https://doi.org/10.18196/hi.v10i2.12227

JURNAL HUBUNGAN INTERNASIONAL
VOL. 10, NO. 2 (2022)

The Rights to Nationality for Indonesian Ex-ISIS Combatants Repatriation Under International Law

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Submitted: 5 July 2021; Revised: 11 November 2021; Accepted: 12 November 2021

Abstrak

Pada 2020, Menteri Koordinator Bidang Politik, Hukum, dan Keamanan Indonesia, Mahfud MD menegaskan bahwa setiap warga negara Indonesia yang berafiliasi dengan ISIS tidak akan dipulangkan. Padahal, menurut Pasal 28D UUD 1945 seseorang atas kewarganegaraannya dijamin statusnya sebagai salah satu hak asasi manusia sebagaimana dijamin dalam Pasal 15 Deklarasi Universal Hak Asasi Manusia. Penelitian ini menggunakan methode penelitian hukum normatif dengan menggunakan pendekatan undang-undang dan kasus melalui studi pustaka. Penelitian ini mengangkat pertanyaan bagaimana perlindungan hak atas kewarganegaraan yang dimiliki oleh mantan ISIS menurut hukum international. Penelitian ini bertujuan untuk membahas dan menganalisis hak atas kewarganegaraan anggota ISIS di bawah penerapan Hukum Internasional seperti Pasal 1 (1) Konvensi Berkaitan dengan Status Orang Tanpa Kewarganegaraan 1954. Hasil penelitian menjelaskan bahwa diskresi negara mengenai kewarganegaraan dibatasi pada syarat-syarat seperti larangan perampasan secara sewenang-wenang, kewajiban untuk menghindari keadaan tanpa kewarganegaraan, dan prinsip diskriminasi dan setiap orang berhak atas kewarganegaraan.
Kata Kunci: mantan kombatan ISIS Indonesia, repatriasi, hak atas kewarganegaraan, orang tanpa kewarganegaraan.

Abstract

In 2020, the Coordinating Minister for Political, Legal, and Security Affairs of Indonesia, Mahfud MD, affirmed that any Indonesian citizen affiliated with ISIS would not be repatriated. However, Article 28D of the 1945 Constitution ensures that a person's citizenship status is guaranteed as one of the human rights, as guaranteed in Article 15 of the Universal Declaration of Human Rights. For this reason, this research used a normative legal research method using statute and case approaches through literature review. The research raises the question of how is the protection of the rights to nationality for ex-ISIS based on international law? The research aims to discuss and analyze the rights to the nationality of ex-ISIS combatants under the implementation of international law, such as Article 1 (1) of the 1954 Convention Relating to the Status of Stateless Persons. The research results explain that the state's discretion regarding nationality is particularly limited to conditions such as the prohibition of arbitrary deprivation, the duty to avoid statelessness, and the principle of discrimination, and everyone has a right to a nationality.
Keywords: Indonesian ex-ISIS combatants, repatriation, the rights to nationality, stateless persons.

INTRODUCTION

Currently, the Islamic State of Iraq and Syria (ISIS) organization is remarked as the most significant terrorist threat to world security. Many peoples worldwide join ISIS for various grounds, such as ideology, money, power, or behalf of religion. ISIS propaganda plays an essential role in attracting civilians to join foreign terrorist fighters. Moreover, at that period, most Muslims were oppressed to practice their religion freely (Sheikh, 2016). More than 30,000 people were estimated from at least 86 countries, who fled from their homes and then traveled to Syria and

Iraq by the end of 2015. The amount of data is likely to increase further in the coming years as the group acquires more nearby territory (Benmelech & Klor, 2020).

The criminal capacity of ISIS includes weaponry, logistics, organization, and financial resources, allowing ISIS to recruit mainly from other countries and even carry out repression, attacks, and violence to the point of massive casualties. Despite its fast-tracked growth and all the terror and pain it has inflicted worldwide, ISIS is now facing a steady fall. ISIS's conditions in Iraq and Syria have weakened, with the number of fatalities continuing to decline each year, which has dropped by more than 75% (Khan, 2019). However, the impact of ISIS's actions is still felt today. The Islamic State terrorist group's ideology might pose the most potent threat to Muslim communities in Southeast Asia and elsewhere. Even after losing its territorial holdings in Iraq and Syria, ISIS peddles its armed jihad and caliphate idea. The ideological propaganda resonates with Muslims' minuscule fraction, inspiring some to persist in mounting terrorist attacks and supporting the movement (Chan, 2015).

