

CHAPTER ONE

INTRODUCTION

A. Background of Research

Today, the Islamic State organization in Iraq and Syria (ISIS) is remarked as the most significant current terrorist threat to world security. According to Jacob Shapiro, the difficulties of armed groups commonly struggle with their human resources.¹ Apart from the expected problems, most people joined ISIS based on various grounds such as ideology, money, power, or on behalf of religion. Moreover, ISIS's propaganda plays an essential role in attracting foreign fighters and civilians. Heralding the drawn of ISIS was too oppressed the Muslim to live and practice their religion freely.²

Some estimates, more than 30,000 people from at least 86 countries who flee from their homes traveled to Syria and Iraq by the end of 2015 and likely to increase further in coming years as the groups acquired more territory.³ After its declaration as a worldwide caliphate territory in Iraq and Syria, including Mosul and Raqqa, in 2014, ISIS initially attacks outside Syria and Iraq. The attacks causing more than 1,3000 people died and more than 2,000 injured people.⁴ ISIS strategy governs the areas it controls in Iraq and Syria and extends to the Muslim territories by accepting pledges of allegiance.

¹ Jacob N. Shapiro, 2013, *The Terrorist Dilemma: Managing Violent Convert Organization*, Princeton: Princeton University Press, p. 30.

² Jakob Sheikh, 2016, "“I Just Said It. The State”: Examining the Motivations for Danish Foreign Fighters in Syria”, *Perspective on Terrorism*, Vol. 10, No. 6, p. 63.

³ Efraim Benmelech and Esteban F. Klor, 2020, “What Explains the Flow of Foreign Fighters to ISIS?”, *Terrorism and Political Violence*, Vol. 32, No. 7, p. 1.

⁴ Jasko, Katarzyna, Arie W. Kruglanski, Ahmad Saiful Rijal Bin Hassan, and Rohan Gunaratna, 2018, *ISIS: Its History, Ideology, and Psychology*, Switzerland: Springer, p. 3.

Primarily ISIS seeks to maintain the environment and administer the caliphate; expand the caliphate into other permissive areas which are not under its control.

The origins of ISIS inseparable relate to Abu Mus'ab al-Zarqawi, recognized as the organization's founding father. Hardly paragon of Islamic purity, Abu laid the ideology of ISIS, who dropped out from school in his teens after his father's death, engaged in petty theft, and a heavy-drinker.⁵ In 2004, he formed an unknown terrorist organization named al Qaeda in Iraq (AQI) and pledged its allegiance to Osama bin Laden. AQI launches a series of attacks primarily sectarian in nature.⁶ The organization was responsible for killing thousands of Shiah and also carried out a regular attack on the state machinery.

AQI also laid the foundation of the establishment of ISIS. The Islamic State of Iraq and Syria is generally referred to as the Islamic State, a militant organization originating from the Al Qaeda splinter group. Leads by Abu Bakar Al-Baghdadi, ISIS is the most ruthless militant group due to violence and the successful use of propaganda techniques on the internet.⁷ The group had deep-rooted public sympathy for Iraq's war-torn areas, where the Sunni population was abused due to the Americans' Shiah government. The support

⁵ *Ibid.*, p. 6.

⁶ Sectarianism is a form of prejudice, discrimination, or hatred arising from attaching relations of inferiority and superiority to differences between subdivisions within a group.

⁷ Jason Hannah, 2016, "Here's How ISIS was Really Founded", retrieved from: <https://edition.cnn.com/2016/08/12/middleeast/here-is-how-isis-began/index.html>, accessed on 9 October 2020 at 9 p.m.

worked in favor of the organization and allowed it to have unprecedented growth.

