



Implementation of Legal Protection for Citizenship Rights of Indonesian Former Transnational Terrorism Actors Within The Indonesian Legal System

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Abstract. *This research aims to analyze the implementation of legal protection for citizenship rights of former transnational terrorist Indonesian citizens within Indonesia's legal system. Using normative juridical method with statutory and conceptual approaches, this study examines secondary data from primary, secondary, and tertiary legal materials. The results show that Indonesia's legal system has an adequate legal framework to protect the citizenship rights of former transnational terrorists, although its implementation faces various challenges. The deradicalization program and status verification mechanism implemented by the government have not been fully effective due to inter-institutional coordination constraints and community resistance. Additionally, the study identifies that citizenship status cannot be automatically revoked without proper legal process according to Law No. 12 of 2006 on Citizenship, as terrorist groups cannot be categorized as "foreign military" as specified in the law. This research contributes significantly to the development of returnee handling policies by balancing aspects of national security and human rights protection.*

Keywords: *Citizenship, Former Terrorists, Human Rights, Indonesian Legal System.*

1. INTRODUCTION

The transnational terrorism phenomenon has created complex challenges in national and international legal systems, particularly regarding citizenship rights protection. According to the National Counter-Terrorism Agency (BNPT) data, from 2014 to 2019, more than 1,321 Indonesian citizens were identified as having joined the transnational terrorist group Islamic State of Iraq and Syria (ISIS) in various countries.¹ This phenomenon created a legal dilemma when ISIS was defeated in 2019 and hundreds of former ISIS Indonesian citizens wanted to return to Indonesia.²

The Indonesian Constitution through Article 28D paragraph (4) of the 1945 Constitution guarantees everyone's right to citizenship.³ This aligns with international legal principles as explained by Kusumaatmadja, emphasizing that citizenship is a fundamental right that must be protected.⁴ However, Indonesian citizens' involvement in transnational terrorism creates complex legal and social dilemmas, especially when these former terrorists wish to return to Indonesia after ISIS's fall.⁵

¹ Benmelech, E. & Klor, E. (2020). What Explains the Flow of Foreign Fighters to ISIS? *Terrorism and Political Violence*, 32(7), 1.

² Luquerna, A. (2020). The Children of ISIS: Statelessness and Eligibility for Asylum Under International Law. *Chicago Journal of International Law*, 21(1), 151.

³ The 1945 Constitution of the Republic of Indonesia.

⁴ Mochtar Kusumaatmadja, *Pengantar Hukum Internasional*, (Bandung: Alumni, 2003), p. 378.

⁵ Hamzah Junaid, "Pergerakan Kelompok Terorisme dalam Perspektif Barat dan Islam", in *Journal of Sulesana*, Volume.8/No.2/2013, p. 119.

The Indonesian government's decision through the closed cabinet meeting on February 11, 2020, to reject the repatriation of hundreds of former ISIS Indonesian citizens sparked debate from national and international legal perspectives.⁶ On one side, there are national security interests to prevent potential radicalization and terrorist acts. On the other side, citizenship revocation under Law No. 12 of 2006 on Citizenship can only be done if someone "joins foreign military service without prior permission from the President".⁷ This raises questions considering ISIS cannot be categorized as "foreign military" as it does not meet state qualifications under the 1933 Montevideo Convention.⁸

The complexity of this issue requires an in-depth study of legal protection implementation for citizenship rights of former transnational terrorist Indonesian citizens within Indonesia's legal system. This research is important to provide a clear legal framework in handling returnees while balancing national security aspects and human rights protection. This issue's complexity increases with the state's obligation to protect citizenship rights as guaranteed in Article 28D paragraph (4) of the 1945 Constitution and Article 15 of the Universal Declaration of Human Rights.⁹ According to UNHCR data, citizenship revocation policies against foreign terrorist fighters potentially create stateless person problems that contradict international legal principles. This aligns with Lambert's findings emphasizing that citizenship is "the right to have rights" that is fundamental in the international legal framework.¹⁰

The citizenship status of former ISIS Indonesian citizens also has implications for more than 100 children in detention camps like Al-Hol in Syria.¹¹ This condition requires a comprehensive approach considering national security aspects, human rights protection, and children's best interests as regulated in the Convention on the Rights of the Child (CRC).¹² Deradicalization and social reintegration programs become key in handling returnees while maintaining balance between law enforcement and human rights protection.

⁶ Setyawan, F. (2020, February 5). *Jokowi Tak Setuju Pulangkan 660 WNI Eks ISIS ke Indonesia*. CNN Indonesia.

