

Participation in Good Governance Principles Related to Citizenship Protection Ex-Isis Indonesian Citizen

Aulia Rahman AK¹, Heru Susetyo², Ceruang Alang³

¹Faculty of Law, Indonesia University, Indonesia. [E-mail: rahmanakaulia@gmail.com](mailto:rahmanakaulia@gmail.com)

¹Faculty of Law, Indonesia University, Indonesia. [E-mail: hsusetyo@ui.ac.id](mailto:hsusetyo@ui.ac.id)

²School of information Science, College of Computing Informatics and Media, University Teknologi MARA, Malaysia [E-mail: alung704@gmail.com](mailto:alung704@gmail.com)

Abstract: Citizenship is an obligation to recognize, protect, and fulfill human rights for a state governed by the Rule of Law. The government has a responsibility outlined in the principles or principles or general principles of good governance (*Algemene beginselen van behoorlijk bestuur*) to serve the public (public service) of the people as Indonesian citizens. The government has obligations set out in the Law—Citizenship Law to consider regarding not repatriating and revoking the Citizenship of ex-ISIS Indonesian citizens. Government policy, in this case, is fundamental because every policy that is decided must be under existing regulations and the principles of Good Governance so that the government can protect ex-ISIS Indonesian citizens in fulfilling their citizenship rights. The problem in writing this Law is how the government's participation (in this case, the application of the principles of Good Governance) in protecting Indonesian citizens of ex-ISIS and what factors cause ex-ISIS to lose their Citizenship under applicable regulations in Indonesia. This research employs a normative research approach with a literature study. The analysis technique uses descriptive qualitative analysis with primary legal materials of statutory rules, secondary legal materials of scientific books, journals, articles, and tertiary legal materials. The conclusion is that the protection of ex-ISIS under Law Number 12 of 2006 concerning Citizenship that is the state is responsible for human rights and government participation in Law Number 30 of 2014 concerning Government Administration in Article 5 that the administration on government is based on the principle of protecting human rights.

Keywords: Citizenship, Human Rights, Good Governance

1. Introduction

According to Article 1 paragraph 3 of the Constitution, Article 27 paragraph 1 of the Constitution, and Article 28D paragraph 1 of the Constitution, Indonesia is a "rechstaat", a state built on law not power. 1945. ¹ Jimly Asshiddiqie argues that the content of the formulation proves that the concept of the rule of law has been realized in Indonesia. This includes (i) recognition of the supremacy of law and the constitution; (ii) adherence to the principle of refinement and completion of power; (iii) guarantees of human rights; and (iv) the existence of a free and impartial judiciary that guarantees the existence of citizens before the law and guarantees justice for each individual.

In the background that will be described below, it refers to the polemics that emphasize the rule of law and the principle of good governance in the case of ex-terrorists whose rights are guaranteed by the 1945 Constitution and their protection in various legal instruments in Indonesia.

Ad-Daulah al-Islamiyah fi al-Iraq wa ash-Syam literally translates to "Islamic State of Iraq and Syria," or "ISIS" in English. But the Associated Press and the United States refer to them as the Islamic State of Iraq and the Levant, which is a different name (ISIL). Because of the radical actions it takes, the Islamic State of Iraq and Syria (ISIS) is a source of alarm to the international community. ISIS' stated goal is to create an Islamic state in Iraq and Syria.

¹ Zaid Afif, *Konsep Negara Hukum Rule of Law dalam Sistem Ketatanegaraan Indonesia*, Jurnal Pionir LPPM Universitas Asahan, Vol. 2 No. 5, Juli-Desember 2018, hal. 56.

One of the strategies used is the spread of propaganda that encourages Muslims around the world to join the jihad in order to build an Islamic state. According to ISIS thinking, fighting for them is a "jihad" that will ultimately pay off in the afterlife with a place in paradise. For IS, re-establishing the Islamic Caliphate, established at the height of Islamic power hundreds of years ago, is a necessity that must be resolved in the present.²

After forming an alliance with al-Qaida, JTWJ changed its name to al-Qaida in Iraq (AQI). Majlis Shura Al-Mujahedin was established in 2006 when AQI, led by Zarqawi, urged other groups to work with al-Qaida (MSM). After Zarqawi's assassination on June 7, 2006, at the hands of the US-led coalition, Abu Hamza al-Muhajir became in control of al-Qaida in the Islamic World (AQI). Thereafter, in October 2006, Muhajir and Abu Umar al-Quraish al-Husaini al-Baghdadi announced the Islamic State of Iraq (ISI) as their political platform. Abu Umar took the lead, and Muhajir served as Minister of War.³

However, after Abu Umar and Muhajir were killed in 2010, Abu Bakr al-Baghdadi took over the leadership of ISI. Thereafter, Abu Bakr al-Baghdadi was tasked with establishing the ISIS caliphate in the middle of war-torn Syria. Originally known as Jabhat al-Nusra, the group united with ISI and later changed its name to ISIS.⁴