The defeat of ISIS has also impacted countries globally, especially Indonesia. The phenomenon of the return of Foreign Terrorist Fighters (FTF) could be a new issue since Indonesian President Joko Widodo, widely known as Jokowi, eventually agreed not to repatriate sympathizers or jihadists of the Islamic State of Iraq and Syria (Setyawan, 2020). The decision was taken because the fighters, in theory, have the potential to endanger the public. According to the Presidential Chief of Staff, Moeldoko, the Indonesian Government has stripped the ex-ISIS fighters of their citizenship, leaving them stateless. The decision clarifies Indonesia's legal concept of nationality. It is stated that anyone who has joined any armed forces of a country as regulated in Article 23 of Law No. 12 of 2006 concerning Indonesian citizenship automatically loses his citizenship (Nugraha, 2020).

Nevertheless, Article 23 is open to legal controversy. The article mentions that anyone has joined any armed forces of a country. However, ISIS is merely an organization that does not fit the requirements of a state-recognized constitutionally by the UN (Razak, 2020). To recognize a state, ISIS shall have the following qualifications, first, possess a certain territory; second, have a permanent population; third, have a government; lastly, get recognition from other countries. These qualifications are provided for in Article 1 of the 1933 Montevideo Convention on the Rights and Duties of the State.

For this reason, an assessment is necessary regarding Indonesia's decision to revoke the citizenship of ex-ISIS fighters to ensure an individual's right to hold a nationality (Harvey, 2012). In the current state of development, citizenship deprivation is not unconstitutional; states are entitled to revoke nationality against the individual's wishes. However, the deprivation may provide particular legal safeguards from various sources implemented to ensure certain legal safeguards are complied with. These safeguards derive from various references implemented at international, regional, and national levels (Mantu, 2018).

The 1948 Universal Declaration of Human Rights states that all people have the right to the nationality mentioned in Article 15, thereby acknowledging nationality's legal and practical importance to enjoy human rights (Lambert, 2017). Nationality is known as the legal relationship between the individual and the state. Nationality offers a sense of identity but, above all, enables people to exert a variety of rights (Rawlings, 2012), such as the right to education, the right to health care, and the right to live freely based on their own decisions. Although the right to nationality is acknowledged internationally, there are still new cases of statelessness. At least 10 million people are rendered stateless worldwide today (Goodman, 2018).

This research describes the protections enforced by international law in light of the rights to nationality for individuals, including foreign terrorist fighters. Therefore, it will be known in detail the rights to nationality and protection for foreign terrorist fighters according to international law in the related country, especially Indonesia. This study describes the protection of nationality for Indonesian ex-ISIS combatants since, according to Article 15 of UDHC and Article 28D of the Indonesian Constitution, it is a right for everyone to hold

a nationality. Furthermore, the research also provides an in-depth theoretical understanding of the right to nationality and its protection under international law.

LITERATURE REVIEW

As a general acceptance, the principle of sovereignty acknowledges that each state has the power to decide who its nationals are under national law. In Indonesia, the law regarding nationality must be consistent with the constitution. Indonesia has been shaped by two fundamental processes: decolonization and post-colonial, leading to the globalization era. The development of nationality in Indonesia has considerably changed how nationality is acquired and lost. The 2006 Law on Citizenship emphasizes ius sanguinis to acquire the nationality. Although the 1946 Law plays an important law under Indonesian laws to prevent statelessness, the duty to avoid statelessness itself has been reinforced by adopting a constitutional provision that guarantees everyone to hold a nationality as a fundamental right (Harijanti, 2017).

For instance, the UK is a party for both the 1945 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Even though the UK ratified the 1954 Convention in 1959, it has not established a formal mechanism for recognizing and protecting statelessness. The UK is also the head of many other countries in having stateless application procedures but does not treat statelessness as a protection status equivalent to refugee status or humanitarian protection. In practice, it means that different processes and rights are associated with the grant of leave (Bezzano & Judith Center, 2018).

Antonio Guterres, the UN High Commissioner for Refugees, stated that it is wholly within the power of each government concerned to resolve the issue regarding statelessness. He further mentioned that there is an opportunity to handle these injustice issues. Since nationality is a precondition for the realization and materialization of other human rights, the international community has committed to protecting and promoting vulnerable people's rights as essential to protect the rights of stateless persons (Reddy & Ramaprasad, 2019).

Specifically, according to United Nations Security Council Resolution 2178 (Londras, 2018), foreign terrorist fighters travel to a state other than their states of residence or nationality (See, 2018). The travel is for the perpetration, planning, or preparation of, or participation in, terrorist acts or providing or receiving terrorist training, including in connection with armed conflict (Hagmann, Hegemann, & Neal, 2018). Furthermore, in particular, in 2014, the Security Council passed Resolution 2178 to address foreign terrorist fighters who participate in terrorist combat, requiring all UN member states to take action before the courts and ensure that domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and penalize.

