

Malaysia's Public Opinion on Death Penalty

Marafendi Bin Marzuki¹

University Utara Malaysia.

marafendi_marzuki@ahsgs.uum.edu.my

Saralah Devi Mariamdarani Chethiyar²

University Utara Malaysia.

devi@uum.edu.my

MAM Sameem

South Eastern University of Sri Lanka

risameem@seu.ac.lk

Abstract

The issue of abolishment of mandatory death sentence has long been debated in Malaysia and until now there is no agreement as to whether it should be abolished or continued. Since its been debated, it has created two parties supporting and opposing the implementation. This study has explored the public's perception regarding the issue and look at the opinions that often stand in their way of supporting and opposing the abolition of mandatory death sentence. This study uses qualitative method, the data was gathered from field notes written by the researcher in the course of interviews, or video recordings carried out by the researcher in natural settings. From the interviews, the researcher deduced that certain respondents are in favour of death penalty abolishment because of being in favour of human right and the perception that human being if given a chance can change, but they also emphasize that the hardcore criminal such as Illegal drug lord, serial killer, rape and sexual assault against children must be sentenced to death. this indicated that while there are advocates who support the death penalty, they still place an exception to their choice if it involves severe cases.

Keywords: *Public Perception, Death penalty abolishment, Human Right*

1. Introduction.

1.1 Introduction.

Before discussing in detail, it is crucial to apprehend the view of capital punishment according to Malaysian law. The capital punishment in the context of Malaysian law is the death

sentence by hanging until the person who is hanged dies (Alan, 2019). The debate over the death penalty is not a new issue, but an old one and involves a debate between people who assist the death penalty and people who consider this punishment to be an improper and cruel act (Cochran and Chamlin, 2000; Thomson, 1999).

There are many studies that have been conducted to look at public perceptions related to capital punishment. Interesting studies in Malaysia includes, study conducted by Rogers Hood in 2013, (study the Malaysian perception toward death penalty), and reports from Amnesty International on the development of the implementation of the death penalty in Malaysia (Amnesty International Report). Amnesty International is a body that fights for Human Rights and has a vision to ensure that every human being has their rights as enshrined in the Universal Declaration of Human Rights (UDHR). This declaration UDHR has been adopted and documented by the United Nations (UN) which requires each of its members to comply with matters relating to human rights. Malaysia is one of the UN countries and therefore needs to show compliance with this issue.

The process of abolishing the mandatory death penalty is too unique and complex for every country. It highly depends on how the state of the country is governed in terms of culture, law, politics, religious diversity and many more. There is not a single homogeneous model of action that can be said to be suitable for the whole country. Some countries take action to abolish the death penalty after political changes or crises such as war and others, some accept the abolition of this mandatory death sentence after it becomes legally valid or no longer in accordance with the country's constitution. In some countries, the movement started at the grassroots level, based on strong community support, there are also countries that accept this action as a result of international pressure or influential community figures.

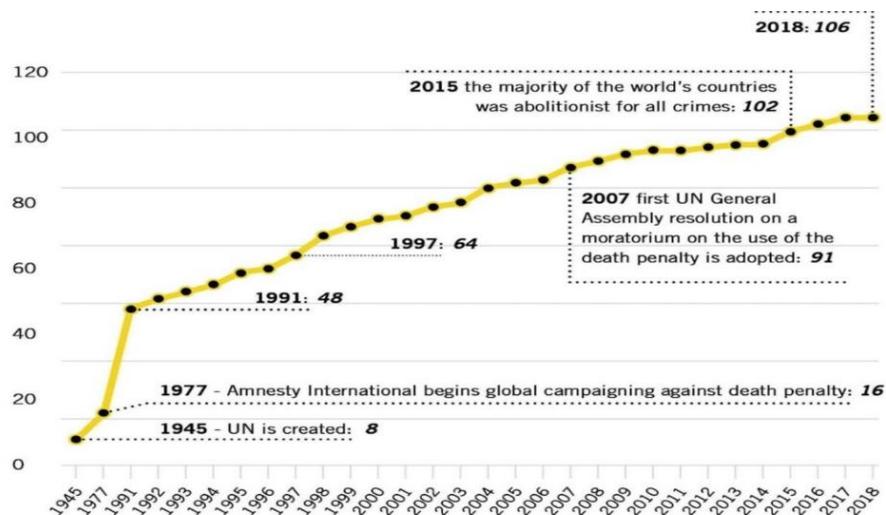
At least 657 executions recorded by Amnesty International in 20 countries in 2019. Overall, it is the smallest number since Amnesty began taking steps to track the execution in 1979. It decreases 5% from at least 690 deaths recorded in 2018. It also decreases 60% from the highest 25-year total of 1,634 reportedly implemented in 2015 (Amnesty International, 2020). In 2019, Amnesty International recorded 2,307 deaths worldwide, a decrease of 2,531 deaths recorded in 2018 (Amnesty International, 2019). More than half countries in the world have abolished the death penalty, and nearly three-quarters of all countries have not implemented the death penalty in at least a decade. This action is clear that we are moving towards global elimination.

