REFORMULATION OF REGULATIONS ON INDONESIAN CITIZENS WHO HAD JOINED THE ISLAMIC STATE OF IRAQ AND SYRIA (ISIS)

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Abstract

The repatriation of ex-ISIS members to Indonesia will have an impact on the community, because previous jihadi alumni from Afghanistan carried out terrorist bombings in several locations after they returned to Indonesia. This research will analyze the classification of Indonesian citizens who had joined ISIS; the Indonesian citizens who had joined ISIS according to Indonesian regulations and the reformulation of regulations on Indonesian citizens who had joined ISIS. This normative juridical research uses statutory approach and conceptual approach. The results of this study shows that the classification of Indonesian citizens who had joined ISIS based on hierarchy in the organization and concerned involvement in ISIS, the regulatory violations committed by Indonesian citizens by joining ISIS, and the urgency of changing the citizenship law that applies to Indonesian citizens who join ISIS.

Keywords: Citizenship Law; Indonesian Citizen; ISIS.

Abstrak

Pulangnya kembali Warga Negara Indonesia mantan anggota ISIS akan berdampak pada masyarakat, karena alumni jihadi sebelumnya dari Afghanistan meledakkan bom teror di beberapa lokasi sebelumnya mereka ke Indonesia. Tulisan ini meneliti terkait klasifikasi WNI yang pernah bergabung dengan ISIS; bagaimana WNI yang telah bergabung dengan ISIS menurut peraturan Indonesia dan bagaimana reformulasi regulasi terhadap WNI yang pernah bergabung dengan ISIS. Penelitian normatif ini menggunakan pendekatan peraturan perundang-undangan dan pendekatan konseptual. Hasilnya klasifikasi WNI yang pernah bergabung dengan ISIS ditentukan berdasarkan hierarki dalam organisasi dan keterlibatan yang bersangkutan dalam ISIS; pelanggaran regulasi yang dilakukan oleh WNI karena bergabung dengan ISIS, dan urgensi perubahan Undang-Undang Kewarganegaraan yang berlaku bagi WNI yang bergabung dengan ISIS.

Kata kunci: ISIS; UU Kewarganegaraan; Warga Negara Indonesia.
Introduction

Initially, ISIS was intended to establish an Islamic state in Iraq and Syria only, so that their caliph, Abu Bakr al-Baghdadi, could become the ruler of all Muslims. As Al Imara Executive branch, Abu Bakr al-Baghdadi was also as Commander in Chief (Caliph) and supported by: cabinet (Baghdadi’s advisers), 1 (one) Deputy and 12 (twelve) Governors for each Syria and Iraq, Shura Council (religious and military affairs), Financial Council (weapons and oil sales), Leadership Council (drafting laws, key policies), Military Council (defence of the “Islamic State”), Legal Council (decisions on executions, recruitment), Fighters Assistance Council (Foreign fighter aid), Security Council (internal “policing” execution), and Intelligence Council (information on ISIS enemies).

In 2019, the Kurdish-led Syrian Democratic Forces (SDF) with the help of the United States and other international coalitions successfully defeated ISIS in Baghouz and killed Abu Bakr al-Baghdadi. Then the leadership of ISIS was unidentified, the members were scattered, territory was narrowing, and pushed against international forces fighting ISIS. This causes citizens from various countries who have joined ISIS, wanting to return to their respective countries. Indonesia also facing the same problems regarding the fate of about 689 Indonesian citizens who join ISIS in Syria.

From this background, the legal issues in this research are: 1) What is the classification of Indonesian citizens who had joined ISIS?; 2) How are Indonesian citizens who had joined ISIS according to Indonesian regulations? And 3) How is the reformulation of regulations on Indonesian citizens who had joined ISIS?

This research will be analyzed based on the perspective of Constitutional Law, by tracing legal materials in the form of statutory regulations. Primary legal materials include:

1 Undang Undang Dasar Negara Republik Indonesia Tahun 1945.
2 Undang-Undang Nomor 15 Tahun 2003 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2002 tentang Pemberantasan Tindak Pidana Terorisme menjadi Undang-Undang.
3 Undang-Undang Nomor 12 Tahun 2006 tentang Kewarganegaraan Republik

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Indonesia.

Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.

Undang-Undang Nomor 24 Tahun 2009 tentang Bendera, Bahasa, Dan Lambang Negara, Serta Lagu Kebangsaan.

Undang-Undang Nomor 6 Tahun 2011 Tentang Keimigrasian.

Undang-Undang Nomor 7 Tahun 2012 tentang Penanganan Konflik Sosial.

Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik.

Undang-Undang Nomor 19 Tahun 2017 tentang Perubahan Atas Undang-Undang Nomor 2 Tahun 2007 Tentang Tata Cara Memperoleh, Kehilangan, Pembatalan, Dan Memperoleh Kembali Kewarganegaraan Republik Indonesia.

Peraturan Pemerintah Nomor 66 Tahun 1951 tentang Lambang Negara.

Peraturan Pemerintah Nomor 31 Tahun 2013 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 6 Tahun 2011 Tentang Keimigrasian.


Law Number 11 Of 2008 Concerning Electronic Information And Transactions. Hereinafter referred to as Law on Electronic Information and Transactions.

Law Number 24 of 2009 concerning the Flag, Language and State Emblem and National Anthem. Hereinafter referred to as Law on the National Emblem.

Law Number 6 of 2011 concerning Immigration. Hereinafter referred to as Immigration Law.

Law Number 7 Of 2012 Concerning Amendment To Law Number 11 Of 2008 Concerning Electronic Information And Transactions. Hereinafter referred to as Amendment To Law on Electronic Information and Transactions.


This study uses a normative juridical research method with 2 (two) approaches: statute approach and conceptual approach. The statute approach is research that prioritizes legal materials in the form of laws and regulations as basic reference material in research. Usually used to examine laws and regulations that have deficiencies in the normative or even deviate technically or their implementation in the field. It is carried out by examining all laws and regulations related to the problems (legal issues) that are being faced. This research analyses the consistency or conformity between the Constitution and the citizenship law, as well as between the Citizenship Law and other laws. While the conceptual approach is a type of legal research approach that analyses the legal concepts behind it, or concepts used in regulations. Used to understand the concepts in the norms of legislation, conformity with the underlying legal concepts, based on the views and doctrines that develop in the legal science. Views/doctrines will clarify ideas by providing legal understandings, legal concepts, and legal principles that are relevant to the problem.

The unclear legal status of Indonesian citizens who join ISIS will be resolved through the interpretation method. The method of interpretation is important because not all of the laws and regulations could be clearly drafted and do not require further interpretation. The interpretation methods used in this research are: 1) Structural interpretation; and 2) Systematic or logical interpretation. Structural interpretation is a method that links the law with the Constitution which regulates state administrative structures. While systematic interpretation or logical interpretation is interpreting the law as part of the overall system of legislation by connecting it with other laws. Laws are related and become part of the entire system of regulations, and there is no law that is completely separated from the whole system of legislation.

Discussion

A. Classification of Indonesian Citizens Who Had Joined

For Indonesian citizens who join ISIS, their motivation to join ISIS must be investigated. The background of Indonesian citizens joining ISIS:

1. Sympathetic to the Caliphate Movement

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20 *Ibid.* p. 120.
and In Line With ISIS Ideology. Anti-ISIS propaganda in Indonesia caused some young Indonesian jihadists to join ISIS and become anti-government. According to them, the government that rejects ISIS is an enemy of the mujahideen. Since 2014-2019 the number of Foreign Terrorist Militias from Indonesia in Syria and Iraq continues to increase. So far, there is no valid data on how many naïve or hardliners or a combination of the two, who joined ISIS surrendered or were arrested by security forces. Kurdish officials in Raqqa, who deal with ex-jihadists or ISIS brides, only stated the screening and interrogation process is expected to last up to six months, then the next step will be decided.