The Islamic State of Iraq and Syria (ISIS) was completely defeated before the end of 2019. Total defeat means the death of Al-Baghdadi as ISIS leader.⁵ President Joko Widodo's administration made a decision not to repatriate hundreds of Indonesian citizens who fled ISIS to Indonesia. The decision was made during a cabinet meeting at the Merdeka Palace complex on February 11, 2020, which was preceded by President Joko Widodo, amid a heated debate over the fate of Indonesians who once fought for ISIS and later begged to be repatriated.⁶

A total of 698 Indonesian citizens who were previously members of ISIS have not been repatriated and are now considered stateless.⁷ For a state of law, citizenship is an obligation in terms of recognition, protection and fulfillment of human rights. According to Nurul Qamar, "if human rights are rights that every human being gets as a consequence of his divine destiny as a human being, then it is different with basic rights, as a right that every human being gets as a consequence of being a citizen of a country".⁸

² Intervensi militer Amerika Serikat yang menyebabkan jatuhnya rezim Saddam Hussein secara langsung bertanggung jawab atas kebangkitan ISIS. Dengan kejatuhan Saddam Hussein datang kehancuran seluruh kerangka politik, militer dan ekonomi Irak. Selain itu, orang mungkin berpendapat bahwa Al-Qaida berfungsi sebagai "rahim" dari mana ISIS muncul. Selama masa jabatan Abu Mus'ab al-Zarqawi sebagai pemimpin Jamaat Al-Tauhid wa-l-Jihad "(JTWJ)" pada tahun 1999, asal-usul ISIS dapat dilacak. Sejak awal, JTWJ telah memimpin gerakan di Afghanistan, Kashmir, Bosnia dan Chech, dan kemudian kembali ke Irak untuk berperang melawan invasi Amerika pada tahun 2003 (selengkapnya, lihat Acun, C.) (2014). ISIS, atau Negara Islam di Irak dan Suriah, adalah al Qaeda (ISIS) baru. Research Associate di Urusan Internasional, 10, h.2

³Can Acun, (2014), Neo al-Qaeda: The Islamic State of Iraq and the Sham (ISIS), SETA Foreign Policy Research Assistant, No, 10, hlm.2

⁴ *Ibid.*

⁵ Reuters, (2019). Pemimpin ISIS Abu Bakar Al-Baghdadi tewas dalam operasi militer AS, 'merintih, menangis' sebelum ledakkan bom rompi, kata Presiden Trump. Diakses pada tanggal 7 Februari 2023, <https://www.bbc.com/indonesia/dunia-5019821>.

⁶ lihat Ismaeli, A. (2020). WNI eks ISIS di Suriah tidak akan dipulangkan, Mahfud MD: 'Kalau mereka pulang, bisa menjadi virus baru', diakses pada tanggal 8 Februari 2023, <https://www.bbc.com/indonesia/indonesia-51460647>.

⁷ Pemerintah tidak bersedia untuk memulangkan kembali *Foreign Terrorist Fighters* (FTF) bahkan status mereka tidak lagi dianggap sebagai WNI lagi. Dikarenakan seandainya pemulangan tersebut benar terjadi, keberadaan mereka tidak hanya menjadi ancaman masyarakat tetapi juga bagi ideologi dan keamanan negara. Lihat Psp, (2020). Istana: 698 WNI Eks Isis Stateless, diakses pada tanggal 13 Februari 2023, <https://www.cnnindonesia.com/nasional/20200213123946-20-474239/istana-689-wni-eks-isis-stateless>.

⁸ Qamar, N. (2013). *Hak Asasi Manusia dalam Negara Hukum Demokrasi*. Jakarta: Sinar Grafika, h. 17.

Citizenship is essential as it allows people to participate in democratic processes that they would otherwise be denied if they did not hold citizenship. In addition to the legal significance of citizenship under international law, only citizens are guaranteed unfettered access to enter and settle in a country. Therefore, a stateless person may never get the legal right to live anywhere, or one may be wiped out altogether. Challenges also arise in other areas, such as mobility, education and healthcare for those who are stateless. The state hinders people's ability to exercise their rights and statelessness can have a chilling effect on social cohesion and stability, with potentially disastrous results such as upheaval and conflict in these situations.

With regard to the concept of the rule of law, Indonesia is committed to the Pancasila legal system. The basis of the Pancasila rule of law is based on the ideals of gotong royong and unity among family members. These two principles are inseparable. Although the public interest takes precedence over others, people are still given the respect and value they deserve as unique individuals.⁹ "For Indonesian policymakers to achieve the country's stated goals, they must adhere to the four *rechtstide* principles (ideals) of the Indonesian state First, ideologically and territorially safeguard the integrity of the "nation and state;" Second, simultaneously and inseparably realize "popular sovereignty" (democracy) and the "state" of law (nomocracy); third, ensure everyone in Indonesia has access to "public welfare and justice"; fourth, develop "humanitarian tolerance" and "civilized" coexistence.¹⁰

Legal norms or laws and regulations, as well as law enforcement officers and law implementers who are professional, have integrity and discipline, are needed to realize the principle of the rule of law, which in turn requires legal facilities and infrastructure, as well as legal behavior. society. To protect Ex-ISIS citizens from Indonesia, this must be done in accordance with the principles of good governance as well as data from the ministry of law and human rights and the human rights commission. Therefore, every country with law, including Indonesia, needs an independent law enforcement agency to uphold the rule of law and truth.¹¹