1.2 Motivation.

While there have been delays and threats to extend the execution of the death penalty, the global trend towards capital punishment remains firm from implementation to elimination (Graph 1). After Universal Declaration been accepted in 1948, only 8 countries took the initiative to abolish the death penalty for entire crimes, including, Ecuador (1906), Iceland (1928), Costa Rica (1877), Panama (1922), San Marino (1865), Colombia (1910), Uruguay (1907) and Venezuela (1863) (Amnesty International, 2018). In 2015, the figure keeps on rising. In October 2019, about 142 countries which is more than two-thirds of the world's nations - have abolished the capital punishment in law or practice (Amnesty International, 2018).

In 2018, Amnesty International reported at least 690 known for its implementations, excluding China, show a 31% decline compared to 2017, which is the lowest in a decade. China figure remained as national secret, however, Amnesty believes thousands of deaths have been taking out this year. The worldwide tendency to abstain from death penalty is also shown in seven resolutions referendum adopted by the UN General Assembly on the moratorium for death penalty (Amnesty International, 2018).

After UN General Assembly launched its resolution over the death penalty in December 2007, over 104 countries acknowledge it; (UN General Assembly resolution, 2007) in the last ballot in December 2018, Malaysia and other 121 countries, voted to support the resolution (UN General Assembly resolution, 2018). Although this agreement does not legally bind its members, the contents of this resolution came from the UN's main consulting body which means all its members must be morally and politically responsible in demonstrating the tendency to put an end to death penalty (Amnesty International, 2018).



Graph 1: Number of countries that have abolished the death penalty (Amnesty International, 2019).

Only Singapore, Thailand and Vietnam reported the death penalty in 2018. Papua New Guinea is the only country in the Pacific still withholding the death penalty after its National Court ruled that the death penalty by the country violated the protection of human rights enshrined in the national Constitution.

1.3 Related Theory.

When discussing the issue of the death penalty, one must not refuse from looking at punishment-related theories, as for modern criminal justice system, there are four common theories of punishment that been used by judges as decided in the case of *Reg v Davis* (1978). The theory of punishment is retribution, prevention, recovery, and deprivation. Each of these theories has its own ideology, goals and also justification for a punishment.

Few argued that punishment, consists of five elements, including putting discomfort to offender, caused by a violation (actual / alleged), which then becomes a work of a private agency (not a natural consequence), which must be imposed by the authorities or institutions on the rules being violated if not, the action is not a punishment but merely an act of hostility / tends to be revenge (Banks, 2004)

Furthermore, Banks (2004) stated that “the word punishment often been describing as something that is very painful” (Banks, 2004). He stated that punishment been define by Garland (1990) was a legal process in which criminal offenders were condemned and sanctioned according to the certain legal categories and procedures.

Punishment theory in psychological studies is mostly reviewed in behaviour modification books. Because punishment is one of many other tools used to increase desirable behaviour and reduce undesirable behaviour. Prof. Dr. Ali Imran stated that, "Punishment is a sanction accepted by someone as a result of violations or rules that have been set. Such sanctions can be in the form of material or non-material" (Imran, 2012).