2. Believe in ISIS propaganda on the internet without finding out the facts in Syria. Syrian cleric Shaikh Abdullah Mustafa Rahhal cited the causes of people joining ISIS:

a. Most of those who joined ISIS came from outside Syria and did not know about the real conditions. They only know from ISIS propaganda media that feature positive things about the ideals of an Islamic state that interest them.

b. The money or salary promised if they can join ISIS, which is US$ 400-500 per month per person.

c. ISIS propaganda on the internet, that Daulah Islamiyah is a place to live and become a true Muslim. When Indonesian citizens go to Raqa in Syria to join ISIS, they think they are on their way to heaven of faith on earth, imagining living under the auspices of the Islamic caliphate, getting health insurance and working with wages that can only be dreamed of in Indonesia.

Nasir Abbas explained that ISIS has a way to provide its members with terrorist funds, in the form of living expenses for members’ families, children’s education, member salaries, and other life guarantees. In 2015, BNPT Deputy Enforcement and Capacity Building Inspector General Arief Dharmawan stated that not all Indonesian citizens who

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25 M Iqbal dan Ikhwanul Khabibi, *loc.cit.*

26 Ulama Suriah Syaikh Abdullah Mustafa Rahhal in M Iqbal dan Ikhwanul Khabibi, *ibid.*


emigrated to Syria or Iraq purely fought for ideological reasons, because some joined ISIS for a monthly salary for each member.\textsuperscript{31} In addition to fighting, ISIS sympathizers of foreign origin who arrived in conflict areas, mainly their headquarters in Mosul City, Iraq, were given jobs in soup kitchens or other jobs supporting their war efforts. The regular salary given in US dollars is equivalent to IDR 39 million per week, or IDR 150 million per month. Not surprisingly, more than 3,400 Western nationals reportedly joined, for example from Australia, the Netherlands and other European countries.\textsuperscript{32}

On the contrary, no one in Syria sympathizes with ISIS, especially young men who already know and witnessed for themselves the atrocities and perversions of ISIS so far, namely killing, raping women, destroying buildings and torturing civilians.\textsuperscript{33} Facts in Syria presented by Syrian Cleric Shaikh Abdullah Mustafa Rahhal:\textsuperscript{34}

1. ISIS funds come from:
   a. Syrian regime. Clerics in Syria already know ISIS is international intelligence propaganda to bring down the image of Islam, as well as to help Bashar’s regime stop the Syrian people’s resistance.
   b. proceeds from the sale of oil from ISIS-controlled fields. It is alleged that there was ISIS collusion with the Syrian regime because the strategic location was easily taken by ISIS, even though it was heavily guarded by a government that had a strong military.

2. The release of recidivists from prisons in Syria to join ISIS, fulfill their creed (rape) and kill with generous monetary incentives.

3. The Syrian people arrest members of ISIS, consisting of ordinary people and government military officers, or officers from Iran or Russia, or from Syrian National Guard intelligence who are supposed to fight alongside the Syrian people to fight against the regime, instead coordinating with the regime’s army.

4. ISIS jihadist behavior is not in accordance with Islamic rules. ISIS is repression, there is neither justice nor peace. There is a big difference between civilians and ISIS members. Civilians get oppression and have to pay for electricity, health services and more, while ISIS jihadist conditions are better and get all for free.\textsuperscript{35}

The purpose of ISIS ideology entering Indonesia, which is a Muslim-majority country, is to obtain sympathizers and ISIS members.\textsuperscript{36} Indonesia is the country with the largest Muslim population in the world, where
an estimated 229 million Muslims reside. This is 87.2% of Indonesia’s population of 263 million or about 13% of the world’s Muslim population.\(^{37}\) Abdullah asked Indonesian citizens as the largest Muslims in the world to be sensitive to religious issues, to be critical, to be careful in responding to propaganda and not to join ISIS. ISIS uses Islam only as a veil, as if it were beautiful with Islamic symbols, flags and so on, but its content is to destroy Islam. Especially when this propaganda shuts down humanitarian issues due to the repression of the Bashar regime which has killed more than 300,000 civilians.\(^ {38}\)

There are several categories of Indonesian citizens affiliated with ISIS, namely: \(^ {39}\)

1. **Sympathizers.** Those interested in the ideology of ISIS, positively sympathetic to its propaganda, feel that ISIS has practiced Shari’a. The number of ISIS sympathizers is very large in Indonesia, but they are difficult to be prosecuted, because they did not contribute anything to the ISIS movement, so they did not commit any criminal acts.

2. **Supporters.** \(^ {40}\) Those who have sympathized and have provided assistance to the ISIS movement (direct donations, or through fund-raising organizations that channel their funds to ISIS). Their actions violated Law 5/2018 on the criminal act of terrorism.

3. **Members.** Those who joined ISIS through ISIS-affiliated terror groups in Indonesia. They also violated the criminal act of terrorism.

4. **Deportees.** Sympathizers, supporters or members of ISIS who agree with ISIS ideology and intend to stay in ISIS territory, but have not yet reached the destination they have been arrested and repatriated from transit countries. Their dream of entering and living in the ISIS area has not been achieved, they are still curious and have not proven themselves. They may blame the government for thwarting their dream of living in ISIS Daulah Islamiyah. They can be charged with laws or regulations on immigration violations, but it is difficult to be charged with criminal acts of terrorism.

5. **Returnees.** Those who successfully entered and lived in (formerly) ISIS territory in Iraq and Syria, were classified into the category of combatants and non-combatants. Combatants are those who participate in ISIS military/non-military activities (directly or indirectly) in violation of the criminal act of terrorism. Meanwhile, non-combatants


\(^ {38}\) M Iqbal dan Ikhwanul Khabibi, *loc. cit*.


\(^ {40}\) Institute for Policy Analysis of Conflict (IPAC), *The Evolution Of Isis In Indonesia*, (IPAC Report No.13, 2014), p. 23
are people who have never participated in any activities while living in ISIS territory, so they do not violate the criminal act of terrorism.

Furthermore, for Indonesian citizens who join ISIS, their motivation to return to Indonesia must be investigated. Do they regret joining ISIS? Or, do they want to return to Indonesia to spread their ideology? If they regret joining ISIS, then they can be categorized as Indonesian citizen Ex-ISIS. But if they return to Indonesia to spread ISIS ideology, then they become ISIS Ex-Indonesian citizen. In the name of justice, the legal position and treatment given by the state for Indonesian citizen Ex-ISIS and ISIS Ex-Indonesian citizen, should be different.

The distinction between Indonesian citizen Ex-ISIS and ISIS Ex-Indonesian citizen can be classified based on their position in the ISIS organization. According to Fraser and Fulton, terrorist organizations organize themselves into hierarchies, namely:

1. The first hierarchy is terrorists who are in control of operations, including planning and setting goals, overseers of a terrorist organization.
2. Active cadres as executor. Each cadre usually masters one or more skills, for example assembling bombs, language and using or operating communication technology.
3. Active supporters to maintain the continuity of active cadres in the field.
4. Passive supporters. They are actually not directly a member of a terrorist organization and are mostly used or exploited by members of a terrorist group without them knowing it.