⁷ See Law Number 12 of 2006 concerning Indonesian Citizenship.

⁸ Razak, I. (2020, February 11). *To Welcome or Deny Former IS Fighters, Avoiding Old Mistakes*. The Jakarta Post.

⁹ Lambert, H. (2015). *Comparative Perspective on Arbitrary of Nationality and Refugee Status*. *International and Comparative Law Quarterly*, 64(1), 725.

¹⁰ Waas, L., Chickera, A., & Albarazi, Z. (2014). *The World's Stateless*. Wolf Legal Publisher.

¹¹ Lambert, H. (2017). *Temporary Refuge from War: Customary International Law and the Syrian Conflict*. *International and Comparative Law Quarterly*, 66(3), 74.

¹² Fox-Decent, E. (2017). *The Authority of Human Rights*. *The University of Toronto Law Journal*, 67(4), 601.

Houry, N. (2016, November 23). *Children of the Caliphate: What to Do About Kids Born Under ISIS*. Foreign Affairs.

2. LITERATURE REVIEW

Various studies have been conducted regarding legal protection for former transnational terrorist Indonesian citizens. Several relevant previous studies can be grouped into several main themes:

A. Citizenship Status of Former Terrorists

Rusdi (2020) in his research analyzed the citizenship status of Indonesian citizens who joined ISIS based on Law No. 12 of 2006. This research found that there is no strong legal basis for automatically revoking the citizenship of former ISIS Indonesian citizens, as ISIS cannot be categorized as “foreign military” as defined in the law.¹³

Similarly, Zebua (2019) in her research on international legal protection for former ISIS members found that citizenship rejection and revocation can create stateless person problems that contradict international legal principles.¹⁴

The principle of state sovereignty recognizes each state's authority to determine its citizens' citizenship status through national law. However, state discretion is limited by international obligations as regulated in the 1930 Hague Convention on Conflict of Nationality Laws.¹⁵ Waas and Jaghai explain that citizenship revocation must meet the principles of non-discrimination, proportionality, and due process of law.¹⁶

B. Deradicalization, Reintegration and Returnee Handling

Hikam (2016) in his study on deradicalization emphasizes the importance of civil society's role in deradicalization and reintegration programs for former terrorists. This research found that the success of deradicalization programs heavily depends on community acceptance and comprehensive institutional support.¹⁷

Prasetyo (2020) in his research at North Sumatra Regional Police revealed that handling former terrorists requires a multi-dimensional approach involving legal, social, and security aspects. This study found that inter-institutional coordination is a key factor in handling returnees.¹⁸

Hegghammer developed the concept of foreign terrorist fighters with four main characteristics: (1) joining to operate in insurgency, (2) not having citizenship of the conflict state, (3) not being affiliated with official military organizations, and (4) not being paid.¹⁹

¹³ Moh. Ramdan Rusdi, “*Status Kewarganegaraan WNI Yang Bergabung Dengan ISIS...*”, *Loc. Cit.*, p. 1963-1964.

¹⁴ Claresta Sri Nifili Zebua, “*Perlindungan Hukum Internasional Terhadap Mantan Anggota ISIS Yang Ditolak Kembali ke Negeranya*”, Thesis of Law Faculty, University of Atma Jaya Yogyakarta, 2019.

¹⁵ Mantu, S. (2018). *Terrorist' Citizens and the Human Rights to Nationality*. *Journal of Contemporary European Studies*, 26(1), 30

¹⁶ Waas, L. & Jaghai, S. (2018). All Citizens are Created Equal, but Some are More Equal Than Others. *Netherlands Law Review*, 65(3), 414.

¹⁷ Muhammad A.S Hikam, *Deradikalisasi: Peran Masyarakat Sipil Indonesia...*, *Op. Cit.*, p. 34-35.

¹⁸ Achmad Yudha Prasetyo, “*Tinjauan Kriminologi Terhadap Pelaku Tindak Pidana Terorisme*”, Thesis of Law Faculty, University of Muhammadiyah Sumatra Utara Medan, 2020.

¹⁹ Scott, G. & Podder, S. (2015). Social Media, Recruitment, Allegiance, and the Islamic State. *Perspectives on Terrorism*, 9(4).