The criminal capacity of ISIS includes weaponry, logistics, organization, financial resources, allow ISIS to recruit mainly from other countries and even carry out repression, attacks, and violence until the massive fall in casualties. Despite the fast-tracked growth of ISIS and all the terror and pain it inflicted worldwide, it has now faced a steady fall. ISIS's conditions in Iraq and Syria have weakened, the number of fatalities continues to decline each year, dropping by more than 75%.⁸ 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, it 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.⁹

While not the first terrorist group to attract foreign nationals, ISIS is a terrorist group capable of recruiting many members with a broad reach. According to the United Nations Counter-Terrorism Committee Executive Directorate (UNCTED), it is estimated that at least 42,000 foreign nationals with 104 nationalities came to Syria or Iraq to join ISIS, including

⁸ Muhammad Z. Khan, 2019, "Global Terrorism Index (GTI)-a Tool for Norm Socialisation?", retrieved from: <https://www.economicsandpeace.org/wp-content/uploads/2016/11/Global-Terrorism-Index-2016.2.pdf>, accessed on 9 October 2020 at 10 p.m.

⁹ Anton Chan, 2015, "The Call of ISIS: The Medium and the Message Attracting Southeast Asians", *Counter Terrorist Trends and Analyses*, Vol. 7, No. 4, p. 5.

Indonesia.¹⁰ Since the war in Iraq and Syria draws to a close, refugee camps and military detention centers have begun to flood with Foreign Terrorist Fighters and their families in retreat from the fallen Islamic caliphate in Iraq and Syria.

Since early 2019, ISIS continues to rapidly lose territory in its strongholds due to intense counter-military action by the USA, Russia, and Kurdish forces, increasing fleeing foreign terrorist fighters, which is only expected to grow in coming days.¹¹ Having lost its territorial caliphate, ISIS has only managed less than 1% of the territory once it was acquired.¹² The complications surrounding detained Indonesian ISIS fighters from the ambiguity of their situation. In a world state, borders are still fundamentally essential to the operation and application of Law; the detainees are suspended in a limbo created by the interaction of two territorial entities that both fell short of statehood.

The defeat of ISIS has had an impact on countries in the world, especially Indonesia. The phenomenon of the return of Foreign Terrorist Fighters (FTF) can be a new issue. Indonesian President, Joko Widodo, widely known as Jokowi, eventually agreed not to repatriate sympathizers or

¹⁰ Thomas Renard, and S. Woelkner, 2019, "Returnees in the Maghreb: Comparing Policies on Returning Foreign Terrorist Fighters in Egypt, Morocco and Tunisia", *Egmont Paper 107*, p. 10.

¹¹ Kabir Taneja, 2018, "The fall of ISIS and its Implications for South Asia", *ORF Issue Brief*, No. 220, p. 2.

¹² Dworkin, Anthony, 2019, "Beyond Good and Evil: Why Europe Should Bring Isis Foreign Fighters Home", retrieved from: https://www.ecfr.eu/publications/summary/beyond_good_and_evil_why_europe_should_bring_isis_foreign_fighters_home, accessed on 11 October 2020 at 9 p.m.

jihadists of Iraq and Syria's Islamic State.¹³ The decision is taken because the fighters could theoretically endanger the public. The government has stripped the fighters of their citizenship, leaving the fighters stateless, according to Presidential Chief of staff Moeldoko. The decision clarifies Indonesians' legal concept who have joined arm forces of a country provided for in Article 23 of Law No. 12 the Year 2006 on Indonesian citizenship, which automatically loses their citizenship.¹⁴ Thus, Indonesian ISIS fighters born in Indonesia fulfill almost all the requirements in Article 23 of the nine subsections of the categories, which set out all the authorities' criteria to annul their Indonesian citizenship.

Nevertheless, the Article is open to legal controversy since ISIS is not an organization that fits the requirements of a state constitutionally recognized by the UN.¹⁵ A form should have the following qualifications: (a) a given territory; (b) a permanent population; and (c) a government which provided for in Article 1 of the 1933 Montevideo Convention on the Rights and Duties of states. Based on Resolution 2249 of the United Nations Security Council (UNSC), ISIS is not an entity but rather a terrorist organization. An examination is necessary for the state's revocation to ensure individuals' right to a nationality. The state's nationality decisions will produce legal effects

¹³ Feri Agus Setyawan, 2020, "Jokowi Tak Setuju Pulangkan 660 WNI Eks ISIS ke Indonesia", retrieved from: <https://www.cnnindonesia.com/nasional/20200205171541-20-471955/jokowi-tak-setuju-pulangkan-660-wni-eks-isis-ke-indonesia>, accessed on 30 October 2020 at 9 p.m.