Regarding foreign terrorist fighters, Thomas Hegghammer builds the formulation in the following ways. Fighters as agents, in the first place, join forces to operate within the confines of an insurgency; second, lacking citizenship from the conflict state or kindship with the warring factions; third, not affiliated with any official military organization; fourth, unpaid (Scotts & Podder, 2015). In addition, transnational insurgents potentially serve to strengthen insurgent groups by contributing resources, fighters, and know-how. However, it may also introduce new ideas and affect the nature of the conflict. The reason is that foreign fighters differ from local rebels in two critical respects. First, the fighters are selected for ideological commitment. Second, fighters have fewer personal stakes in the conflict. Indeed, the combination of ideological motivation, non-parochialism, and detachment from local politics can sometimes make a foreign recruit attractive to the host group.

In recent decades, governments worldwide have begun to promote assisted repatriation of their hosted migrants. Such programs are designed to provide financial, administrative, logistical, and, at times, additional reintegration support for those who voluntarily return to their country of origin. According to Richard Black (Black, Collyer, & Somerville, 2011), this scheme targets four categories of migrants: first, those with a valid residence; second, illegal residents and failed

asylum seekers who have not yet been subject to removal; third, unauthorized migrants subject to removal, including rejected asylees; lastly, asylees whose claims are pending.

RESEARCH METHOD

This juridical-normative research used the combination of statutory and case approaches to analyze the issue regarding the rights to nationality and stateless for ex-ISIS combatant repatriation under international law. The preliminary research included the introductory material discussing the research problem and study. Beforehand, the research has tried to elaborate in-depth on how the fall of ISIS historically leads to statelessness. In addition, normative legal research or qualitative legal research is usually known as a study of documents, using secondary data as its primary source. The sources comprised court decisions, doctrines, regulations, legal theory or official papers, books, reports, and journals. Secondary data consisted of primary legal material, secondary legal material, and tertiary legal material.

The data were collected by library research, such as reading, analyzing, and deriving the conclusion from the related documents. The documents were treaties, declarations, regulations, books, journals, internets, and other related materials of the issue. Data analysis used by the research was qualitative methods. The method employed was a systematic and orderly approach to collecting and analyzing data. Consequently, the information could be obtained from those data. Meanwhile, the techniques were particularly gradual procedures that could be followed to gather data and analyze.

RESULT AND ANALYSIS

THE CONDITION AFTER THE FALL OF ISIS

By the beginning of 2019, the Islamic State of Iraq and Syria, mostly known as ISIS, had lost its last territorial stronghold at Baghuz Fawqani, leading the Syrian Democratic Forces to declare the final victory over the terrorist organization officially. Even though no official ISIS territory remains, it is estimated that there are still tens of thousands of ISIS sympathizers in Iraq and Syria. The defeat of ISIS has also led to the incarceration of over 11,000 fighters (Hubbard, 2019). Also, the former refugee camps in Syria, Iraq, and Libya became detention camps for thousands of men, women, and children previously affiliated with ISIS. The fall of ISIS has raised a legal, political, and racial question; hence, thousands of people who previously flocked to join terrorism from around the world now have no place to go.

The territorial victory over ISIS has also led to a dire humanitarian crisis in the detention camps housing thousands of men, women, and children previously affiliated with ISIS. Al-Hol camp is the largest of the three detention camps in Northern Syria, run by the Kurdish autonomous administration. However, it is difficult to gather the exact number of detainees at the center; as of January 2020, an estimated 63,000 women and children were held in detention at al-Hol camp. Around 34,000 children and more than 120 are unaccompanied or separated from their families and live in an interim care center in camp. Of all the children in the camp, 95% are under twelve. The Kurdish administration stated that the Kurdish has no intention to prosecute the detainees and has repeatedly emphasized and clarified that home countries should repatriate their citizens (Luquerna, 2020). In addition, the al-Hol camp has made international headlines due to the lack of humanitarian assistance available to its detainees. Women and children are severely malnourished and have limited access to essential resources, such as food and health care. The detainees are also not allowed to leave the al-Hol camp because of their perceived dangerousness freely.

In Indonesia, the declaration by the Indonesian Government to leave Indonesian ex-ISIS fighters was made on behalf of safety. The Indonesian Government said that there are no willingness and intention to repatriate any terrorist to come back to Indonesia. The President of Indonesia, Joko Widodo, also firmly stated that the decision made by the government was unanimous.