In the legal principles of good governance in Law No. 30 of 2014 concerning Government Administration which is the basis for implementing policies based on justice and expediency. Policies for public services should be prioritized because they concern the direction of a more advanced country. To realize independent judicial power, to administer justice in order to uphold law and justice, the Indonesian judicial sector is currently undergoing strengthening reforms listed in accordance with article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.¹² The essence in the administration of justice lies in the judge's decision,¹³ therefore the substance is able to explain the dignity, dignity, honor of judges for the sake of upholding law and justice in the corridor of democratization of the rule of law.¹⁴

⁹ Qamar, N. (2013). *Op. Cit.* h. 48.

¹⁰ Sulaiman, K. F. (2017). *Politik Hukum Indonesia*. Yogyakarta: Thafa Media, h. 75.

¹¹ Kebijakan yang dilaksanakan oleh negara dikenal dengan istilah politik hukum. Agar pemerintah dapat secara hukum melindungi warga negara Indonesia eks-ISIS dalam menjalankan hak status kewarganegaraannya, setiap keputusan kebijakan harus sejalan dengan norma politik yang sudah ada sebelumnya. Karena status Indonesia sebagai negara hukum, pemerintah dilarang melanggar tanggung jawab konstitusional untuk membela dan menegakkan hak asasi manusia penduduknya.

¹² Amandemen UU 14 Tahun 1970, UU 35 Tahun 1999, UU 4 Tahun 2004, dan UU Tentang Pokok-Pokok Peradilan Yudisial Nomor 48 yang berlaku saat ini semuanya dilakukan untuk mereformasi sektor peradilan secara bertahap. Sekarang tahun 2009.

¹³ Putusan hakim sebagai mahkota keadilan

¹⁴ Lihat Pasal 1 ayat (3) UUD NRI 1945, "Negara Indonesia adalah negara hukum".

Based on the issues as described above, the author is interested in conducting further research on Participation in the Principles of Good Governance Regarding the Protection of Citizenship of Ex-Isis Indonesian Citizens.

2. Method

The type of research in this study is normative legal research. Normative legal research is a scientific investigation of legal issues through secondary sources, such as books and articles.¹⁵ In addition, we want to assess how the emphasis on the principles of participation and AUPB affects good governance in terms of the need for legal certainty,¹⁶ justice, and expediency.¹⁷ This research systematically explains the participation of citizens and the Government of Indonesia in providing Legal Protection against the Citizenship Status of Ex-ISIS (Islamic State of Iraq and Syria) Indonesian Citizens where the Ex-ISIS are not repatriated back to their homeland and their citizenship as Indonesian Citizens is revoked by the government.

3. Results and Discussion

3.1 Legal Protection for Ex-ISIS Indonesian Citizens

In developing strategies to avoid and eradicate terrorism, Indonesia, as a society based on a democratic rule of law, must balance the need to defend human rights with the need to act prudently. In a rule of law system such as Indonesia's, every policy decision taken by the government must be in accordance with existing rules. While the general idea of implementation is the same across countries, the specifics vary greatly. It is important to note that the world is not uniform; certain countries are steadfast in their adherence to these values, while others are completely antithetical. Therefore, it is imperative for the government and its agencies to work together in issuing policies, making it easier to carry out activities as a government and reducing the central role of the government in solving problems. This means that the government does not act in a purely administrative capacity, but rather receives assistance from various sources in carrying out its mandate.

Moreover, one of the elements of the Rule of Law according to AV Dicey¹⁸ is the Supremacy of Law, by enforcing the law and giving it the highest priority, the rule of law can ensure the security of all citizens without the need for outside intervention. If someone does something illegal the first time, he or she can face legal consequences.

In essence, everyone is entitled to legal protection in relation to the law must get protection from the law. According to Setiono, legal protection is "an action or effort to protect the public from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as human beings."¹⁹

¹⁵ Soerjono Soekanto dalam Susanti dan Effendi, Pendidikan Hukum, Penerbit Sinar Grafika, Jakarta, 2019, hlm. 19

¹⁶ Radburch dalam tanya, L. Yoan, et.al teori hukum strategi tertib manusia lintas ruang dan generasi, genta publishing, Yogyakarta, 2010, hal. 129-130, menawarkan pandangan bahwa hukum harus menjunjung tinggi nilai-nilai seperti keadilan, kepraktisan, dan kepastian hukum; bahwa hukum harus mewujudkan nilai keadilan yang bersumber dari kehidupan manusia

¹⁷ Jhon Rawls menekankan bahwa kemanfaatan yang merupakan esensi dari keadilan tidak boleh tidak menghargai hak individu. Lihat Lebacqz, karen, *the six theory of Justice*, Aughsburng Publishing House, 1986, Indiana Polis, diterjemahan Santoso, yudi. Teori-teori Keadilan, nusa media, bandung , 2013, hal. 13-47

¹⁸ Lihat dalam Zaid Afif hal. 56, Op.cit.

