

Bali verdict: a political show trial based on unconstitutional law

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Acting under direct pressure from Western governments for swift convictions and severe punishments, a special Indonesian court last week sentenced Amrozi bin Nurhasyim to death for his alleged part in the October 2002 Bali bombing. The proceedings became a political show trial, testing out anti-terrorist decrees imposed by President Megawati Sukarnoputri's administration one week after the Bali explosion.

From his conduct in the courtroom, Amrozi is a fanatical Islamic fundamentalist and anti-Semite, showing no remorse for his actions or sympathy for the bombs' hundreds of victims. From the evidence and his own statements, he played a minor logistical role in the Bali attack. He admitted to buying and transporting the explosives used in the blast.

But his entire trial was based on laws that were retrospectively applied and therefore clearly breach the Indonesian Constitution, setting a precedent that can be used against anyone perceived as an opponent of the Indonesian regime. His lawyers have announced that they will appeal his case all the way to the highest Indonesian court, the newly established Constitutional Court.

The Indonesian authorities chose not to charge Amrozi or any of his co-accused with any offences under the country's existing criminal code—for example, with murder or being accessories to murder. Those crimes would have required more rigorous proof of personal involvement and intent. Many of the police methods and evidence used against the defendants would have been inadmissible, and lesser sentences would have applied.

Despite the obvious legal flaws, the Australian media hailed the proceedings as a model of "due process". According to the *Australian's* Greg Sheridan, "the Indonesian judicial and investigative services deserve the highest praise for the way the Bali trial has unfolded". Sheridan lauded the Indonesian government for conducting a "transparent legal process in which the rights of the accused have been observed".

In reality, Megawati's measures—introduced under pressure from the US and Australian governments for her government to align itself with the "war on terrorism"—are little different to those employed for three decades by the Suharto military dictatorship to suppress political dissent, also with the full support of Washington and Canberra.

Seven days after the Bali blast, Megawati issued two presidential anti-terrorist decrees, or Perpus, under a provision of the Indonesian constitution that allows for such measures "in the event of a compelling emergency". She seized upon the Bali atrocity to

override opposition in the national parliament, which had stalled legislation along the same lines for months. The legislators did not want to be seen to boost the powers of the military and police which, under Suharto, used security laws without restraint to detain, interrogate and murder their political opponents.

The first decree was similar to the anti-democratic Internal Security Acts in Malaysia and Singapore, which provide for extended detention without trial. Under Megawati's provisions, Indonesian police can arrest and detain for seven days without charge anyone identified by intelligence information as a terrorist suspect. After that period, a judge can order their detention and interrogation for a further six months—still without the laying of any charge.

"Terrorism" was defined in sweeping terms as "any violent act that could create terror or insecurity among the public, violate the public's freedom, cause the death of other people or cause the destruction of vital or strategic objects". Severe penalties, ranging from three years jail to death by firing squad, were imposed for a broad range of new offences, including threatening acts of terrorism, damaging public or international property and storing firearms or explosives. The police were given wider powers to tap phones, record other conversations and intercept mail, for periods of up to one year.

Significantly for the Bali trials, Article 26 of the decree reopened the door for the methods of torture and frame-up employed under Suharto, by allowing intelligence reports to be used as evidence in court. This permits the government and the security apparatus to obtain convictions on the basis of contrived and uncorroborated police claims.

Megawati's second decree retrospectively applied the first decree specifically to the Bali explosion. Thus, apart from its wider implications, the first decree was drafted precisely to secure convictions for the Bali bombing, by outlawing various acts after the event and rewriting the rules of detention and evidence.

Megawati's decrees were later adopted as laws by the national parliament, with nearly the entire political establishment, including Peoples Consultative Assembly (MPR) speaker Amien Rais and ex-president Abdurrahman Wahid, lining up to back them in the name of fighting terrorism.

Despite being rubberstamped by the parliament, these laws are blatant violations of the Bill of Rights added to the Indonesian Constitution in August 2000 as a supposed guarantee of democratic and human rights in the wake of Suharto's downfall.

Article 28I (1) states that “the right not to be prosecuted on the basis of a retroactive law [is a] human right ... that cannot be diminished under any circumstances”.