However, the condition of the camp is not feasible due to the overcrowded of foreign fighters from around the world, including Indonesia. Over time, the number of Indonesian citizens who have joined ISIS has reached

more than 850 people, including men, women, and children. At the center, there is a shortage of medicine, food, clean water, sanitary conditions, maintenance needs, mobility to access medical services, and substances. Some reported that women had to give birth in their tents; moreover, children have died due to sickness and malnutrition. It is estimated that over 390 child deaths have been reported at al-Camp due to food shortages and disease (Cumming-Bruce, 2019). On the other side, radicalization experts worry that camps of terrorist fighters will become the new grounds for the terrorism spread, exposing children to an extremist ideology. There is a fear that if detainees are not brought back by their countries and prosecuted, the women and children may be further radicalized into the terrorist organization and threaten world security in the future.

JUSTIFICATION FOR DEPRIVATION OF NATIONALITY

Based on the sovereignty of Municipal Law, nationality had until recently been defined in the *domain reserve* (Spiro, 2011). Indonesia has several laws regarding nationality, for instance, Law No. 12 of 2006 on Citizenship and Government Regulation No. 2 of 2007 concerning Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship. Both laws cover the mechanism for the acquisition and revocation of nationality. Nationality revocation by the Indonesian Government for the terrorist fighters might be justified on behalf of both laws.

So far, as highlighted in the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, it is stipulated that it is indeed up to each state to decide under its law which its nationals are. The convention recognizes international restrictions regarding the general rights of matters related to nationality. The article mentions that the law should be about other states' nationality practices insofar as it is consistent with international conventions, international customs, and the principles of law generally recognized about nationality. The power to arbitrarily denationalize individuals has been constrained since the mid-20th century (Spiro & Bosniak, 2007). Hence, whether an individual has a specific state's nationality is decided according to its law.

Nevertheless, in deferring to Municipal Law, the Permanent Court of International Justice (PCIJ) acknowledged limitations in Nationality Decrees in Tunis and Morocco at the states' discretion. The limit is sufficient to observe for a present opinion that its responsibilities, in theory, constrain the state's discretion to another state in a matter which nationality is not, however, ruled by International Law (Edwards, 2014). Indeed, nationality has always been within sovereignty and deemed a matter for states' internal expertise to define their nationality laws (Worster, 2016). However, given the lack of uniformity and continuity, multiple incoherence and issues arise in the state's law relating to nationality, contributing to significant problems and issues, such as stateless, dual citizenship, and contradictory citizenship laws.

Furthermore, an individual is considered a full member of state-related rights and responsibilities that must be enjoyed entirely and discharged. Non-nationals such a stateless frequently have limited, if any, access to fundamental political and social rights. The limitation is contrary to International Human Rights Law, in which the rights belong to all individuals regardless of race or nationality (Paz, 2017). Every individual has the same and equal rights under the international human rights, thickening system as such. Although the state's desire to regulate stateless persons in their territory is recognized as an important problem in international law, treaties had only drawn by 94 countries that ratified the 1954 Convention relating to the Status of Stateless Persons, and a mere 75 states have ratified the 1961 United Nation Convention on the Reduction of Statelessness. Countless people, particularly those vulnerable to persecution, lack protection of citizenship rights, affected by national government ignorance and the international community's absence. Stateless persons also lack access to human rights, security, and free speech as citizens.

In the guidelines known as the Handbook on Protection of Stateless Persons, UNHCR summarizes its viewpoints on nationality status, which is usually linked to the right to enter and re-enter residency within the

state's territory. The state does not prohibit its nationals from being classified as citizens in light of the convention. However, the statelessness issue has brought the international community a new challenge in shifting responsibility to prevent international human rights violations. Currently, at least 10 million stateless persons worldwide are under the UNHCR's protection mandate (Waas, Chickera, & Albarazi, 2014). Yet, there were still the owing data gaps. The actual number of stateless persons is undoubtedly sufficient; statelessness data will indeed pave the way for the rational conclusions of dilemma proactively.

INTERNATIONAL LAW IMPLICATIONS ON THE NATIONALITY OF FOREIGN TERRORIST FIGHTERS

Nationality has known to be the legal relationship between individuals and a state that connotes complete and equitable membership of the political community. Naturally, nationality means to be secure and inviolable (Waas & Jaghai, 2018). Several democratic states have recently adopted or considered passing laws that enable the government to deprive citizenship of foreign terrorist fighters (Hoffman, 2020). Today, the nationality revocation of foreign terrorist fighters gains new attention from the states as a tool for counterterrorism measures, leading to much political, public, and academic debate.

In response to the fall of ISIS, deprivation of individual citizenship is perceived to be detrimental to interest, which has been indicated as a crucial instrument for safety, security, and counterterrorism. Indeed, International Law recognizes states' competence to regulate their nationals as broadly a sovereign matter. However, it also accepts that the sovereign states, besides legitimacy, rest partly on their duties to protect all citizens' safety and security, including the foreign terrorist fighters. With the view to resolve the conflict of nationality regulation and with the acceptance of nationality as a human right, International Law has placed restrictions on states' power. Under International Law, states otherwise stipulate the condition for acquisition and loss of nationality. However, the state's discretion is particularly limited (Lloydd, 2017). Limitation on stripping individuals includes foreign terrorist fighters' nationality, the prohibition of arbitrary deprivation, the duty to avoid statelessness, and the principle of non-discrimination.

