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## Examining the Citizenship Status of Ex-ISIS Indonesians

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### ABSTRACT

The Protection of Human Rights (HAM) is a requirement in the rule of law. One of the ways to protect human rights by the state is through laws and regulations intended to show and ensure the Government's seriousness in providing guarantees to citizens. Citizenship is a human right; it means that no one may be stateless. According to the rejection of the Government of more than 600 Indonesian citizens (WNI) who are members of ISIS who are currently in Syria to return to Indonesia, there are pros and cons in society. The legal process must approve the violations of the Indonesian citizens who are members of ISIS, but still consider the values of justice that rely on the Pancasila as the *Philosophische Grondslag* of the Indonesian nation. Law Number 12 of 2006 concerning Citizenship, and also in terms of aspects of upholding human rights.

### KEYWORDS

ISIS; Citizenship;  
Human Rights



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## INTRODUCTION

Population (*ingezetenen*) or people is one of the elements to fulfill the criteria of a state. Residents or inhabitants of a state territory are all people who at one time inhabited the territory of the state.<sup>1</sup> They are sociologically commonly called the people of the country, which is a group of people who are united by a sense of equality and together inhabit a certain area.

The population that inhabits a country in terms of law consists of citizens (*staatsburgers*) and foreigners. According to Soepomo,<sup>2</sup> Residents are people who legally reside in a country, meaning that it is not contrary to the provisions regarding entry and permanent residence in the country concerned. In addition to residents in a state, other people are not residents (*niet-ingezetenen*), for example, a tourist visiting a country, and foreigners working in the territory of the country.

The population is divided into native citizens and foreigners. Native citizens are holders of citizenship status granted by the country, while foreigners are people who have citizenship status from other countries that are outside the territory of the country and are in the country for an interest. Citizens are one of the constitutive elements in the establishment of a state. Therefore, each country in its constitution regulates who is a citizen, and in Indonesia, the 1945 Constitution explains who is an Indonesian citizen, who is then mandated in the provisions of the Citizenship Law, which has been changed several times because it adjusts along with changes to the 1945 Constitution, and the current one is the Citizenship Law No. 12 of 2006. Every citizen is granted citizenship status by the state. Citizenship, according to Law No. 12/2006, is all matters relating to citizens.

In addition to regulating how a person obtains citizenship, Law No.12 of 2006 also regulates how a person loses citizenship. This happens because of the person's request or actions that cause the loss of citizenship. However, the loss of citizenship can also be regained through procedures established by this Law. In relation to loss of citizenship, more than 600 Indonesian citizens currently in Syria who are former ISIS members are in limbo regarding their citizenship status. Although the government has announced the rejection of the repatriation of more than 600 Indonesian citizens to Indonesia, because they have been declared stateless, this cannot be said to be a legal decision. The urgent thing to know is how the identity of the 600 Indonesians, which includes individual data, personal identity, and a complete profile, also contains the degree of potential risk. Then related to how the clarity of who is the legal subject who canceled/deleted his citizenship based on the Citizenship Law.

## METHOD

The research method used in this study is qualitative research with a normative-juridical approach. This approach was chosen because the problems studied are closely related to legal aspects, especially regarding the citizenship status of ex-ISIS Indonesian Citizens (WNI) from the perspective of Law Number 12 of 2006 concerning Citizenship and the principles of Human Rights (HAM). The data in this

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<sup>1</sup> Samidjo, *Ilmu Negara* (Bandung: ARMICO, 1986).

<sup>2</sup> Soepomo in Hartono Hadisoeparto, *Pengantar Tata Hukum Indonesia* (Yogyakarta: Liberty, 1982).



research were obtained through a literature study by examining legislation, legal literature, scientific journals, and relevant decisions. Furthermore, the data is analyzed qualitatively by emphasizing legal interpretation and critical analysis of applicable regulations. The analysis process is carried out through three stages, namely: data reduction, data presentation, and conclusion drawing. With this method, researchers attempt to explore the meaning of the law, find normative problems, and formulate juridical solutions to the issue of Indonesian ex-ISIS citizenship, which raises pros and cons in society.