¹⁹ Setiono, (2004). *Rule of Law (Supremasi Hukum)*. Surakarta: Magister Ilmu Hukum Program Pascaserjana Universitas Sebelas Maret, h. 3.

It is common knowledge that not all Indonesians have the same goal or motivation to travel to Syria. For various reasons, Indonesian citizens choose to become Foreign Terrorist Fighters (FTF) for ISIS. Researcher Solahudin from the Center for the Study of Terrorism and Social Conflict, Faculty of Psychology, University of Indonesia, cites at least five main reasons as driving people to fight:²⁰

- 1) As a first justification, we must defend the Sunni community persecuted by Shia extremists. Many Syrians believe that Shia-backed President Bashar al-Assad discriminates against the minority Sunni community."
- 2) They "think the region around Syria will be the scene of the End Times War, or al-malhamah al-kubra."
- 3) "Many are tempted to see for themselves that ISIS is the group most devoted to upholding Islamic law."?
- 4) The propaganda that defending ISIS will get a five-star life imbalance" has been around since the group's inception. People from Indonesia who went to Syria with that promise found out that it was a hoax and went home. All the high salary projections they made never came true."
- 5) The reason they long to be under the *Khilafah*

Given these factors, some Indonesians may be sympathetic to IS or may have fallen victim to its propaganda despite not actively participating as fighters in the conflict in Iraq and Syria. To quote Brigadier General (pol) Hamidin: "not all people returning from Iraq and Syria can be classified as terrorists because they went to Syria or Iraq with various purposes or various motivations." ²¹

Investigations show that before concluding that a person returning from Iraq or Syria is a member of a foreign terrorist organization, it is necessary to determine whether or not the person is an Indonesian citizen who committed a terrorism crime. However, due to the complexity of evidence, authorities have so far failed to arrest ISIS sympathizers. The same applies to Indonesian citizens who have joined the ranks of ISIS. ISIS members need to see what the future facts in this case look like. There is still an open investigation into those who have not been repatriated. As the applicable laws in Indonesia have not yet addressed this issue, we will have to wait until later to determine which articles can be used to punish them. Since no one knows whether the men actually fought for ISIS abroad, demonstrating their involvement is very difficult at the moment.

The UDHR ensures that everyone, regardless of nationality, is treated fairly and with equal rights and responsibilities wherever they are; exceptions to this rule are rare. Article 9 states, "No one shall be subjected to arbitrary arrest, imprisonment or exile," and Article 6 states, "Everyone has the right to be recognized as a human being in the eyes of the law wherever he may be." For Indonesian citizens living abroad to apply for international protection under the UDHR. A person's legal status as a stateless person can be affected by the Indonesian government's refusal to repatriate Indonesian citizens. Because the principle of citizenship is not recognized by Law No. 12/2006 on Citizenship. Therefore, it is important to understand that the government's protection and concern for Indonesian citizens involved in terrorist organizations is realized by repatriating Indonesian citizens from abroad who have joined ISIS.

²⁰ Samu, K. A. (2018). Status Hukum Warga Negara Indonesia Yang Terlibat Dalam Organisasi Teroris Internasional. *Lex Et Societatis*, 6(10), h. 80

²¹ Affan, H. (2021). WNI yang bergabung ISIS, Indonesia "Tidak bisa tolak deportasi". Diakses pada tanggal 21 Januari 2023, <https://www.bbc.com/indonesia/indonesia-40430349>

In Law No. 37 of 1999 on foreign relations²², Article 21²³ states: "in the event that Indonesian citizens are threatened with actual danger, the Representative of the Republic of Indonesia is obliged to provide protection, assist, and gather them to a safe area, and endeavor to repatriate them to Indonesia at the expense of the state". Natural disasters, invasions, civil wars, acts of terrorism, and other similar catastrophes are examples of "actual risks" that should be described in the context of their potential impact on public safety. In addition, RI Representatives concerned about the situation coordinate such efforts and ensure that they are carried out as effectively as possible, provided that the necessary conditions are met. These include, for example, the safety and ability to reach the area where the actual danger is located, the availability of necessary means including funds, the opening up of safe areas, and so on.

Thus, one of the forms of protection by the state against Indonesian citizens through the Ministry of "Foreign Affairs" in this case the "Representative of the Republic of Indonesia" is obliged to facilitate the return of Indonesian citizens from conflict areas related to terrorism." As "part of the implementation of consular functions", the provision of protection by the Representative of the Republic of Indonesia "abroad" is regulated by norms that have been established in domestic and international law.

Then article 19 letter b of Law No.37 of 1999 concerning Foreign Relations²⁴ states that "Representatives of the Republic of Indonesia are obliged to provide protection, protection and legal assistance to Indonesian national citizens and legal entities abroad, in accordance with statutory regulations and international laws and customs."

According to Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, every person is entitled to recognition, guarantees, protection and certainty of a just law and equal treatment before the law. This means that the legal basis for protecting citizenship status has a constitutional basis, namely article 28D paragraph (1) of the 1945 Constitution. Then in article 28D paragraph (4) reads, everyone has the right to their citizenship status. Thus, in this day and age there should be no more people who do not have citizenship status from a country.