Prohibition on the Deprivation of Nationality

States provide in their laws the possibility of involuntary withdrawal of citizenship. Also, there is a distinction between involuntarily loss and deprivation of nationality. Involuntary loss of nationality applies to a condition where there are domestic legislation's procedures and requirements; therefore, nationality is withdrawn automatically. For instance, Indonesian Citizenship Law, determined by Law No. 12 the Year 2006, states that nationality can be automatically lost if individuals reside abroad for a consecutive period and when individuals receive other state citizenship.

Meanwhile, nationality deprivation is non-automatic and requires the state to set down competencies in each case of nationality whether citizenship should be revoked or not, complying with the authority stipulated in Domestic Law. As the aforementioned Law No. 12 of 2006 on citizenship, the law does not seem suitable for all deprived ISIS of their Indonesian citizenship. The deprivation might not be implemented since, in fact, not all the fighters resided in the ISIS territory for the period mentioned in the article.

Moreover, arbitrarily depriving individuals of their nationality cover all withdrawal forms except voluntarily requested by the individual. Deprivation of nationality usually refers to a situation of denationalization and the restriction of access to nationality, although, in the implementation, not all the deprivation of nationality is arbitrary. The deprivation of nationality will not be categorized as arbitrary deeds if deprivation conforms with Domestic Law and with the specific procedural and principles of proportionality, non-discrimination or equity, due process, and standards. Thus, the initiatives involved should achieve a legitimate aim according to international human rights law's objectives (Fox-Decent, 2017). Therefore, the measures should at least be intrusive amongst those that might achieve the desired

result, and it must be proportionate to the interest to be protected (Lambert, 2015).

In the Resolution 20/5 of 2012, the Human Rights Council reiterated that unconstitutional deprivation of nationality is a violation of human rights and fundamental freedoms, particularly because of the discriminatory groups on the grounds of race, color, sex, language, religion, political or other option or social origin, property, birth, or status. Two findings could be forwarded by the Human Rights Council. First, deprivation of nationality is protected by international human rights, refugee, and stateless law. Second, the subjective grounds to deprive a nationality disproportionately affect an individual belonging to minorities, including foreign terrorist fighters.

In compliance with the 1961 Convention on the Reduction of Statelessness, various criteria are applied to particular losses and nationality deprivation. A different standard applies to specific forms of loss and deprivation of nationality. However, both types of deprivation nationality are still subjected to a wider human rights standard on the restriction of arbitrary deprivation. In practice, Domestic Law does not always clearly distinguish between involuntarily loss and deprivation of nationality, which both lead to an individual who was once a citizen being left stateless. The previous explanation explicitly shows that the deprivation of nationality is amongst the harsh and destructive measures that place individuals out of protection by a state's membership (Bauböck & Paskalev, 2015), although there are circumstances in which a state may lawfully deprive its nationals of nationality. Legally, it might be applied if the act recognizes a legitimate aim that confirms the proportionality standard, and the individuals do not become a stateless loss of their nationality.

Duty to Avoid the Statelessness

In the recently adopted nationality law amendments and further debate, statelessness has received particular attention from the world (Menz, 2016). A solid understanding of depriving nationality even from foreign fighters who potentially threaten the public should generally not result in a stateless fighter. The onus to avoid rendering people stateless stems from International Law since the League of Nations' era. Since then, states have recognized a general interest in ensuring that everyone holds nationality, and the duty to avoid statelessness has been later strengthened by human rights norms that recognize a nationality as a fundamental right (Achmad, 2015).

Today's international community has also set its firm objectives of eradicating statelessness as a purpose, motivated by the growth of the state powers to create new cases of statelessness through denationalization. Indeed, nationality deprivation is tantamount to political or civic death; individuals rendered stateless are not just politically dead, with respect to the country of former nationality, but also concern the entire community of states (Macklin, 2014).

Afterward, due to the conditions of statelessness, it affects whether the deprivation of nationality of foreign terrorist fighters will serve a legitimate purpose (Giustiniani, 2016). Under the 1961 Convention on the Reduction of Stateless, deprivation of nationality needs to have a firm basis in National Law. Hence, to establish whether a fighter acquires or had a nationality withdrawn on account of certain facts or circumstances, the state must include a transitional provision to avoid individuals losing their nationality due to the act, which have not resulted in loss or deprivation of nationality. Subsequently, states that expand the power of deprivation in response to foreign fighters' phenomenon may only apply to persons with dual nationality. Article 11 of Law No. 12 of 2006 on Citizenship also affirms that the declaration of the loss of Indonesian citizenship shall not result in the person becoming stateless. The world person in the article refers to all people with Indonesian citizenship, including terrorist fighters, regardless of the fighters' criminal conduct.