Based on the hierarchy, there are variations in conditions that may occur, namely:

1. Indonesian Citizens Affiliated With ISIS
2. Indonesian Citizen Ex-ISIS
3. Former Indonesian Citizens Affiliated With ISIS / ISIS Ex-Indonesian citizen
4. Former Indonesian Citizen Ex-ISIS

ISIS Ex-Indonesian citizen can be included in hierarchies 1 to 3, while sympathizers in the fourth hierarchy included women and children who are forced to join because of unequal power relations in the family. After entering the ISIS Islamic caliphate in Syria or Iraq, some Indonesian citizens who want to become jihadists or jihadist brides in order to pursue the paradise on earth promised by ISIS,

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41 Explanation to Article 14 of Anti-Terrorism Law: “This provision is aimed at intellectual actors. What is meant by ‘moving’ includes incitement and provocation, giving gifts, money, or promises”.
43 Kamus Besar Bahasa Indonesia (KBBI), Affiliated/affiliated with is having affinity and relationship as a member or branch. https://www.kbbi.web.id/afiliasi.
finally realize the bitter reality that there is only hell. The hope of male Indonesian citizens to get a job, be paid debts and get a variety of free life facilities turns into a nightmare. The conditions in Daesh turned out to be very different from what was displayed on the internet. They were forced to fight, for those who refused will be immediately imprisoned or tortured. Delusions and ‘trade’ calculations, that the capital expended to come to Raqqa will be returned and the economy will improve, are crushed by the reality of the jihadists’ nepotism, aggression, sex obsession and war. As ISIS fought to defend its capital, the Indonesian citizen was forced to flee and seek refuge in the Ai Issa refugee camp located 50 km from Raqqa.

ISIS promised a decent life and freedom to join or leave ISIS if they arrived there, but the fact did not match nor in accordance with the initial promise after they left Indonesia and were recruited as ISIS members. In early 2020, Nada Fedulla’s statement in a special interview with Quentin Sommerville, the BBC’s Middle East correspondent, went viral. As an Indonesian citizen who joined ISIS (Islamic State of Iraq and Syria), she said, “I am so tired of living here. So, I would be very grateful if someone would forgive and accept us home.” She also hopes for the Indonesian government to be able to repatriate her and her family, including her father who is now in prison in Syria for being a former ISIS fighter.

Meanwhile, Nurshardrina Khaira Dhania (19), an Indonesian woman who was tempted by the promise of ISIS caliphate paradise, expressed regret, naive and stupid. Nur first learned of ISIS from her uncle and then searched for information about ISIS on the Internet (Tumblr), where there was an ISIS sympathizer who told of the beauty of being an ISIS member in Syria. A life that is safe, peaceful, full of justice, children go to school, and family life is guaranteed. ISIS sympathizers promise to pay for her trips to the Middle East, reimbursement of debts, high-paying jobs. On arrival in Turkey, Nur realized the situation was very dangerous, but her family went to Raqqa anyway. In Raqqa, women were separated from men, locked up in a dormitory and forced into jihadist brides. The ISIS fighters go to the Women’s dormitory, ask for a wife from the dormitory leader and are free to choose a girl or a widow. ISIS sympathizers consider jihad only by getting

45 DW, Pengakuan WNI Simpatisan ISIS: “Semuanya bohong!”, loc.cit.
46 DW, Janji Surga ISIS Realitanya Neraka, loc.cit.
47 Ibid.
48 Ibid.
49 DW, Pengakuan WNI Simpatisan ISIS: “Semuanya bohong!”, loc.cit.
50 Jemmy Jefry Pietersz and Vica Jillyan Edsti Saja, loc.cit.
52 Fellyanda Suci Agiesta, Deretan WNI Termakan Janji Palsu ISIS, loc.cit.
53 DW, Janji Surga ISIS Realitanya Neraka, loc.cit.
54 Ibid.
married, women are used as objects and child factories. If in the morning a woman is asked to marry a jihadist, the answer should be given that very evening. Many were married for only two weeks or two months, then divorced. Fortunately, Nur managed to return to Indonesia in August 2017.

Regret was also expressed by Leefa, a 38-year-old Indonesian woman who needed neck surgery at a very high cost in Indonesia. Initially, Leefa made contact on the internet with young ISIS sympathizers who promised prosperity and assured Leefa that he would reimburse ticket costs because everything was free in Daesh. But upon arrival in Raqa she found a completely different reality and the promised neck surgery was not free at all.

However, these women and children need to be investigated further, because women and children are already actively involved in ISIS actions, for funding, military training, and spreading hatred against parties outside ISIS. Most of the women arrested by Indonesian authorities were those who helped hide their fugitive husbands as former terrorist groups. While ISIS women are the enforcers of ISIS ideology in Syrian camps, they kill other women, burn their victims’ tents, throw stones at their victims, and teach their children to hate people who have different ideologies and carry out violence against their opponents.

Eka Widi Astuti and Xavier Nugraha distinguish between Indonesian Citizen Ex-ISIS and ISIS Ex-Indonesian Citizen, with a focus on legal protection for Indonesian Citizen Ex-ISIS. Therefore, it is necessary to carry out an in-depth investigation to classify Indonesian citizen Ex-ISIS and ISIS Ex-Indonesian citizen. If Indonesian citizen Ex-ISIS are still entitled to legal protection

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56 DW, Janji Surga ISIS Realitanya Neraka, loc.cit.

57 DW, Pengakuan WNI Simpatisan ISIS: “Semuanya bohong!”, loc.cit.

58 Faisal Mohay and Sri Juliati (Ed), loc.cit. Read also: Rizky Zulham, loc.cit.

59 DW, Pengakuan WNI Simpatisan ISIS: “Semuanya bohong!”, loc.cit.


due to their citizenship status, according to the author, ISIS Ex-Indonesian citizen should apply otherwise. In handling the citizens who join ISIS, the government must study, classify, trace the track record of each person and the policies taken cannot be generalized. Therefore, the identification and assessment of Indonesian citizens who join ISIS is carried out by the National Counterterrorism Agency (Badan Nasional Penanggulangan Terorisme / BNPT).

BNPT is the agency that carries out affairs in the field of counter-terrorism, is under and responsible to the President. BNPT is domiciled in the capital city of the Republic of Indonesia, and is the center for crisis analysis and control, which functions as a facility for the President to determine policies and steps to deal with crises, including the mobilization of resources in dealing with terrorism.

After the identification and assessment results are obtained, the judicial mechanism will continue towards Indonesian citizens who join ISIS. This judicial mechanism is to determine legal status as an Indonesian citizen Ex-ISIS or ISIS Ex-Indonesian citizen, before imposing sanctions on the removal of Indonesian citizenship. ISIS Ex-Indonesian citizen who do not obey Indonesian law will certainly refuse to attend the trial, therefore the trial will be carried out against them in absentia.

The concept of in absentia is a concept where the defendant has been legally summoned and is not present at the trial without a valid reason, so that the court carries out an examination in court without the presence of the defendant. The trial in absentia against ISIS ex-WNI must then be regulated in the Anti-Terrorism Law.

The repatriation of ex-ISIS members to Indonesia will have an impact on the community, because it can lead to a new terrorism movement that disrupts the stability of public security. Previous experience was that jihadi alumni from Afghanistan who still uphold their ideological radicalism carried out terrorist bombings in several locations after they returned to Indonesia.

Several bomb cases in Indonesia are closely related to former Afghan combatants, such as Mukhlas, Amrozi and Ali Imron as the Bali bombers. In May 2018, 154 prisoners before imposing sanctions on the removal of Indonesian citizenship. ISIS Ex-Indonesian citizen who do not obey Indonesian law will certainly refuse to attend the trial, therefore the trial will be carried out against them in absentia. The concept of in absentia is a concept where the defendant has been legally summoned and is not present at the trial without a valid reason, so that the court carries out an examination in court without the presence of the defendant. The trial in absentia against ISIS ex-WNI must then be regulated in the Anti-Terrorism Law.