Article 15 paragraph (1) and paragraph (2) of the Universal Declaration of Human Rights also states that the right to nationality is universal, and no one may be deprived or denied nationality just because they want to change it. This means that in this case the government cannot revoke or arbitrarily decide on the citizenship status of Indonesian Ex-ISIS citizens. they have the right to their citizenship again if the government unilaterally decides to revoke their citizenship status. So that revocation of citizenship is not a wise choice to be made by the government.²⁵

It is common knowledge that a person's rights and obligations as a citizen of a nation do not change wherever he or she is, as long as the government still recognizes the individual as a citizen. Whether he commits an act of terrorism or not, he is still entitled to legal protection in Indonesia because he is a citizen of the country. The principle of maximum protection, which states that the government is obliged and provides full protection to every citizen, is contained in Law Number 12/2006 on Citizenship and is one of the legal bases for the protection of Indonesian citizens at a state level. Indonesian state in internal and external circumstances.

Thus, as an ex-ISIS who is still an Indonesian citizen while there is no legal regulation in revoking his citizenship, he should still get legal protection based on the 1945 Constitution of

²² LN No 156 Tahun 1999, TLN No. 3882

²³ Ibid.

²⁴ Ibid.

²⁵ mereka mempunyai hak atas kewarganegaraannya kembali jika andai saja pemerintah dengan cara sepihak memutuskan untuk mencabut status kewarganegaraannya tersebut. Sehingga pencabutan kewarganegaraan bukanlah sebuah pilihan yang bijak untuk dilakukan oleh pemerintah.

the Republic of Indonesia article 28I number 4, namely "Protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government".²⁶

As Heru Sasetyo said in his article that Indonesian citizens who joined ISIS should be repatriated²⁷ on humanitarian grounds²⁸ and their legal status is not refugee.²⁹ He continued, while these Indonesians went to Syria of their own free will and they also did not leave Indonesia nor were they expelled from Indonesia for SARA reasons but misused visit visas.³⁰

Citizenship can be revoked for various reasons. The sole act of entering a foreign military without the President's approval is grounds for automatic revocation of citizenship under Article 23(d) of Law No. 12/2006. This means that an Indonesian citizen who intentionally commits foreign military service is considered a violation of the law and will automatically lose their citizenship.

Then, according to Article 1 Number 34 of 2004 concerning the Indonesian National Army, the state law of the Republic of Indonesia defines *tantara*³¹ as:

- a. As defined by international law, "military" refers to the armed forces of a state.
- b. The term "soldier" is used to refer to armed and trained citizens who voluntarily serve their country in times of war or other armed conflict.

The question at hand is whether, in this context, "foreign military service" refers exclusively to service performed by foreign "states" or also includes foreign soldiers of non-state actors. This phrase can be taken in several different ways, so it needs to be defined. According to Article 1 of the 1933 Montevideo on the rights and duties of states, there are several requirements for an entity to be classified as a state. These are as follows:³²

- a. Permanent residents (citizens);"
- b. Has a certain territory;"
- c. The existence of government;"
- d. And the ability to conduct relations with "other" countries."

Based on UN Security Council Resolutions 2249 and 2368, the *Islamic State of Iraq and Syria* (ISIS) is a terrorist group that threatens international peace and stability.³³

²⁶ Rusdi, R. M. (2020). Status Kewarganegaraan WNI Yang Bergabung Dengan ISIS Berdasarkan Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan. *Dinamika: Jurnal Ilmiah Ilmu Hukum*, 26(17), h.1962

²⁷ Heru Susetyo, (2019), Demi Alasan Kemanusiaan, Indonesia sebaiknya terima kembali WNI mantan Anggota ISIS, Diakses pada 7 Februari 2023, <https://theconversation.com/demi-alasan-kemanusiaan-indonesia-sebaiknya-terima-kembali-wni-mantan-anggota-isis-115203>,

²⁸ Ibid, we cannot allow those ISIS members who are Indonesian citizens to stay there for two reasons. First, we will allow them to be tried by the legal system in Iraq and Syria, while law enforcement in Syria is not working as well as law enforcement in Iraq. Secondly, the conditions of the shelters are so bad that the shelters that are supposed to hold 20,000 people must hold 60,000 people, especially considering that 90% of ISIS fighters are women and children.

²⁹ Ibid, according to the 1951 Convention on the Status of Refugees, refugees are defined as those who have been expelled from their country and forced to migrate to another country because of fear or danger of becoming victims of violence or persecution on account of race, religion, nationality, membership of a particular social group or political party.

³⁰ Ibid.

