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AN OVERVIEW OF THE ABOLISHMENT OF MANDATORY DEATH PENALTY IN MALAYSIA

Anie Farahida Omar^{1*}, Mohd Syahril Ibrahim¹, Amylia Fuziana Azmi¹ & Nor Laila Ahmad¹

¹*Faculty of Law, Universiti Teknologi MARA, Cawangan Negeri Sembilan, Kampus Seremban
70300, Seremban, Negeri Sembilan, Malaysia*

**Corresponding author: aniefarahida@uitm.edu.my*

Abstract

The death penalty has always been a controversial issue in Malaysia. Historically, tracing back to British colonial times, Malaysia has adopted capital punishment as a preventive measure against serious crimes. The death penalty was seen as a necessary tool to maintain public order and safety, particularly in response to the increase of crime rates. However, the implementation of the death penalty has faced backlashes from human rights advocates, legal scholars, and the international community, who argue that it is an inhumane and ineffective form of punishment. The mandatory death penalty in Malaysia authorized the courts to punish individuals convicted of certain serious offenses, such as murder and drug trafficking, with a death sentence without the option of alternative punishment. This one-size-fits-all approach to justice raised concerns regarding judicial discretion and the potential for miscarriages of justice. The critics emphasized the lack of consideration for mitigating factors, such as the situations surrounding the crime or the offender's background, which could result in excessively harsh sentences. Accordingly, the mandatory death penalty became a crucial point for debates on legal reform and human rights in the country. Finally in 2023, Malaysia has taken significant steps towards reforming its capital punishment laws, ending in the abolishment of the mandatory death penalty through the enactment of the Abolition of Mandatory Death Penalty Act 2023. This article aims to provide an overview of the abolition of the death penalty in Malaysia. In doing so, it explores the historical context of the issue and the legal implications of the relevant laws. To offer a more holistic perspective, it also highlights developments in neighbouring countries. The significance of this article lies not only in its relevance to Malaysian law but also in its wider implications for human rights and justice in the region.

Keywords: criminal, death penalty, justice, mandatory, punishment

INTRODUCTION

The death penalty in Malaysia has its roots in British colonial law and has been a subject of significant debate and scrutiny in recent years. Despite the global trend towards abolition, Malaysia has retained the death penalty for various crimes, including drug-related offenses and violent crimes (Ali & Khan, 2024). This is pursuant to the Federal Constitution which allows for the deprivation of life in accordance with the law, which has been interpreted to include the death penalty for certain offenses (Kannatu, 2022). The debate around the death penalty in Malaysia is framed by contrasting views: abolitionists argue from a human rights perspective, emphasizing the risk of wrongful executions and the lack of deterrent effect, while retentionists focus on justice for victims and national security (Kannatu, 2022; Singh et al., 2023).

The mandatory death penalty in Malaysia, was introduced in 1983 (Amnesty, 2025), and has been a controversial issue ever since (Mostyn, 2021). This form of punishment means that judges have no discretion and must impose the death penalty upon conviction for certain crimes. The mandatory nature of the death penalty has been criticized for being inhumane and for not allowing consideration of mitigating circumstances (Novak, 2015) (McDermott, 2016). Novak adds,

internationally, there has been a movement towards abolishing mandatory death penalties, with many countries recognizing it as a violation of human rights norms. In Malaysia, however, efforts to challenge the constitutionality of the mandatory death penalty have so far been unsuccessful (Muhammad et al., 2024). However, finally on 3 April 2023, the Abolition of Mandatory Death Penalty Act 2023 (hereinafter will be known as AMDP Act) was passed by the Parliament. The Act came into effect on 4 July 2023 with the objective to abolish the mandatory death penalty and imprisonment for natural life. In addition to that, the Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of The Federal Court) Act 2023 was also enacted and enforced on 12 September 2023 (hereinafter will be known as the RSD Act). The objective of RSD Act is to provide for the temporary revisionary jurisdiction of the Federal Court to review the sentence of death and imprisonment for natural life imposed on a convicted person following the abolition of the mandatory death penalty and amendment to the relating laws.

