



## Everyone deserves a fair trial — even Abu Bakar Bashir

**TIM LINDSEY**

It is disturbing that Australians have demanded Indonesia abandon legal procedure.

**A**BU Bakar Bashir has been trying unsuccessfully to turn Indonesia into a hardline Islamic state since 1970, when he joined the militant organisation Darul Islam.

DI was a militia that in the late 1940s carved out an Islamic state in hills south of Jakarta, which it ruled bandit-style as a base for terrorist activities around the archipelago.

In 1957, it came close to assassinating president Soekarno in a blast that killed schoolchildren, and in 1961-62 it was finally crushed in a major military operation. Bashir joined survivors as a DI propaganda broadcaster and, with close colleague Abdullah Sungkar, established the notorious pesantren, or Islamic boarding school, al-Mukimin, at Ngruki in 1971. Here they campaigned for an Islamic state and trained students, many of whom — including some of the Bali bombers — have since been convicted of terrorism.

President Soeharto had the pair arrested and convicted of subversion in 1978, but they escaped to Malaysia in 1985, where they found shelter for the next 14 years. There they recruited mujahideen for the Afghanistan jihad against the Soviet Union until, backed by al-Qaeda's Hambali, they split from DI to form Jemaah Islamiyah in the mid-1990s.

A year after the fall of Soeharto in 1998, they returned to Indonesia. Sungkar soon died and Bashir succeeded him as emir, or head, of JI, openly and aggressively campaigning for a hardline Islamic state.

Throughout his career, Bashir has been a committed proponent of the modern fringe cult of salafi jihadism that is doing so much damage to the mainstream religion of hundreds of millions of Muslims.

An outspoken supporter of armed jihad, he is imbued with the thought of jihadi ideologues such as Sayyid Qutb and Abdullah Azzam. He is fanatical, ultra-conservative, hostile towards women and obsessive in his hatred of the West — especially the US — and a purported world conspiracy of Jews.

I have little doubt that Bashir was involved in the decision to bomb nightclubs in Kuta in 2002. But my personal opinions, like those of millions of Australians, or, for that matter, millions of Indonesians, are beside the point when it comes to Bashir's trial.

And that is as it should be. It is axiomatic that criminal trials must be decided only on the evidence. To have it otherwise and allow conviction on the background or personality of an accused or the emotions or intuition of judges is to abandon the panoply of rights and freedoms that underpin modern democracies and that we constantly urge upon developing states such as Indonesia.

It is only a step away from kangaroo courts, mob rule and lynchings. For decades, Indonesia's courts were a sham. Deliberately degraded and corrupted by Soekarno and Soeharto, they were a byword for all that was wrong with the country. Since Soeharto's fall and Indonesia's democratisation, the judiciary has slowly and painfully moved down the path to reform.

The political and social pressure on judges to do their job transparently, fairly and by the rules is now immense.

As a result, it is increasingly true that in major trials the superior courts more often behave within the range of what the procedural and substantive laws require — as they did in Bashir's case. Despite shrill and often abusive criticism in Aus-

tralia of Indonesian judges (including from politicians who should know better), it is not judges who decide what evidence is presented at trial.

The basic problem is that Indonesian prosecutors have never been able to produce evidence that directly incriminates Bashir in the first Bali bombing.

Damning video-link evidence from Singapore didn't comply with court rules designed to prevent witnesses being manipulated, and the prosecution instead relied on local witnesses who refused to testify or gave irrelevant evidence.

The best evidence against Bashir was a claim that he told Bali bomber Amrozi bin Nurhasyim that undertaking "an event" in Bali was up to Amrozi, because he knew "the situation in the field".

This is vague stuff and does not show that Bashir had a hands-on role or even actual knowledge of the plot to bomb the Kuta nightclubs. To make matters even worse, Amrozi denied he ever said these words and the prosecution relied instead solely on a contested police report of their interview with him.

The West didn't help much either. When the Indonesian courts asked the US to produce key witnesses, including Hambali — presumably held in Guantanamo — they refused, despite earlier assurance of compliance (although this didn't stop Washington saying Bashir's trial proved Indonesia was "weak on terrorism").

On the evidence the prosecution presented at his trial, it is extremely unlikely Bashir would ever have been convicted in an Australian court.

Of course, this doesn't mean he is innocent — just that there is not enough evidence to justify a criminal conviction for conspiracy. And that meant that the



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five judges who acquitted Bashir last week had no alternative if they were applying the law objectively. It is disturbing that many Australians who enjoy the benefits of extensive protections granted to accused persons in our criminal justice system have been so quick to demand that Indonesia abandon legal procedure and make findings

Australians might like, regardless of what the evidence says.

We can't have it both ways. If we think Australians facing drugs charges should get fair trials and that David Hicks in Guantanamo has a basic right to one, then so, too, should Abu Bakar Bashir.

That means the result must turn solely on the evidence —

and that, in turn, means that sometimes the people we think are guilty must go free.

Professor Tim Lindsey is federation fellow and director of the Asian Law Centre, Melbourne University.

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