This provision was based on Article 11(2) of the Universal Declaration of Human Rights. Retroactive prosecutions are such an obvious breach of basic rights, allowing arbitrary persecution of past acts, that they are also banned by Article 15(1) of the International Covenant on Civil and Political Rights and numerous national constitutions. The only possible exception under these declarations is for gross human rights violations that were already recognised as crimes under international law.

Yet, the Indonesian authorities argued, and the special court established to hear the Bali bombing trials quickly agreed, that Article 28I can be overridden by a completely general article that was inserted in the Bill of Rights, referring to rights being limited by law. Article 28J states: “In exercising their rights and freedoms, each person is obliged to observe limitations established by laws, with the intention of guaranteeing recognition and respect for the rights of others.”

The official claim is that this vague provision guarantees the human rights of others, namely the victims of the Bali blast, even though it does not refer at all to the principle of non-retrospectivity. This argument flies in the face of the clear and unambiguous words of Article 28I that the ban on retrospective prosecution “cannot be diminished under any circumstances”.

The readiness of Megawati’s government and the courts to trample over Article 28I has raised some concerns in the military. In 2000, senior generals lobbied for the adoption of the retrospectivity ban as a means of preventing prosecutions for human rights abuses committed before 1999, when former President Habibie issued a decree punishing human rights violations.

Nearly all the military commanders, former officials and militia leaders convicted of human rights abuses in East Timor remain free on bail and are appealing on the same grounds as Amrozi, because the ad hoc tribunal that tried them also operated under a retrospective law, rather than the criminal code.

Amrozi’s show trial was a travesty in other ways as well. In order to sentence him to death under the anti-terrorist measures, the court had to rule that he was involved in plotting the bombing, not just in assisting the operation. Amrozi maintained that he had nothing to do with the planning or execution of the explosion.

His lawyers, Wirawan Adnan and Ahmad Mihdan, argued that of 58 witnesses only four had direct links to Amrozi and none had said that he was involved in making the bomb or in planning and executing the attack. The prosecution case relied heavily on confessions that have been extracted under duress by the Indonesian security forces, which were notorious for the use of torture under the Suharto dictatorship.

Amrozi’s younger brother, Ali Imron, who appears to be cooperating with police in the hope of escaping the death penalty, testified that Amrozi attended a meeting at which potential bomb targets were identified. Another co-accused, Imam Samudra, the alleged commander of the Bali bomb plot, denied any responsibility for the blast and improbably named Amrozi as the operation’s mastermind.

In handing down their sentence, the judges referred to some of the political and economic imperatives behind their verdict. “The punishment must be commensurate with the seriousness of his crime,” judge Lilik Mulyadi stated. After mentioning the casualties caused by the explosion, the judge continued: “What he has done damaged property and public facilities ... it has destroyed our country, damaged our financial system.”

His comment echoed government complaints that the Bali bombing had severely disrupted tourism, one of the country’s largest foreign currency earners after oil and gas. Tourist numbers dropped 16.5 percent, from 5.15 million arrivals to 4.3 million, during 2002 as Western governments issued travel cautions warning their citizens not to visit.

Encouraged by the favourable response to Amrozi’s conviction in the international media, several government and military leaders immediately demanded even tougher anti-democratic measures. Indonesia’s military chief backed calls by Defence Minister Matori Abdul Jalil for the security agencies, including the armed forces, to be authorised to detain indefinitely anyone deemed to be a threat to national security.

General Endriatono Sutarto complained that the anti-terrorist laws were not as effective as Suharto’s subversion laws because the security forces lacked the power to detain people as a preventative measure. A police general declared that the police would “like to take off the streets” about 300 people. One of Megawati’s palace officials, Rizal Malarangeng added his voice, telling the Singapore-based *Straits Times*: “We need to wipe out these radicals at all costs. We need to throw them in jail so that we can preserve our freedom.”

By endorsing the violation of democratic and constitutional rights in the Bali trials, the Australian media, together with the Howard government, are directly facilitating the return of authoritarian rule to Indonesia. These methods will, in turn, only assist Islamic fundamentalists to exploit political and social discontent for their own reactionary ends.



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