The purpose of this article is to provide an overview of the death penalty in Malaysia, focusing on its historical context, current legal framework, and the ongoing debates surrounding its use. By examining the mandatory death penalty and its implications, the article aims to highlight the human rights concerns and how this transformation has reshaped the criminal justice system in Malaysia. The significance of this article lies in its contribution to the broader discourse on capital punishment, offering insights into the Malaysian context and the global movement towards abolition. Understanding the dynamics of the death penalty in Malaysia can enlighten policy decisions and advocacy efforts aimed at promoting human rights and justice (Kannatu, 2022).

METHODOLOGY

This article is a doctrinal legal analysis by examining the relevant statutes and constitutional provisions, complemented by a comprehensive review of secondary sources including scholarly articles, reports from human rights organizations, and empirical studies to assess the legal and human rights implications of the abolition of the mandatory death penalty in Malaysia. This literature-based research approach enables a holistic understanding of the historical context and current legal framework in Malaysia, as well as comparative perspectives from neighboring countries, supporting an informed critique and discussion of the subject matter.

HISTORICAL CONTEXT OF THE DEATH PENALTY IN MALAYSIA

The death penalty in Malaysia is a legacy of British colonial rule, embedded in the legal system since the establishment of the Federal Constitution in 1957. Initially, the mandatory death penalty was enforced for murder. Although the Dangerous Drugs Act (DDA) was established to address the threat posed by drug-related substances, it did not include the death penalty until 1975. That year, amid the government's intensified anti-drug campaign, capital punishment was introduced as a discretionary sentence for drug traffickers. In 1983, this penalty finally was made mandatory (Amnesty, 2025).

As provided in Article 5 of the Federal Constitution, it allows for the deprivation of life in accordance with the law, which has historically included the mandatory death penalty for various crimes, particularly drug-related offenses (Kannatu, 2022). Over the years, Malaysia has maintained strict death penalty practices, often justified as a deterrent against serious crimes (Widyawati et al., 2025). However, the global trend towards abolition and increasing scrutiny from human rights organizations have put pressure on Malaysia to reconsider its stance (Ali & Khan, 2024; Widyawati et al 2025).

Significant legislative changes in Malaysia have been driven by both internal and external pressures. The Criminal Procedure (Amendment) Act 2006 for example, marked a major reform in the criminal justice system, aiming to protect suspects and improve the quality of justice (Farrar, 2009). According to Farrar, for instance Section 28A was introduced to remedy improper treatment while an accused person was in police custody. Among the rights given under this provision are that the arrestee must be informed as soon as may be of the grounds of his arrest and obligations, he also must be allowed to consult with his lawyer within reasonable time, and the police must provide reasonable facilities for communication and legal consultation free of charge. More recently, Malaysia has moved towards by abolishing the mandatory death penalty, influenced by the recognition that it does not effectively deter crime and poses risks of irreversible miscarriages of justice (Ali & Khan, 2024). This shift is part of a broader effort to align with international human rights standards and reshape the criminal justice system (Novak, 2019).

Public and political discourse in Malaysia regarding the death penalty is highly separated. According to Kannatu (2022), abolitionists, including activist lawyers and non-governmental organizations, frame their arguments around human rights and justice, emphasizing the inhumanity and potential for wrongful executions. He added on the other hand, retentionists, including victims' families, argue from the perspective of victims' justice and national security. Apparently, media coverage has played a significant role in shaping public opinion, with major newspapers providing varied coverage on the issue without taking a formal stance (Singh, 2024). From the public opinion surveys, it shows that while there is majoritarian support for the death penalty, this support is often based on a limited understanding of its implications and decreases significantly when people are more informed (Girelli, 2021; Chan-Gonzaga, 2023).

LEGAL IMPLICATIONS ON THE ABOLISHMENT OF MANDATORY DEATH PENALTY

Several studies have explored the legislative reforms have aimed at reshaping the criminal justice system, moving away from mandatory death sentences and aligning with international human rights standards (Novak, 2015; Ali & Khan, 2024; Muhammad et al., 2024). Generally, the abolishment of mandatory of death penalty in Malaysia has legally impacted in two ways; legal framework and judicial discretion.