³¹ LN No. 127 Year 2004, TLN No. 4439

³² Article 1 Montevideo 1933

³³ The government's view that ex-ISIS members lose their citizenship by joining foreign armies indirectly recognizes ISIS as a "state" entity. Based on the theory of constitutive recognition, a state is created

In this example, members of the community not only joined IS, but also had their passports banned, perhaps to emphasize their stance that they had no intention of accepting Indonesia as a legitimate country of citizenship.³⁴ The government assumes that burning the passports confirms that the ex-ISIS members do not accept Indonesia as their country. In fact, burning the passport does not necessarily eliminate their citizenship status. In fact, Article 23 of Law No. 12/2006 part (f)³⁵ explains that a person can lose his citizenship if he voluntarily takes an oath and pledge of allegiance to a foreign country. So, in this case it can cause ex-ISIS to lose its citizenship. According to researchers as explained earlier, ISIS is not a country where ISIS is only an international terrorism organization.

3.2. Participation as a Principle of Good Governance in the Protection of Ex-ISIS Citizenship

Participation is one of the principles of *good governance*,³⁶ the involvement of the public³⁷ including citizens who are stakeholders in the agenda-setting process, the process of formulating, implementing, and evaluating public policies, as well as the implementation of these policies. Participation in this process can provide valuable feedback before policies are made.

In public participation, there are two broad criteria, the first is the group that sees the organizers of participation as coming from the state or government, either executive or legislative, while the second group is the group that sees participation from the area affected by participation, namely the community.³⁸ Both produce values that affect decentralization policy, namely the realization of *political equality*, where public participation in various political activities at the national level is open.

Moreover, the establishment of a fair and indiscriminate rule of law that includes human rights and those who can have a voice in policy-making do so either directly or through legitimate representative institutions that speak for their interests and are based on the protection of freedom of assembly and expression.³⁹

Therefore, the government must involve stakeholders such as Komnas HAM because the government's decision has implications for human rights violations, especially regarding citizenship rights. and the rules governing the loss of citizenship are not used by the government in revoking and not repatriating the Ex-ISIS. The participation of Komnas HAM in government participation so that the rights of these ex-ISIS citizens are fulfilled. Of course, in the process of governance, good governance requires an assessment from the community, namely the community who assesses the quality of services they receive from the government.⁴⁰ The implementation of the principles of good governance in the making of the ex-ISIS policy is not as expected because the basis for determining the policy *does not exist*, and also participation involving residents or families who are affected is not carried out by the government.

when there is the ability to establish relations with other countries or get recognition from other countries, a requirement that ISIS has never had.

³⁴ Setyawan, F. A. (2020). Istana: Eks ISIS bakar paspor sudah bukan WNI, Diakses pada tanggal 7 Februari 2023, <https://www.cnnindonesia.com/nasional/20200207170303-20-472672/istana-eks-isis-bakar-paspor-sudah-bukan-wni>

³⁵ Op.cit, Reads:

³⁶ www.unescap.org, accessed on September 25, 2022.

³⁷ The community referred to in this research is the family of ex-ISIS and ex-ISIS who are affected by the government's political decision in terms of not repatriating and revoking the citizenship of the ex-ISIS.

³⁸ Hikmawati, *Partisipasi Publik dalam Perumusan Kebijakan Publik*, Jurnal Politik Profetik, 2013.

³⁹ World Bank, *Governance and Development*, Washington DC, World Bank, 1992.

⁴⁰ Suhardi, *Persepsi Masyarakat Terhadap Kualitas Pelayanan Publik pada Kantor Dinas Kependudukan Kota Batam*, Jurnal Benefita, 3 (1), 53, 2018.

In this study, the government's move not to repatriate and revoke citizenship is not the right step.⁴¹ Revocation of citizenship is a form of punishment that degrades human dignity. Then the revocation of citizenship also cannot solve the problem of terrorism in Indonesia and in the world. In fact, *statelessness* will open up space for potential world insecurity. With the revocation of citizenship, it is as if the government has indirectly legitimized ISIS as a state. In fact, according to the UN, ISIS is only an organization that stands with principles and ideologies to threaten world security.⁴²

In responding to the government's refusal to repatriate ex-ISIS citizens and revoke their citizenship, there is a violation of the principles of *Good Governance*, especially *participation* because in creating good governance in terms of public policy related to the loss of citizenship of ex-ISIS, there needs to be participation, which in this case does not only involve the government, but involves stakeholders such as ex-ISIS and the victims and even their families. As a sovereign state and based on applicable laws and regulations, it is certainly not right for the government to decide unilaterally to revoke and negate the citizenship rights of ex-ISIS without being based on a clear legal basis.⁴³

In addition, it is also more precise that the government participates also with BNPT in this case ex-ISIS is a former prisoner of terrorism and is included in the deradicalization program by the National Counterterrorism Agency (BNPT). Then article 43D paragraph 4 of Law No.5/2018 explains that several stages are carried out, namely identification and assessment, rehabilitation, reeducation and social reintegration. Handling radicalism in Indonesia is the task of the National Counterterrorism Agency (BNPT). The National Counterterrorism Agency (BNPT) is one of the "agencies in the non-ministerial government that has the "duties and responsibilities" in countering terrorism in Indonesia. As for that, BNPT has several functions, namely for the sake of "national preparedness", counter radicalization and de-radicalization, it is important to formulate and stipulate national policies, strategies and programs in the field of countering terrorism; and carry out "coordination of policies", strategies and national programs in the field of countering terrorism.

