

**FOR IMMEDIATE RELEASE**

**ASLI SUPPORTS THE ABOLISHMENT OF MANDATORY DEATH PENALTY**

**Thursday, 14 November 2019** – On 10<sup>th</sup> of December 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR); the primary document that lays down the basic rights and fundamental freedoms each person is entitled to. Article 3 of the UDHR guarantees the right to life of every person while Article 5 protects against torture, cruel, inhuman or degrading treatment or punishment. In this regard, death penalty is viewed as a violation of these two fundamental human rights principles. The two principles on the right to life and protection against torture, cruel, inhuman or degrading treatment or punishment were then adopted into the International Covenant on Civil and Political Rights (ICCPR) where the scope of the imposition of the death penalty was narrowed down to “*most serious offences*” only.

While Malaysia is party to the Convention on the Rights of the Child, it is not party to ICCPR, the Second Protocol to ICCPR, and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. To date, there are 11 offences that still carry mandatory death penalty upon conviction, namely sections 121A, 130C, 130I, 130N, 130O, 130QA, 130ZB, 302 and 374A of the Penal Code; and sections 3 and 3A of the Firearms (Increased Penalties) Act 1971.

Some of these offences may be accompanied by acts of violence that may result in the death of a person and as such, falls within the ambit of the “*most serious crime*” therefore justifying the imposition of death penalty. However, it must be stressed that the imposition thereof is justified only if the act that caused the loss of life was committed with an actual intent to kill. Thus, it can be argued that the imposition of mandatory death sentence in domestic laws is not in compliance with the international standards. This is based on the stance taken by the Human Rights Committee that death sentence may not be mandatory even for an offence that results in the loss of life which comes within the ambit of most serious crime.

Based on the international position, ASLI acknowledges and supports the Malaysian government’s decision to abolish the mandatory death penalty and to allow the judges to use their discretion in determining the punishments including death penalty or other alternative punishments.

ASLI also welcomes the establishment of the “*Jawatankuasa Khas Kajian Hukuman Gantian terhadap Hukuman Mati Mandatori*” that will undertake a detailed and holistic study on new sentencing policy to substitute the mandatory death penalty.

ASLI is honoured to have been invited as one of the participants for *Sesi Town Hall Mengenai Cadangan Hukuman Gantian Terhadap Hukuman Mati Mandatori*, that was held in the Legal Affairs Division of Prime Minister's Department on the 11<sup>th</sup> of November 2019.

ASLI hereby recommends the following for the Malaysian Government's consideration:

**Special Committee's Terms of Reference should not be limited to only the 11 offences that still carry mandatory death penalty but expanded to all offences that provide for the death penalty under any domestic laws;** and the Special Committee that was established by the Government should be looking into alternative punishments for all the offences that provided death penalty as one of its punishments be it mandatory or discretionary. Thus far, death penalty in Malaysia is entrenched in 33 provisions within eight Acts of Parliament. Out of these 33 offences, 22 offences provide for alternative sentences apart from death as the punishment. In addition, there are two provisions that are linked with other principal offences: abetment and criminal conspiracy. The punishment for these two offences mirrors the punishment that is provided for their respective principal offences namely death penalty.

Any decision pertaining to alternative punishments that this Special Committee may arrive at will directly and/or indirectly affect the entire landscape of the sentencing policies in our criminal justice system. In particular, their decision may subsequently lead to further amendments of Criminal Justice Act 1953 [Act 345] and/or any other written law. Hence, it is prudent that the Special Committee undertake a comprehensive evaluation of the alternative punishments for all the offences that provided death penalty.

**A provision on retrospective effects of the amendments to 11 offences that provide for mandatory death penalty to be introduced.** The government should provide for a provision for the Court to review the existing cases. A person who had already been convicted of any of the said 11 offences, regardless of whether he had appealed against his conviction, or whether the appeal court had determined the appeal, or is currently waiting for the execution, may avail himself to the new amendments. In general, every statute is prospective unless it is expressed in the statute that it has retrospective operation. This is to ensure that the crucial fundamental rights are protected with two foundational values: "fairness of criminal proceedings" and "safeguarding the rule of law".

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