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Capital Punishment in Malaysia: A Critical Analysis of the Legal Framework and Contemporary Developments

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ABSTRACT

One of the most controversial features of the criminal justice system of Malaysia has always been capital punishment. Incorporating the laws of the colonial period, the death penalty has historically been executed when dealing with crimes related to murder, drug dealing, treason, among other armament-related crimes. Nevertheless, changes in the law and policy have taken place dramatically over the last few years as a result of both local and foreign pressure to change. This paper analyses legal practices that have prevailed in punishing



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capital punishment in Malaysia. The study also examines Malaysia's struggle to balance public perception, deterrence goals, and human rights obligations, especially in accordance with international conventions. This study, after all, emphasises the cornerstone of transition that the country undergoes in terms of moving toward a more rehabilitative and rights-oriented justice system of providing capital punishment to offenders, and placing a strong emphasis on the fact that the country is still struggling to try to balance national legislation and international guidelines of capital punishment.

Keywords: Abolition; Reform; Capital punishment; Death penalty; Mandatory; Malaysia

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1. Introduction

The death penalty, sometimes known as capital punishment, has been an acrimonious topic in discussions about its use as a deterrent, its morality, and its position in contemporary legal systems. As a component of the legal system, the death penalty has been applied to serious crimes like murder, drug trafficking, and some firearm offences in Malaysia for many years. Malaysia's capital punishment system, which has its roots in British colonial law, automatically imposes the death penalty for certain offences. This has drawn condemnation from legal professionals and human rights advocates alike.

The automatic application of the death penalty for specific crimes was one of the most contentious features of Malaysia's capital punishment system. Judges were not allowed to take extraordinary circumstances or mitigating factors into account while imposing a death sentence under this system. Particularly when people were given death sentences for non-violent drug offences, this automatism caused a great deal of debate. The inflexibility of the law, and the concern over fair trial standards, fueled fierce debate over the morality and necessity of capital punishment in Malaysia.

This paper argues that although the recent reforms in Malaysia are a significant shift in a system that is highly inflexible and punishment-driven, the fact that capital punishment is still in use indicates that the transformation is not full yet. Although the death penalty's mandatory nature has been abolished and judges are given discretion, the death penalty remains in the Malaysian criminal system as a sentence of last resort. This means that questions of justice, consistency in sentencing and compliance with international human rights law are neither fully addressed. The system, therefore, is not an abolitionist system in its entirety, but a transitional one where Malaysia is still grappling with the intersections of retribution, discretion, and the right to a fair Criminal Justice system. To reinforce this argument, the paper will also look into the historical roots of the death penalty in Malaysia, the legal context underpinning the use of the penalty, and the judicial and legislative trends of the recent past. It also interacts with some of the most important discussions of deterrence, human rights, and the general policy to evaluate the extent to which Malaysia is undertaking real reform or merely a partial truce.

2. Brief History of Capital Punishment

Capital punishment, also known as the death penalty, is only imposed on individuals who were convicted of certain offences during prehistoric times. According to Knowles (2015), the Sumerian Ur-Nammu Code was the oldest law believed to execute a death sentence. The law came into effect in the 21st century BC.

Next, Dhaliwal (2015) mentions that the Babylonian Code of Hammurabi was also discovered to impose the death penalty on more than 20 offences. The other codes that contained the death penalty were the Roman Laws of the Twelve Tablets, the Code of Hattusa, and the Draconian Law of Athens (Knowles, 2015). Many types of death penalty existed during previous eras, such as impalement, beheading, boiling in oil, hanging, and burning. Dass (2019) stated that these sentences were to inflict more pain on the offender. Britain also used this capital punishment by the 1700s. Efforts by philosophers such as Jeremy Bentham also started the abolitionist movement in the 1750s, questioning the impracticality and unnecessary of the death penalty and its deterrent effect (Dhaliwal, 2015).

However, many countries have completely abolished the death penalty nowadays, which is considered to be a hopeless deterrent. More than 106 countries have abolished this sentence for all offences (Amnesty International, 2018), yet there are around 56 countries that still keep the punishment. The methods are different in each country, such as death by firing squad, gaseous asphyxiation, stoning, beheading, lethal injection, being thrown from a high wall, and hanging (Dass, 2019).

