

THE LEGALITY OF EX-ISIS CITIZENSHIP FROM INDONESIA IN IRAQ AND SYRIA

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Abstract

After the death of the supreme commander of the Islamic State of Iraq and Syria (ISIS), Abu Bakar Al Baghdadi, marked the end of ISIS's legitimacy and hegemony in the Arabian Peninsula. The incident actually led to a new polemic related to the fate of combatants or sympathizers whose support the ISIS (Foreign Terrorist Fighter). With the defeat of ISIS, many FTF are trapped unable to return to their home/ origin countries. On the other side, the sentiment of the country of origin has arisen to not accept its citizens back and lead to revocation of citizenship status. As one of the donor countries for ISIS member, the Government of Indonesia is faced with serious problems regarding the legality of citizenship status and the threat of radical ideology. The dilemmatic attitude to revoke Indonesian citizenship or to repatriate the Ex-ISIS becomes a matter of climax. The issue of this article to centralize and highlight the legality toward the ex-ISIS citizenship from Indonesia in Iraq and Syria. In addition, this article also to give the perspective and elaboration in matter of consequences to repatriate those former ISIS or to withdraw their citizenship. The results of the study of this article are criticized and also analyze the legality of citizenship of ex ISIS member from Indonesia.

Keywords: *The Legality; Citizenship; Ex-ISIS*

1. Introduction

The conflict in Syria has openly invited sympathizers and support of foreign citizens on a large scale. ISIS with all its persuasive attitude and doctrinal approach to trust can raise funds or support the masses of foreign citizens. The current joining of Ex-ISIS has a different motivational background. The first motivation to be confirmed, they have the desire to defend or take part in ISIS's armed conflict. The second motivation is to migrate and settle in the ISIS sphere which strictly enforces Islamic law. If it is confirmed, between 30,000 and 42,000 people from 110 countries have come to Syria and joined ISIS even before ISIS declared its caliphate in 2014.¹ Data collected by the Soufan Center shows Russia and the countries of the former Soviet Union (8,717), the Middle East (7,504), Western Europe (5778) and the Maghrib Arab Region (5356) combining the largest FTF contributor areas.² The Indonesian government itself notes

¹ *CTED Trends Report: The Challenge of Returning and Relocating Foreign Terrorist Fighters: Research Perspectives* (CTED, 2018); Richard Barrett, *Beyond the Caliphate: Foreign Fighters and The Threats of Returnees* (New York, 2017).

² *CTED Trends Report: The Challenge of Returning and Relocating Foreign Terrorist Fighters: Research Perspectives*.

that since 2014 until now, as many as 1580 Indonesian citizens have or have tried to leave for Syria and Iraq to join ISIS. Of these, as many as 639 people were recorded there.³

When mapped by gender, ISIS supporters or sympathizers not only attract the attention of male sympathizers. Based on 2017 data, at least 113 Indonesian women (WNI) have been in Syria and Iraq.⁴ As it is known that the departure of these investigators brings families including children. Data released by the **Government** noted that there were more than 100 Indonesian children who had traveled to Syria and Iraq.⁵

Table 1.
The Number of Indonesia Sympathizer in Iraq and Syria

NO	Information and Condition	Male	Female	Total
1	Still in Syria and Iraq	451	188	639
2	Died in Syria and Iraq	107	4	111
3	Back to Indonesia as Returnee	76	21	97
4	Deported to Indonesia	315	238	555
5	Planning to go Iraq and Syria	116	62	178
Total		1067	513	1580

Source: Habibie Centre, *Kajian Kontra and Terrorisme* 2019.

In early 2019, the interest of ISIS strength was on its weakest point and this matter was exacerbated by the recent onslaught of ISIS defense in the Baghouz Al-Fawqani village in the DayrAz-Zawr area by the Syrian Democratic Forces (SDF) and the United States. In addition to capturing combatants and Ex-ISIS, the joint force ended ISIS territorial control in Syria and resulted in a large-scale exodus of refugees. The captured combatants totaling 6000 people and around a thousand prisoners came from 55 countries including Indonesia. As for Ex-ISIS, the family is placed in the Al-Hawl refugee camp. Al-Hawl Camp holds hundreds of women and children. If judging from the total number of refugees, Al-Hawl Camp is inhabited by more than

³ The Habibie Center, *Kajian Kontra Terorisme Dan Kebijakan: Tantangan Dan Solusi Pemulangan Simpatisan ISIS*, 5th ed. (Jakarta: The Habibie Center, 2019), 4.

⁴ Tom Allard, "Southeast Asia States Vow Cooperation on 'Growing' Militant Threat," *Reuters*, 2017, <https://www.reuters.com/article/us-asia-security-idUSKBN1AE0EL>.