¹⁴ Ricky M. Nugraha, 2020, "Indonesians Joining ISIS Automatically Lose Citizenship: Expert", retrieved from <https://en.tempo.co/read/1307019/indonesians-joining-isis-automatically-lose-citizenship-expert>, accessed on 13 October 2020 at 7 p.m.

¹⁵ Imanudin Razak, 2020, "To Welcome or Deny Former IS Fighters, Avoiding Old Mistakes", retrieved from: <https://www.thejakartapost.com/academia/2020/02/11/to-welcome-or-deny-former-is-fighters-avoiding-old-mistakes.html>, accessed on 13 October 2020 at 8 p.m.

within its internal order to comply with the international level.¹⁶ 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 a range of sources implemented to ensure certain legal safeguards are complied with. These safeguards derive from various references implemented at international, regional, and national levels.¹⁷

The safeguards include human rights obligations, such as the prohibition of arbitrary deprivation of nationality, the creation of statelessness, and respect for private life.¹⁸ The central point of the legal framework of protecting the right to nationality is Article 15 of the Universal Declaration of Human Rights (UDHR), stating that everyone has a right to nationality and prohibiting arbitrary deprivation of nationality. In this sense, the deprivation by Jokowi of Indonesian citizenship who affiliated with ISIS is, for two reasons, neither fair nor justifiable. First, citizenship deprivation does not fix terrorism; instead, it legitimizes ISIS as a state. ISIS fighters are, therefore, legally Indonesian citizens, and the government cannot escape its constitutional mandate to deal with foreign terrorist fighters. Second, there are

¹⁶ Colin Harvey, 2012, "The Right to Have Rights: Citizenship, Humanity, and International Law", *International Journal of Refugee Law*,c Vol. 24, No. 4, p. 887.

¹⁷ Sandra Mantu, 2018, "'Terrorist' Citizens and the Human Right to Nationality", *Journal of Contemporary European Studies*, Vol. 26, No. 1, p. 30.

¹⁸ Carol A. Batchelor, 2006, "Transforming International Legal Principles into National Law: The Right to A Nationality and the Avoidance of Statelessness", *Refugee Survey Quarterly*, Vol. 25, No. 3, p. 8.

no legal requirements for the government's power to revoke citizenship.¹⁹ Indeed, it is not illegal to strip people of citizenship, but Citizenship Law No. 12 of 2006 does not recognize dual citizenship or statelessness.

In such a scheme, the war against terrorism is justifiable. Nonetheless, extremism in its activity and room can only be stopped, addressed, and narrowed by robust state policies that foster democratic political life, social security, and upholding justice. Therefore, in formulating a counter-terrorism policy, the State must fulfill its responsibilities to protect democracy and justice. In the case of ISIS fighters, the program is possibly in violation of the International Covenant on Civil and Political Rights Ratification, namely Law No. 12 of 2005.²⁰ Indeed, Article 12 of the Law allows for people to join and leave their own country.²¹ Every person shall not be unlawfully deprived of the right to enter their own country, legally governed in the Article.

The 1948 Universal Declaration of Human Rights states that all people have a right to nationality to show that a stateless person needs security and protection. Thereby acknowledge the legal and practical importance of nationality for the enjoyment of human rights.²² Nationality was known to be a legal relationship between an individual and a state. Nationality offers a

¹⁹ Shai Lavi, 2010, "Punishment and the Revocation of Citizenship in the United Kingdom, United States, and Israel", *New Criminal Law Review: An International and Interdisciplinary Journal*, Vol. 13, No. 2, p. 412.

²⁰ Article 12 Law No. 12 Year 2005 About the Ratification of the International Covenant on Civil and Political Rights.

²¹ Zachary D. Kaufman, 2018, "The Prospects, Problems, and Proliferation of Recent UN Investigations of International Law Violations", *Journal of International Criminal Justice*, Vol. 16, No. 1, p. 94.