UN Security Council Resolution 2178 (2014) requires member states to take legal action against foreign terrorist fighters while respecting human rights.²⁰

Renard and Coolset's study identifies three main approaches in handling returnees: (1) criminal prosecution, (2) deradicalization programs, and (3) social reintegration.²¹ The effectiveness of these programs depends on multi-stakeholder coordination and community support.²² Research in various countries shows the importance of individual assessment approaches in determining risk levels and appropriate intervention programs.²³

C. Child Protection in Terrorism Context

Luquerna analyzed the legal status of children born or brought to ISIS territory, emphasizing the principle of the best interests of the child according to the Convention on the Rights of the Child.²⁴ Houry found that former ISIS children face risks of statelessness and psychological trauma requiring special handling.²⁵

D. Human Rights Aspects in Counter-terrorism Policy

Ratnasari (2017) examined sanctions against terrorism perpetrators from Islamic jurisprudence and positive law perspectives. This research found alignment between Islamic law principles and positive law in providing sanctions to terrorism perpetrators while considering human rights aspects.²⁶

Latukau (2020) in his research on human rights protection for terrorism perpetrators emphasizes the importance of balance between law enforcement and human rights protection. This study found that due process of law must be guaranteed even in the context of terrorism crimes.²⁷

Burchardt & Gulati examined the balance between national security and human rights protection in handling foreign terrorist fighters.²⁸ This study found that citizenship revocation as a counter-terrorism instrument potentially violates international legal

²⁰ Kopitzke, C. (2017). Security Council Resolutions 2178 (2014): An Ineffective Response to the Foreign Terrorist Fighters Phenomenon. *Indiana Journal of Global Legal Studies*, 24(1), 24.

²¹ Renard, T. & Coolset, R. (2020). *From Bad to Worse: The Fate of European Foreign Fighters and Families Detained in Syria*. Egmont Institute.

²² Hoffman, A. & Furlan, M. (2020). Challenges Posed by Returning Foreign Fighters.

²³ Boekestein, T. (2018). Deprivation of Nationality as a Counter-Terrorism Tool: a Comparative Analysis of Canadian and Dutch Legislation. *The Transnational Human Rights Review*, 5(1), 2.

²⁴ Luquerna, A. (2020). The Children of ISIS: Statelessness and Eligibility for Asylum Under International Law. *Chicago Journal of International Law*, 21(1), 151.

²⁵ Houry, N. (2016). Children of the Caliphate: What to Do About Kids Born Under ISIS. *Foreign Affairs*.

²⁶ Fauziah Ratnasari, "Sanksi Terhadap Pelaku Tindak Pidana Terorisme Ditinjau Dari Perspektif Fiqh Jinayah Dan Undang-undang Nomor 15 Tahun 2003", Skripsi Fakultas Syariah dan Hukum, Universitas Raden Fatah Palembang, 2017.

²⁷ Fikry Latukau, "Perlindungan Hukum Asasi Pelaku Terorisme Sebagai Bentuk Penerapan Hukum Yang Berkepastian dan Berkeadilan", in *Journal of Judicial Review*, Volume 22, Number 1, 2020, p. 7.

²⁸ Burchardt, D. & Gulati, R. (2018). International Counter-Terrorism Regulation and Citizenship Stripping Laws – Reinforcing Legal Exceptionalism. *Journal of Conflict and Security Law*, 32(2), 13.

principles.²⁹ Wautelet emphasizes the importance of non-discrimination principles in citizenship revocation policies.³⁰

This literature review shows research gaps in comprehensive legal protection implementation for former terrorists, particularly in Indonesia's legal system context which must balance national security aspects, human rights protection, and international obligations.

3. METHODS

This research uses a normative juridical method with statutory approach (statute approach) and conceptual approach. The normative juridical method was chosen because this research examines the application of rules or norms in positive law regarding legal protection for former transnational terrorist Indonesian citizens. The research uses secondary data consisting of primary legal materials including the 1945 Constitution, Law No. 12 of 2006 on Citizenship, Law No. 5 of 2018 on Terrorism Crime Prevention, and Government Regulation No. 2 of 2007; secondary legal materials including legal literature, research results, and scientific journals; and tertiary legal materials including legal dictionaries and encyclopedias supporting the research.³¹

Data collection was conducted through library research by reviewing and analyzing various legal documents, literature, and previous research results related to legal protection for former transnational terrorist Indonesian citizens. The collected data was then analyzed qualitatively using the deductive method, namely by analyzing problems from general matters to specific matters.³²

The analysis was conducted in three main stages: first, identifying legal substances related to citizenship protection; second, analyzing legal protection implementation; and third, formulating conclusions based on analysis results. This approach was chosen to obtain comprehensive understanding about legal protection implementation for former transnational terrorist Indonesian citizens in Indonesia's legal system.