Previously, before the enforcement of AMDP Act, there were twelve offences which carry mandatory death penalty, including drug trafficking⁵, murder⁶, terrorism⁷, kidnapping⁸, treason and waging war against the Yang di-Pertuan Agong⁹, discharging of firearm¹⁰. Therefore, the judges had no discretion and had to impose death upon conviction for these crimes. However, after the AMDP Act came into effect, it abolished the mandatory death sentence for all offenses where it previously applied. At present, the judges have discretion to sentence the convicts either to death, or 30 to 40 years imprisonment with at least 12 strokes of whipping, depending on the specific crimes of each case.

The abolishment has also significantly impacted judicial discretion in sentencing. In Malaysia, the shift towards discretionary sentencing is similarly aimed at allowing judges to consider a

⁵ Section 39B (2A) of the Dangerous Drugs Act 1952

⁶ Section 302 of the Penal Code

⁷ Sections 130C (1)(a), 130I(a), 130N(a), 130O(1)(aa), 130QA, 130ZB of the Penal Code

⁸ Section 374A(a) of the Penal Code

⁹ Section 121A of the Penal Code

¹⁰ Sections 3 and 3A of the Firearms (Increased Penalties) Act 1971

broader range of factors before deciding on the appropriate punishment (Muhammad, 2024). This move aligns with international human rights norms and the growing recognition of the importance of judicial independence in sentencing matters (Novak, 2019).

According to ADPAN (2025), as of March 2025, the number of prisoners sentenced to death in Malaysia has decreased from over 1,300 to 140. The decrease is due to resentencing hearings before the Federal Court, which considered mitigating factors following the repeal of the mandatory death penalty legislation. For comparison, Malaysia's death row population stood at 1,337 at the close of 2022, dropping to 1,275 by the end of 2023 (Amnesty, 2024a). Based on statistics in 2019, Amnesty discloses that drug trafficking accounted for an estimated 67.5% of all death sentences (Amnesty, 2022). Apparently, the abolishment of the mandatory death penalty in Malaysia marked a significant change in the country's legal landscape.

According to Amnesty (2024b), based on the special jurisdiction under the RSD Act, the Federal Court has a power to resentence 906 people under sentence of death who had already exhausted their ordinary judicial proceedings. According to figures tabled in Parliament, up to November 2024, out of 906 convicts, 877 (96.80%) people were awaiting a decision from the State Board of Pardons, meanwhile 29 (or 3%) people had a final confirmation of their then mandatory death sentence from the Board. Also, further 369 people who had been sentenced to the mandatory death penalty, could still have their sentences reviewed as part of their ordinary appeals before the Court of Appeal and the Federal Court.

The abolishment of death penalty has led to significant changes in the legal frameworks of other countries with unique approaches and outcomes too. For instance, in Singapore, the judges now have the discretion to impose life imprisonment instead of the death penalty under certain conditions, such as the presence of mental illness or substantive assistance in disrupting drug trafficking activities (Amirthalingam, 2018; Chan, 2023). This discretion allows for a more individualized approach to sentencing, considering mitigating factors and the specific circumstances of each case. Consequently, this reform has resulted in fewer death sentences (Chan, 2023; Tanpoco, 2024)

Similarly, the Supreme Court in Bangladesh annulled the mandatory death penalty for specific aggravated murder cases, citing it as in accordance with the international human rights norms and jurisprudence from other Commonwealth countries (Novak, 2015). In other words, it reflects a broader Commonwealth consensus that such penalties constitute cruel and degrading punishment.

Interestingly, Philippines has experienced a fluctuating history with capital punishment. The death penalty was first abolished in 1987, then it was reimposed in 1993, and it was abolished again in 2006. The country's legislative and judicial battles reflect a contentious and indecisive approach to capital punishment (De Ungria et al., 2018; Colmenaris, 2023). These examples highlight a global trend towards the abolition of mandatory death penalties, driven by evolving standards of decency, human rights considerations, and the recognition of the importance of judicial discretion in sentencing (Novak, 2019; Jabbar, 2019). These changes reflect a broader global movement towards the abolition of mandatory death penalties, emphasizing judicial discretion and human rights considerations.

