



Comment

Never too late to speak out against the death penalty



**Tim
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IT IS not clear what documents have been obtained from Indonesia's Supreme Court upgrading to death the sentences imposed on four of the Bali nine, or whether they are the final formal judgement of the court. This is because there are often drafts prepared for discussion before a judgement is issued and, increasingly, dissenting judges of the court will issue minority decisions.

It is not unusual for the Indonesian Supreme Court to issue more than 1000 judgements in a single month. Like European civil law courts of cassation, these appeal decisions are not made at hearings but on the basis of documents supplied by the parties involved and a lower court.

For example, the Denpasar District Court is gathering evidence that will be supplied to the Supreme Court in Schapelle Corby's appeal.

Again like in most European courts, there is no formal hearing to announce the court's final finding. Rather, the outcome goes through an administrative process and is sent to the various parties involved. Because of the volume of cases handled by the highest court in a nation of 230 million people, this is often delayed – even for years in some unfortunate cases.

The court is unlikely to formally comment on its decision until the parties involved have been notified.

In any case, this is not the end of the appeal process. There is a further opportunity for the Bali nine to seek reconsideration of their convictions or sentences using an internal review procedure known as *peninjauan kembali*, sometimes called a judicial review.

Here, the cassation decision is reviewed

by a new panel of Supreme Court judges. Usually, the court only hears a judicial review case if a *novum* exists, that is, a new fact or circumstance that if known at the time of the original trial would have resulted in acquittal or in a lesser sentence being imposed. Other grounds include contradictory evidence in another case, or whether a judge at an earlier level has made a clear mistake.

A judicial review can be lodged at any time, and the Supreme Court can take as long as it wants to decide it.

It is not unknown for a judicial review decision to reverse the trend of all previous decisions.

There may also be the possibility of an appeal to the new Constitutional Court on the basis of a “right-to-life guarantee” in the constitution. But, so far, no one has enforced a Constitutional Court decision in the Supreme Court.

The last chance in the appeal process is an application to the 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 does not rush executions. It could be years before the Bali nine face death if their judicial review fails, assuming that they take this step.

There are many convicted drug offenders in front of them on death row, who have been waiting for many years.

In any case, the Australian Government should hope the process takes a long time, because our failure to be active in opposing the death penalty in our region, through formal government channels, has left us with low credibility when Australians face the ultimate penalty – the firing squad – in Indonesia.

Our support for the execution of the Bali bombers has been widely noted in the region, and was raised by Singapore when Australia sought to save Nguyen Tuong Van from death on drug trafficking charges.

Canberra should use what time is left in the case of the Bali nine to become internationally vocal on the death penalty, not just for Australians, but for anybody, including the Bali bombers, unpleasant though this will be, if it is to have more leverage in Indonesia to help its citizens. It is not enough to rely on the friendship between Yudhoyono and our Prime Minister, John Howard, strong though this is.

It has been suggested in Federal Parliament that Indonesia seems keen to execute the Bali nine and very slow in executing the Bali bombers. This is mischievous. The apparent slowness in relation to the handling of the case of the Bali bombers is normal in the Indonesian legal system, which moves slowly with any execution. The Bali bombers have yet to lodge judicial reviews, and this has caused the authorities to delay.

The same will likely be true for the Bali nine, who are still far from the stage the Bali bombers have reached.

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

Howard is on record as saying that the death penalty is appropriate for the Bali bombers and he does not see how people might see it as barbaric.

This may play well with Australians angry at terrorists, but it does little to help Australians who have committed serious crimes overseas.

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