

Indonesian court dismisses Bali bombing charges as unconstitutional

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In a decision that provoked sharp criticism from the Australian government, the South Jakarta District Court has dismissed charges against Johni Hendrawan, also known as Idris, over his role in the October 2002 Bali terrorist bombings. The court ruled on August 24 that the retrospective use of draconian anti-terrorism laws enacted after the Bali attack violated the Indonesian constitution.

According to his own confessions to police and in open court, Idris attended planning meetings for the Bali attack along with other Islamic extremists connected to the Jemaah Islamiyah organisation. He was accused of helping to purchase the van that was loaded with explosives and of training the driver who parked it outside the Sari Club in the main tourist stretch of Kuta Beach. The blast, along with a second explosion at the adjacent Paddy's Irish Pub, killed 202 people, including Balinese workers, residents and foreign tourists. Idris was also charged with setting off a small diversionary explosion outside the US consulate in nearby Denpasar.

Idris was sentenced to 10 years jail over the separate Marriott Hotel bombing in Jakarta in August 2003, in which 12 people were killed. But the dismissal of all Bali-related charges has immediately called into question the convictions of 32 others who were charged over the Bali bombing, either wholly or in part under the same anti-terrorism laws. Among these are three—Iman Samudra, Amrozi bin Nurhasyim and Muklas bin Nurhasyim—who have been sentenced to death. Lawyers for all of those convicted are expected now to appeal.

The ruling in the Idris case was based on the July 23 judgment of the Constitutional Court on the appeal of Masykur Abdul Kadir. Kadir had been sentenced to 15 years imprisonment for providing logistical support for the Bali bombing operation. The court ruled that the use of state law 16/2003, which authorised the retrospective use of the anti-terrorist legislation, was invalid under amendments to the national constitution passed in 2000. The court decision was very restricted, and left in place the anti-terrorism laws.

The decision to dismiss the charges against Idris was

immediately condemned in Canberra. Prime Minister John Howard declared: "We will continue to put all the legitimate pressure we can on the Indonesian government to make certain that these people remain in jail, remain punished and remain fully accountable before the law... no stone will be left untouched by my government." Foreign Minister Alexander Downer echoed these views stating: "For us the issue is not the technicalities of Indonesian law."

These comments once again underscore the Australian government's complete contempt for democratic rights. In the first place, the ruling by Indonesia's Constitutional Court was not based on a mere "technicality". Article 28I of the Indonesian constitution is modeled on a section of the Universal Declaration of Human Rights banning retrospective prosecutions, which are also prohibited by the International Covenant on Civil and Political Rights.

Retrospective prosecutions are one of the legal hallmarks of a dictatorship. The constitutional amendments in 2000 and the establishment of the Constitutional Court last year were in part a response to the mass movement in 1998 that brought down the Suharto dictatorship. It reflected in a limited way the desire of broad masses of ordinary people for an end to the arbitrary rule and police state measures that prevailed under the junta—all of which were rubberstamped by the judiciary. In 1970, Suharto introduced a law specifically to prevent courts from reviewing the constitutional validity of statutes.

The constitutional changes were also the result of sharp international pressure, including from Washington and Canberra, to establish a transparent legal system that protected the interests of global capital. Foreign investors continue to push for commercial laws that are not subject to arbitrary change and a judiciary that does not bend to local political pressure. The constitutional change banning the retrospective application of laws was part of Indonesia's attempts to adapt to these demands.

In the wake of the September 11 attacks, however, the Bush administration, and in its wake the Howard government, used the "war on terrorism" to make major

inroads into democratic rights. The arbitrary and indefinite detention without charge of “illegal combatants” at Guantanamo Bay in Cuba went beyond the anti-democratic measures employed by many of autocratic regimes in South East Asia. From early 2002, Washington and Canberra put Jakarta under growing pressure to detain Indonesian fundamentalist cleric Abu Bakar Bashir, the alleged leader of Jemaah Islamiyah (JI), who was accused of involvement in terrorist acts in the region.

Just seven days after the Bali attack, and still without any suspects identified, President Megawati Sukarnoputri, anxious to accommodate to Washington and Canberra, issued two presidential decrees. The first decree reintroduced Suharto-style measures that empowered the security forces to detain a suspect for seven days without charge and, then after a court appearance, provided for a further six months detention, again without charge.

Terrorism was defined in vague and sweeping language and the security forces were given wide powers to tap electronic communications and intercept mail. The decree provided harsh penalties for terrorist acts, up to and including the death penalty. The second decree applied these measures retrospectively to the Bali attack. The national parliament later adopted these decrees as laws.

Bashir, the target of the decree, was immediately arrested but was not charged over the Bali bombings. Those directly involved in the attack such as Idris were charged under the anti-terrorist legislation rather than existing laws against murder, arson and the use of explosives. But the previous laws would have required a higher burden of proof and rendered confessions extracted in police custody inadmissible in court. This trampling on democratic rights was welcomed by the US and Australia as a sign that Jakarta was joining the “war on terror”.

The Australian government insists that it will continue to keep the pressure on Jakarta to ensure that the Bali convictions stand. But it was pressure from Canberra and Washington that compelled Megawati and the Indonesian judicial system to ride roughshod over the constitution in the first place. A number of legal commentators pointed out at the time that the retrospective use of the anti-terrorism legislation was not only undemocratic, but unconstitutional as well.

The recent court rulings reflect competing political pressures. Within Indonesia itself, there is widespread hostility to the militarist actions of the Bush administration, backed by the Howard government, in invading first Afghanistan and then Iraq. While there is not broad sympathy for terrorism, there is nevertheless widespread anger over Megawati’s bowing to Washington’s demands, particularly over the continued detention of Bashir. At the

same time, the Indonesian ruling elites are well aware that they cannot afford to alienate the Bush administration and its Australian ally.

In the wake of the Constitutional Court decision on the Kadir case, Megawati’s administration has attempted to argue that the ruling has no bearing on previous convictions. Justice Minister Yusril Mahendra stated: “The [32] convictions remain legal because they were made before the Constitutional Court’s ruling.” By this twisted logic, even the conviction of Kadir, who won his appeal, would continue to stand.

Mahendra was echoing the chief judge of the Constitutional Court, Jimly Asshiddique, who declared outside the court, that the ruling has no bearing on cases already decided. In other words, even though 32 people have been convicted under laws, which have been shown to have been applied unconstitutionally, there is no redress because no court had ruled on the issue at the time.

Tim Lindsay and Simon Butt, two researchers from the Australian-based Asian Law Centre, commented on the implications of such an interpretation: “[T]he absurd situation [has been] created whereby no litigant—no matter how deserving and badly treated—could ever receive the benefit of a win in the court...”

“What would be the point of a litigant aggrieved by an apparently unconstitutional law going to the effort and expense of challenging the legality of that law knowing that the decision will not actually benefit him or her in any way? This is a particularly tragic outcome if the litigant is wrongly facing long imprisonment or, worse still, the death penalty. Judicial review would fall into disuse.”

Whether such an interpretation is allowed to stand is yet to be seen. But there are strong pressures from the Howard government to ensure that those convicted of the Bali bombings remain in jail, or are executed, despite the undemocratic and unconstitutional means that were used to try them.



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