

Asia Rising Podcast – Indonesia Executions

Professor Nick Bisley

Welcome to Asia Rising, a podcast of La Trobe Asia where we examine the news events and general happenings of Asia's states and societies. I'm your host Nick Bisley, Executive Director of La Trobe Asia and in this podcast we look at Indonesia in the world under President Jokowi with particular emphasis on Indonesia's Foreign Policy in this first six months and the very controversial topic of the death penalties and imminent executions of a number of foreigners on death row in Indonesia.

In this podcast you'll hear from a long time analyst and scholar of Indonesia, Dr David Mcrae who is a Senior Research Fellow at Melbourne University's Melbourne's Asia Institute.

Nick Bisley

When Jokowi came to the office of the Presidency, he signalled very clearly he was a man with little experience in a wide range of policy areas and that he was going to be appointing a cabinet of experts, bureaucrats, and people with technical knowledge of a whole range of policy spheres.

Foreign Policy stood out, as an area in which Jokowi had absolutely no experience and no real interest in taking a significant leadership role in the formulation of this policy. In this six months however, as is often the case in foreign policy, the world has come to Indonesia. Having set out to have a technical, bureaucratic, rational foreign policy, how Indonesia has engaged with the world has in fact, in some areas, been quite different.

Dr David Mcrae

The continuities aren't there, which I guess is indicative of the fact that you have a President who doesn't have his own strong foreign policy ideas and so a lot of what has continued on, a commitment to multilateralism, keeping Asian as a central part of the way Indonesia tries to create a role for itself on a broader regional stage, and its commitment to protecting citizens abroad, those sort of things are a broad continuity and reflect, I guess, the priorities that the foreign ministry as well has developed over time.

The biggest, new distinct item to Indonesia's Foreign Policy under Jokowi substantively I think, is this idea of a Global Maritime Fulcrum, which would not have been directly authored by Jokowi himself, but reflects the input of advisors. The idea of this Global Maritime Fulcrum is that you have Indonesia positioned between the Pacific and Indian Oceans and saying that with the sea-lanes this puts Indonesia at the centre of the shift of gravity from the West to East Asia. And so Indonesia is committed to massively upgrade its maritime infrastructure, its defence capabilities, its defence diplomacy to, I guess, try to become a large nation through becoming a more effective maritime actor.

I think that potentially brings a new focus and coherency to the Indonesian Foreign Policy which you didn't have under Yudhoyono, but it's a massively ambitious project that requires a lot of money that it's not clear that Indonesia will be able to raise, and it also runs into various competing interests. So that, I guess, is a new thing which again is consistent with the idea that foreign policy would be somewhat delegated.

If there's something that I think reflects more directly, Jokowi's own government style, it's these kind of populist nationalist gestures that we've seen in foreign policy during his first six months. On illegal fishing for example, his fisheries minister has been sinking seized fishing vessels,

particularly from South East Asian Nations by having the military shoot them, this being televised or photographed and massively publicised, "we're getting tough, we're sinking ships," it's making a spectacle of Indonesia standing up to, I guess, these nefarious foreign interests who are taking the wealth from Indonesia.

The other thing that I think reflects this sort of populism is their death penalty policy. The way Jokowi has made a real spectacle within the country, of the fact that rejecting clemency for all these narcotics convicts. I guess, what's going to be interesting is, both of these policies; and I'd say the death penalty in particular given that there's 18 – 21 countries who have their citizens on death row in Indonesia, also can be quite corrosive of Indonesia's relations with other countries and so it's going to be to see, how over time the government weighs the international cost of these sort of really populist gestures is depicted this as something that will really help Indonesia deal with its narcotics problems. There's no international evidence to suggest that that's the case, even if he runs through and executes all these people and there's still a narcotics problem, through this really hard line rhetoric it makes it more difficult for him to shift position to look at the problem and the time wasted to deal with it.

Nick Bisley

Jokowi's predecessor, President Susilo Bambang Yudhoyono, was widely regarded as the best president for Australia - Indonesia Bilateral Relations, certainly under his presidency, the relationship between Canberra – Jakarta seemed to go from strength to strength. Many therefore worried that with the election of the populist Jokowi, relations between Australia and Indonesia would deteriorate. And yet the two countries have quite constrictable interests that bind their fates together. Many questioned therefore that the rise and fall of any one political figure was going to irrevocably change the tenor of the relationship?