⁵ Francis Chan, "Thousands of ISIS Returnees, Including Their Children, Continue to Pose Terror Threat," *The Strait Times*, 2017, <https://www.straitstimes.com/asia/se-asia/thousands-of-isis-returnees-including-their-children-continue-to-pose-terror-threat>.

73,000 ISIS sympathetic family members and around 49,000 people are children under the age of 12 years. The living conditions in the Camp can be qualified below the standard of living and this is evidenced by more than 300 children killed during the first week since the influx of refugees began in March 2019.⁶

The conditions of the refugee camp for Ex-ISIS' wives and children are far from worthiness and living standards. Even these limited food ingredients, access to clean water and health facilities prove that these refugees need humanitarian assistance or solutions. To anticipate this polemic, a number of countries have begun the process of repatriating their citizens. Meanwhile, most countries, especially countries in Europe tend to be reluctant to repatriate and lead to the elimination of citizenship.

Not all of those who come out of Syria want to return to their home countries. Some might try to relocate in a third country. Although to date it is still very difficult to find accurate data on the relocation patterns of former ISIS combatants and sympathizers, researchers generally agree that a number of regions, including Southeast Asia besides East and North Africa, South Asia and Central Asia are widely targeted as a relocation destination.

The Indonesian government had experiencing a dilemma in making both policies or decisions to resolve this problem. Many considerations and factors need to be assessed to determine attitudes. When viewed from the root of the problem many countries do not repatriate and decide the citizenship rights of the Ex-ISIS. National security and resilience factors are the main reasons cited. Many Ex-ISIS still have loyalties to the radical ideology that is brought about including the ability to commit terror and be active in a network of jihadists who incidentally will greatly threaten national security.

This serious problem had arisen to be real polemic that need to solve immediately by the country involved. Considerably, the country that faced this country should be imply and adopt the legal actions or “not durable solution” that can prevent the case getting worse. The government should be made a decision to elaborate or take the concrete actions to define the status of Ex-ISIS from Indonesia in Iraq and Syria.

⁶ Liz Sly, “New Suffering for the Children of the ISIS Caliphate as Hunger and Sickness Spread,” *The Washington Post*, 2019, https://www.washingtonpost.com/world/new-suffering-for-the-children-of-the-isis-caliphate-as-hunger-and-sickness-spread/2019/06/18/3824fe6c-87a2-11e9-9d73-e2ba6bbf1b9b_story.html.

2. Methods

The current research has the basis on the law relating to the protection of human right in term of nationality and terrorism. Specifically, the author utilizes Indonesian Nationality Law No 12/2016 and other related regulations (especially international instruments such as convention) to elaborates and understands the principle of nationality. Besides, the author also uses the secondary sources data such as legal writings that have interpreted the primary sources, including books, scientific paper, working paper and journals accessible online.

3. Results and Discussion

In matter to anticipate the citizen to not join ISIS, Indonesia through the Prevention and Counterterrorism Agency qualifies explicitly mentioned that the ISIS Movement is qualified as a radical and terrorist group, therefore the Government of the Republic of Indonesia calls for every Indonesian citizen not to be provoked and join the ISIS radical and terrorist movement. One of the legal issues raised is the discourse of revocation of citizenship for Indonesian citizens who are sympathizers of ISIS (hereinafter could be labelled as ex-ISIS).

The emergence of this discourse is raised during the amendment proses of the legislation on criminal acts of terrorism. The argument that underlies the legal issue is due to resistance from Indonesian people who reject the return of former Ex-ISIS.⁷ If we pay attention to the national legal instruments contained in Article 23 of Law No 12/2006 concerning Citizenship of the Republic of Indonesia and Article 31 of Government Regulation No 2/2007 concerning Procedures for Obtaining, Losing, Cancellation and Reclaiming Citizenship of the Republic of Indonesia. Qualification of actions that can result in an Indonesian citizen losing citizenship if the person concerned does several things including:

1. *Acquires another citizenship voluntarily;*
2. *Will not refuse or will not relinquish other citizenship when the incumbent has the opportunity to do so;*
3. *Is declared of having relinquished their citizenship by the President at their voluntary request, the person is aged above 18 (eighteen) or has married, is living abroad, and with the relinquishment of their citizenship does not become stateless because of it;*
4. *Has entered into foreign military service without prior approval from the President;*
5. *Has voluntarily entered into the services of foreign entities in a position where by law, such a position in Indonesia is only reserved for citizens of the Republic of Indonesia;*

⁷ The Habibie Center, *Kajian Kontra Terorisme Dan Kebijakan: Tantangan Dan Solusi Pemulangan Simpatisan ISIS*, 12.