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riotied and took over the Salemba Branch Detention Center located at the Police Mobile Brigade Command Headquarters in Kelapa Dua, Depok. The incident that killed 5 police officers was later claimed by ISIS through the Amag News Agency, and was followed by suicide bombings in Surabaya and Sidoarjo and attacks on the Riau Police Headquarters. These incidents show ISIS can be categorized as illegally belligerent. Belligerent is a rebel in a warring country, while ISIS is a terrorist who attacks under all circumstances, attacking other countries even in peaceful conditions, as happened in the Philippines. These incidents also show the rapid spread of the ideology of terrorism that threatens state sovereignty and world peace. Some countries have even prevented or refused, even revoked the citizenship of their citizens who joined ISIS.

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75 The conditions for a group to be considered a Belligerent are: a) The rebels have a legitimate armed force in accordance with international humanitarian law (not the hijackers or terrorists); b) Warfare must be based on international humanitarian law; c) The warships used are legitimate warships (not pirate ships and fishing boats); d) Disputes committed at sea must be respected by neutral countries; e) Control the territory in a country; f) The existence of good government management (as opposed to the ruling government); g) Willing and able to protect foreign nationals in the territory they control or the country where the rebellion took place. Read: Hanif Nur Widhiyanti, Riana Susmayanti, Muhammad Fadli Efendi, Kontradiksi Antara Keamanan Dan Kedaulatan Indonesia Dengan Pemulangan WNI Eks Anggota ISIS, (Malang: Fakultas Hukum Universitas Brawijaya, 2021), p. 33. Read also: Sam Foster Halabi, “Traditions of Belligerent Recognition: The Libyan Intervention in Historical and Theoretical Context”, American University International Law Review Vol. 27, No. 2, (2012): 332.


B. Indonesian Citizens Who Had Joined ISIS According To Indonesian Regulations

1. Indonesian Citizens Who Had Joined ISIS According To Indonesian Constitution

ISIS developed into 3 (three) main objectives, namely: 1) Establish a caliphate in Iraq and the Levant; 2) Expand Islam and Sharia Law Worldwide; and 3) Recreate the Power and Glory of (Sunni) Islam. According to ISIS, the caliphate is a state system according to God’s command, a government where Muslims in the world live under one leadership, not limited by the territory of the state in enforcing sharia law.

The radicalism promoted by ISIS is an attitude of truth claim in religion which has a negative value because it is forced on its adherents and fights other religions (extrinsic orientation). This radicalism threatens the life of pluralism which the majority of modern countries live in the world. Therefore, ISIS became common enemy on transnational crime.

ISIS ideologies consisting of 5 (five) basic principles that must be believed and understood by the sympathizers, namely: 1) Jihad: It is an integral and important component of the jihadi Salafi movement which views jihad as the pinnacle of Islam, which makes the vehicle for this religion to survive and develop; 2) Takfir or takfiri: Takfir’s understanding is the process of stating that other Muslims or a group of Muslims have left Islam because they are different from themselves; 3) Al wala ‘wal baro’: The concept of al wala ‘wal baro’ can be used as an effort to protect the Muslim community by showing loyalty and providing legality to attack its enemies; 4) Monotheism: It is a form of applying the being of the creature to God regarding His names and attributes; and 5) Hakimiyyah: This concept states that the sovereignty of the political system and the rules of state life only belongs to God. The enforcement of God’s sovereignty in the political system will not only secure God’s right.

The fourth paragraph of the Preamble to the Indonesian Constitution contains Pancasila as the state ideology, which consists of 5 (five) precepts: the belief in One and Only God, just and civilized Humanity, the Unity of Indonesia and a Democratic Life guided by wisdom in Deliberation/Representation, and by realizing social Justice for all the people of Indonesia.

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81 Indrayanto, Nur Rohim Yunus, Dana Riksa Buana, Amy Maulana, Ade Irma Elvira, loc. cit.

82 Anonymous, op. cit., p. 39
If we compare ISIS ideology with Pancasila, then there are conflicting values. The first precept of Pancasila shows monotheism, namely the belief in One and Only God. However jihad, takfiri/takfiri and al wala ‘wal baro’ are contrary to the second, third and fifth precepts of Pancasila (humanity, unity and justice), because although the majority of the population in Indonesia is Muslim but some religions and beliefs are also recognized and protected by the government (Christian, Catholic, Hindu, Buddhis and Kong Hu Chu). All terrorist acts claimed by ISIS in Iraq, Syria or in any other country, resulted in the fall of innocent victims. This threatens the sovereignty of countries where ISIS spreads its ideology. They do not respect peace, tolerance and religious differences in Indonesia, instead leaving Indonesia to form an Islamic state (chaliphate).

Meanwhile, hakimiyyah is contrary to democracy in the fourth precept of Pancasila. According to ISIS ideology, That democracy is a strange thing because it does not conform to the Shura (deliberative) system in Islam. For example, democracy is a manifestation of the existence of a majority of votes (majority) that have the highest power in decision making. Therefore, the practice of homosexuality can be promulgated in a country, if a majority in parliament approves it. Whereas in Islamic law, whatever the reason, homosexuality is something haram (unlawful/forbidden) ; 2) The secular system must be replaced with the Islamic caliphate system. Practically and theoretically, the Islamic caliphate refers to the experience of the Salaf generation.

Constitution of the State of Indonesia, which is structured in a form of the State of the Republic of Indonesia, with people’s sovereignty. The Theory of People’s Sovereignty pioneered by Jean Jacques Rousseau (JJ Rousseau) asserts that what is meant by the people is not the summation of individuals (volonte de tous) within the state, but rather is the unity formed by individuals, and who have the will. The will is obtained from individuals through the covenant of society, called the general will (volonte generale), which reflects the general will. The development of people’s sovereignty in determining the direction of the state can be analyzed as Consent of the Governed, where there are 2 (two) phrases consent and governed. Based on Black’s Law Dictionary, ‘consent’ : 1) A concurrence of wills; 2) Voluntarily yielding the will to the proposition of another; 3) acquiescence or compliance therewith.

While ‘governed’ is a passive form of govern, which means: 1) To direct and control the

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83 Pulung Widhi Hari Hananto, *loc. cit.*
84 Fernando PM Tambunan, *Sejarah Dan Ideologi ISIS (Islamic State Of Iraq And Sham)*, (Jakarta: Universitas Indonesia).
85 Paragraph 4 Preambule of UUD 1945.
86 Abu Daud Busroh, *Ilmu Negara*, (Jakarta: Bumi Aksara, 2009), p. 73
actions or conduct of, either by established laws or by arbitrary will; to direct and control, rule, or regulate, by authority; 2) To be a rule, precedent, law or deciding principle for. Based on political philosophy, the Principle of Consent of The Governed deals with the idea that the legitimacy of government and the moral right to exercise state power are only correct and legal if approved by the people and society in which political power is exercised. George Sabine\(^8\) gathered various views on consent of the governed from many political theorists.

In fact, a survey conducted by the Saiful Mujani Research and Consulting (SMRC) showed that less than 10% of the Indonesian population agreed with the idea of replacing the state basis of Pancasila and the 1945 Constitution with a caliphate, as aspired by the group that calls itself ISIS and Hizbut Tahrir Indonesia (HTI).\(^9\) This shows that ISIS is incompatible with the theory of people’s sovereignty and the principle of the will of the people implemented in Indonesia.