## **RESULT & DISCUSSION**

### **I. Juridical Review of Citizenship Status of Ex-ISIS Indonesian Citizens**

Indonesia is a state of law, as stated in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia. One of the characteristics of a state of law, as expressed by Lawrence Friedman, is the protection of human rights.<sup>3</sup> The protection of human rights is then realized through accommodating the status of citizenship. According to Article 1 paragraph (2) of Law Number 12/2006 on Citizenship, citizenship is all matters relating to citizens. The right to citizenship is very important because it is a form of recognition of a state's rights to its citizens.

In relation to the right to citizenship, Law No. 12/2006 explains how a person can obtain citizenship and how a person can lose citizenship. For the loss of citizenship status, one of the important things related to the rejection of the repatriation of hundreds of Indonesian citizens (WNI) ex Islamic State (IS) involved in cross-border terrorism (foreign terrorist fighters) is related to their citizenship. Therefore, to know whether they have lost their Indonesian citizenship, they must have fulfilled the provisions of Article 23 of Law Number 12/2006 on Indonesian Citizenship (Indonesian Citizenship Law). This article stipulates that Indonesian citizens lose their citizenship if:

- a. Acquires another nationality of his/her own accord;
- b. Does not refuse or does not renounce another citizenship, while the person concerned has the opportunity to do so;
- c. Is declared to have lost his/her citizenship by the President upon his/her own request, the person concerned is 18 (eighteen) years old or married, residing abroad, and by being declared to have lost the Citizenship of the Republic of Indonesia does not become stateless;
- d. Enters into the service of a foreign army without prior authorization from the President;
- e. Voluntarily enters into the service of a foreign state, whose position in such service in Indonesia, in accordance with the provisions of laws and regulations, can only be held by Indonesian Citizens;
- f. Voluntarily taking an oath or pledge of allegiance to a foreign state or part of such foreign state;
- g. Is not obliged but participates in the election of something of a constitutional nature for a foreign country;

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<sup>3</sup> Agus Widodo, "Telaah Terhadap Perlindungan Hak Asasi Manusia Dalam Negara Hukum Indonesia" (2016) 12:1 Huk dan Din Masy 1-10.



- h. Has a passport or a letter like a passport from a foreign country or a letter that can be interpreted as a valid sign of citizenship from another country in his/her name;
- i. Resides outside the territory of the Republic of Indonesia for 5 (five) years continuously not in the context of state service, without valid reasons and intentionally does not declare his/her wish to remain an Indonesian citizen before the end of the 5 (five) year period, and every 5 (five) years thereafter the person concerned does not submit a statement to remain an Indonesian citizen to the Representative of the Republic of Indonesia whose working area covers the place of residence concerned even though the Representative of the Republic of Indonesia has notified the person concerned in writing, provided that the person concerned does not become stateless;
- j. An Indonesian woman who marries a foreign man loses her Indonesian citizenship if, under the law of her husband's country of origin, the wife's citizenship follows that of her husband as a result of the marriage;
- k. An Indonesian male citizen who marries a foreign female citizen shall lose his Indonesian citizenship if, according to the law of his wife's country of origin, the husband's citizenship follows that of his wife as a result of the marriage. Or, if he wishes to remain an Indonesian citizen, he may submit a declaration of his wish to an official or representative of the Republic of Indonesia whose territory covers the residence of the woman or man, unless such submission results in dual citizenship. The statement letter can be submitted by the woman after 3 (three) years from the date of marriage.
- l. Any person who acquires the Citizenship of the Republic of Indonesia based on information that is later declared to be false or falsified, incorrect, or there is a mistake regarding his/her person by the competent authority, shall have his/her citizenship canceled. The Minister shall publish the name of the person who has lost the Citizenship of the Republic of Indonesia in the State Gazette of the Republic of Indonesia.

From the provisions of Article 23 above, one of the articles that can at least be imposed on ex-ISIS citizens is Article 23 letter (d), namely “entering the service of a foreign army without prior permission from the president”. Then what about the provisions of Article 23 letter (e), which states “voluntarily entering the service of a foreign state, whose position in such service in Indonesia in accordance with the provisions of laws and regulations can only be held by Indonesian citizens”. This provision cannot be applied to ex-ISIS citizens because ISIS is not a legitimate state recognized by the United Nations. However, he can be subject to Article 23 letter (d), given that the term used is “foreign military service”. Therefore, the term foreign military service is not related to “state”. Foreign military service can include soldiers from a country recognized by Indonesia, or soldiers from a country not recognized by Indonesia, or soldiers from a rebel group in a country.<sup>4</sup>

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<sup>4</sup> Hikmahanto Juwana, “Ini Penjelasan Hikmahanto Soal Kewarganegaraan WNI Gabung IS”, (2020), online: <<https://mediaindonesia.com/politik-dan-hukum/289100/ini-penjelasan-hikmahanto-soal-kewarganegaraan-wni-gabung-is>>.