A pronounced world divide on whether to abolish the death penalty or not has been created in the contemporary world between nations that have abolished the death penalty and those that still maintain it. Most nations, especially in Europe, have abolished capital punishment altogether. According to Knowles (2015), United Kingdom and its death penalty over murder was abolished in 1965, driven by a sense of wrongful convictions and an increasing focus on human rights. He also furthered that it was abolished in France in 1981, nearly due to the moral combat and conformance to European human rights norms. Such abolitionist states usually see the death penalty as being inconsistent with the right to life and the barring of cruel, inhuman, or degrading punishment. On the other hand, a number of nations still uphold capital punishment. The US still has death penalty on the federal level and in some states, usually on the basis of deterrence, retribution and the safety of people (Radelet & Lacock, 2009). Similarly, China is also reported to use the death penalty on a large variety of crimes including economic crimes, which is indicative of the fact that they highly emphasise keeping social order (Amnesty International, 2024). The capital punishment in Saudi Arabia is based on the interpretation of the Islamic law, according to which it is acceptable to commit certain serious crimes like murder and drug trafficking (Karimullah et al., 2024).

The justifications behind the death penalty can be generalised into a few major categories. Nagin (2013) suggests that it advocates that it can be used as a deterrent to serious criminal activity, but there is still a debate on its efficacy. Second, it is commonly justified as a manifestation of the assumption that some crimes deserve the final

punishment. Third, in certain jurisdictions, cultural, political, or religious aspects are influential in maintaining its use.

3. Historical Background of Death Penalty in Malaysia

The practice of the death penalty in the modern era is influenced by British rule. British rule in Malaya previously had crystallised the usage of the death sentence in Malaysia and Singapore. This was done when the British imported their penal code into their colony, which later developed the criminal law system of the country (Harry, 2023). According to Amnesty Malaysia (2022), the British had introduced several statutes before the independence of Malaya, such as the Dangerous Drugs Act (DDA) 1952, and in 1975, drug trafficking was a capital offence (punishable with death sentence) and was declared mandatory in 1983. However, before that, the British had introduced the death penalty punishment for the offence of murder and treason in the Straits Settlement Penal Code, which later, a new penal code was introduced for all Malay states in 1936 by referring to the Indian Penal Code 1860 (Berrih & Ngeow, 2020). Md Isa (2015) states that it was undeniable that the use of opium, also known as chandu, was widely used in Malaya. Therefore, the British announced a ban on all drug dealing in 1948. Afterwards, the British enacted the previous DDA 1952, which was based on the 1920 and 1925 English Dangerous Drugs Act to criminalise drug offences, especially imposing the death penalty for drug trafficking offences.

After Malaya gained independence in 1957, Malaysia was a new name for the previous Malaya. Malaysia, however, retained the DDA 1952. Later, Malaysia was flabbergasted by the emergence of a trend in drug abuse among men in the late 1960s that was highly influenced by hippy culture and the Vietnam War, which involved many types of drugs such as heroin and cannabis as well as psychotropic drugs like amphetamines (Kamarudin, 2007). Thus, the Malaysian government had taken stern action by enforcing stricter penalties, including the death penalty, which is put under the Dangerous Drugs Act 1975 (Harring, 1991).

Furthermore, Amnesty Malaysia (2022) was of the view that the practice of the death sentence was actively used under the rule of Prime Minister Tun Dr. Mahathir Mohamad, as his administration treated drug offences as a major threat to the country, which has led to Malaysian drug laws being very harsh. Between 1983 and 1996, around 120 drug offenders were punished with capital punishment by hanging, which was roughly around 15 to 16 executions per year from 1980 to 1996. Thus, the practice of the death penalty in Malaysia was introduced due to colonialism by the British, who were very anti-drug trafficking at that time, which changed the legal landscape of the Malaysian criminal law system.

4. Legal Framework Governing Capital Punishment in Malaysia

Article 5 of the Federal Constitution provides the right to life whereby no individual should be denied life or personal liberty without the law. This is a qualification of the right and permits the state to administer capital punishment provided it is permitted by legitimate law

and is administered in the proper way of law. The Malaysian courts have understood this provision to imply that the death penalty is constitutional as long as it is applied in accordance with the laws which include the Penal Code or other legislation. It has always been about whether the deprivation of life is within the law, but about the issues of fairness or proportionality. Nonetheless, there are also some significant procedural rights provided in Article 5, including the right to counsel and the right to avoid illegal detention. Such are particularly essential in capital cases in order to guarantee due process and lower the chances of false arrests.