David Mcrae

Well I think everything has been overshadowed by these potential executions, I think that's really consumed relations over the last six months and the real danger to good ties in the future is that even if both governments behind closed doors were to try to be pragmatic about it and say, "lets plug on." The Australian public has become so involved in this and the Indonesian public in their own way as well, that it makes a whole range of co-operation controversial, potentially for a long time to come.

When Jokowi was elected, he came in I think, with a great deal of good will as someone seen as a new style of leader. I think that was a moment of opportunity to take a longer term view, start to build relations anew. Certainly there were challenges, but I think from his side, Indonesia have squandered all of that good-will, you've just had months of relentless negative coverage to do with Indonesia in Australia. I think that makes prospects for really building stronger ties in the short term, pretty dim to be honest.

Nick Bisley

Many observers of Indonesia are surprised at the extent to which President Jokowi has invested very significant amount of domestic political capital on looking tough on crime and in particular looking tough on narcotics crime and using the death penalty as a means to do this. In Indonesia at the moment, there are people from 21 different countries on death row and so it's turned a domestic policy into a foreign policy challenge.

For Australia of course, once again Indonesia's Criminal Justice System is the lens through which many look at, understand and are perplexed by what is going on in Indonesia. And of course, most recently this tension has come to a head because of the imminent execution of Andrew Chan and Myuran Sukumaran, two convicted drug smugglers, part of the group known in Australia

as the 'Bali 9.'

David Mcrae

It's been roughly a decade now since they were first arrested and of the nine people who were arrested it's these two, Andrew Chan and Myuran Sukumaran who have ended up with the death sentence all the way through their appeal process.

It's come to a head for two reasons, first is, in December, Jokowi using executions as a short cut to look tough on drugs, announced that he wouldn't grant clemency to any narcotics convicts of which he said there were 64 on death row at the time. The second thing is he then actually pushed through and started rejecting people's clemency and so rejected both Chan and Sukumaran's clemency in late December or early January. That made the prospect of executions imminent and indeed there were six people executed in January, five of them foreigners, also in narcotics cases and then Chan and Sukumaran were mentioned as being among the next batch of ten, of whom nine are foreigners who would be executed.

For the countries who had their citizens executed in January, Brazil withdrew their Ambassador, and then deliberately snubbed Indonesia's appointee the new Ambassador to Brazil. The Netherlands also withdrew their Ambassador temporarily, so this already began to create quite a furore. I think now that you have another ten people scheduled to be executed and nine of them foreigners, that's drawn more and more countries in who have been making very strong representations, often public criticisms of Indonesia's policy, of some of the trials that have led to these death penalty sentences and also to the contradiction between the fact that Indonesia very actively advocates for its own citizens who are facing a death penalty and the fact that they are applying the death penalty, in Jokowi's case mostly to foreigners, within Indonesia.

Nick Bisley

Although Andrew Chan and Myuran Sukumaran have exhausted all the formal legal avenues and have had their pleas for clemency turned down, it might appear surprising to the casual observer, that there remains a number of avenues that the two are pursuing, both legal and political and this is due to some quirks within the Indonesian Justice and Political System.

David Mcrae

So in Indonesia, once you're convicted you then appeal to a Provincial High Court and then to the Supreme Court. Once those two appeals have been rejected or decided upon, your case is considered to achieve what's called 'Final Legal Standing.' After that you've got two avenues of appeal, one is to ask for a Judicial Review of the sentence on the basis of new evidence; an error of law or conflict with another judgement, that's handled by the Supreme Court, that's the Judicial Process. The other is to request Clemency from the President which is explicitly not a Judicial Process, it's him exercising his discretion.

Chan and Sukumaran for instance, exhausted their Judicial Review some time ago and have had the Clemency outstanding far beyond the time limit set within legislation for that to be considered. So once that was rejected, in theory that would have exhausted most of their, well all really, of their legal avenues, but a few things have happened. First the Constitutional Court in Indonesia ruled that multiple Judicial Review were now allowed, that created the chance for Chan and Sukumaran and some of the other people on death row to try to submit the second request for Judicial Review.

The second legal avenue that you've had is, because Jokowi has made a blanket refusal of clemency in narcotics cases and there's been suggestion that he didn't even have the entire case files available to him, you've seen various prisoners, Chan and Sukumaran included, challenge that

through the State Administrative Courts on the basis he hasn't properly exercised his power of clemency. Again that's been rejected on procedural grounds on the basis that the State Administrative Court doesn't have jurisdiction over clemency, so the next legal challenge that we're seeing at the moment from Chan and Sukumaran, is to take this to the Constitutional Court, this question of the appropriate exercise of the Power of Clemency and seek a ruling from them that while it would be prospective it wouldn't affect cases that have already happened, would be a step that they would use to try to de-legitimise the clemency decisions that Jokowi has made so far and I think that's a strong strand in advocacy at the moment.