The Principles of Non-Discrimination

The loss or deprivation of nationality may not be based on discrimination on any ground firmly entrenched in the Principle of International Human Rights Law. The relationship between principles and nationality may be obscured by the fact that, very often,

the focus is on discrimination based on nationality (Wautelet, 2017). In short, regardless of whether fighters engage in the same undesirable, dangerous behavior, not all nations are equally exposed to the risk of being stripped of nationality under the newly enacted amendments. In addition, Article 9 mentions the prohibition to deprive any person of groups or person of their nationality on racial, ethnic, and political grounds.

According to International Law, nationalism is intended to be equal and equalize status as a legal bond between individuals and a state. Individuals will be on the same level as other nationals of that state. Macklin points out that it can contribute to the form of punishment's arbitrariness if depriving a national in response to a particular crime such as terrorist fighters, in which the nation cannot be subjected to the measure of having committed a certain criminal act. In this regard, a human rights-based approach acknowledges the value of the right to freedom and non-discrimination and its vulnerability in response to foreign fighters related to the threats and challenges. The approach, commonly reflected in international commitments that terrorism must be identified with any ethnicity, nationality, religion, or belief, still has many challenges to convert the approach into reality. A full range of measures shall be established in the criminal and administrative legislation as a preventive measure to deal with foreign terrorist fighters. Regardless of the criminal conduct that the fighters have taken, the state should prosecute the foreign terrorist fighters and give security protection to all its nationals.

HUMAN RIGHTS IN COUNTERTERRORISM MEASURES

In counterterrorism measures, traditional criminal law mechanisms and extensive oversight in different states are integrated into Domestic Law on nationality. Many states have adopted and extended their rules on the revocation of nationality (Boekestein, 2018). The counterterrorism measures have now begun to enter the realm of nationality. The establishment of law also prompts a question about how the state might meet the genuine security challenges from foreign terrorist fighters while making real on the commitment to human rights and the rule of law (Burchardt & Gulati, 2018). Although nationality deprivation has featured within the legislative, many governments have responded to terrorism threats; however, the purpose is not identified. No evidence has been produced for the effectiveness of depriving a nationality, which makes society more secure. Of course, a primary requirement of human rights approaches in response to foreign terrorist fighters shall be governed by law. So far, chapter VII of the Resolutions obliged the states to take all necessary and feasible measures to prevent the threats of terrorism, which is reflected in the obligation of human rights law. According to the resolution, the responsibility is to take appropriate preventive, protective, investigative, and appropriate punitive measures for counterterrorism.

Since foreign terrorist fighters have committed or contributed to a serious crime abroad, Criminal Law has a significant role. In this case, the Domestic Law will ensure transparency and fairness, including providing suspects of terrorism and knowing how to respond to the allegations against the terrorist. Regarding law enforcement, the Domestic Law approach may fare favorably compared to the other administrative and executive measures application. In the counterterrorism measures, states have gradually tried to deter law preventively by providing sanctions and penalizing action before a terrorist crime is conducted. The principle of legality known as nullum crimen sine lege is reflected in Article 15 of the International Covenant and Civil and Political Rights (ICCPR).

Benjamin Constant argues that the right is subjected only to the laws and will be either arrested, detained, put to death, or maltreated in any other way (Boaz, 2017). Notably, the laws shall protect both victims as innocent and individuals who commit a crime. However, deprivation of nationality in its implementation often violates due process rights, guaranteeing that the court proceedings will treat those subjects fairly, under the rule of international human rights law. Nevertheless, even if the due process is sufficiently protected in such cases of a state, deprivation of nationality, which resulting stateless, ultimately violates the commitment to equality of punishment in the most democratic states.

Moreover, a human rights tragedy confronts thousands of children born to foreign terrorist fighters' areas due to traveling abroad with their families. Then, the children are forced to engage with terrorist groups unintentionally. Many data reported that those children are orphaned, in detention or extreme vulnerability situations, and subject to egregious violations, including rape, violence, and disappearances, due to their perceived association with foreign fighters. The essential principle, as the primary focus reflected in the United Nations Convention on the Rights of the Child (CRC), across international and regional standards, should be to uphold the best interest of the child. The principle further acknowledges that the states should not deprive a child of citizenship, potentially given the profound impacts on their rights. Some forms have indicated that children at a particular age should be returned to their own country, including Indonesia. Sometimes, technical obstacles obstruct children's chance to return since many children have a problem with valid birth documents or lack of identification to prove paternity, which should be overcome (Houry, 2016).