According to Skinner (1938), each individual learns based on 3 things and one of them is from punishment. Punishment in this context causes the offender to not repeat the mistake that they made, but to learn from it. In discussing the mandatory death penalty, the theory that is often discussed is the theories related to punishment which include deterrence, retributive dan Incapacitation (Bohm, 1987). These three punishment ideologies came out with reasons for supporting the death penalty (Lambert. et al, 2004). In this study, we will only discuss deterrence theory in detail.

1.3.1 Deterrence Theory.

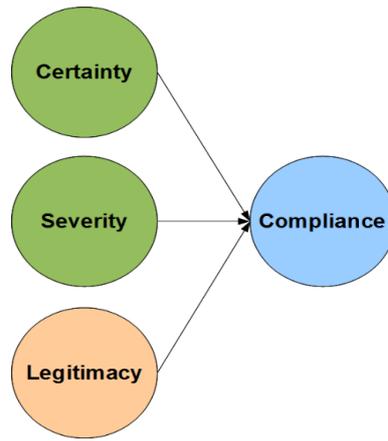
Deterrence theory is a theory which assumes that certainty of punishments will cause criminals to think about their actions to commit crimes (Andenaes, 1974; Zimring & Hawkins, 1973). This theory explains that, criminals who not been punished will avoid from committing crime because they become afraid of being arrested (Andenaes, 1974). This theory is a strong theory in defending the use of death penalty in Malaysia. In Malaysia, death penalty is being imposed to an offender such as drug trafficking, murder, and arms trafficking (Death Penalty Project, 2018). This theory believes that communities can put an end to these crimes by setting a more severe punishment than the profit that criminals earn from their criminal actions. Proponents of the death penalty through this theory assumes that the death penalty is more deterrence than life sentence (Ellsworth and Gross, 1994).

Deterrence theory was first introduced from the very beginning by classical philosophers such as Thomas Hobbes (1588–1678), Cesare Beccaria (1738–1794), and Jeremy Bentham (1748–1832). These philosophers have objected to the long-established legal policy that had been in European thought for thousands of years. They have also provided the basis for modern preventive theories in criminology.

Humans have their own will and are willing to do anything to fulfil their desires, this action includes endangering others in order to achieve self-interest (Hobbes, 1951). Because of this, human beings will always face conflict, without appropriate laws, society as a whole will be vulnerable to danger. The law must contain more severe penalties than the profits derived from criminal activity. This is in order to keep the social contract from being violated (Hobbes, 1951).

“Punishments is unfair when the severity exceeds the essential amount to achieve deterrence” (Beccaria, 1963). The idea was based on the way of society at that time conducting the punishment which can be considered as brutal. Extremity will only increase crime, meanwhile, swift and certain in punishment can be considered as the best way of preventing crime. State should promote happiness to the society, and that include rewarding and punishing (Bentham, 1948).

All the important things in deterrence theory that are severity, celerity and certainty of punishment described by Hobbes, Beccaria, and Bentham will cause people to stay away from criminal behaviour. Criminal law needs to impose penalties to ensure society obey the law. Extreme punishment is unfair, on the other way, unjust punishment will not be able to prevent society from committing crimes.



Graph 2: Deterrence Theory model (Wikiversity, 2011).

1.3.2 Retribution Theory.

In Malaysian perception, retribution is one of the public reasons to support death penalty. Retribution perhaps the main reason why people choose death penalty (Whitehead & Blankenship, 2000). The main reason for Malaysian public to selecting death sentence was retribution and followed by deterrence by never more than 15% of the respondents (Roger Hood, 2013). There is a large majority in term of supporting death sentence in Malaysia; 91% support for murder cases, 80% for drug trafficking cases, and 83% for firearms offences (Roger Hood, 2013). The most frequently chosen is retribution, and the reason for that were given as “*there is no excuses for committing crime, everyone found guilty.... deserves to die*” (Roger Hood,2013).

