

Busting the myths of the death penalty

October 11 2018, by Iqrak Sulhin



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October 10 is [World Day against Death Penalty](#). Indonesia is one of the few remaining countries that still implements capital punishment. Despite many rejections from various circles, the Indonesian government still believes the death penalty serves as an effective deterrent against crime.

In a book, [Politik Hukuman Mati di Indonesia](#) (The Politics of Capital Punishment in Indonesia), I wrote that research on the deterrent effect of the [death penalty](#) has yet to be conducted in Indonesia. Apart from the lack of empirical data, other arguments and studies around the world have shown the deterrent effect of [capital punishment](#) is a myth.

The rationale of capital punishment

Within penology, a branch of criminology that studies criminal sanctions, the idea that the [death](#) penalty has a deterrent effect rose with the influence of classic utilitarianism in the 18th century within the Western legal system.

[Classic utilitarianism](#) is a theoretical approach to ethics that was introduced by the philosophers Jeremy Bentham and John Stuart Mill. Scholars before them, such as Immanuel Kant in [The Philosophy of Law](#), regarded [punishment](#) as a moral obligation. Kant saw sanctions not as an attempt to promote goodness but as a direct punishment against the perpetrator of a crime.

Classic utilitarianism also shifted the perspective of penalties towards its purpose or consequences. Based on the utilitarian approach, a sanction is justified if it can bring the most benefit to the most number of people. If crime can be prevented to create public safety, then a punishment is justified.

Capital punishment is then seen as a type of sanction that can effectively scare people from committing crime. The death penalty is not valuable because it's a legal court "sanctioned act to kill". It's valuable because it creates a particular benefit, the prevention of crime as it deters people from transgressing in the first place.

The death penalty in Indonesia

Capital punishment in Indonesia has been in effect since the colonial era. The Governor General of the Dutch East Indies Herman Daendels utilised capital punishment as a method to [silence rebellion within the colonies](#). The legal basis of the death penalty was formalised in Dutch colonial penal code (*Wetboek van Strafrecht voor Indonesia* (WvSI)) on January 1, 1918. Provisions within the WvSI were maintained as Indonesia's penal code even after the country's independence.

From the colonial era until today, the death penalty is still being carried out in Indonesia despite numerous renunciations. Rejection mostly comes from civil organisations such as [Amnesty International](#), [The Commission for Missing Persons and Victims of Violence \(KontraS\)](#), and the [Institute for Policy Research and Advocacy \(Elsam\)](#).

Their reason to refuse the death penalty relates to the concept that capital punishment as a penalty violates human rights and, at the same time, does not guarantee fair trial. [The National Commission for the Protection of Human Rights \(Komnas HAM\)](#) also recommends its practice in Indonesia be reviewed.

However, it seems the government has turned a blind eye and still goes forward with the death penalty in Indonesia.

The most high profile case of capital punishment that received global attention happened in 2015.

On January 18 and April 29, 2015, the government executed 14 death row inmates who were convicted for drug-related crimes.

President Joko "Jokowi" Widodo has proclaimed he will enforce the law and eradicate drug abuses as they have torn the nation apart. Jokowi's

stance on capital punishment is seen as a decisive act and a call to war against narcotics. Jokowi believes the death penalty is a manifestation of the [government's responsibility to protect future generations](#).

The myth of deterrence

[K.G. Armstrong](#), a penologist, sees punishment as a way to inflict suffering against a criminal perpetrator so they won't repeat the same violation, and to deter others from the same crime.

However, the claim capital punishment can have a deterrent effect against future crime has been refuted many times. Numerous studies, especially within the US, have cast doubt on the deterrent effect.

The main reason for doubt relates to the difficulty of obtaining empirical evidence for the effect of capital punishment. [Sociologist Michael L. Radelet and criminologist Ronald L. Akers](#) stated in 1996 that to prove the death penalty's deterrent effect we would need a method that may be constrained by the ethics of research. Ultimately, it's not ethical to measure the deterrent effect of capital punishment before and after an execution.

A method that can then be used is to measure the statistics of crime that are subject to the death penalty, and compare data before and after an execution.

However, research conducted by [sociologist David Johnson](#) in Japan and South Korea shows how the decline in the executions in Japan is followed by a decline in murder cases. In the 1950s, the average number of executions in Japan was 25 per year while in the 1980s that average dropped to only 1.5 per year. During that period, the murder cases dropped by 80%.

On the other hand, in South Korea, there was not a significant difference in the number of murder cases between the years before and after 23 people were executed in 1997. This data questions the ability of the death penalty to control crime.

Another problem related to measuring the deterrent effect is that even if there was a decline, is it not possible it was influenced by other factors?

[Law professor Stuart Banner](#) found the deterrent effect for murders in the US cannot be isolated from the influences of other factors such as population density, welfare equality, level of education and religion.

The factors mentioned above affect the number of crimes. While other studies that have sought to prove the deterrent effect of capital punishment, tend to see those extraneous factors as [constant](#).

Minimal support from criminologists

Radelet and Akers's research presented noteworthy [data](#) showing there is minimal support from criminologists of the death penalty.

They concluded capital punishment does and will not have higher deterrent effect than lifelong imprisonment. They also found the death penalty is nothing more than a political commodity in relation the electability of politicians during election season.

In 2009, [Radelet](#) conducted another study with a similar method along with legal expert Traci L. Lacock.

Involving 94 respondents, the research has shown only 2.6% agreed with the statement that the death penalty can deter people from committing murder. The remaining 86.9% disagreed. This means only a small number of acclaimed criminologists in the US actually believes the

threat of the death [penalty](#) can curtail murder. Most of them believe life imprisonment is a stronger deterrent.

In other words, criminologists agree capital punishment is not supported with strong empirical data that it can decrease crime.

Although classic utilitarianism is seen as the foundation of penal theory, in [An Introduction to the Principles of Morals and Legislation](#), Jeremy Bentham explained there were certain conditions where the implementation of certain sanctions can no longer be condoned. Those conditions include circumstances when punishments can no longer prevent crime or if there are alternative types of sanctions that can do a better job.

Due to minimal evidence and support from empirical data, the Indonesian government should reevaluate the practice of capital punishment.

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Provided by The Conversation

Citation: Busting the myths of the death penalty (2018, October 11) retrieved 27 April 2024 from <https://phys.org/news/2018-10-myths-death-penalty.html>

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