Therefore, Indonesian citizens who joined the ISIS army have lost their citizenship because they joined the service of a foreign army. Regarding whether ISIS is a state or not? The question is whether ISIS is a rebel of the legitimate government or not? Isn't one of ISIS's goals to overthrow the legitimate governments in Syria and Iraq? If so, aren't the Indonesian citizens who are members of ISIS actually included in the rebels in a country? Therefore, Indonesian citizens who join the ISIS army will automatically lose their citizenship. Automatic here because it refers to Article 31 paragraph (1) of Government Regulation 2/2007 on Procedures for Obtaining, Losing, and Canceling Citizenship.

### **Human Rights Aspects**

The three dimensions of the provisions in the Indonesian Citizenship Law are equivalent to the citizenship laws of various countries in the world, which consider a person's service in a foreign military or foreign government to be a cause of loss of citizenship. A person's involvement in a foreign military or foreign government is considered to have established allegiance to a foreign state, which, of course, harms the contractual relationship between the citizen and the state.

The modern legal concept of citizenship has three dimensions at once. First, the legal status dimension, which places citizens as legal subjects who are free to act in accordance with the law and have the right to seek legal protection. Second, the dimension of political agency that allows citizens to actively participate in political institutions. Third, the dimension of membership in a political community, which allows citizens' identities to emerge legitimately in the life of a political society.

In principle, being a citizen of a state means consciously volunteering to be a member of a political community, which allows the citizen to enjoy certain rights. However, at the same time, it is also obliged to assume responsibilities. If a citizen neglects to assume those responsibilities, the consequences of that negligence must be imposed by the state based on democratically established laws and regulations. What must be ensured is that the government is obliged to take action against its citizens who violate the law by imposing sanctions, including if it must decide on the loss of one's citizenship, as long as it is done in accordance with legal provisions.

In relation to the above issue, since the defeat of ISIS in Syria in March 2019, tens of thousands of ISIS combatants have surrendered to the Syrian Democratic Forces (SDF). With this defeat, ISIS no longer has territory, both in Syria and in Iraq, which defeated them in 2017. The ISIS militants were then placed in al-Hol Camp, located in Eastern Syria and under Kurdish rule. Not all Indonesians in the camp are ISIS militants, but many of them are children and women who are the families of ISIS militants themselves.<sup>5</sup> The government must also consider the aspect of justice for those who are also victims.

Although legally, ISIS militants have fulfilled the provisions, Article 23 letter (d) of Law No. 12/2006 on Citizenship, then what about their families? Will he also automatically lose his citizenship? Examining the concept of justice expressed by Aristotle, namely, *Justitia est constans et perpetua voluntas ius suum cuique tribunes* (justice is a permanent and endless will, to give to each person, what is his

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<sup>5</sup> Ahmad Naufal Dzulfaroh, "Potret al-Hol, Kamp Pengungsian ISIS di Suriah", (2020), online: <<https://www.google.com/amp/s/amp.kompas.com/tren/read/2020/02/10/090500465/potret-al-hol-kamp-pengungsian-isis-di-suriah>>.



right) and *juris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere* (the basic rules of the law are: live righteously, do no harm to others, give to others what is rightfully theirs).<sup>6</sup> Therefore, to ensure legal certainty and justice for Indonesian citizens, the government cannot simply declare that they have lost their citizenship status without going through administrative measures to ascertain whether all Indonesian citizens currently in Syria have met the qualifications of Article 23 letter (d) of Law No. 12/2006 on Citizenship or not. Because many of them are also families of ISIS militants. So in this case, the Government, as the highest entity in a country, is not only able to enforce the text in a statutory regulation, but also able to see the humanitarian aspect by referring to Pancasila as the philosophy of the nation.