DIVERSE PERSPECTIVES ON THE DEATH PENALTY: LEGAL, ACTIVIST, AND FAMILY VOICES

The abolishment of the death penalty has had profound impacts on various cases, particularly in terms of legal processes, social justice, and human rights. The legacy of constitutional litigation in retentionist jurisdictions has led to significant changes in the criminal justice system. Empirical research shows that the death penalty has been one of the most scrutinized aspects of criminal justice, with courts increasingly recognizing the principle of human dignity, which has contributed to the erosion of capital punishment (Novak, 2019). This shift has influenced other forms of punishment, including life imprisonment, highlighting the broader implications of abolishing the death penalty.

Moreover, the abolition has addressed issues such as racial bias and arbitrariness in the implementation of capital punishment. Studies have shown that the death penalty system is marred by randomness and racial disparities, particularly in cases where Black defendants murder white victims (Jeffrey et al., 2022). This unpredictability in the decision-making process underscores the need for abolition to ensure a fairer and more just legal system.

Legal experts, activists, and affected families offer diverse perspectives on the abolition of the death penalty. Legal scholars argue that abolition is a significant milestone in advancing human rights and justice. They emphasize the importance of sustained constitutional litigation and the growing recognition of human dignity in eroding capital punishment (Novak, 2019). Additionally, the abolition is seen as a necessary step to address the deep flaws in the death penalty system, such as inadequate counsel, racial bias, and the risk of executing innocent people (Finley, 2024).

Furthermore, activists highlight the role of public campaigns and the efforts of bereaved families in confronting injustices and raising awareness about the harms of the death penalty. Bereaved family activism (BFA) has become increasingly important in public debates, with families sharing their experiences to promote solidarity and recognition of injustices (Cook, 2020). These campaigns have been instrumental in shifting public opinion and policy towards abolition.

In contrary, the affected families provide different interesting views of the death penalty's impact. While some families initially support capital punishment for closure, many express uncertainty and complexity in their perspectives. Studies reveal that the death penalty does not always provide the healing and closure that families seek, and there is a growing recognition of alternative forms of justice that focus on forgiveness and recovery (Vollum & Longmire, 2007). This shift in perspective underscores the need for a justice system that prioritizes healing and community restoration over retribution.

CONCLUSION AND RECOMMENDATIONS

In conclusion, abolishing the mandatory death penalty will not just align Malaysia with international human rights standards but also emphasize the right to life and human dignity. Furthermore, it reflects a broader commitment to protecting human rights and reducing the risk of irreversible miscarriages of justice. Moreover, abolition is seen as a transformative step towards a more humane and just criminal justice system. It challenges the notion that severe punishments are necessary for deterrence and encourages the adoption of more rehabilitative and restorative justice approaches. Most importantly, changing the public attitudes towards the death penalty is crucial. As awareness increases about the ineffectiveness and injustices associated with capital punishment, public support for its abolition is likely to grow. This shift in perception can

lead to broader societal changes and greater acceptance of human rights principles. Finally, Malaysia's move towards abolition can serve as an example for other retentionist countries in the region. By demonstrating the benefits of aligning with international human rights standards, Malaysia can influence regional trends and contribute to the global movement against capital punishment.

Therefore, it can be concluded that the abolishment of the death penalty in Malaysia is a significant step towards enhancing human rights, reshaping the criminal justice system, and influencing public perception and regional trends. This move reflects a broader commitment to justice and human dignity, setting a precedent for future legal reforms. This study proposes several recommendations to ensure the effectiveness of this reform could be done successfully in the future. Firstly, a clear understanding about this reform concept and application may lead to an effective enforcement of the law. As such, public awareness relating to the alternatives to the death penalty and the benefits of abolition should be enhanced. This study proposes that the usage of social media must be enhanced. Social media should have been made as a platform to promote and educate the public about this reform. Secondly, it is important to consider alternative sentencing plans that focus on rehabilitation rather than punishment. This method is seen as an effective method as it supports the idea of ensuring for fair trial and preventing harmful convictions. Last but not the least, judicial review is also important to be observed in ensuring all death sentences undergo rigorous judicial review to minimize errors and arbitrariness. Judicial review is significantly crucial to ensure the effective process, and the lawfulness of a decision has been made. It is hoped that the findings from this research will provide an appropriate solution for issues relating to the abolishment of the mandatory death penalty in Malaysia.

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LEGISLATION

Abolition of Mandatory Death Penalty Act 2023 [Act 846]

Federal Constitution of Malaysia.

Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of the Federal Court) Act 2023 [Act 847]