Therefore, there are various statutes that impose death penalty prior to the Abolition of Mandatory Death Penalty Act 2023. In Malaysia, death penalty is split into two types, namely mandatory and discretionary death penalty (Abd Rahim & Zulkifli, 2023).

4.1 Penal Code

Penal Code has introduced ten offences with mandatory death penalty which are murder, certain offences against the head of state, certain offences regarding attempt to murder and hostage taking and terrorist offences. Meanwhile, seven offences with discretionary death penalty are provided by the Penal Code which are several abduction offences or rape, abetted suicide, mutiny, false testimony leading to death of innocent person and acts of war). Among the provisions in the Penal Code which relates to the death penalty are Sections 6, 121, 121A, 130C (1), 130L, 130N, 130O, 130QA, 130ZB, 132, 194, 302, 305, 307(2), 364, 374A, 376(4) and 396.

4.2 Dangerous Drugs Act 1952

The Dangerous Drugs Act 1952 sets out mandatory and discretionary death sentence subject to the circumstances. This Act is suppressive in nature as it presumes the accused's guilt. The Act was amended in 2017, but it has no retroactive effect even though it had abolished the death sentence under certain circumstances. The provision that provided the mandatory death penalty previously was Section 39B of the Act, which relates to the offence of preparatory acts or offer to traffic, offers to traffic and trafficking.

4.3 Armed Forces Act 1972

Several provisions in this Act provided a discretionary death sentence to offenders. This can be seen clearly in Sections 38(2) (aiding enemy), 41(1) (communication with the enemy), 47(1) (mutiny) and 88 (civil offences). All these provisions clarified that the one who will be convicted under these provisions are punishable with death.

4.4 Arms Act 1960

Arms Act 1960 provided discretionary death penalty against any person who is convicted under Section 14(1) of the Act which stated about penalty for manufacturing without license and for breach of conditions of license where the convicted may be punished with death or imprisonment for life and whipping with not less than 6 strokes and if the convicted is a company or society or firm or body of persons can be penalized with a fine not more than five hundred thousand ringgit.

4.5 Firearms Act (Increased Penalties) 1971

The Firearms Act 1971 laid out both mandatory and discretionary death penalty for those who infringed this Act violently. This can be traced in several provisions, such as Section 3 (discharging a firearm in the commission of a scheduled offence), Section 3A (accomplices in case of discharge of firearm) and Section 7 (trafficking in firearms). Death sentence in Sections 3 and 3A are mandatory while Section 7 is discretionary.

4.6 Kidnapping Act 1961

There is a single provision in this Act that provides for the discretionary death penalty, which is Section 3 that relates to Abduction, wrongful restraint, or wrongful confinement for ransom. Those who are convicted may be sentenced to death or imprisonment for life and if not punished with death, he is also liable to whipping.

4.7 Water Services Industry Act 2006

Under Section 121 of this Act, the death penalty is also available to those who are convicted for the offence of contamination of water. If the result of the act, contaminating any watercourse or water supply, is death, the punishment may be a death sentence or imprisonment for a term which may extend to 20 years, but if the result is not death, he must be liable to whipping. However, this sentence is discretionary only.

4.8 Strategic Trade Act 2010

The Strategic Trade Act 2010 provides several provisions that require a discretionary death penalty as punishment for the offences committed. These provisions are Section 9 (Export, transshipment and transit of strategic items and unlisted items), Section 10 (Provision of technical assistance), Section 11 (Brokering of strategic items) and lastly Section 12 (Transactions involving unlisted items and restricted activities). All these offences, if they have been committed and the result of the act is death; the convicted accused may be punished.