UN Special Representative of the Secretary-General for Children and Armed Conflict reminded its recommendation that states should treat children associated with armed conflict groups as victims. The children should be treated foremost as victims, including those recruited by ISIS, and decisions about their future should be based on their interests. Therefore, especially for children, in response, the criminal justice should not be solely at a resort, but with pedagogical orientation to rehabilitate children, which is stipulated in Article 40 Paragraph 1. Moreover, if minors are subjected to criminal justice, international standards of juvenile justice, which apply to individuals under 18 years old, must be respected and compliant.

Resolution 2178 seems like a positive and comprehensive strategy to curb the flow of foreign fighters. Security Council has never disregarded the concerns that the states might have had the potential for abuse in providing criminal justice in the response of foreign terrorist fighters in Resolution 2178. On the contrary, the Resolutions language is quite strong on human rights. First, Resolution 2178 lays out state obligations under international human rights law, International Humanitarian Law, and international refugee law. Moreover, the Security Council recognizes the respect of fundamental rights, and the law supports counterterrorism measures. Hence, through its preamble, the security council reminds member states of their responsibility to respect fundamental freedoms under human rights law (Kopitzke, 2017).

Subsequently, the government and state officials have to simultaneously criminalize foreign terrorist fighters who belong to their country to comply with the international human rights law, which is rhetorical, according to Emilio De Capitani. To include the conduct within new categories of the crime of terrorism or as a part of more general terrorism-related offenses, many foreign terrorist fighters have been condemned on the base by national courts (Foot, 2017). The legal approach to the repatriation of foreign terrorist fighters suspected of committing or supporting atrocities must be identified, detained, and charged with Domestic Law. In the condition when men and women return to the country of their nationality, after having allied themselves with foreign terrorist fighters such as ISIS who may be suspected to be liable in serious crime conducted abroad, ISIS has indeed bragged about genocidal massacres, sexual slavery, and many other various horrendous crimes.

Hence, in terms of the rights and duties of foreign terrorist fighters, the legal response seems the least disruptive. The state, at least, has a minimal fair system of law and justice. However, several countries are introducing legislation dealing with the repatriation of fighters. Furthermore, the issue regarding prison radicalization, which the fighters may have influenced, has some tactics to address the issue. The prisoners associated with foreign fighters may be kept isolated and away from the common populated prison. Besides, various monitoring measures can be used, including specialized training programs. The training may be monitored by technology tools to watch and observe prisoners more closely (Renard & Coolset, 2020).

The main objectives of such laws on nationality are to prevent terrorism and radicalization, either introducing legislation such as allowing the deprivation of

individuals, which might potentially pose a threat of rights or actively repatriate followed by possible prosecution and have conduct a secure procedure. A debatable question arises whether physically preventing individuals from re-entry into their own country will prevent terrorism and radicalization. The answer is that depriving someone's citizenship, including foreign terrorist fighters, is not equivalent to avoiding the fighters or other people from perpetrating any attacks in the future based on several security grounds.

First, they are technologically interconnected, where physical presence is no longer necessary to orchestrate criminal acts. Therefore, even if countries could seal their borders against the re-entry of person has been rescinded, this would not necessarily inoculate the foreign terrorist fighters against the re-entry. This threat is by definition transnational and could be perpetrated from abroad. Second, individuals determined to re-enter the country will still find ways to do so, including through illegal means.

Hence, preventing the fighters from leaving the camps to come back to their country will prevent them from being held responsible for their crimes before the trial, which determines each individual's guilt, unless the al-Hol camp is a lawful place of detention like a prison. Also, the camp should respect the freedom of movement of leaving the camps and returning. Movement restrictions are only permissible if provided by law and are necessary to protect national security, public order, public health or morals, or others' rights and freedoms. Any restriction must be non-discriminatory, proportionate, and necessary.

At least three important things need to be considered for the Indonesian Government to revocate citizenship, bans, and option for foreign terrorist fighters. Regarding the revocation of nationality, there was an act of breaking passwords by the former ISIS Indonesian citizen. However, the action does not necessarily mean that the government might revoke their citizenship. In the Indonesian legal framework, the revocation of citizenship is regulated under Law No. 12 of 2006 concerning Citizenship and Government Regulation No. 2 of 2007 concerning Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship.

Law on Citizenship and Government Regulation state that the condition under which Indonesian citizen might lose their citizenship is on behalf of entering into service of a foreign army without prior permission from the president and voluntarily taking an oath or pledge allegiance to or part of a foreign country. However, consideration needs to be proven first whether ISIS has a status as a foreign army or foreign country.