²⁹ Lloyd, M. (2017). Foreign Fighters Under International Law and Beyond. *Melbourne Journal of International Law*, 18(1), 4.

³⁰ Wautelet, P. (2017). Deprivation of Citizenship for 'Jihadists' Analysis of Belgian and French Practice and Policy in Light of the Principle of Equal Treatment.

³¹ Johan Yasin, "*Hak Asasi Manusia dan Hak Serta Kewajiban Warga Negara Dalam Hukum Positif Indonesia*", in *Journal of Syiar Hukum: Journal of Ilmu Hukum*, Volume 11 Number 2, 2009, p. 7.

³² Sunardi, *Terorisme dalam Perspektif Politik Hukum Pidana Internasional*, (Tangerang Selatan: Nirmana MEDIA, 2017), p. 1.

4. RESULTS

The research results show important findings regarding the citizenship status of former transnational terrorist Indonesian citizens in Indonesia's legal system. Analysis of Law No. 12 of 2006 on Citizenship shows that there is no strong legal basis for automatically revoking citizenship status of former terrorists. The provisions of Article 23 letter d of the Citizenship Law regulating citizenship loss due to "joining foreign military service without Presidential permission" cannot be directly applied, considering ISIS and other terrorist groups cannot be categorized as "foreign military" because they lack internationally recognized state elements and lack sovereign recognition from any state.³³

The research also reveals that the process of citizenship loss must go through clear legal mechanisms as regulated in Government Regulation No. 2 of 2007. This mechanism includes substantive examination by the Minister, verification and clarification to the concerned party, and establishment of legally accountable decisions. Legal protection implementation for former terrorist Indonesian citizens is carried out through two approaches: preventive legal protection including strict immigration checks, citizenship status verification, and deradicalization programs; and repressive legal protection including fair trial processes according to the Criminal Procedure Code and guarantees of suspects/defendants' rights.³⁴

The research findings also identify several challenges in legal protection implementation, including suboptimal inter-institutional coordination, community resistance to reintegration programs, resource limitations in deradicalization programs, and citizenship status verification complexity. This shows the need for institutional system strengthening and apparatus capacity improvement in handling former transnational terrorist Indonesian citizens.³⁵

Special attention is given to protecting children of former terrorist Indonesian citizens. The research finds that the principle of children's best interests must be prioritized, including preventing statelessness in children and guaranteeing access to education and health.³⁶ Rehabilitation programs for children include psychosocial assistance, anti-radicalism education, and family reintegration. Implementation of these programs requires a multidisciplinary approach involving various stakeholders.³⁷

³³ Moh. Ramdan Rusdi, "*Status Kewarganegaraan WNI Yang Bergabung Dengan ISIS...*", p. 1963.

³⁴ Fikry Latukau, "*Perlindungan Hukum Asasi Pelaku Terorisme...*", *Loc. Cit.*, p. 7.

³⁵ Elga Andina, "*Wacana Pemulangan Anak-anak Kombatan ISIS*", in *Journal of Pusat Penelitian Badan Keahlian DPR RI*, Volume XII, Number 4, 2020, p. 5.

³⁶ Houry, N. (2016). *Children of the Caliphate: What to Do About Kids Born Under ISIS*. Foreign Affairs.

³⁷ Waas, L. & Jaghai, S. (2018). All Citizens are Created Equal, but Some are More Equal Than Others. *Netherlands Law Review*, 65(3), 414.

From an international law perspective, the research identifies Indonesia's obligation to meet human rights standards including prohibition of arbitrary citizenship revocation, prevention of statelessness, and application of non-discrimination principles.³⁸ International cooperation also becomes an important aspect in handling former terrorist Indonesian citizens, including intelligence information exchange, mutual legal assistance, and counter-terrorism policy harmonization.

These research results show the need for a comprehensive approach in handling former terrorist Indonesian citizens that considers legal, security, and humanitarian aspects. The existing legal framework needs improvement to accommodate this issue's complexity, especially in balancing national security interests with human rights protection.