So although the formal legal avenues are exhausted you're still seeing both legal advocacy and broader advocacy trying to de-legitimise some of these decisions to put pressure on Indonesia to refrain from executing people for the moment.

Nick Bisley

For a country that has its nationals on death row, it's always a difficult course to chart to advocate on their behalf, while seeking to avoid any collateral damage to the broader relationship. The Australian efforts have been going for as long as the Bali 9 have been in the Indonesian Criminal Justice System and those efforts have been very mixed in terms of their focus and quality.

And perhaps the most surprising and counter-productive of these efforts was when Prime Minister Tony Abbott made some unfortunate links between the very considerable aid Australia provided to Indonesia in the aftermath of the Boxing Day Tsunami 2004 and the pleas for clemency for the two convicted drug smugglers. This led to massive popular discontent in Indonesia, but Australia had been faced with a very difficult and complex chart to navigate.

David Mrae

I think, some really significant missteps aside, a lot of what the governments done has been pretty much spot on. You mentioned the Abbott comment, which wasn't to give back aid, it was sort of ham-fistedly highlighting the tsunami assistance, but certainly it was interpreted within Indonesia as to give back aid and the cut through of that comment. I've been travelling around Indonesia during the past month and everywhere I went they had kind of angry questions of "Why did the Prime Minister say this, is he really going to stop Australia's aid program?" And so on, and so forth, that was a really unfortunate distraction and the real damage of it was that it created the impression that Australia is asking for special treatment for its citizens because the aid that we give, rather than we're advocating against the death penalty more broadly.

Once you move beyond a blunder like that, and I think some of the other things that the Prime Minister has said, I think the strategy of making all kinds of representations behind the scenes, offering any inducements that Australia could think of that might convince Indonesia not to execute, but then ramping up more and more public criticism at moments when it appears that executions might be imminent is about the right mix.

Because you have this terrible Catch 22 – if there's seen to be no cost to continuing with the executions then there's little to stop Indonesia from doing it. On the flip side, that's exactly what also generates the nationalist response within Indonesia and I think Indonesia's politicians including the President have encouraged, makes it harder for them to change their minds over time.

I think Jokowi has really publicly committed to this idea of rejecting clemency, this idea of executing, the only avenue left for the international community with their citizens facing imminent execution out there and communicate that there's going to be a cost. So I think in difficult circumstances, if you could edit out one or two of the blunders, then I think the

government advocacy has been pretty good.

Nick Bisley

Although in Indonesia, support for the death penalty is very high, opinion polling supports its retention with very significant majorities in the 70% mark or thereabouts, and yet the number of people being executed in Indonesia has been steadily declining as has been the case in many developing economies. As a country's economic prospects improve, they become less and less comfortable with capital punishment.

The abolition however, of capital punishment is always a very complex and fraught political exercise, how the current case of the two Australians on death row will play out is uncertain. Their prospect not good, but individual events, the political pressure both domestic and international that builds around these can play a quite decisive role in determining the long term fate of the death penalty in countries like Indonesia.

David Mcrae

While this real push to intensify executions at the moment makes it much more difficult for abolition to happen any time soon, the fact that its creating such international furore, there's at least a small chance that that can contribute in its own way. You know, we push ahead with executions, it's not clear that it achieves anything, there's no evidence that it does and yet it really trashes our relations with any number of countries, that's the kind of pragmatic argument that the abolitionists who are within government can use to try to get to a point where it's their voices being heard, rather than those of the hardliners who always push for more and more executions.

If I could make a final gratuitous comment though, the funny thing about his death penalty policy is, we hear mostly about the fact that won't accept any pleas for clemency for narcotics convicts. In the middle of that he's also granted clemency to at least one murder convict on death row, which in itself is really rare in death penalty practice in Indonesia, I think there might be one to two other cases, it's very in-transparent, but that have happened over the past decade or more.

There really is, at times, a confusing or incoherent picture that so hard line on the death penalty for narcotics offences and such an atypical decision on a clemency decision on a different crime that is actually the crime that more typically attracts the death penalty in retentionist countries across the world.

Nick Bisley

That was Dr Dave Mcrae of Melbourne University's Melbourne Asia Institute. In our next podcast we'll be talking with Dave about the political prospects of President Jokowi's first six months in office.

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