Since Gregg vs Georgia (1976), The United States Supreme Court has ruled that public perception and support are important in order to decide what is necessary in imposing criminal sanctions (James O. Finckenauer, 1988). There are two forms of retributivism theory that must be understood. Either retribution as revenge or retribution as "just deserts". Usually retribution as revenge often occurs when there is emotional involvement in expressing the way of punishment. The desire for revenge is normally related with personal emotion, which is usually derived from anger (Wilson and Herrnstein, 1985). This is often closely related to the criminal situation committed by the offender. The cruelty shown during a criminal act will invite the emotions of the community towards the punishment that should be given to the criminal.

Jeffrie G. Murphy (1979) stated: "The theory of retributivism is intended for action to be fair and not for revenge". The theory of retribution should be based on criminal justice which looks at the balance between crime and punishment. This is the meaning of “just deserts”, where criminals are given punishment in sufficient proportions and not excessive. Revenge usually does not contain

aspects of justice, goodness, and law (Jeffrie G. Murphy, 1979). Support for retribution has been taken to mean that “society that supports death penalty as one way to restore justice believes that the death penalty is a just and fair punishment for certain crimes”(Tyler and Weber, 1982).

1.3.3 Incapacitation Theory.

Incapacitation Theory is closely related to methods for crippling criminal activity. The method we often know is by isolating criminals from society, this is known as imprisonment/incarceration. Criminals are imprisoned for a long time with the aim of preventing the community from being disturbed by their criminal activities and preventing their criminal activities from developing in the future. It is the way of making a restriction to an offender's freedom which they normally have in the society.

In Incapacitation theory, imprisonment is not the only method available, but it also involves death penalty. *“Incarceration is the most common method of incapacitating offenders; however, other, more severe, forms such as capital punishment are also used”* (Barton, 2005). With the death penalty, all crimes committed by offenders will cease and society will no longer face the same crime in the future. For example, in Malaysia, the death penalty is imposed on drug traffickers, this is to stop its distribution activities. As a result of drug trafficking crimes, people are in a state of fear and restlessness following the emergence of cases of murder, robbery, prostitution, burglary and so on (Norhasniah, &Shukeri, 2011).

The death penalty is often associated with theories related to retribution and deterrence, but does not look at the rationality of incapacitation. To this day, there are still scholars who simply assume that the death penalty has nothing to do with the incapacitation theory (McLeod, 2018). It is true that life imprisonment (incarceration) is a form of crippling criminal activity, but what if those activities are still continued even though criminals are still in prison? (McLeod, 2018). Incapacitation adheres to the view to stop crime in the future and protect society from being affected by these criminal activities.

1.4 Problem Statement

1.4.1 Reason to Oppose Death Penalty.

Mandatory death sentences are often met with opposition from various parties who do not support the idea of this punishment. For them, they consider that this punishment is an inappropriate tool and violates the nature of a person's life as a human being. *"The right to life is fundamental to human rights. The life taken will never be restored, and it is contrary to our basic belief in the*

dignity and worth of every human being. There is no place for the death penalty in the 21st century" (Ban Ki Moon, 2015). More precisely it violates human rights and is no longer relevant in today's world which is more focused on efforts to rehabilitate.

Apart from that, "The mandatory death penalty for drug trafficking offenses, does not help in educating the offenders because cases involving drug trafficking are constantly increasing" (BeritaHarian Online, 2018). "Crimes involving drug trafficking are still increasing even with the mandatory death sentence, it turns out that it cannot stop this crime" (BeritaHarian, 2018).

Mandatory death penalty is seen as a cruel act and goes beyond the limits of punishment so as to cause the desire to prevent criminal acts, to be unfulfilled (Beccaria, 1963). Results from previous studies showed that there are effects of brutalization from the executions and further more death penalty actually increases homicide rates (Cochran and Chamlin, 2000). Evidence in term of brutalization effect usually arise from the work of sociologists, however, it is concluded that brutalization effects may be present (Shepherd, 2005).