The deradicalization education program is an appropriate effort in handling radicalism considering that radicalism is a mindset. The purpose of deradicalization education is to shape a person's understanding in order to accept the diversity of Indonesia. Thus, education on radicalism is the main tool that Indonesia can use to revive its diversity on the basis of inclusivism, multiculturalism and pluralism. Tolerance and respect for the relative truth in one's religious beliefs characterize the world's religiously diverse population.⁴⁴ After successfully completing BNPT's deradicalization program, they will be repatriated to their home countries. This is all an important part of the process of preventing and countering

⁴¹ Basically, this is a polemic that is focused on in this research. Because of the incompatibility of the policy-making mechanism carried out by the government in addressing this matter, moreover it is contrary to the Participation Principle which should be prioritized by the government in making policies.

⁴² As for if *statelessness* is also done, then the government needs to be proportional according to the legal constitution that applies in Indonesia. If *Foreign Terrorism Fighters* from Indonesia are active in ISIS, in the sense that they participate in military warfare, carry out armed attacks and are part of combatants, then they are arrested by the government there and the legal process that applies there, the Indonesian government provides legal assistance in the country. As for those who are not under legal process, they should be repatriated. When the government repatriates them, the government checks to see if they are part of the *Foreign Terrorism Fighter* and which of them are not. The government can then create an effective deradicalization program for these ex-ISIS members.

⁴³ So, in the view of researchers from all the explanations above, it can be said that ex-ISIS from Indonesia who are in Syria still have citizenship status as Indonesian Citizens where they still have the right to have their constitutional rights as citizens.

⁴⁴ Muqoyyidin, A. W. (2013). *Membangun kesadaran inklusifmultikultural untuk deradikalisasi pendidikan Islam*. Jurnal Pendidikan Islam 2(1), h. 150

terrorist attacks. As for the ideal concept that the researcher proposes, it can be an option for the government to create a fair law for Indonesian citizens who are former ISIS.

4. Conclusion

The form of state legal protection against ex-ISIS based on Law No. 12 of 2006 can be done through the principles that apply in the Law, among others, providing maximum protection to its citizens. Then the protection of ex-ISIS can also be carried out based on the constitutional principles of the 1945 Constitution of the Republic of Indonesia, the principles in the Human Rights Act, and the principles in the regulations of the Minister of Foreign Relations. But for now the government in addressing the issue, there is no protection provided by the government of President Joko Widodo where the government does not repatriate these ex-ISIS Indonesian citizens, and even the government revokes their citizenship. There are no factors or reasons that can cause the loss of citizenship of ex-ISIS citizens if referring to article 23 of Law Number 12 of 2006 concerning Citizenship, a person will lose his citizenship if he joins the foreign service, takes a promise and oath to a foreign country and has citizenship. Meanwhile, ISIS is not a form of a state because there are no conditions for ISIS to be said to be a state. The government must involve *stakeholders* such as Komnas HAM because the government's decision has implications for human rights violations, especially regarding citizenship rights. and the rules governing the loss of citizenship are not used by the government in revoking and not repatriating the Ex-ISIS. The participation of Komnas HAM in government participation so that the rights of these ex-ISIS citizens are fulfilled.

References

Book

- Gabil, R. (2006). *Syria The United States, and The War on Terror in The Middle East*. New York: An Imprint Of Greenwood Publishing Group.
- Ichwanuddin, (2006). *Wawan. Masyarakat Sipil dan Kebijakan Publik, Studi Kasus Masyarakat Sipil dalam Mempengaruhi Pembuatan Kebijakan*. Jakarta: YAPPIKA,
- Jimly Asshiddiqie, (2005), *Konstitusi dan Konstitusionalisme Indonesia*, Jakarta: Sinar Grafika.
- Peter Mahmud Marzuki, (2016), *Penelitian Hukum*, Jakarta: Kencana.
- Qamar, N. (2013). *Hak Asasi Manusia dalam Negara Hukum Demokrasi*. Jakarta: Sinar Grafika.
- Rose, G. (2014). *Endgame in Iraq*. New York: Scholastic Press.
- Setiono, (2004). *Rule of Law (Supremasi Hukum)*. Surakarta: Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret.
- Sulaiman, K. F. (2017). *Politik Hukum Indonesia*. Yogyakarta: Thafa Media.
- Soerjono Soekanto dalam Susanti dan Effendi, (2019). *Pendidikan Hukum*, Jakarta: Penerbit Sinar Grafika.
- World Bank, (1992), *Governance and Development*, Washington DC, World Bank.

