.<sup>11</sup> Thus, it was not designed specifically to control cannabis. As noted, since the Cannabis Act has not yet been introduced, regulation of cannabis is in limbo. Consequently, in an attempt to control cannabis and to alleviate public concern regarding the absence of regulation of cannabis, the Ministry of Public Health declared cannabis to be controlled herbs under the Act.

Interestingly, Section 46 of the Act states: ‘*No person shall study, research or export controlled herbs, or distribute or transform controlled herbs for commercial purpose, unless a licence is given by the licensor...*’. Notably, the definition of distribution under the Act means selling, dispensation, disposition or exchange, including possession with intent to sell.<sup>12</sup> Basically, all forms of distribution without licence, be they for profit or not for profit, are strictly prohibited. For example, if A does not have a controlled herb distribution licence and A gives cannabis to B, then A

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<sup>11</sup> See preface of the Protection and Promotion of Thai Traditional Medical Knowledge Act B.E. 2542 (1999).

<sup>12</sup> See Section 3 of the Protection and Promotion of Thai Traditional Medical Knowledge Act B.E. 2542 (1999).

would be considered to be distributing cannabis to B. Hence A would be held criminally liable.

It may be seen that this directly contradicts the Notification of the Ministry of Public Health Regarding Controlled Herb (Cannabis) B.E. 2565 (2022), which allows a person who is more than 20 years old to distribute controlled herbs (such as cannabis). Technically, the Notification, which is in a lower hierarchical rank of law, cannot overrule a higher hierarchical rank of law such as the Act. According to the hierarchy of law, the clause of the Notification must be deemed invalid. Thus, the distribution of cannabis by a person without a licence is prohibited according to Section 46 of the Act. This eventually leads to a penalty under Section 78, namely imprisonment for a term not exceeding one year or a fine not exceeding twenty-thousand Baht or both.

In conclusion, the distribution of cannabis without a licence is prohibited under the law. Thus, caveat emptor: there is no such thing as ‘cannabis free trade’.

## 2.4 Growing cannabis for personal use

Currently, there is no direct regulation regarding control of cannabis cultivation for personal use, meaning that cannabis may be freely grown without having to acquire any licence. Still, the government is encouraging those who are growing cannabis to register on its application called ‘Plookgunja’<sup>13</sup> (which may be translated as ‘growing cannabis’). Notably, failing to register is not an offence so it could be said that registration is wholly voluntary. Nonetheless, it should be noted that, after the Cannabis Act is legislated and enforced, those who wish to grow cannabis should study the Act since the regulation will probably change.

## 2.5 Driving under the influence: The Land Traffic Act B.E. 2522 (1979)

Although, cannabis is no longer deemed to be a narcotic, using it may cause intoxication. Thus, if a person intoxicated with cannabis drives a vehicle in such state, the driver could be held criminally liable under Section 43(2) of the Land Traffic Act B.E. 2522 (1979). This Act forbids a person to drive a vehicle under the influence of

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<sup>13</sup> ‘Plookgunja’ (The Thai Food and Drug Administration (FDA), 2022) <<https://plookganja.fda.moph.go.th/>> accessed 8 August 2022.



alcohol or other types of influence. Consequently, the driver could be punished under Section 160 ter. The penalty may include imprisonment for a term not exceeding one year or a fine from five thousand to twenty-thousand Baht or both, a suspension of driving licence for a minimum of six months or a revocation of the driving licence. Notably, there are higher penalties in cases where driving under the influence causes injury, serious injury or death.<sup>14</sup>

### 3. Conclusion

It can be seen that cannabis for recreational use is not illegal since there is no law to prohibit it. Nevertheless, using cannabis in some instances may constitute an offence. Hence, it may be concluded that Thailand is not really in a state of ‘deregulated cannabis’. In this regard, the government also claims vehemently that cannabis is legal for the purpose of medical use only.<sup>15</sup>

Nevertheless, it must be accepted that the current situation: an absence of direct legislation regarding cannabis and a government campaign to promote cannabis by distributing free cannabis plants,<sup>16</sup> may generate confusion and lead to misapprehension. Therefore, it is imperative that the government should introduce the Cannabis Act in the very near future to mitigate this problem.

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<sup>14</sup> See Section 160 ter Paragraph 2,3,4 of the Land Traffic Act B.E. 2522 (1979).

<sup>15</sup> ‘The Minister of Public Health insists on controlling cannabis’ (Matichon, 8 August 2022) <[https://www.matichon.co.th/local/news\\_3496106](https://www.matichon.co.th/local/news_3496106)> accessed 8 August 2022.

<sup>16</sup> ‘Thai govt starts giving away 1 million free marijuana plants’ (The Nation Thailand, 10 June 2022) <<https://www.nationthailand.com/in-focus/40016517>> accessed 8 August 2022.