1.4.2 Reason to Favour Death Penalty.

The potential of criminals to be more courageous to commit such crimes is likely to be higher when this mandatory death sentence is abolished. 'Deterrence' is indeed the most relevant statement in support of this death sentence. It exists in the perception among the community in Malaysia. Past studies in the 20th century have shown that this mandatory death penalty could be an effective preventative tool. Edward Sutherland (1925) and Torsten Sellin (1959) conducted a study and found that the death penalty was a better preventative sentence from imprisonment for a longer period of time.

In general, deterrence also acts as a barrier to individuals who have the potential to commit crimes. They will look at examples that apply to the punishment received by criminals and learn not to commit the same crime (Clarke, Lambert, 2004). Farid Mohd Hassan, Senior Lecturer of the Faculty of Syariah and Law (FSU) Universiti Sains Islam Malaysia (USIM) informed that Malaysia still needs this mandatory suspension as it can be a tool in curbing serious crimes such as drug trafficking, murder, and crime involving firearms (SinarHarian, 2018).

1.5 Significance of the Study

The main purpose of this study is to see the perception of society and their understanding towards capital punishment that has been carried out in Malaysia. It also aims to identify the level of public acceptance towards death penalty. The abolition of the death penalty is to promote justice in

the administration of law and also to uphold the principles of Human Rights (Amnesty International, 2019). It is not something new, but it has long been voiced and debated. The pressure to stop this government action is said to stem from the perceptions and views of the public who see this punishment as a punishment that prevents widespread crime; to control the increase in crime; appropriate punishment for a heinous crime and more economical than the life sentence announced as a substitute for the mandatory death sentence. Other than that unpleasantly rough punishment can degrade the offender's status, empower the victim and society, and by that it will restore balance (Okimoto& Wenzel, 2008, 2010).

It is hoped that these findings will provide empirical evidence on the perceptions of individuals in society in expressing their support either to choose to abolish the mandatory death penalty or to continue this sentence. This study is also expected to help the relevant parties, especially the Prime Minister's Department to identify what is really expected by the community and what is the support of the community at this time. Therefore, by studying the perception and opinion of the community related to the matter, it is hoped that it can help the government in making appropriate decisions and understand what needs to be done if this punishment is to be implemented.

2. Literature Review.

2.1 Death penalty as Deterrent, Retribution, and Incapacitation.

Most countries implement various forms of laws and punishments to control the behavior of individuals in society so as not to commit crimes. The fact that a government implements such a situation for murder cases shows that they are very serious about preventing such crimes, therefore, the punishment they choose is the death penalty. Logically, this situation is expected so that anyone who wants to commit the same crime will think twice to do it for fear of being sentenced to life imprisonment.

Professors at the University of Colorado at Denver confirmed the effects that exist from the execution of the death penalty (Mocan and Gittings, 2003). The results showed that for each increase in the execution of this death sentence, it creates a barrier to at least five potential murder cases. Other studies also supported the blocking effect of the death penalty (Dezhbakhsh Et al, 2008). Death penalty can be used to deter crime, the severe, swift and certainty of punishments will cause criminals to think about their actions to commit crimes (Andenaes, 1974; Zimring& Hawkins, 1973).

FaridMohd Hassan, Senior Lecturer of the Faculty of Syariah and Law (FSU) University Sains Islam Malaysia (USIM) informed that Malaysia still needs this punishment (death penalty) as it can be a tool in curbing serious crimes such as murder, drug trafficking and crimes involving

firearms (SinarHarian, 2018). Retribution can be described as one of the justifications for the oldest sentence which is based on the principle of Lex Talionis (“an eye for an eye, a tooth for a tooth”).

“When one man strikes another and kills him, he shall be put to death. Whoever strikes a beast and kills it shall make restitution, life for life. When one man injures and disfigures his fellow-countryman, it shall be done to him as he has done; fracture for fracture, eye for eye, tooth for tooth; the injury and disfigurement that he has inflicted upon another shall in turn be inflicted upon him”

(Leviticus 25:17-22).

Based on this principle, punishment is seen as appropriate to the damage done (Miethe & Lu, 2005). Retribution is one of the most relevant reasons in supporting the death penalty (Ellsworth & Gross, 1997). As for many, imposing the death penalty on the offender, can eliminate the anger caused by the offender's evil deeds (Jiang & Lambert, 2007).