According to Article 30 paragraph (1) of Indonesian Constitution, every citizen shall be entitled and shall participate in the efforts towards the defence and security of the state. National security problems in the form of poverty, epidemics and natural disasters, social unrest, conflicts between groups, crime, armed rebellion to armed separatist movements. Disturbances that arise due to social inequality can be a serious threat to human security, without necessarily being a threat to the functioning of state government institutions and not at all related to the issue of territorial integrity. Meanwhile, conflicts between groups can pose a serious threat to the functioning of the state government functions, although they do not pose a threat to territorial integrity. Separatist movements, distinct from armed insurgency, pose a threat that is directly related to territorial integrity and the functioning of government functions.\(^9\)

Based on Indonesian Constitution, every person is free to choose and to practice their choice of religion, to choose education and schooling, to choose employment, to choose citizenship, and to choose their residences within the state territory and to leave, and to which shall have the right to return.\(^9\) As a free human being, anyone has the right to leave Indonesia and change citizenship, so former Indonesian citizens affiliated with ISIS (ISIS Ex-Indonesian Citizens) and former Indonesian citizens Ex-ISIS will lose their obligations and rights as citizens means losing

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92 Article 28E paragraph 1 of Indonesian Constitution
their obligations and rights as citizens.

Still and all, Indonesia does not use Islamic law as its state law, because the founding fathers since the independence era wanted Indonesia as a home for various kinds of diversity (ethnic, religious, cultural, racial and other).\textsuperscript{93}

Bhinneka Tunggal Ika is the national motto as stated in Government Regulation Number 66 of 1951\textsuperscript{94} and Law Number 24 of 2009 concerning the Flag, Language and State Emblem and National Anthem.\textsuperscript{95} Bhinneka Tunggal Ika as unity in diversity, contains the following meanings: encouraging the strengthening of Indonesian unity; Encouraging the emergence of awareness about the importance of association for the sake of strong unity and integrity; Not insulting, ridiculing, or vilifying each other among fellow nations; Mutual respect and love for each other; Increase identity and pride as an Indonesian nation; and Increase the value of mutual cooperation and solidarity.\textsuperscript{96}

Based on the Indonesian Constitution,\textsuperscript{97} Indonesian citizens consist of indigenous Indonesians and foreigners who have been legalized as citizens according to law. Indonesian citizens have constitutional rights and obligations arising from their status. The following are legal facts that show ISIS Ex-Indonesian Citizens has violated the Indonesian Constitution, has not carried out its constitutional obligations so they are not entitled to their constitutional rights as Indonesian citizens.

a. ISIS Ex-Indonesian Citizen Do Not Recognize The Indonesian Government

According to the Indonesian Constitution, all Indonesian citizens are equal before the law and in government and duty to respect the law and government, with no exceptions.\textsuperscript{98} Instead, ISIS propaganda videos show ISIS Ex Indonesian Citizens burning and tearing up their passports on purpose (deliberately). What is meant by “deliberately” is an intention or intentionality in any form (intentional with possibility, intentional with intent/purpose, and intentional with certainty). For this reason, intentionality has been evident

\textsuperscript{94} Article 5 of Government Regulation on the National Emblem: “Below the symbol is written in Latin letters a motto in Old Javanese language, which reads: Bhinneka Tunggal Ika”.
\textsuperscript{95} Article 46 of Law on Flag, Language and State Emblem and National Anthem: “The emblem of the Unitary State of the Republic of Indonesia is in the form of Garuda Pancasila with its head turned straight to the right, a heart-shaped shield hanging from a chain around Garuda’s neck, and the motto Bhinneka Tunggal Ika written on a ribbon gripped by Garuda. Explanation to Article 46 of Law on Flag, Language and State Emblem and National Anthem: …” What is meant by “the motto of Bhinneka Tunggal Ika” is an old saying once used by the famous poet Mpu Tantular. The word ‘bhinneka’ is a combination of two words: ‘bhinna’ and ‘ika’ are interpreted differently but still one and the word ‘tunggal ika’ means that the Indonesian nation’s cultural heritage is one unity. This motto is used to describe the unity and integrity of the nation and the Unitary State of the Republic of Indonesia”.
\textsuperscript{96} Safril Hidayat, loc.cit.
\textsuperscript{97} Article 26 paragraph (1) of Indonesian Constitution
\textsuperscript{98} Article 27 paragraph (1) of Indonesian Constitution
from the existence of “preparatory actions” (voorbereidings handeling) which can be punished, and this is an extension of the existence of trials, assistance, or evil conspiracies. 

ISIS Ex-Indonesian Citizen have burned their Indonesian passports, as a symbol that they no longer want to be Indonesian citizens, meaning that they eliminate their status and identity as citizens, violated the law, no longer willing to be part of the Republic of Indonesia, and ignoring all the legal consequences of their actions.

ISIS Ex-Indonesian Citizen declared themselves firmly and expressly as ISIS members, accepted ISIS ideology and became part of the ISIS war. ISIS Ex-Indonesian Citizen, declare their oath of allegiance to the ISIS ideology, have betrayed the Pancasila ideology, violated the 1945 Constitution of the Republic of Indonesia, and no longer want to be part of the Unitary State of the Republic of Indonesia. Therefore, why should their Indonesian citizen status be maintained?

There is no point in maintaining Indonesian citizenship for people who no longer want that status.

Based on the Indonesian Constitution, each Indonesian citizen has the right to work and to have a decent living for humanity. Conversely, ISIS Ex-Indonesian Citizen hate people who have different ideology, even justifies killing them. In accordance with Indonesian Constitution, every Indonesian citizen has the right and duty to participate in defending the state. Every citizen has the right and duty to participate in the defense and security of the state. On the contrary, ISIS Ex-Indonesian Citizen do not defend the unitary state of the Republic of Indonesia, instead they want to form an Islamic state (chalicephate) based on ISIS ideology. ISIS claims that terrorist attacks in Indonesia are acts of jihad against a government that does not apply Islamic law or is labeled toghut.

b. ISIS Legalizes Slavery And Violates The Rights Of Women And Children

99 Explanation to Article 82A paragraph (1) of Law on Community Organizations
100 Jemmy Jefry Pietersz and Vica Jillyan Edsti Saija, loc. cit.
102 Heyder Affan, loc.cit
103 Article 27 paragraph (2) of Indonesian Constitution
105 Article 27 paragraph (3) of Indonesian Constitution
106 Article 30 paragraph (1) of Indonesian Constitution
Indonesian Constitution protects rights to live, right to be free from torture, right of freedom of thought and conscience, right of religion, right to be free from slavery, right to be recognized as a person before the law, and right not to be prosecuted under a law with retrospective effect are all human rights that cannot be deprived under any circumstances. But ISIS legalizes slavery. ISIS released a fatwa governing the treatment of sex slaves: One gift that God has given to the Khilafah State (ISIS) is to be able to control this vast area. And one thing that is a consequence of jihad is that the women and children of the disbelievers will become slaves to Muslims.

By Indonesian Constitution, every person has the right to protection of self, family, honor, dignity, and their property, and has the right to security and protection from threats of fear to exercise or not to exercise his human rights. Conversely, ISIS claim jihad for the sake of Allah, but all they want is about women and sex.

