

THE ABOLISHMENT OF DEATH PENALTY AS CAPITAL PUNISHMENT:
A COMPARATIVE STUDY OF DEATH PENALTY BETWEEN
MALAYSIA AND AUSTRALIA

By

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The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the works of others.

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ABSTRACT

Throughout the world, the subject of the relevancy of death penalty has become a polemic issue that will never be ceased from being debated unless all the countries in the world has finally come to a resolution that the imposition of death penalty should be completely abolished be it in law or in practice. Malaysia is among the nations that still preserve the imposition of death penalty in its criminal justice system. The method of execution is by hanging the criminals to death and a mandatory death sentence will be imposed towards the criminals who are guilty of the offence of discharging firearms at public, intentional murder and trafficking in dangerous drugs. While Malaysia is still practicing this gruesome law, most of the world's nations especially in the big part of Europe had already taken away this type of punishment from their laws. According to these 'civilised' nations, death penalty is a cruel punishment that denies the right to life of human beings. Besides, the punishment is being condemned for it is prone to establish unfairness and miscarriage of justice especially in a situation where an innocent man is being put to death and he will only be exonerated after several years of his execution.

In order to know whether these arguments are valid and justified, a comparative study will be conducted between Malaysia and Australia. We choose to compare the law of Malaysia with Australia since both are applying common law principle.

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CHAPTER ONE: INTRODUCTION

1.0 Research Background

Death penalty can be defined as a legal process whereby a person is put to death by the state as a punishment for a crime. In Malaysia, the government applied the capital punishment or the death penalty towards the people who discourage the law, especially for serious crimes.

There are two ways in sentencing death penalty in Malaysia which is in accordance to the mandatory punishment provided in Statutory Provision (Federal Constitution as well as Penal Code) and also by the discretion of the judiciary (Judge). However, the issues on the right to life are universally discussed all around the world, which literally related to the application of death penalty in certain countries. Reasons behind the action in doing this research are mainly because there is a need in changing the structure of the capital punishment in Malaysia where most of its citizens are started to subjectively examine the importance of right to life. In other words, there is an urgency to reform the capital punishment by abolishing the death penalty.

During this analysis, a comparative study will be performed by looking at Australia, in which they have finalised the abolishment of death penalty throughout the whole state.

Previously, in Australia, the execution of death penalty is by hanging to death. In 2010, the Commonwealth Parliament passed the first new Australian law on the death penalty for many years. The Commonwealth Death Penalty Abolition Act 1973 had abolished the death penalty under federal law. It amounts to a clear statement of national law that Australia renounces the death penalty now and into the future.¹ The main reason

¹ Jo Lennan, and George Williams. "The Death Penalty in Australian Law." *The Sydney Law Review* 34 Sydney L. Rev. 659 (2012)