²² Helene T. Lambert, 2017, "Temporary Refugee from War: Customary International Law and the Syrian Conflict", *International and Comparative Law Quarterly*, Vol. 66, No. 3, p. 725.

sense of identity, but, above all, it enables people to exert a variety of rights.²³

Although the right to nationality is acknowledged internationally, there are still new cases of statelessness. At least 10 million people are rendered stateless all over the world today.²⁴

Voluntarily loss of nationality by renunciation is possible in all states. the question arises whether the person is entitled to give up their nationality or dependent on some authority's discretion renunciation. The renunciation becomes effective *ex lege* if all conditions, including the declaration of renunciation, are met. The other option, the loss, does not become effective *ex lege*. Still, the authorities always have to grant the release from nationality if the conditions are met and justify negative decisions.

The only group for whom Indonesian have arranged to returns to is the children of ISIS fighters. The Indonesian leaders and officials acknowledge that even though the children may pose some threat, they should be victims. The children under the age of 10 years old potentially have to be educated and guided. Indonesia takes responsibility to offer help for children who either pose the nationality by their parents or simply were born there. Yet, the children's repatriation has proceeded to have a strict criterion in selecting and identifying the children.²⁵

²³ Gregory Rawlings, 2012, "Statelessness, Human Rights and Decolonisation: Citizenship in Vanuatu, 1906-80", *The Journal of Pacific History*, Vol. 47, No. 1, p. 45.

²⁴ Rachel Goodman, 2018, "Statelessness: What Is It and How Does It Occur?", retrieved from: <https://www.centeronhumanrightseducation.org/statelessness-what-is-it-and-how-does-it-occur/>, accessed on 17 October 2020 at 10 a.m.

²⁵ Ihsanuddin, 2020, "Istana Minta Rakyat Terima Kepulangan ISIS", retrieved from: <https://nasional.kompas.com/read/2020/02/29/08550561/istana-minta-masyarakat-terima-kepulangan-anak-anak-wni-eks-isis?page=all>, accessed on 14 October 2020 at 1 p.m.

Statelessness makes a person live in an extremely precarious and vulnerable situation. Although humans have rights under International Human Rights Law, individuals without citizenship lack legal recognition to exercise any requests and have no diplomatic protection from any government. Statelessness affects a person's ability to enjoy a fundamental privilege such as marriage, education, health, and freedom of movement. Consequently, poverty becomes an integral part of stateless life. A stateless person is particularly vulnerable to expulsion from their country of habitual residence because of the lack of legal status and at the risk of prolonged detention. Vulnerable, particularly in the context of a pre-deportation arrest, because there is often no state that will admit stateless persons.

According to International Law, the research is different from other research discussed previously, even though the study also focuses on nationality rights. The latest previous research, such as the research of Nafees Ahmad in 2020. However, the research explains the right to nationality for foreign terrorist fighters after the fall of ISIS in 2019. Furthermore, the research shows the condition of ISIS, which lives in dire situations and obscurity, and the revocation of nationality made by the states for counter-terrorism measures.²⁶ In the other parts, the research puts the establishment of Special Forces of Indonesia in 2020 to assess ISIS to enact proportionate measures and decisions for the Indonesian Government. Besides focusing on nationality rights, the research also explains the reason and the emergence of

²⁶ Rohan Gunaratna, 2017, "Strategic Counter-Terrorism: A Game Changer in Fighting Terrorism", *Counter Terrorist Trends and Analyses*, Vol. 9, No. 6, p. 1.

repatriation for the foreign terrorist fighters to come back to their home country for a fair justice system. Besides, the research describes the state's counter-terrorism measures should comply with the International Human Rights Law.

B. Problem Formulation

How is the protection of the rights to nationality for Indonesian Ex ISIS combatant's repatriation under International Law?

C. Objectives of Research

The Objective of the Research is to know the nationality of the Indonesian Ex-ISIS combatants and how nationality protects under International Law.

D. Benefits of Research

1. Theoretical Benefits

The research describes how is the protection of nationality for Indonesian Ex-ISIS combatants. Furthermore, the research also grants an in-depth theoretical understanding of rights to nationality and its protection under International Law.

2. Practical Benefits

The research describes how far the protection on nationality for Indonesian Ex-ISIS combatants and recommends settling the problems regarding Indonesian Ex-ISIS's deprivation under International Law.