According to Indonesian Constitution, every child has the right to live, to grow and to develop, and has the right to protection from violence and discrimination. Otherwise, ISIS Ex-Indonesian Citizen engage children in racist hate and violence. In October 2015, about 450 Indonesian and Malaysian fighters and their families were in the Iraq/Syrian region under ISIS/Katibah Nusantara control. More ominously, Katibah Nusantara has set up the Abdullah Azzam Academy for the education and military training of children of Malaysian and Indonesian fighters. The medium of instruction is the Malay language, and it is clear that Katibah Nusantara is training a new generation of Malay-speaking militants indoctrinated from childhood to be committed to the core belief that the setting up of the Southeast Asian wilayat of ISIS is a long-term God-given mission. In March 2015, ISIS posted a two-minute video showing Malay children training with weapons in ISIS-held territory. The video declares that these children will “finish all oppressors, disbelievers, apostates” and ends with a child firing a revolver. The underlying theme is sobering: “These children will be the next generation of fighters. You can capture us, kill us, we will regenerate, no matter how hard

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109 Pasal 28I paragraph (1) of Indonesian Constitution
112 Article 28 G paragraph (1) of Indonesian Constitution
114 Article 28B paragraph (2) of Indonesian Constitution
115 Heyder Affan, loc. cit.
2. **Indonesian Citizens Who Had Joined ISIS According To Law**

a. **Law on Electronic Information and Transactions**

Article 28 paragraph (2) Law on Electronic Information and Transactions: “Everyone intentionally and without rights disseminates information that is intended to cause hatred or hostility to certain individuals and/or community groups based on ethnicity, religion, race, and inter-group.” ISIS is actively occupying the internet via social media platforms such as Twitter, Facebook, and chat-based social media platforms such as Telegram, WhatsApp, and BlackBerry. Their purposes and objectives for social media activity are to radicalize with Koran, recruit, guide to go to Syria and Iraq, make plans to attack, connect with pre-existing local or regional jihadi groups, connect with returning Foreign Terrorist Fighters (FTF), intimidate enemies, and funding. ISIS’ campaign through social media is a threat to Indonesia’s national security due to its potential to increase more threats from the already existing terrorism threats. While as per the 2003 Anti-Terrorism Law already defined terrorism as a threat, the trends of social media radicalization campaign increases the potential of it, thus demanding the government to update the Anti-Terrorism Law in 2018. The threats posed by this social media campaign might create new ISIS affiliates or sympathizers in Indonesia in the form of a lone-wolf, recruits, or even FTF. ISIS-claimed terror attacks that have caused loss of life and/or damages to public facilities have proven that the threat of ISIS’s social media campaign is not just a latent one.

As a tool for their global radicalism campaign tactics, ISIS use social media platforms to radicalize with the Koran, recruit, guide to go to Syria and Iraq, make plans to attack, connect with pre-existing local or regional jihadi groups, connect with returning Foreign Terrorist Fighters (FTF), intimidate enemies, and funding. The trend of ISIS radicalization campaigns on social media increases the potential for terrorism, thus demanding the government to update the Anti-Terrorism Law in 2018.

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117 Law Number 11 Of 2008 Concerning Electronic Information And Transactions.


119 Ibid.

120 Ibid.

121 Ibid.

122 Ibid.
Anti-Terrorism Law in 2018, the government is an executive organ that is obliged to provide protection to the public against terror and violence perpetrated by radicalism groups.\textsuperscript{123} The eradication of terrorism in Indonesia has not yet been completed, ISIS propaganda through social media has the potential to increase more new terrorism threats. It might create new ISIS affiliates or sympathizers in Indonesia in the form of a lone-wolf, recruits, or even Foreign Terrorist Fighters (FTF). The terror attacks claimed by ISIS that caused casualties and/or damage to public facilities proves that the threat of ISIS social media campaigns is not only latent.\textsuperscript{124}

For ISIS Ex-Indonesian Citizen who intentionally and without rights disseminates information intended to create feelings of hatred or hostility towards certain individuals and/or community groups based on ethnicity, religion, race, and inter-group as referred to in Article 28 paragraph (2) shall be subject to criminal sanctions imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1,000,000,000.00 (one billion rupiah).\textsuperscript{125}

\textbf{b. Law on Handling Social Conflict}\textsuperscript{126}

ISIS hostility towards people with different ideologies can lead to social conflicts that originate from: feuds between religious and/or religious, inter-ethnic, and inter-ethnic conflicts.\textsuperscript{127} Whereas in order to maintain a state of peace in society, everyone is obliged to:\textsuperscript{128}

\begin{itemize}
  \item a) develop an attitude of tolerance and mutual respect for freedom of worship in accordance with one’s religion and belief;
  \item b) respect the differences in ethnicity, language, and customs of others;
  \item c) recognize and treat human beings in accordance with their dignity and worth;
  \item d) recognize the equality and equal rights and obligations of every human being without distinction of ethnicity, ancestry, religion, belief, gender, social position, and skin color;
  \item e) to develop Indonesian unity on the basis of diversity in diversity; and/or
  \item f) respect the opinions and freedom of others.
\end{itemize}

\textbf{c. Law on Community Organizations}\textsuperscript{129}

There are certain social organizations whose activities are not in line with the principles of community organization in accordance with the articles of association of social organizations that have been registered and approved by the Government, and it is even factually proven that there are principles of community organizations and their activities that are contrary to Pancasila and the

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\textsuperscript{123} Sumawiharja and Adis Imam Ismunandar, \textit{loc. cit.}
\textsuperscript{124} Savitri, \textit{loc. cit.}
\textsuperscript{125} Article I Number 8 Amendment To Law on Electronic Information And Transactions
\textsuperscript{126} Law Number 7 Of 2012 Concerning Handling Social Conflict
\textsuperscript{127} Article 5 letter b of the Law on Handling Social Conflicts
\textsuperscript{128} Article 7 of the Law on Handling Social Conflicts
\textsuperscript{129} Law Number 16 of 2017 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Community Organizations to become Law
\end{flushleft}
Indonesian Constitution.\textsuperscript{130} Community organizations infiltrated by ISIS ideology violated the prohibition in Article 59 paragraph (3) letter a, b, c and paragraph (4) letter b and c of the Law on Community Organizations. Basically, organizations are prohibited from:\textsuperscript{131} a) commit acts of hostility towards ethnicity, religion, race, or class; b) commit abuse, blasphemy, or blasphemy against the religion professed in Indonesia; and c) commit acts of violence, disturb the peace and public order, or damage public facilities and social facilities. Community organizations are prohibited from:\textsuperscript{133} b) carry out separatist activities that threaten the sovereignty of the Republic of Indonesia; and/or c) adhere to, develop, and spread teachings or understandings that are contrary to Pancasila.\textsuperscript{135}

\textbf{d. Immigration Law}\textsuperscript{136}

Until 2020, it is estimated that 689 Indonesian citizens join ISIS. President Jokowi has ordered to take countermeasures against them according to the immigration law.\textsuperscript{137} Therefore, the relevant ministries must also conduct studies and in-depth searches of ex-ISIS members who are in evacuation to have valid data that can be used as a basis for the government in conducting administrative legal processes so that the President can immediately determine the list of names of ISIS Ex-Indonesian Citizens who have lost their citizenship status. In addition, the technical rules for implementing deterrence are clarified in Government Regulation (PP) on Regulations for the Implementation of the Immigration Act. In this regulation, based on the provisions of Article 236 Paragraph (2) letter a it is stated that a person’s involvement in organized transnational crime is one of the reasons for the deterrence.\textsuperscript{138} ISIS can be categorized as part of transnational crime

\begin{footnotesize}
\textsuperscript{130} Considerations Considering letter d of Law on Community Organizations
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\textsuperscript{131} Article 59 paragraph (3) letter a, b, c of Law on Community Organizations
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\begin{footnotesize}
\textsuperscript{132} Explanation to Article 59 paragraph (3) letter a of Law on Community Organizations: “What is meant by ‘acts of hostility’ are words, statements, attitudes or aspirations, both verbally and in writing, whether through electronic media or not through electronic media that cause hatred, both towards certain groups and against everyone including state administrators”
\end{footnotesize}

\begin{footnotesize}
\textsuperscript{133} Article 59 Paragraph (4) letter b and c of Law on Community Organizations
\end{footnotesize}