5. Recent Legal Developments and Reforms

5.1 Abolition of Mandatory Death Sentences

Malaysia has recently abolished the mandatory death penalty via the Abolition of Mandatory Death Penalty Act 2023. In the new framework, judges have discretion to impose sentences for serious crime offences that were only punishable by death. Offences under the Penal Code are one example, including murder¹ and terrorism,² as well as firearms offences,³ now invoke a sentence of imprisonment from 30 to 40 years, with a minimum application of 12 strokes of whipping. A Court of Appeal case of *Public Prosecutor v. Edy Ko'im bin Said & Ors* (2024),⁴ demonstrates this new reform in motion. The defendants were charged with kidnapping under the Kidnapping Act 1961,⁵ an offence that had tentatively included a death penalty or life imprisonment potential. After the coming into force of Act 846, imposing 30 to 40 years imprisonment and whipping as the penalty,⁶ instead of a death sentence, this impacted the question of jurisdiction for the case. In the end, the case was allowably transferred from the High Court to the Sessions Court, which had jurisdiction to punish under the new legal sanction.⁷

The appeal in *Robin Radjaini Saih @ Amjan Patta v. Public Prosecutor* (2024),⁸ is also illustrative where the appellants are charged for murder, with a punishment sentence of death. In the subsequent decision following an appellate appeal, the appellant contended that the new law should apply to convert the death sentence to 30 years imprisonment. The court held that death was warranted in consideration of the severity of the crime and implications to public safety. The court also noted that it was circumventing the 'rarest of the rare' test imposed in other jurisdictions but maintained the court retains full discretion for punishment sentencing under the new law. Lastly, in *Md Masud Rana v. Public Prosecutor* (2024),⁹ the appellant was convicted for murder and sentenced to death. When appellate review was sought, the court determined, although also applying mitigating factors that had been considered in the prosecution case, the death penalty was abolished under the new law and imposed a sentence of 35 years in prison with 12 strokes of whipping, which are also set forth in the new guideline of punishment sentencing.

¹ Penal Code.

² Security Offences (Special Measures) Act 2012.

³ Firearms (Increased Penalty) Act 1971.

⁴ *Public Prosecutor v. Edy Ko'im bin Said & Ors* [2024] 11 Malayan Law Journal 703 (High Court).

⁵ Kidnapping Act 1961.

⁶ Abolition of Mandatory Death Penalty Act 2023.

⁷ *Public Prosecutor v. Edy Ko'im bin Said & Ors* [2024] 11 Malayan Law Journal 703 (High Court).

⁸ *Robin Radjaini Saih @ Amjan Patta v. Public Prosecutor* [2024] 6 Malayan Law Journal 773 (Court of Appeal).

⁹ *Md Masud Rana v. Public Prosecutor* [2024] 2 Malayan Law Journal 447 (Court of Appeal).

Both case examples portray Malaysia's shift toward a rehabilitative rather than retributive justice system. While death remains a warrantable sentence, many more punishments are available to introduce years in prison and reintegration back into the community. As such, this is a total shift toward significant liberalisation in transitional movements of capital punishment in Malaysian law. The Abolition of Mandatory Death Penalty Act 2023 has abolished mandatory death sentencing, which represents an important change in the criminal justice system of Malaysia and will radically change the character of judicial analysis. Instead of imposing death sentences in a mechanical manner, a judge now has to perform a balancing act in which aggravating and mitigating factors are taken into consideration. This has considered factors like the seriousness of crime, level of guilt and wider societal interests. Consequently, sentencing is now more personalised, proportional and fair oriented.

Apart from landmark cases, earlier cases also serve to demonstrate how courts are now exercising discretion in imposing the death penalty in Malaysia. In cases involving murder, for instance, more recent Federal Court cases (prior reform) like *PP v. Mohd Radzi Abu Bakar* (2006),¹⁰ heavily relied on the doctrine of strict liability when the intention was established under Section 300 of the Penal Code, leaving little discretion for sentencing. In contrast to cases decided after 2023 such as *Robin Radjaini* (2024), courts now not only decide (or not) whether the person meets the elements of the crime but also engage with the proportionality of the sentence of death in relation to the perpetrator's actions and circumstances. Therefore, we could see a broader judicial trend in Malaysia regarding the discretion after the abolition of the mandatory death sentence. Even prior to the repeal of the mandatory death penalty, courts have displayed unease with inflexible punishment, especially in drug-related cases where vulnerable persons are involved. Post-2023, this trend has become a clear judicial position: the mandatory nature of death punishment is no longer taken for granted; it must be applied as an appropriate punishment in exceptional instances. This is a trend in line with international norms, which limit the use of capital punishment where it leads to the 'most serious crimes' and with close scrutiny.