6. *Has voluntarily declared allegiance to a foreign country or part of the said foreign country;*
7. *Was not obligated but has voluntarily participated in a referendum that is civic in nature for a foreign country;*
8. *Possesses a passport or travel document equivalent to a passport from a foreign country or a letter that may be construed as a valid citizenship identity from another country on his/her name; or*
9. *Living outside the territories of the Rep. of Indonesia for 5 (five) consecutive years for non-official purposes, without legal reason and deliberately refuses to declare their intention to remain as Indonesian citizens before the 5 (five) year limit ends, and in each of the next 5 (five) years the said person fails to declare their intention of retaining their citizenship to the Indonesian Representative offices in which the said person's residence is under their jurisdiction although the said Representative Office has duly informed them in writing, as long as the incumbent does not become stateless because of such negligence.*

In order to understanding broadly the points above, it is necessary also to understanding the definition of citizenship as stipulated or constructed in The Law No 12/2006. On article 1 point 1 and 2 The Law No 12/2006 has strictly definition to regulate and also formulated the corridors of citizenship as follows:

1. *Citizen of a state is the citizen of a certain state as determined by law.*
2. *Citizenship includes all matters pertaining to the citizen of a state.*

In order to confirm and analyze the reason above provisions, the elimination of citizenship status of an individual outlines more emphasis on the existence of acts that are categorized as having links with other countries. Therefore, to provide an assessment of the discourse toward the revocation of Indonesian citizens whose ex-ISIS, a study of the legal status of ISIS must first be conducted as a subject of International Law.

On several occasions, the Ministry of Law and Human Rights of the Republic of Indonesia has stated that ISIS is not a "state" entity that the provisions of the article are difficult to apply in the case of ISIS. This is based on a number of legal instruments, one of which is Article 1 of the Montevideo Convention on the Rights and Duties of States of 1933 which states that:

"... The state as a person of international law should possess the following qualifications: (a) permanent population; (b) defined territory; (c) government; and (d) capacity to enter into relations with the other states"

Based on the provisions of Article 1 of the Montevideo Convention on the Rights and Duties of States of 1933 above, according to international law a legal subject in order to fulfill the requirements as a State must meet a number of elements including permanent residents,

permanent territories, government and capacity to enter into relations with another country to be said as a country.

Based on regional and population aspects, ISIS controls a part of Iraq, Syria and Lebanon, which are inhabited by local residents. While from the aspect of governance, ISIS organizations have a Government structure that governs the areas they support. But there is one point that ISIS does not have, namely the absence of a country in the world that has diplomatic relations with ISIS. So even though ISIS has fulfilled the three components of the 1933 Montevideo Convention, its existence as a State is very doubtful because there is no recognition from the countries of the world to open diplomatic relations.

Moreover, if we paying attention to the formulation of the above provisions, the implementation of the discourse of revocation of citizenship as a punishment for Indonesian citizens affiliated with ISIS creates a blunder and counterproductive for the Government of the Republic of Indonesia because it can lead to the perspective that the Indonesian State gives legitimacy to the existence of ISIS as a political entity like a State. In matter of an individual who joins ISIS commits violence to cause terror, therefore they can be convicted based on Article 7 of the Government Regulation In lieu of Law No 1/2002 concerning Eradication of Terrorism Crimes which has now been changed into Law Number 15/2003 concerning Establishment of Government Regulation In lieu of Law No 1/2002 concerning Eradication of Terrorism Criminal Acts becomes Law:

"Anyone who intentionally uses violence or threat of violence intends to cause an atmosphere of terror or fear of people in a widespread manner or cause mass casualties by seizing freedom or loss of life or property of others, or to cause damage or destruction to objects strategic vital projects, or the environment, or public facilities, or international facilities, to be sentenced to a maximum imprisonment of a lifetime.

The imposition of sanctions in the form of the removal of citizenship for Indonesian citizens is difficult to do, this is because in Article 28 of the Constitution of the Unitary Republic of Indonesia categorizing one's right to a citizenship is a human right which is guaranteed protection by the State. The promotion of citizenship rights as a fundamental right for a human being, does not necessarily have major implications for the individual or group concerned, but also affects the country concerned and the international community.

The Elimination or the Revoke of citizenship status for Indonesian citizens will cause their legal position as stateless individuals. This is inseparable from the policy of the Government of the Republic of Indonesia which adheres to the concept of single citizenship. Long-term effects

experienced by individuals who do not have legal citizenship will get sanctions in the form of detention in the long term, until the emergence of refugee legal status due to revocation of citizenship which can lead to social instability.

