

## Herald Sun

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### Other ways of doing justice

Tim Lindsey and Jeremy Kingsley

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THERE is widespread confusion about why the Indonesian Supreme Court has sentenced Bali Nine members Scott Rush, Matthew Norman, Si Yi Chen and Tan Duc Than Nguyen to death.

And there is deep anxiety about their fate.

There are suggestions the Bali Nine are being made an example of and are being rushed to the firing squad.

Meanwhile, the Indonesian legal system is seen to be going slow in carrying out the death sentences on Bali bombers Imam Samudra, Muhklas and Amrozi.

This speculation has little basis in fact and does great harm to relations between our two countries.

It is part of the flood of misinformation and, sometimes, pure fantasy about the Indonesian legal system produced by our media and even some politicians when an Australian gets into trouble in Bali.

The reality is that the Indonesian legal system is based on a traditional French civil law model, common globally.

Australia, by contrast, belongs to the minority of countries influenced by the British common law legal system.

In the Indonesian system, as in many civil law countries, it is open to judges deciding an appeal to acquit, convict or impose whatever punishment they see fit.

This is regardless of the views of lower courts or what is sought by the prosecution.

This is normal and is seen as a way of avoiding incompetence or even corruption on the part of the prosecution and ensuring a degree of parity and uniformity in sentencing.

Therefore, upgrading the sentences of Rush, Norman, Chen and Nguyen was always on the cards.

In fact, it was likely.

Two of the Bali Nine, Andrew Chan and Myuran Sukamaran received death sentences at the initial hearings in Bali and Indonesian courts have taken a tough line on drug offences, especially heroin for some years.

Indeed, there are already a number of other foreigners convicted of similar, serious drugs offences sitting on Indonesia's death row.

But while many Australians are under the impression that six of the Bali Nine face imminent execution, they are probably wrong. Unlike some of its neighbours, Singapore for example, Indonesia moves slowly on executions.

Authorities usually wait until all appeals and clemency applications are exhausted before a firing squad is formed.

There is still another step available in the appeal process. The Peninjauan Kembali or PK, is a review by another panel of Supreme Court judges.

A PK will sometimes reverse previous decisions, but the court will only hear such cases if a novum, or new fact or circumstance is found that if known at the time of the trial could have resulted in a lesser sentence or acquittal.

Other grounds for a PK include contradictory evidence produced in another case, or if previous judges have made a clear mistake.

The good news is that such grounds are usually relatively easy to find and a PK can usually be lodged at any time before the sentence is to be carried out.

Also, the Supreme Court can take as long as it likes to hear it.

This drags out any execution, which is well understood by the Bali Bombers.

This is why they have still not lodged a PK and why their lawyers appear indecisive as to when they might call for a PK.

But while the authorities might be waiting for this to happen their patience could start to wear thin.

Those of the Bali Nine facing the death sentence could also consider an appeal to Indonesia's Constitutional Court.

A new "right-to-life" amendment creates room for an argument that the death penalty is unconstitutional.

Whether this would quash an existing sentence in the Supreme Court is unclear.

However, a successful Constitutional Court appeal would bring huge political pressure for lenience.

If court reviews fail, the last chance for the six of the Bali Nine sentenced to death would be an application to Indonesian President Susilo Bambang Yudhoyono for clemency.

But he has said many times that he would not exercise his powers in favour of drug offenders. Indonesia has a war on drugs with saturation national advertising.

Drug arrests are increasing and anti-drugs banners flutter in the streets.

President Yudhoyono could be influenced by any Constitutional Court decision against the death penalty.

But Australia needs to campaign more effectively against the death penalty. Unfortunately, Canberra is only active when one of its own citizens is facing execution.

It needs to campaign internationally against the death sentence. If we think the death sentence should not be applied to our citizens, why do we not speak against it when others are about to be executed?

If we oppose the death penalty, we should do so universally, regardless of citizenship or crime.

PRIME Minister John Howard's prime-time media endorsements of the death sentences for the Bali bombers did not help Australian drug smuggler Van Nyugen who was executed in Singapore.

And they will not help those of the Bali Nine who face execution. It's more than time for principled consistency from Canberra.

Prof TIM LINDSEY is Director of the Asian Law Centre at the University of Melbourne. JEREMY KINGSLEY is a Principal Researcher

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