In this case, the families of ISIS militants who are in the al-Hol refugee camp do not have certainty about the fulfillment of their basic rights and survival, because they are ignored by their families or husbands who are militants and by their home governments. The governments of most countries take the same action when they find out that their citizens are members of ISIS, namely the revocation of their citizenship, because all actions taken by citizens will have consequences for their country. This action will result in the loss of a person's citizenship status if the person does not have dual citizenship. Statelessness is not only defined *de jure* or as losing citizenship legally, but also *de facto*. Stateless *de facto* is addressed to people who have citizenship, but do not receive the protection of their country of nationality, who generally live outside the territory of that country, or people whose citizenship is ineffective.<sup>7</sup>

So in this case, a solution is needed by the Government to ensure justice and provide citizenship rights to Indonesian citizens for what is rightfully theirs, namely the families of ISIS militants. Furthermore, by not ignoring the mistakes that have been made, government administrative actions must be taken by the Government. Based on Article 32 and Article 34 of Government Regulation No. 2/2007 on Procedures for Obtaining, Losing, Cancelling, and Regaining Indonesian Citizenship, the head of the central-level agency who is aware of an Indonesian citizen who meets the conditions of losing Indonesian citizenship coordinates with the Minister of Law and Human Rights. The head of the central agency in this case is the Ministry of Foreign Affairs, which can obtain information about Indonesian citizens who meet the conditions of losing Indonesian citizenship from Indonesian representatives (Indonesian Embassy, Indonesian Consulate General, Indonesian Consulate, Permanent Mission of the Republic of Indonesia, and certain temporary Representatives of the Republic of Indonesia).

The next action is for the minister of law and human rights to check the veracity of the report and clarify to the reporter, the reported party, and the relevant agencies. If the report has fulfilled the conditions that cause loss of citizenship, the Minister of Law and Human Rights determines the name of the person who loses

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<sup>6</sup> Lambertus Johannes Apeldoorn, *Inleiding Tot De Studie Van Het Nederlandse Recht*, 12th ed (Zwolle: Tjeenk Willink).

<sup>7</sup> Paul Weis, *Nationality and Statelessness in International Law* (Netherlands, 1979); Also see Jason Tucker, "Questioning *de facto* Statelessness By Looking at the *facto* Citizenship" (2014) 19:1-2 *Tilburg Law Rev* 276-284, online: <<https://tilburglawreview.com/articles/10.1163/22112596-01902026>>.



Indonesian citizenship. Finally, the Minister of Law and Human Rights announces the name of the person who loses Indonesian citizenship in the State Gazette of Indonesia. This government administration action is necessary because, after all, citizenship is the status of a person who is recognized based on laws and regulations as a legitimate member of a sovereign state. In the Indonesian context, citizenship status has even become a constitutional right regulated in Article 28D paragraph (4) of the 1945 Constitution. With this citizen status, one already has the individual capacity to defend their citizen rights in front of government authorities. Therefore, if the status of citizenship, which is a constitutional right of citizens, is to be eliminated, it must go through the corridors of proper government administration to continue to guarantee the protection of the human rights of these citizens. This government administration includes the procedures for making decisions or actions by government bodies or officials regarding people who lose Indonesian citizenship, as explained above.

## **II. Solution to the Revocation of Citizenship Status of Ex-ISIS Indonesians**

### **Naturalization of Militants and Families of Apatride Militants Into Citizenship**

In accordance with Article 32 of the Convention Relating to the Status of Stateless Persons 1954, the state government provides facilities to the families of IS militants to obtain citizenship by fulfilling the specified residency requirements, as well as accelerating the naturalization process and reducing the cost of the process. Before the return of IS militants' families to community life, the process of verifying whether citizens are IS militants or not, deradicalization is a preventive measure for strategies in neutralizing ideologies that are considered radical and dangerous by means of a non-violent approach, in the Indonesian context, through a religious approach and a cultural approach, and rehabilitation related to psychological recovery.