This provision has an indirect correlation with the provisions of International Law formulated in Article 15 of the Universal Declaration of Human Rights which states that: "everyone has the right to citizenship". Other international legal instruments are Article 24 paragraph 30 of the International Covenant on civil and political rights which states that: "Every child has the right to have citizenship rights."

The option to revoke citizenship from former Indonesian citizens of Ex-ISIS can be used as an alternative sanction if the conditions of the violation are of an emergency nature. considering the great consequences that must be received by the convicted.⁸ in regard to a number of National and International regulations above, the implementation of the legal discourse on revocation of citizenship against perpetrators must be carefully considered and examined by the Government of the Republic of Indonesia.

In the context of the debate about the return of Ex-ISIS from Syria, the discourse regarding revocation of citizenship towards Ex-ISIS returned. The rules regarding revocation of passports and citizenship of citizens who have participated in military training or war in other countries for criminal acts of terror had surfaced during the discussion of the draft revision of the law on combating terrorism some time ago.⁹ The argument that citizens who join ISIS must be revoked of citizenship generally arises from those who refuse the return of Ex-ISIS. This part of this paper tries to review legal arguments that can be built to revoke or not revoke the citizenship of Ex-ISIS.

As is known, the rules regarding revocation of citizenship for the FTF were not finally approved as part of Law No. 5/2018. Article 12B paragraph (4) of the law states that Indonesian citizens involved in military, paramilitary or other training in or abroad for the purpose of criminal acts of terrorism, other than imprisonment, may be subject to additional crimes in the form of revocation of the right to have a passport and cross-border pass within a maximum period of five years.

Aside from the reasons stated above, it is also difficult to revoke citizenship because Indonesia guarantees that in its constitution it is essentially a person's right to citizenship status as a human right. This position is in line with a number of treaties and international legal

⁸ Al Araf, "Pencabutan Kewarganegaraan," *Imparsial*, 2016.

⁹ *Ibid.*

instruments that also guarantee citizenship rights. Article 15 of the Universal Declaration of Human Rights, for example, asserts that "everyone has the right to citizenship". In addition, Article 24 paragraph (3) of the International Covenant on Civil and Political Rights (ICCPR) also stipulates that "every child has the right to obtain citizenship".

As a fundamental right, loss of citizenship will have a huge impact not only on the convicted but also on the country itself and the international community. Revocation of citizenship against Indonesian citizens, because Indonesia adheres to the principle of single citizenship, will result in the creation of conditions without citizenship (stateless). Apart from being excluded from political processes and the right to settle in a country, a person without citizenship can be subject to long-term detention. In addition, conditions without citizenship can also create social instability and displacement.

There are three policy choice scenarios that can be taken by the Indonesian government regarding the discourse of returning ISIS sympathizers. First, the government can try to repatriate all citizens registered in Syria, both combatants who are in detention and family members of women and children. Compared to other options, in the short term the policy to repatriate all Indonesian citizens currently held or detained in Syria will be the most challenging. Domestically, the government must be able to prepare infrastructure related to assessment, return and temporary accommodation. This infrastructure includes assessment tools, more structured counseling programs, social workers who are specially trained to deal with those exposed to radicalism, guidance and training programs especially for young people, and training programs for local government officials to deal with returnees and deportees.¹⁰ The government also needs to ensure that a fair and long-lasting legal process can be carried out against those suspected of violating the law. Judicial capacity building is an important issue in this context. The need to prepare infrastructure will have significant implications for budgetary needs. If the repatriation option for all ISIS sympathizers is taken, cooperation between the government and parliament will be absolutely necessary.

Although in the short term the most challenging and requires a large investment, in the long run the repatriation option for all ISIS sympathizers is the most profitable option. Seeing the current political and security conditions in Syria, sooner or later the Kurdish Authority, without US support, will lose control of the refugees and detainees. In the worst scenario where Kurdish Authority control collapses, most of the refugees and prisoners will look for illegal ways to

¹⁰ Institute for Policy Analysis of Conflict (IPAC), *Managing Indonesia's pro-ISIS Deportees* (Jakarta: Institute for Policy Analysis of Conflict (IPAC), 2018).

return to Indonesia. Such conditions will make it more difficult for supervision and monitoring.¹¹ In addition, this point could be difficulty to apply and

