



## Bali death sentences: a dilemma Australia cannot dodge

TIM LINDSEY

### John Howard thinks death is right for the bombers. But why?

THE announcement by Jakarta of the imminent execution of Bali bombers Amrozi, Imam Samudra and Mukhlas poses a dilemma that will require careful handling by Canberra.

Given the Australian public's record in the past few years, the likely popular response to the firing squad for these unapologetic terrorists will be another round of gloating and bloodthirsty celebration.

So what? The Bali bombers are mass murderers, convicted in trials deemed free and fair by local and international observers. They are unrepentant, even proud, of their crimes and their sentences are in line with Indonesian judicial practice.

The problem with what happens to the bombers is that it may also determine the fate of Australians Andrew Chan and Myuran Sukumaran. These are, of course, the so-called ring-leaders of the Bali nine, sentenced to death earlier this year for their role in the attempted importation of 8.3 kilograms of heroin from Bali to Australia.

Australia's official policy is that it opposes the death sentence. Australia therefore vigorously, but unsuccessfully, opposed the execution of Van Nguyen by Singapore last year.

Canberra knows that Australians take strong objection to fellow citizens — whatever their crimes — being hanged, shot, electrocuted or poisoned by overseas governments, especially in developing countries, so we can expect that polls and focus groups will eventually push it into advocating mercy for Chan and Sukumaran.

This split between enthusiasm for executing the Bali bombers and repugnance at the same being done to Chan and

Sukumaran puts the Government in a corner.

The Prime Minister has said the death penalty is appropriate because he didn't understand why anyone would think that it (execution for Amrozi) was barbaric.

But if he continues to offer this sort of support for the execution of the murderous Bali bombers, it will become increasingly difficult for Australia to be heard with any credibility on the question of clemency for Chan and Sukumaran. After all, they are drug smugglers who, for profit, committed a crime that would be serious in any country and would undoubtedly lead to deaths among drug users in Australia. Why let them off, when Australia was keen to see the Bali bombers dead? Do we oppose the death penalty or oppose it only for our own citizens? It is surely axiomatic that the death penalty is either morally wrong or it is not.

These points were made forcefully last year by Singapore and we can be sure they will be made again by Indonesia, when Australia advocates mercy for

Chan and Sukumaran. Rightly or wrongly, we are often seen in our region as racist, hypocritical and narrowly self-interested. Our double standard on the death penalty in our region only cements these prejudices and encourages our ASEAN neighbours to look for opportunities to poke us in the eye.

And there's a further, unpleasant twist: the Indonesian Constitutional Court has already said that the anti-terror law under which the three bombers were convicted breaches a constitutional ban on retrospectivity and cannot be applied to the Bali bombing. The bombers say they will appeal against their death sentences on this basis to

the Supreme Court, but that court has already said it will not take the Constitutional Court decision into account. This may lead to the three being executed under a law already declared unconstitutional. The interests of the fragile rule of law in our region demand Australia must not support such an outcome.

So, what to do? Our Government needs to be careful, disciplined and nuanced in how it responds to the execution of Amrozi, Mukhlas and Imam Samudra.

Canberra needs to point out, quietly, but strongly and consistently, that although Indonesia may have a right to execute the bombers, Australia, in principle, opposes the death penalty and would always recommend imprisonment in its place, regardless of the crime involved. Canberra needs to make this policy clear to Australians as well as Indonesians and it needs to do it fast, to overcome the damage already done.

This line will, of course, be unpopular and even distasteful for many in Australia and Indonesia in relation to the Bali bombers, but it is essential if Australia is to have any chance of securing mercy for Chan and Sukumaran.

The alternative is a double standard that is morally reprehensible, is fast becoming unsustainable and does nothing to help citizens in trouble overseas.

Tim Lindsey is professor of Asian law and director of the Asian Law Centre at the University of Melbourne.

**Do we oppose the death penalty or oppose it only for our own citizens?**