

Opposition to Indonesian executions must be colourblind

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The execution of the three Bali bombers in 2008 was a low point in Australia's opposition to the death penalty. Both the Howard and Rudd governments expressed their support for the executions, undermining Australia's commitment to abolition.

As another member of the Bali bombing plot, Umar Patek, stands trial in Jakarta, it is essential that the government not repeat this mistake. To do so would further compromise Australia's ability to raise the issue of the death penalty with Indonesia, just as our key regional neighbour is at a crossroads regarding capital punishment.

Why should Australians be concerned with the death penalty in Indonesia? For one thing, it is the only country in the world where Australians are on death row. Only a plea for presidential clemency now stands between Bali nine members Andrew Chan and Myuran Sukumaran and their execution. Abolition in Indonesia would save Chan and Sukumaran, and the other 112 Indonesians and foreigners on death row.

Indonesia is also important because it could be a domino for abolition of the death penalty across south-east Asia. As the region's largest nation and the world's most populous Muslim country, an abolitionist Indonesia would be better placed to influence other countries than the region's three existing abolitionist states, the Philippines, Cambodia and East Timor.

Abolition in south-east Asia would conform to Australia's stated support for a universal end to the death penalty. It is also of pragmatic interest, given the last four Australians executed were each hanged in either Malaysia or Singapore.

Why is Indonesia at a crossroads, and what are the prospects for abolition? On the one hand, the death penalty is written into a range of legislation and has strong supporters pushing for its retention or even for its intensified use. The courts have passed up two recent opportunities to repeal death penalty statutes and capital punishment appears to have majority public support. Nor has there been an overall reduction in its use under democratic rule.

On the other hand, there are enough forces pushing for abolition or moderation to suggest a reconsideration of the death penalty is possible. Indonesia executes few people compared to countries such as China, Iran and the United States. It has not carried out any executions at all since 2008, although the courts continue to hand down death sentences.

The inclusion of the death penalty in new laws is strongly debated, with some legislation such as the human trafficking law omitting the punishment. There is also a new opportunity coming for the courts to reconsider capital punishment, as two death row inmates have filed a challenge to the constitutionality of the death penalty for aggravated robbery occasioning death.

The most important factor, however, is concern for Indonesian citizens facing the death penalty abroad. As of December, 217 Indonesians faced possible execution overseas, mostly in Malaysia, Saudi Arabia and China. The Indonesian government has come under intense pressure to advocate for these citizens since the execution of an Indonesian domestic worker in Saudi Arabia last year.

Many Indonesians say as long as Indonesia retains the death penalty domestically, the government lacks a moral basis to advocate for citizens abroad.

What could the Australian government do to encourage abolition in Indonesia? Scholars have proposed Australia engage other Asian abolitionist states to encourage Indonesia to take steps towards abolition. This approach is worth focusing on, although in reality Indonesia is more likely the domino that could influence other south-east Asian nations to do away with it, rather than vice versa.

Australia could also explore bilateral options such as encouraging abolition through law enforcement co-operation. The government should signal its opposition to any and all executions in Indonesia, even when it is politically costly within Australia. This must include the Patek case if he receives a death sentence. No advocacy will work if Australia is not itself a consistent and principled opponent of the death penalty.

The government must signal its genuine intent to encourage abolition, while acknowledging that Australia is not in a position to dictate terms. Though it will be Indonesia that determines whether or when it will abolish the death penalty, Australia can and should do more to encourage it.

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