Second, the Indonesian government cannot facilitate and reject the return of ISIS sympathizers. Compared to other options, in the short term, this policy choice will be the easiest and cheapest. However, in the long run this policy choice will be very detrimental. Deteriorating humanitarian conditions in refugee and detention camps in Syria will put the Indonesian government in a difficult position. The government will be under broad pressure because it is considered to neglect humanitarian aspects and act reactively instead of being preventive in handling ISIS sympathizers. In addition, again, in the worst-case scenario where refugees and prisoners are no longer under the full control of the Kurdish Authority, it will be difficult for the government to prevent the backflow of FTFs and those associated with the FTF.¹²

Third, the Indonesian government could repatriate only women and children who were in refugee camps and leave Indonesian combatants temporarily in detention. This option seems the most likely to be taken by the government at this time. By repatriating women and children, the Indonesian government continues to carry out its responsibilities to protect Indonesian citizens while minimizing potential security threats by assuming that those associated with the FTF are more easily managed by their potential threats through rehabilitation, radicalization education, reintegration, and monitoring and supervision programs.¹³

The latest development until March 2020, the Government of Indonesia through the Coordinator of the Ministry for Political, Legal and Security Affairs has issued a final statement that WILL NOT repatriate ISIS sympathizers to the country.¹⁴ This matter is based on the effects and views of radicalism teachings which will certainly remain attached so it cannot be understood. This Government Policy gets pros and cons considering that some of these sympathizers consist of women and children. It's just that, for children aged 10 (ten) years and under will be considered in a case by case.¹⁵ On one hand, Indonesia's move not to repatriate ISIS sympathizers to the country can be said to follow the steps of other countries. It can be assume that Indonesia also follows the step of UK in regard to dissolve the same issue, in this

¹¹ The Habibie Center, *Kajian Kontra Terorisme Dan Kebijakan: Tantangan Dan Solusi Pemulangan Simpatisan ISIS*.

¹² Ibid.

¹³ Ibid.

¹⁴ Gregg Jennet, "Tolak Kepulangan Kombatan ISIS, Indonesia Tidak Imun Dari Ideologi Garis Keras," *ABC News*, 2020, <https://www.abc.net.au/indonesian/2020-02-12/indonesia-resmi-tolak-kepulangan-pendukung-isis/11957338>.

¹⁵ Ibid.

case is the case Shamina Begum.¹⁶ The discourse of revocation of citizenship has been carried out in the United Kingdom where it revoked the citizenship of some of its citizens who joined ISIS in 2015.¹⁷ Another parameter is Germany, where Germany also has similarities in the field of nationality legal arrangements. Law in Germany does not allow revocation of citizenship except under certain conditions such as when the person concerned joins the other armed forces. Germany is planning to make a new law that will provide space for the government to revoke the citizenship of those who have dual citizenship. If passed, then the new law does not apply retroactively.¹⁸

4. Conclusions

In matter to examine and to decide the status of ex-ISIS citizenship must be considered carefully and partially between the elements of citizenship and elements of qualified crime. In this point the state can be still recognize and justify the citizenship status of Ex ISIS as its citizens. On other hand, the state is required to continue to legal enforcement toward the crime that exercised by the ex-ISIS, in this case is the terrorism. There is a comprehensive reason for the Indonesian government to recognize the citizenship of Ex-ISIS. The first reason is because ISIS is not a state as mandated by the Montevideo Convention. Therefore, the participation of ex-ISIS in the ISIS army cannot be broadly defined as formulated in Article 23 of The Law No. 12/2006. The second reason is based more on political and practical policies. In matter of the Government of Indonesia revokes citizenship of ex-ISIS as a punishment is a step that is considered counter-productive and has the potential to legitimize ISIS's status as a political entity. The third reason is a humanitarian reason, this is cause of the ex-ISIS are women and children whose very vulnerable to persecution. This reasoning is based on the human rights contained in the UDHR and ICCPR.

In connection with the repatriation issue of ex ISIS, the comprehensive assessment is needed to be applied. Next, the Government of Indonesia must be able to synergize policies, legal infrastructure and institutions in matter to repatriate ex-ISIS back the country. The Various options or legal scenarios that can be applied are that the Indonesian government can take a diplomatic approach through the transit countries or conflict countries to provide assistance. On

¹⁶ Lizzie Dearden, "ISIS 'Beatles' Militants Captured in Syria Accuse Government of Breaking Law by Removing British Citizenship," *Independent*, 2018, <https://www.independent.co.uk/news/uk/home-news/isis-beatles-captured-syria-interview-law-british-citizenship-kotey-elsheikh-hostages-a8282186.html>.

¹⁷ Ibid.

¹⁸ Guy Chazan, "Germany to Strip Dual-Nationalis Who Fight For ISIS of Citenzhip," *Financial Times*, 2019.

the other hand, the Indonesian government can prioritize attitudes towards groups of women and children as top priority to repatriate.

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