\begin{footnotesize}
\textsuperscript{134} Explanation to Article 59 paragraph (4) letter b of Law on Community Organizations: “What is meant by ‘carrying out separatist activities’ are activities aimed at separating parts of or the entire territory of the Republic of Indonesia or controlling part or the entire territory of the Republic of Indonesia, either on the basis of ethnicity, religion, or race”.
\end{footnotesize}

\begin{footnotesize}
\textsuperscript{135} Explanation to Article 59 paragraph (4) letter c of Law on Community Organizations “What is meant by ‘doctrine or concept that are contrary to Pancasila’ include the doctrine of atheism, communism/Marxism-Leninism, or other understandings that replace/change Pancasila and the Indonesian Constitution
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\textsuperscript{136} Law Number 6 of 2011 concerning Immigration
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\textsuperscript{138} Article 236 paragraph (2) of Government Regulation on the Implementing Regulations of Immigration Law: “In addition to these reasons, deterrence of a person can also be done based on other immigration reasons, such as (a) known or suspected involvement in organized transnational crime; (b) show hostility towards the Government of Indonesia or commit acts that defame the nation and state of Indonesia; (c) is suspected of committing acts that are contrary to the security and public order, decency, religion, and customs of the
as mentioned in an article titled “Strategi Menghadapi Paham Radikalisme Terorisme – ISIS (Strategies in Facing Terrorism-ISIS Radicalism)” compiled by the National Counterterrorism Agency (BNPT), ISIS is categorized as part of a terrorist group.\(^{139}\)

In the explanation of the Immigration Law, terrorists are part of a transnational crime. The explanation of Article 13 paragraph (1) letter g: What is meant by “international crimes and organized transnational crimes” include crimes of terrorism, people smuggling, trafficking, money laundering, narcotics, and psychotropic substances.

In Indonesia, ISIS is also declared a terrorist organization. This is in accordance with the Central Jakarta District Court decision (PN Jakpus) No. 11204/Pen.Pid/2014/PN.JKT. PST dated November 20, 2014. The Central Jakarta District Court has determined that the Islamic State of Iraq and Syria (ISIS) is a terrorist organization.\(^{140}\)

e. **Anti-Terrorism Law\(^{141}\)**

The Islamic State of Iraq and Syria (ISIS) is an extremist militant group that has declared its group an Islamic State with a caliphate. ISIS then radically builds its network of forces in a number of countries\(^{142}\)

ISIS is a militia group that is trying to establish a country by using force to replace and overthrow legitimate governments in Iraq and Syria.\(^{143}\) Militia can be defined as:

1) the obligation to join the army for a certain period of time; people who become soldiers because they fulfill military service\(^{144}\)

2) a military force whose members are trained soldiers but who often have other jobs.\(^{145}\)

3) a body of citizens enrolled for military service, and called out periodically for drill but serving full time only in emergencies; a body of citizen soldiers as distinguished from professional soldiers; all able-bodied males considered by

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141 Law Number 5 of 2018 concerning Amendments to Law Number 15 Of 2003 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning The Eradication of Criminal Acts of Terrorism Becomes a Law


143 Irfan Amir, loc. cit.


law eligible for military service; a body of citizens organized in a paramilitary group and typically regarding themselves as defenders of individual rights against the presumed interference of the federal government.¹⁴⁶

4) a group of private citizens who train for military duty in order to be ready to defend their state or country in times of emergency. A militia is distinct from regular military forces, which are units of professional soldiers maintained both in war and peace by the federal government.¹⁴⁷

5) the military force of the nation, consisting of citizens called forth to execute the laws of the Union, suppress insurrection and repel invasion.¹⁴⁸

ISIS and where it stands today as the most formidable terrorist organization of the 21st century.¹⁴⁹ The United Nations declares ISIS a terrorist organization, based on UN Security Council Resolution No. 1267/1999 which was renewed with No. 1989/1922 and UN Security Council Resolution No. 2170 on 15 August 2014.¹⁵⁰ Based on UN Security Council Resolution 2178, Indonesian citizens who joined ISIS in Syria and Iraq can be categorized as foreign fighters or Foreign Terrorist Fighters (FTF):¹⁵¹ … nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training, including in connection with armed conflict.

On 24 September 2014, at a meeting held at the level of Heads of State or Government, the Security Council unanimously adopted its resolution 2178 (2014) to address the acute and growing threat posed by foreign terrorist fighters (FTFs). The resolution defines FTFs as “individuals who travel to a State other than their State of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict”, and further notes that FTFs increase the intensity, duration, and complexity of conflicts and may constitute a serious danger to their States of origin, transit, destination, as

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¹⁵⁰ Saputra, Ini Dasar Hukum Pemerintah Bisa Menolak WNI Eks ISIS Masuk Indonesia Lagi, loc. cit.
well as neighboring zones of armed conflict in which they are active.\textsuperscript{152}

The classification of ISIS as foreign soldiers has been accommodated in Article 12B paragraph (1) and paragraph (2) of Anti-Terrorism Law:

(1) Any person who intentionally organizes, provides, or participates in military training, paramilitary training, or other training, both domestically and abroad, with the intention of planning, preparing, or committing criminal acts of terrorism, and/or participating in war abroad for the Crime of Terrorism shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 15 (fifteen) years.

(2) Any person who intentionally recruits, accommodates, or sends people to participate in the training as referred to in paragraph (1) shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 15 (fifteen) years.

Explanation to Article 12B paragraph (1) of Anti-Terrorism Law: “What is meant by ‘other training’ is for example information technology training and bomb assembly training. What is meant by ”participating in war” is, among others, helping, either directly or indirectly, in war, for example as medical personnel, logistics, and couriers”.

In Anti-Terrorism Law, the government is an executive organ that is obliged to provide protection to the public against terror and violence perpetrated by radicalism groups.\textsuperscript{153}

Even the Anti-Terrorism Law has provided sanctions for the loss of the right to have a passport: Article 12B paragraph (4) and paragraph (5) of Anti-Terrorism Law:

(4) Every Indonesian citizen who is sentenced to terrorism as referred to in paragraphs (1) to (3) may be subject to additional penalties in the form of revocation of the right to have a passport and cross-border pass within a maximum period of 5 (five) years.

(5) The additional punishment as referred to in paragraph (4) is carried out after the convict has finished serving the main sentence.

Article 6 of Anti-Terrorism Law stated that essentially everyone who intentionally commits acts of terrorism is punished with imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years, life imprisonment, or the death penalty.

The former ISIS Indonesian citizens can be charged with Indonesian law as stated in Article 3: This regulation applies to anyone who commits or intends to commit a criminal act of terrorism in the territory of the Republic of Indonesia and/or other countries that are also have jurisdiction and state their intention to prosecute the perpetrator.


\textsuperscript{153} Sumawiharja, loc. cit.
C. Reformulation of Regulations on Indonesian Citizens Who Had Joined ISIS

The main debate regarding the legal status of Indonesian citizens is on the reasons for losing citizenship, therefore it is necessary to revise the Citizenship Law. The ISIS network in Indonesia is dangerous, but the strong, unequivocal government and community reaction in rejecting it is very good news. Management of Indonesian extremists is improving but the problems remain enormous. Indonesia does need a number of stronger laws to enforce its commitment to banning ISIS.

In principle, each state can determine the regulations that organize the acquisition and deprivation of nationality of a person; in other words, the nationality status of Foreign Terrorist Fighters (FTF) who joined with ISIS fully depends on the national law of each state. General principles such as non-refoulement, statelessness, and the right to enter one’s country are obligations that Indonesia must comply with, being one of the international legal subjects, in order to highly uphold human rights and peace in the world. Therefore, the government of Indonesia still possesses responsibility for bringing back (repatriating) Indonesian citizen who have joined ISIS.