This system has also been implemented by Indonesia, where in 2017, Indonesia received back 17 Indonesian citizens deported from the Syria-Iraq border who joined ISIS in Syria. They are currently reportedly under the supervision of the National Counterterrorism Agency (BNPT), as well as other security authorities.<sup>8</sup> The next step is to ratify regulations to prevent and reduce stateless persons. The regulations in question are national and international regulations. In the international scope, there are several arrangements related to statelessness, namely the Convention Relating to the Status of Stateless Persons 1954 and the Convention on the Reduction of Statelessness 1961.<sup>9</sup>

## **CONCLUSION**

Human Rights as a gift from God Almighty. Human Rights are essentially a reflection of human existence. Referring to the definition of Human Rights in Law No. 39/1999 on Human Rights Article 1 point 1 provides a formulation of the definition of Human Rights as a set of rights inherent in the nature and existence of humans as creatures of God Almighty and is His gift that must be respected, upheld and protected by the

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<sup>8</sup> Anonim, "Kemenlu akan verifikasi klaim sejumlah WNI di kamp pengungsi eks ISIS di Suriah", (2019), online: <<https://www.bbc.com/indonesia/indonesia-47730088>>.

<sup>9</sup> "Office of the United Nations High Commissioner for Refugees", A/50/632.



state, law, government, and everyone for the sake of honor and protection of human dignity. The protection of human rights by the State is realized, among others, through citizenship status. According to Article 1 paragraph (2) of Law Number 12/2006 on Citizenship, citizenship is all matters relating to citizens. The three-dimensional provisions in the Indonesian Citizenship Law are equivalent to the citizenship laws of various countries in the world, which consider a person's service in a foreign military or foreign government (serving in a foreign military or foreign government) to be the cause of loss of citizenship. A person's involvement in a foreign military or foreign government is considered to have established allegiance to a foreign state, which, of course, harms the contractual relationship between the citizen and the state.

So that if citizens neglect to bear this responsibility, the consequences of this negligence must be imposed by the state based on laws and regulations that have been democratically established. What must be ensured is that the government is obliged to take action against its citizens who violate the law by imposing sanctions, including if it has to decide on the loss of one's citizenship, as long as it is done in accordance with legal provisions. So in this case, with regard to former ISIS citizens as described above, they have fulfilled the provisions of Article 23 letter (d) of Law Number 12/2006 on Citizenship, which then, because of these provisions, they have lost their citizenship. However, as a matter of law, every action of the Government must certainly be within the provisions of the legislation; therefore, of course, Government administrative actions must first be carried out. Government administrative actions need to be taken because, after all, citizenship is the status of a person who is recognized based on laws and regulations as a legitimate member of a sovereign state. In the context of Indonesia, citizenship status has even become a constitutional right regulated in Article 28D paragraph (4) of the 1945 Constitution.

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The authors state that there is no conflict of interest in the publication of this article.

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### **REFERENCES**

#### **STATUTE**

*"Office of the United Nations High Commissioner for Refugees", A/50/632.*

#### **BOOK**

Apeldoorn, Lambertus Johannes, *Inleiding Tot De Studie Van Het Nederlandse Recht*, 12th ed (Zwolle: Tjeenk Willink).

Hadisoeparto, Hartono, *Pengantar Tata Hukum Indonesia* (Yogyakarta: Liberty, 1982).



Samidjo, *Ilmu Negara* (Bandung: ARMICO, 1986).

Weis, Paul, *Nationality and Statelessness in International Law* (Netherlands, 1979).

#### **JOURNAL**

Tucker, Jason, "Questioning de facto Statelessness By Looking at the factio Citizenship" (2014) 19:1-2 *Tilbg Law Rev* 276-284, online: <<https://tilburglawreview.com/articles/10.1163/22112596-01902026>>.

Widodo, Agus, "Telaah Terhadap Perlindungan Hak Asasi Manusia Dalam Negara Hukum Indonesia" (2016) 12:1 *Huk dan Din Masy* 1-10.

#### **WEBSITE**

Anonim, "Kemenlu akan verifikasi klaim sejumlah WNI di kamp pengungsi eks ISIS di Suriah", (2019), online: <<https://www.bbc.com/indonesia/indonesia-47730088>>.

Dzulfaroh, Ahmad Naufal, "Potret al-Hol, Kamp Pengungsian ISIS di Suriah", (2020), online: <<https://www.google.com/amp/s/amp.kompas.com/tren/read/2020/02/10/090500465/potret-al-hol-kamp-pengungsian-isis-di-suriah>>.

Juwana, Hikmahanto, "Ini Penjelasan Hikmahanto Soal Kewarganegaraan WNI Gabung IS", (2020), online: <<https://mediaindonesia.com/politik-dan-hukum/289100/ini-penjelasan-hikmahanto-soal-kewarganegaraan-wni-gabung-is>>.