

## Herald Sun

OPEDIT

### Death waits for Bali 6

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YESTERDAY, Indonesia's Constitutional Court took a tentative step towards abolishing the death penalty in that country.

The decision itself has not been made available, but reports say a majority of judges decided that although the death penalty was constitutional there should be a 10-year moratorium on further executions.

During this 'trial period', they said, all new death sentences should be commuted automatically to life in jail. But the decision is very bad news for the six members of the Bali 9 sitting on death row for trying to import around 10kg of heroin into Australia.

Also for the two Indonesians, Edith Sianturi and Rani Andriani, who joined Myram Sukamaran, Andrew Chan and Scott Rush (pictured below) in their application to the Constitutional Court to abolish the death penalty for narcotics offences.

This is because the Constitutional Court specifically stated that all existing death sentences should be carried out, and that means six of the Bali 9 and the Bali bombers and everyone else sentenced to death before today still face death by firing squad.

This is not a big surprise. The Constitutional Court has always said its rulings can't be applied retrospectively to change existing sentences.

The good news is for human rights in Indonesia and the beginnings of a move to bring Indonesia into line with the global trend towards abolition of the death penalty. Even China, the world's No 1 executioner, is now considering abolition.

But why not abolish the death penalty altogether?

The decision itself is not clear on this point but it is believed the nine judges were deeply split over this issue. The final decision may have been a compromise to win over holdout judges, influenced by conservative social values, who strongly support execution.

What now for the 'Bali 6'? There was still the option of a final appeal to the Supreme Court, arguing that their convictions were based on an error of law, but the prospects of success were not strong.

The last chance for the Bali 6 would then be a plea for clemency to Indonesian President Dr Susilo Bambang Yudhoyono.

President Yudhoyono has said on many occasions he would not use his powers of clemency to assist convicted drug offenders.

However, this new Constitutional Court decision may offer Indonesia's death row inmates a tiny ray of hope.

They could argue that even if it is legal to execute them, it would be morally repugnant and inhumane to go ahead with their execution when offenders who happen to have been lucky enough to have been caught after the Constitutional Court decision was handed down will escape death.

They could say that respect for human rights and human dignity, and the horror of someone's fate being arbitrarily determined by the date of their arrest, should stay the President's hand.

It is a very long shot, but it now may now be the only remaining hope for the Bali 6.

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