Journal

- Acun, C. (2014). Neo al-Qaeda: The Islamic State of Iraq and the Sham (ISIS). *Jurnal SETA Foreign Policy Research Assistant*, 10.
- Gaudin, Jean-Pierre. (1999). Modern governance, yesterday and today: Some clarifications to be gained from French government policies. *International Social Science Journal* 50.
- H. Christiansen and A. Koldertsova, (2009). "The Role of Stock Exchanges in Corporate Governance," *Financial Market Trends*, Vol. 2009/1, OCDE.
- Hetifah Sj Sumarto, (2003). *Inovasi, Partisipasi dan Good Governance*, Jakarta : Yayasan Obor Indonesia.
- Hikmawati, (2013). *Partisipasi Publik dalam Perumusan Kebijakan Publik*, *Jurnal Politik Profetik*.
- Ichwanuddin, Wawan. *Masyarakat Sipil dan Kebijakan Publik, Studi Kasus Masyarakat Sipil dalam Mempengaruhi Pembuatan Kebijakan*. Jakarta: YAPPIKA, 2006.
- Merrien, Francois-Xavier. (1999). Governance and modern welfare states. *International Social Science Journal* 50.
- Muqoyyidin, A. W. (2013). *Membangun kesadaran inklusifmultikultural untuk deradikalisasi pendidikan Islam*. *Jurnal Pendidikan Islam*, 2(1).
- Rusdi, R. M. (2020). Status Kewarganegaraan WNI Yang Bergabung Dengan ISIS Berdasarkan Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan. *Dinamika: Jurnal Ilmiah Ilmu Hukum*, 26(17).
- Salminen, A., & Ikola-Norrbacka, R. (2010). Trust, good governance and unethical actions in Finnish public administration. *International Journal of Public Sector Management*, 23(7)
- Samu, K. A. (2018). Status Hukum Warga Negara Indonesia Yang Terlibat Dalam Organisasi Teroris Internasional. *Lex Et Societatis*, 6(10).
- Suhardi, *Persepsi Masyarakat Terhadap Kualitas Pelayanan Publik pada Kantor Dinas Kependudukan Kota Batam*, *Jurnal Benefita*, 3 (1), 53, 2018
- Webb, C. Pollard and G. Ridley, (2006) "Attempting to Define IT Governance: Wisdom or Folly," *Proceedings of the 39th Annual Hawaii International Conference on System Sciences*, Vol. 8, IEEE Computer Society.
- Zaid Afif, (2018), *Konsep Negara Hukum Rule of Law dalam Sistem Ketatanegaraan Indonesia*, *Jurnal Pionir LPPM Universitas Asahan*, 2 (5)

Thesis

- Iswara, I. M. A. M. (2011). *Peranan Mediasi Penal dalam Menyelesaikan Tindak Pidana Kekerasan dalam Rumah Tangga (KDRT) di Polresta Denpasar*. Skripsi, Fakultas Hukum Universitas Udayana.

Regulations

Deklarasi Universal Hak Asasi Manusia

Konvensi 1961, tentang pengurangan keadaan tanpa kewarganegaraan, *Mencegah Dan Mengurangi Keadaan tanpa Kewarganegaraan*.

Konvensi Montevideo 1933 tentang Hak dan Kewajiban Manusia.

Peraturan Pemerintah Nomor 2 tahun 2007 tentang Tata Cara Memperoleh, Kehilangan, Pembatalan, dan Memperoleh Kembali Kewarganegaraan Republik Indonesia.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Nomor 12 tahun 2006 Tentang Kewarganegaraan.

Undang-Undang No. 5 tahun 2018 Tentang Terorisme.

Undang-Undang No.6 tahun 2011 Tentang Keimigrasian.

Undang-Undang No. 37 Tahun 1999 Tentang Hubungan Luar Negeri.

Undang-Undang Nomer 48 Tahun 2009 Tentang Kekuasaan Kehakiman.

Website

Affan, H. (2021). WNI yang bergabung ISIS, Indonesia ‘Tidak bisa tolak deportasi’. Diakses pada tanggal 21 Januari 2023, <https://www.bbc.com/indonesia/indonesia-40430349>.

Heru Susetyo, (2019), Demi Alasan Kemanusiaan, Indonesia sebaiknya terima kembali WNI mantan Anggota ISIS, Diakses pada 7 Februari 2023, <https://theconversation.com/demi-alasan-kemanusiaan-indonesia-sebaiknya-terima-kembali-wni-mantan-anggota-isis-115203>.

Ismaeli, A. (2020). WNI eks ISIS di Suriah tidak akan dipulangkan, Mahfud MD: ‘Kalau mereka pulang, bisa menjadi virus baru’, diakses pada tanggal 8 Februari 2023, <https://www.bbc.com/indonesia/indonesia-51460647>.

Psp, (2020). Istana: 698 WNI Eks Isis Stateless, diakses pada tanggal 13 Februari 2023, <https://www.cnnindonesia.com/nasional/20200213123946-20-474239/istana-689-wni-eks-isis-stateless>.

Reuters, (2019). Pemimpin ISIS Abu Bakar Al-Baghdadi tewas dalam operasi militer AS, ‘merintih, menangis’ sebelum ledakkan bom rompi, kata Presiden Trump. Diakses pada tanggal 7 Februari 2023, <https://www.bbc.com/indonesia/dunia-5019821>.

Setyawan, F. A. (2020). Istana: Eks ISIS bakar paspor sudah bukan WNI, Diakses pada tanggal 7 Februari 2023, <https://www.cnnindonesia.com/nasional/20200207170303-20-472672/istana-eks-isis-bakar-paspor-sudah-bukan-wni>.