The implications of abolishing mandatory sentencing are thus high in terms of law. First, it reinstates judicial independence, whereby judges can impose punishment dependent on the facts of the case. Second, it minimises the chances of disproportionate sentencing, especially when dealing with non-violent crimes or minor culpability. Third, it will improve procedural fairness as it will allow meaningful appeal of sentencing decisions to the appellate court. While the reform is also associated with potential challenges such as the inconsistent risk in sentencing and the necessity of more explicit judicial instructions.

5.2 Replacement With Alternative Sentencing

The elimination of the mandatory death sentence in Malaysia is a major change in the country's criminal justice system, reflecting a shift to a more humane and rehabilitative

¹⁰ *PP v. Mohd Radzi Abu Bakar* [2006] 1 Current Law Journal 457 (Federal Court).

approach to sentencing (Yong, 2023). The change stems primarily from the new Abolition of Mandatory Death Penalty Act,¹¹ which replaces the kind of strict law outlined in law relating to the imposition of the death penalty with discretion. Under the law, judges were required to impose a death sentence for offences, such as murder and drug trafficking, without regard to any mitigating elements. This strict-sentencing regime has been replaced by discretion, which will also allow judges to factor in the circumstances for punishment to fit the offence. A critical part of this reform is the introduction of alternative sentencing options to capital punishment. The new law allows judges' discretion in the imposition of life imprisonment, or extended terms of imprisonment together with corporal punishment (including whipping) instead of the death penalty (Bernama, 2023).

The reforms provide an opportunity for punishments to remain severe for serious crimes (i.e. mandatory death would have been considered severe) while ensuring that, in most cases, an automatic death penalty is not rendered without consideration of the individual circumstances. This change is in line with international human rights standards espoused by the United Nations, which has called for mandatory death sentences, based on proportionality, to be abolished for some time (Lim, 2023). The reform also acknowledges increasing concerns regarding both the fairness of capital punishment and the efficacy of the death penalty as a deterrent. Studies and reports by Amnesty International, and other, emphasise that mandatory death sentences are not any more effective in deterring crime than if enforced at discretion. They also remove the discretion judges must consider important mitigating factors to potentially lessen a sentence; thus, unintended adverse consequences could lead to offenders receiving the same sentence as the principal offender for actions and culpability that may be far different from the principal offender. Where judicial discretion is allowed, the offender's culpability would better reflect the punishment meted out.

6. Key Debates and Controversies

6.1 Effectiveness of Capital Punishment as Crime Deterrent

The death penalty has long been a subject of debate in Malaysia, particularly regarding its effectiveness in deterring crime. The Malaysian government has historically maintained capital punishment for serious offences, particularly drug trafficking, murder, and terrorism-related crimes. This position is rooted in the belief that harsh penalties act as a deterrent, discouraging individuals from committing grave offences. However, numerous studies question the validity of this assumption.

Chalfin and McCrary (2017) mentioned that empirical research provides conflicting perspectives on whether capital punishment has a significant deterrent effect and some studies suggest that the severity of punishment influences criminal behaviour. While others argue that factors such as the certainty of punishment play a more critical role than the

¹¹ Abolition of Mandatory Death Penalty Act 2023.

severity of punishment (Nagin, 2013). Nevertheless, a growing body of research highlights that countries with the death penalty do not necessarily experience lower crime rates than those without it (Radelet and Lacoock, 2009). The use of capital punishment as a deterrent also raises concerns about its effectiveness compared to alternative sentencing. Some scholars argue that life imprisonment without parole provides a serious deterrent effect compared to death penalty (Robinson, 2012). Furthermore, the increasing global trend toward abolition suggests that nations are reconsidering the role of capital punishment in modern legal systems. Additionally, the effectiveness of capital punishment as a deterrent is undermined by the lengthy judicial process and delays in execution, which reduce its immediate impact on crime prevention.

6.2 Human Rights Concerns

The use of capital punishment has been strongly criticised by international human rights organisations, including Amnesty International and the United Nations (UN). These organisations argue that the death penalty violates fundamental human rights, particularly the right to life enshrined in Article 3 of the Universal Declaration of Human Rights (UDHR).¹² Malaysia has faced persistent calls from these entities to abolish the death penalty, particularly due to concerns about fair trial standards and the potential for wrongful convictions. Wrongful convictions represent a fundamental concern in Malaysia's criminal justice system. According to Amnesty Malaysia (2025), the death penalty in Malaysia has been explained in Amnesty International's comprehensive report that there are many abuses against the rights of the defendant, including inadequate access to legal representation from the time of arrest and also ill-treatment during the period of custody to attain a statement which could secure the conviction against the suspect.