Referring to the Montevideo Convention for establishing a country, there are four requirements; first, permanent population; second, defining territory; third, governance with effective control; lastly, the ability to enter into relations with other countries. Hence, the decision to revoke citizenship as a punishment made by the Indonesian Government for former ISIS has no legitimacy since the existence of ISIS itself as a political entity and terrorist organization.

Article 28(d) Paragraph (4) of the 1945 Constitution has also guaranteed a person's right to citizenship status as one of the human rights. In addition, Article 15 of the Universal Declaration of Human Rights, in which Indonesia is also a state party, mentions that everyone has the right to citizenship (Rickart, 2015). Furthermore, Article 24 Paragraph 3 of the International Covenant on Civil and Political Rights also stipulates that every child has a right to acquire a nationality.

For the travel bans, the Indonesian Government shall not prohibit Ex-ISIS Indonesian Citizens who want to return to Indonesia. The prohibition mentioned in Article 14 Paragraph 1 of Law No. 6 of 2011 concerning Immigration acknowledges that every Indonesian citizen may not be refused entry into Indonesian territory. Besides, Article 27 of Law No. 39 of 1999 concerning Human Rights states any every Indonesian citizen has the right to leave and re-enter the territory of Indonesia. Hence, there is no legal basis yet for the Indonesian Government to restrict and ban the Indonesian Ex-ISIS from returning to their home country.

Furthermore, the Indonesian Government should repatriate Indonesian Ex-ISIS combatants to be tried legally. The actions carried out by ISIS have been designated as acts of terrorism by the UN Security Council. The President of the UN Security has stated

that the Security Council strongly condemns the act of terrorism, including terrorist organizations operating under the name of ISIS located in Iraq, Syria, and Lebanon. In this case, Indonesian Terrorism Law states that essentially everyone who intentionally commits acts of terrorism is punished with imprisonment and the death penalty.

Due to the huge number of individuals who joined ISIS, Indonesia has adopted various counterterrorism responses. According to Coordinating Minister of Legal, Political and Security Affairs, Mahfud MD, any Indonesian citizens who joined any terrorist organization abroad, including ISIS, will be deprived of its nationality. He said the decision was made on behalf of 276 million people's security from any threat of terrorism. It is estimated that more than 689 Indonesian citizens were identified as fighters for ISIS. Following the Indonesian citizen's response who allegedly affiliated with ISIS, the Indonesian Government has established the latest regulation in combating the terrorist organization.

The government has set down the organization dealing with the foreign terrorist fighters in Minister of Coordinator Political, Legal, and Security Decree. The regulation has decided to form a special force for handling the Foreign Terrorist Fighters. Special force controlling with FTF is divided into two positions; the first one is the Coordinator of the Special Forces, and the second one is the Executor of the Special Forces. In handling the duties as a special force, it is permitted to involve any government, stakeholders, and other parties deemed necessary by forming a technical implementation team in each ministry or agency.

Since the Indonesian Government has not yet established any regulation for the repatriation of Indonesian citizens affiliated with ISIS, the government has enacted a regulation that focuses on the assessment of the Foreign Terrorist Fighters. The assessment is needed to determine the appropriate action to overcome the problem regarding the FTF. After a comprehensive evaluation through the data collected during the operations conducted by a superior force, which is used as an initial reference to determine an action that the government might take, the data gathered also uses an in-depth assessment of the ministries and agencies handling foreign terrorist fighters at the border and after the border. Lastly, the data are used for comprehensive options and considerations for the final decision of repatriation or deprivation. The Decree of Coordinator Political, Legal and Security Minister comes into force on the date of stipulation on 2 December 2020 until 31 December 2021.

CONCLUSION

Indonesia might stipulate the condition for acquisition and loss of nationality for its citizens, including individuals who alleged joining ISIS. However, as mentioned by Article 15 of the 1948 Universal Declaration of Human Rights, it is acknowledged that all people have a right to a nationality. In addition, Article 28D of the 1945 Indonesian Constitution ensures a person's citizenship status as one of the human rights. Furthermore, every country has duties to protect all citizens' safety and security, including foreign terrorist fighters of ISIS. Deprivation of nationality, which led to the infringements of human rights issues, in fact, is not equivalent to preventing foreign terrorist fighters from perpetrating any attacks in the future. In fact, it will prevent the fighters from being criminalized under Indonesian jurisdiction and ultimately violating the commitment to equality of punishment in the most democratic states. Article 1 of the 1930 Hague Convention on Certain Questions Relating to the International Law stipulates that the law on nationality shall be in line with other states' nationality practices and consistent with international conventions, international customs, and the principles of law generally recognized on nationality.

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