Another reason to justify support for death penalty is Incapacitation (Ellsworth and Gross, 1994). Incapacitation is an action where offender is punished so that he is unable to commit same crime in the future. This theory asserts that by crippling the criminal abilities committed by offenders, life of the society will be safer. In an interview conducted with a special officer working in the Malaysian Prisons Department, he stated that:

“In the context of drug traffickers, even though they are in prison, their activities outside are still going on, and this is proven because we can hear the results of their conversations when they meet their families, some are connected by their children and some are their wives who conducting drug trafficking cases while they are in prison”

(Special Officer, 2020).

Based on the above statement, for some offenses such as drug trafficking and disabling drug trafficking activities is necessary so that it no longer disturbs the community. Whereby as a result of drug trafficking crimes, people are in a state of fear and restlessness following the emergence of cases of murder, robbery, prostitution, burglary and so on (Norhasniah, & Shukeri, 2011).

3. Objective of the Study.

3.1 Research Hypothesis

Below are the hypotheses formulated in this research:

- a. H1:
- b. H2:

c. H3:

3.2 Research Objective

This research will meet objectives stated below:

- a. To examine the public's perception regarding death penalty.
- b. To examine what is the reason to favour/opposed death penalty

3.3 Research Questions

This research will respond to questions below:

- a. What is the public's perception regarding death penalty?
- b. What is public's support towards death penalty?

4. Methodology

This study was an exploratory study where Malaysia is trying to adopt global trend towards restriction and abolition of capital punishment and yet the result has not been specifically defined. Exploring the support towards death penalty, will help researchers to understand society's choice regarding of matters, as well as get a response to why society chooses to support or abolish the death penalty. Exploratory study provides valuable means to understand the crisis and gain insight, the surrounding events, assess the phenomenon and formulate the problem more precociously (Yin, 2003). This study intended to gain insight on the public perception regarding mandatory death sentence in Malaysia.

5. Conclusion and Discussion

Based on interviews and studies conducted, it has been found that most communities still support the death penalty that has long been established in Malaysia. This is because, they argue that this punishment is indeed able to control other individuals who are not involved in crime to remain away from committing crimes. Apart from that, the death penalty also has an impact on most ordinary people which will cause them to think twice to commit a crime because of fear of imposed punishment. Society assumes that, people who are sane and have knowledge related to the law, and the punishment that will be imposed will certainly refrain from doing illegal things. On average, from surveys and information obtained from government officials interviewed, the offenders were mostly individuals who lacked knowledge, were marginalized, lacked religious knowledge, were stuck with the wrong peer group and had family backgrounds with problems.

In the context of retribution, there is indeed a part of society that is emotional in expressing their opinions, this is because some of their family members are victims of this criminal act. They

argue that these criminals should be sentenced to death and this should be continued. They are worried that one day they will be the killers. Therefore, kill these criminals if the government is not able to carry out the task of imposing appropriate punishment on the offenders, especially the offenders in the murder case. However, there are also members of the society who think that the death penalty can be abolished for certain categories of crime and given consideration based on their case in the name of human rights, but at the same time they agree that it should be implemented against offenders involved in violent crime, such as murder with intent, rape to the point of causing death especially to children.

To conclude, this is the opinion obtained from the respondents involved in this study. The death penalty has been proven to have an impact on society. It can restrain individuals in society from being motivated to commit crimes just for profit. It can be considered as the last punishment that can remind society that there are limits in doing something. If this punishment is abolished, society is worried that the situation will get worse than it already is. Existing punishment needs to be corrected, rather than abolished. The replacement of this sentence with a life without opportunity of parole (LWOP) should be reviewed to see the effectiveness of its implementation. Are correctional institutions in this country ready to face prison congestion as is the case in foreign countries? Will the recovery process be successful if prisoners realize they do not have any chance of getting parole? What will happen after they return to the fold of society? This is the question that is playing in the minds of the community and it needs to be resolved first so that the community does not worry about their safety in the future.

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Malaysia's Public Opinion on Death Penalty

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