Another major criticism is the disproportionate impact of the death penalty on marginalised groups. In Malaysia, a significant proportion of individuals on death row are foreign nationals convicted of drug-related offences, raising concerns about their basic human rights when they were not given a competent and immediate interpreter, which could lead to false confessions due to inducement by the police (Ensemble contre la peine de mort, 2022). This issue indicates that these individuals often face linguistic barriers and lack proper legal representation, leading to miscarriages of justice.

Additionally, the mandatory nature of capital punishment in many cases has been criticised for denying judges the ability to consider mitigating factors. In response to these concerns, Malaysia's recent reforms, such as the abolition of mandatory death sentences in 2023, have sought to introduce greater judicial discretion (Amnesty Malaysia, 2025). Despite these changes, concerns remain regarding whether sentencing practices will reflect broader human rights considerations.

¹² Universal Declaration of Human Rights, GA Res 217A (III), UNGAOR, UN Doc A/810 (10 December 1948).

6.3 Public Opinion and Political Influence

Public sentiment regarding capital punishment in Malaysia has evolved over time, reflecting a complex interplay of cultural, religious, and socio-political factors. Surveys conducted by organisations such as The Death Penalty Project indicate that while a portion of Malaysians still support capital punishment for severe crimes, Many organizations such as Malaysian Bar, Human Rights Commission of Malaysia (SUHAKAM), Amnesty International Malaysia and many more also call for the complete abolishment of the death penalty (Hood, 2013).

Amnesty Malaysia (2025) also mentioned that political parties in Malaysia have expressed differing views on the death penalty. The Pakatan Harapan-led government initially announced a moratorium on executions in 2018, with intentions to move towards full abolition. However, political shifts and opposition from conservative factions led to the retention of capital punishment with amendments that allowed judicial discretion in certain cases.

Religious and cultural perspectives also play a crucial role in shaping public attitudes. Malaysia, as a multi-religious nation with Islam as the official religion, often considers Islamic legal principles when discussing legal reforms. Some Islamic scholars argue that the death penalty is permissible under Syariah law for specific crimes, while others advocate for the use of alternative punishments that emphasise rehabilitation (Karimullah et al., 2024). The discourse on capital punishment thus remains deeply intertwined with Malaysia's legal, religious, and political landscape.

7. From Reform to Abolition: Reassessing Malaysia's Capital Punishment Framework

In Malaysia, the status of the death penalty is changing amid important legal reforms. The country has abolished capital punishment for credible crimes, permitting judges to impose discretionary punishments—in such cases as life imprisonment of a maximum up to 40 years imprisonment,¹³ or corporal punishment—to perform the same function without executing the same punishment (Yong, 2023). This law affects over 1,300 persons on death row; they will now be able to approach the court for a review of their sentence. While the law has been revised in this way, the death penalty remains in place for 27 offences, and the moratorium on executions handed down by the 2018 government is still followed (Amnesty Malaysia, 2025).

While the 2023 abolishment of mandatory capital punishment in Malaysia has drawn praise, there is a line of academic literature suggesting discretionary capital punishment should not be allowed within the progressive movement of human rights. Academically, some have argued that the discretionary death penalty does not address the moral and legal problems of the death penalty because arbitrariness is found not in the law, but in prosecutors and judges.

¹³ Abolition of Mandatory Death Penalty Act 2023.

In this vein, Nasrul Ismail (2026) also provides a cynical voice that, while the 2023 impetus 'mark a pivotal shift' in sentencing policy, the death penalty is still in existence in a system that permits discretion to be used at the expense of the defendant (particularly in relation to the power of prosecutors to charge an offence and the sentences). Hence, the suggestion that discretion will not end injustice in the system; it will simply shift it further down the criminal justice system. Likewise, the works of Amnesty International and Human Rights Watch point out that the death penalty is 'inevitably plagued with arbitrariness, prejudice, and error', and the reforms it will not end injustices in the system. (Human Rights Watch, 2023). Amnesty International Malaysia also outlines that the Malaysian discretion can only be considered as 'a first step towards full abolition', the State should abolish the death penalty in order to comply with current international human rights standards (Amnesty Malaysia, 2019). Academically, abolitionist arguments also submit that mandatory death sentences could actually increase the disparity in punitive sentences (where like convicted people could be given an unequal sentence because of the arbitrariness of the judge, the prosecutor and the circumstances of the crime). This is a violation of the rule of law and injustice.