5. DISCUSSION

This research raises several important aspects that need to be discussed regarding legal protection implementation for former transnational terrorist Indonesian citizens. Citizenship status, which is a fundamental right guaranteed by the constitution, faces issues related to involvement in transnational terrorism that poses national security threats. The research shows that the appropriate approach is to apply due process of law principles in handling former terrorists, conduct individual verification and assessment, and provide measurable rehabilitation and reintegration mechanisms.³⁹

Analysis of the existing legal framework indicates the need for more specific regulation refinement regarding returnee handling, the importance of harmonizing legislation related to citizenship and terrorism, and the need for clear standard operating procedures in citizenship status verification. These findings align with the need to strengthen the legal basis in handling former transnational terrorist Indonesian citizens.⁴⁰

Regarding deradicalization and reintegration programs, research indicates that program success depends on a comprehensive approach involving ideological and religious aspects, psychological and social aspects, and economic and empowerment aspects. Active roles of various stakeholders, including government institutions, civil society organizations, and religious and community leaders become key to program success. However, several main challenges identified include verification complexity in the form of data and information

³⁸ Kopitzke, C. (2017). Security Council Resolutions 2178 (2014). *Indiana Journal of Global Legal Studies*, 24(1), 24.

³⁹ Fikry Latukau, "Perlindungan Hukum Asasi Pelaku Terorisme...", *Loc. Cit.*, p. 7-8.

⁴⁰ Moh. Ramdan Rusdi, "Status Kewarganegaraan WNI Yang Bergabung Dengan ISIS...", *Loc. Cit.*, p. 1964.

limitations, difficulty in proving involvement levels, and social resistance in the form of community stigma and concerns about re-radicalization.⁴¹

The research identifies two main challenges in implementation. First, verification complexity including data and information limitations, difficulty in proving involvement levels, and cross-country coordination.⁴² Second, social resistance including community stigma, concerns about re-radicalization, and community rejection.⁴³ To overcome these challenges, institutional strengthening is needed through improved inter-institutional coordination, apparatus capacity building, and effective monitoring system development.⁴⁴

Community-based approaches also become important keys, including involvement of religious and community leaders, public education programs, and social resilience strengthening.⁴⁵ The success of deradicalization and reintegration programs depends on synergy between government, civil society, and other stakeholders. This shows that handling former terrorist Indonesian citizens requires a holistic approach considering legal, security, social, and humanitarian aspects.

6. CONCLUSION

Based on the research results and discussion conducted, it can be concluded that the citizenship status of former transnational terrorist Indonesian citizens cannot be automatically revoked because there is no strong legal basis in Law No. 12 of 2006 on Indonesian Citizenship. Transnational terrorist groups like ISIS cannot be categorized as “foreign military” as referred to in Article 23 letter d of the Citizenship Law, and citizenship status revocation must go through fair legal process in accordance with due process of law principles.

Legal protection implementation for former terrorist Indonesian citizens needs to be carried out comprehensively through preventive and repressive approaches, with deradicalization and social reintegration programs as important components in legal protection efforts. However, implementation effectiveness is still constrained by various factors such as suboptimal inter-institutional coordination, community resistance, and resource limitations. This shows the need for institutional system strengthening and capacity building in handling returnees.

⁴¹ Muhammad A.S Hikam, *Deradikalisasi: Peran Masyarakat Sipil Indonesia...., Loc. Cit.*, p. 34.

⁴² Waas, L. & Jaghai, S. (2018). All Citizens are Created Equal, but Some are More Equal Than Others. *Netherlands Law Review*, 65(3), 414.

⁴³ Luquerna, A. (2020). The Children of ISIS: Statelessness and Eligibility for Asylum Under International Law. *Chicago Journal of International Law*, 21(1), 151.

⁴⁴ Fox-Decent, E. (2017). The Authority of Human Rights. *The University of Toronto Law Journal*, 67(4), 601.

⁴⁵ Kopitzke, C. (2017). Security Council Resolutions 2178 (2014). *Indiana Journal of Global Legal Studies*, 24(1), 24.

For future development, refinement of the legal framework related to handling former transnational terrorist Indonesian citizens, strengthening institutional capacity in deradicalization programs, and increasing community participation in social reintegration programs are needed. This approach is expected to balance national security interests with human rights protection in handling former transnational terrorist Indonesian citizens.

LIMITATION

This research has several limitations that need to be identified for future research development. In terms of data and access, this research only uses secondary data from published sources, without direct access to primary data from former transnational terrorists. This causes limitations in verifying data related to the exact number of Indonesian citizens involved in transnational terrorism networks.

From the research scope aspect, the analysis conducted is limited to Indonesia's positive law perspective and has not included comparative studies with former terrorist handling practices in other countries. Additionally, the research period limited between 2014-2020 may not yet describe the latest developments in handling former transnational terrorist Indonesian citizens.

Methodological limitations also need to be considered, given that this research is normative with a library research approach and has not included empirical field research. This causes limitations in directly measuring the effectiveness of deradicalization and social reintegration program implementation. These limitations can be considerations for more comprehensive future research.

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