Under the Citizenship Law, ISIS can be categorized as foreign soldiers. According to Hikmahanto Juwana, Indonesian citizens who support and involved in ISIS as foreign military service have lost their citizenship. The Citizenship Law regulates to revoke citizenship for Indonesian citizens who are involved in ISIS as foreign military service. Based on Article 23 (d) and (f) of Citizenship Law juncto Article 31 paragraph (1) letter c and e Government Regulation on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship, ISIS Ex-Indonesian citizens lose their Indonesian citizenship because they:

1. enter the foreign army service without prior permission from the President;
2. voluntarily take an oath or declare a pledge of loyalty to a foreign country or part of that foreign country.

\[154\] Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia
\[155\] Institute for Policy Analysis of Conflict (IPAC), *The Evolution Of ISIS In Indonesia, loc.cit.
\[156\] Institute for Policy Analysis of Conflict (IPAC), *Update On Indonesian Pro-ISIS Prisoners And Deradicalization Efforts*, (IPAC Report No. 34, 2016), p. 20
\[157\] Institute for Policy Analysis of Conflict (IPAC), *The Evolution Of ISIS In Indonesia, loc.cit
\[159\] Saputra, Prof Hikmahanto Beberkan Alasan WNI yang Ikut ISIS Hilang Kewarganegaraannya, *loc. cit*
\[161\] Article 23 letter d of Citizenship Law juncto Article 31 paragraph (1) letter c of Government Regulation on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship
\[162\] Article 23 letter f of Citizenship Law juncto Article 31 paragraph (1) letter e of Government Regulation on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship
Regarding Article 23 (d) of Citizenship Law, Hikmahanto Juwana conclude that the legislators are very careful in capturing the confusion about what is meant by the state. Therefore, the legislators do not use the term state in the formulation of Article 23 letter (d) of Citizenship Law. The letter d does not refer nor related to the term state, but what is used is the term foreign army service. Hikmahanto Juwana further revealed that foreign military service could include soldiers from a country recognized by Indonesia, or soldiers from a country not recognized by Indonesia, or soldiers from a rebel in a country. Therefore, those who are members of the ISIS army have lost their citizenship because they have joined the service of a foreign army.

ISIS members lost their Indonesian citizenship status because ISIS was a rebel from the legitimate government. One of ISIS’ goals is to overthrow the legitimate government in Syria and Iraq. Indonesian citizens who are members of ISIS are actually included in a rebel group in a country. Therefore, automatically Indonesian citizens who join ISIS army will lose their citizenship.

Based on Explanation of Article 23 (f) of Citizenship Law juncto Article 31 paragraph (1) of Government Regulation on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship. In Article 23 (f) of Citizenship Law, which is used in addition to the state, there is also the term ‘part of the foreign country’. What is meant by “part of a foreign country” is an area that becomes the jurisdiction of the foreign country concerned. ISIS is a rebel in Syria and they are using terrorist methods to replace the Syria and Iraq. The name ISIS contains the names of 2 countries, namely Syria and Iraq which have jurisdiction, where ISIS occupies the areas on the jurisdiction of the two countries, so ISIS meets the requirements of this clause.

The conditions for losing citizenship should also be reviewed from the requirements for obtaining Indonesian citizenship. Article 9 (d) of the Citizenship Law: An application for citizenship can be submitted by an applicant if it fulfills the following requirements: “can speak Indonesian and acknowledge the basic state of Pancasila and the 1945 Constitution of the Republic of Indonesia.” Article 3 paragraph (2) letter h of Government Regulation on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship: The application as referred to in paragraph (1)

163 Andi Saputra, Prof Hikmahanto Beberkan Alasan WNI yang Ikut ISIS Hilang Kewarganegaraannya, loc. cit
165 Arigi, loc. cit
166 Bernadheti Dian Saraswati, loc. cit.
167 Fikri Arigi and Endri Kurniawati, loc. cit.
168 Ibid.
169 Hikmahanto Juwana in Andi Saputra, Prof Hikmahanto Beberkan Alasan WNI yang Ikut ISIS Hilang Kewarganegaraannya, loc. cit.
must be accompanied by: h. affidavit of the applicant acknowledging the state foundation of Pancasila and the 1945 Constitution of the Republic of Indonesia. On the other hand, the article must be interpreted that Indonesian citizens who do not acknowledge the basic state of Pancasila and the Constitution are not eligible to have Indonesian citizenship. This provision needs to be added as a condition for losing Indonesian citizenship in the amendment to Citizenship Law and Government Regulation on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship.

Furthermore, Article 16 of the Citizenship Law: The oath or statement of pledge of allegiance as referred to in Article 14 paragraph (1) is: The person who takes the oath, pronounces it. The oath is as follows: By Allah/by God Almighty, I swear to renounce all my loyalty to foreign powers, acknowledge, submit and be loyal to the Unitary State of the Republic of Indonesia, Pancasila, and the 1945 Constitution of the Republic of Indonesia and will defend it seriously - earnestly and will carry out the obligations imposed by the state on me as an Indonesian citizen sincerely and sincerely. On the other hand, the article should be interpreted that ISIS Ex-Indonesian citizens who swear allegiance to ISIS are not worthy of Indonesian citizenship. This provision needs to be added as a condition for losing citizenship in the amendment to Citizenship Law and Government Regulation on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship.

To show loyalty, ISIS members are taken an oath (bai’at). In the Indonesian Dictionary, bai’at comes from Persian which means “inauguration”, while in Arabic it is interpreted as “obedience”. 170 According to the Indonesian Dictionary, bai’at/bai·at/ 1 official inauguration; appointment; confirmation; 2 oath of allegiance to the imam (leader). 171

ISIS baiat is defined as the pronouncement of an oath of allegiance or confirmation as a member or part of ISIS. 172 In Islam, bai’at is not just a ceremonial inauguration/appointment, but a sacred ritual. In it was surrender to God for what he said; there is loyalty, willingness to defend and sacrifice for the leader; and willingness to accept punishment for treason/betrayal. So, people who take allegiance on the basis of belief, their stance is difficult to

172 Dipna Videlia Putsanra, loc. cit.
Even if their symbols are destroyed, their weapons are confiscated, their organizations are banned, as long as their bai’at is still a guideline for their understanding, it cannot be eradicated. It is a law of nature that, no matter how minor a community adheres to an ideology (stream), that understanding will still exist, be contagious and passed down to the next generation. Even though they are a minority, adherents of an ideology believe that “the more people denounce its teachings and mission, the more it proves that these teachings are true, there is no prophet who was not insulted in the struggle to uphold the truth”.

ISIS Ex-Indonesian citizens have burned their passports and voluntarily taken an oath or pledge of allegiance to ISIS. Hikmahanto Juwana stated that since Indonesian citizens joined ISIS, which they consider a state, they had lost their Indonesian citizenship and the Indonesian government has no obligation to protect them. Irfan Amir also remarked that it meets the criteria of Article 23 Letter f of Citizenship Law which states that Indonesian citizens lose their citizenship because they voluntarily took an oath and/or promised to be loyal to a foreign country or part of that foreign country. Therefore, the authors conclude that ISIS Ex-Indonesian citizen no longer recognize themselves as Indonesian citizens.

Conclusion
Classification of Indonesian Citizens Who Had Joined ISIS based on hierarchy in the organization and concerned involvement in ISIS. By joining ISIS, Indonesian citizens violate: Indonesian Constitution, Law on Electronic Information and Transactions, Law on Handling Social Conflict, Law on Community Organizations, Immigration Law, and Anti-Terrorism Law. The urgency of changing the citizenship law that applies to Indonesian citizens who join ISIS.

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