At this point, even though the reform movement in Malaysia is a good step to abolish mandatory death penalty, the discretionary death penalty suggests that the Malaysian criminal justice system is still a retributionary system. It would be more equitable and humane (as advocated by many human rights groups and academics), if Malaysia abolishes the death penalty and replaces it with the maximum prison sentence. This will increase consistency and rule out the risk of irreversible wrongful conviction and Malaysia will be following the global trend.

8. Conclusion

Capital punishment in Malaysia has undergone significant legal transformations in response to evolving societal values and international human rights standards. Historically rooted in British colonial law, the death penalty has long been a fixture of Malaysia's legal system, applied to serious crimes such as murder, terrorism, and drug trafficking. Over time, the legal framework governing capital punishment has been shaped by various statutes, including the Penal Code, the Dangerous Drugs Act (DDA) 1952, and other specific legislation such as the Firearms Act 1971 and the Armed Forces Act 1972. The most notable development in recent years has been the abolition of mandatory death sentences, marking a crucial shift toward judicial discretion in sentencing. The Malaysian government's reforms indicate an attempt to strike a balance between deterrence, justice, and human rights concerns.

Despite these legal adjustments, the effectiveness of capital punishment as a crime deterrent remains highly contested. The government and proponents argue that the death penalty serves as a powerful deterrent against violent and drug-related crimes, maintaining public security and upholding justice. However, criminological research suggests otherwise, with studies indicating no conclusive evidence that capital punishment effectively reduces

crime rates compared to alternative sentences such as life imprisonment without parole. The lengthy judicial processes, appeal mechanisms, and delays in execution further weaken their deterrent effect. Additionally, countries that have abolished the death penalty have not experienced significant increases in crime rates, further questioning its necessity.

Ethical concerns surrounding capital punishment continue to fuel the debate on its legitimacy. Human rights organisations, including Amnesty International and the United Nations, have long criticised Malaysia's application of the death penalty, particularly in cases where it has been imposed mandatorily, without considering mitigating factors. Issues such as wrongful convictions, inadequate legal representation, and disproportionate sentencing particularly affecting marginalised communities and foreign nationals have raised concerns about fairness and due process. The irreversible nature of executions amplifies these concerns, as any injustice cannot be rectified posthumously. Furthermore, the socio-economic disparities in access to legal defence have disproportionately impacted low-income individuals, further highlighting systemic inequalities within Malaysia's judicial system.

Public opinion on capital punishment in Malaysia remains divided, shaped by cultural, religious, and political influences. Surveys indicate that while there is support for retaining the death penalty for severe crimes, there is also growing recognition of its ethical implications and the risks associated with wrongful executions. Political parties have expressed differing stances, with some advocating for complete abolition and others emphasising its necessity for crime prevention. The role of Islamic legal principles further complicates the discourse, as interpretations of justice and punishment vary within Malaysia's diverse religious landscape.

Looking ahead, Malaysia stands at a critical juncture in determining the future of capital punishment. The recent legal reforms indicate a progressive shift toward a more rehabilitative and discretionary justice system. However, the question of full abolition remains uncertain. The global trend toward eliminating the death penalty, coupled with increasing pressure from international human rights bodies, may influence Malaysia's future policies. Continued legal reforms, public discourse, and alignment with human rights standards will be essential in shaping Malaysia's evolving stance on the death penalty.

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Author 1 (Roslan) contributed to the writing: original draft and conceptualisation. Author 2 (Fadzli) contributed to the writing: review, editing and supervision. Author 3 (Haidishukri) contributed to the formal analysis. Author 4 (Shahridzuan) contributed to the data curation and methodology.

Conflict of Interest Declaration

The authors declare that they have no conflict of interest in this study.

Ethics Approval

Ethical approval was not required for this study as it is based on doctrinal legal research involving the analysis of legislation, case law, and secondary sources, and does not involve human participants, personal data, or sensitive materials.

AI Usage Declaration

The author declares that Artificial Intelligence (AI) tools were used solely to assist with obtaining idea and editing. No AI tools were used to generate the substantive content, analysis, or conclusions of this manuscript. The author has reviewed and takes full responsibility for the content of this work.

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