
Should There Be a Second Chance for Ex-ISIS Indonesians?

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Abstract: The year of 2019 was hard on Islamic State in Iraq and Syria (ISIS), they lost their main territories and suffer from collapsing until finally lost their leader, al-Baghdadi, by US attack late October 2019. The situation led to the escape of thousands of their ex-members that currently stranded in several different refugee camps in Syria, among the thousands several hundred are Indonesian citizens. On February 11th, 2020, the Indonesian government decided to not taking back all 689 Indonesian citizens that previously involved in the mentioned terrorist organization. This decision was taken under the pretext of preventing radical ideas to develop in Indonesia's soil and ensuring the safety of Indonesian people from the threats of terrorism. Within this paper, we would like to challenge Indonesia's decision by assessing the situation through the concept of international law and international security. According to the Universal Declaration of Human Rights and 1961 Convention on Reduction of Statelessness, every country should prevent its citizens from being stateless, thus Indonesia is in no position to reject its citizens and must assist them to get back to their country. Using the notion of international security, it is theoretically more beneficial for Indonesia to take their citizens back, rejection may lead to more dangerous retaliation by the abandoned citizens and could possibly cause bigger harm in their current state. This paper will try to offer alternative viewpoints to the current Indonesia's policy.

Keywords: Statelessness, ex-ISIS, Indonesia, international law, security

1. Introduction

The widely known definition of terrorism is the act of causing terror using violence or force in an effort to reach certain political goals. Islamic State of Iraq and Syria (ISIS) is considered one of the most dangerous terrorist organizations in the world. Since its appearance in 2014 ISIS had brought instability and devastated the middle east region for years. The terrorist organization had since grown by recruiting new members through brainwash and false promises. Indonesia as a Muslim majority country is among the countries targetted by ISIS for recruitment (Setiawan, 2018).

ISIS recruitment in Indonesia was conducted with a religious campaign, using the narrative of returning the glory of Islam through a global caliphate. Another means of the campaign was through the promise of giving people financial help and better lives. Members that attracted to these offers were mostly uneducated, having unemployment problems and inexperienced (Djelantik, 2016: 10). It is possible to categorize ISIS members from Indonesia into those who are brainwashed, those who joined with pragmatic reasons, and those who joined because they were forced by their families (Elga, 2020: 15).

After al-Baghdadi was killed by US military operation in late 2019, ISIS found itself weaker and thousands of its members were escaping and now stranded in refugee camps in Syria. ISIS fighters' families - women and children - are housed in refugee camps that are overcrowded with more than 70,000 people. Among the stranded, several hundreds are Indonesian citizens. Being abandoned by their organization, many of the ex-ISIS Indonesian citizens are hoping to returning to Indonesia. However, the Indonesian government decided to reject their returns (Soeriaatmadja, 2020).

2. Method

This research was conducted qualitatively. Writers gathered data through library research, using news articles, official statements by governments and legal documents as the main sources. The gathered data was then interpreted by the writers using both the concept of international humanitarian law and security.

3. Discussion

3.1 Why Rejecting Their Returns

Referring to the decision-making theory put forward by Snyder, Bruck, and Sapin (1962: 203), decision making has a structure and scope in the domestic (internal) system and international (external) systems that are considered by the State. Internal and external factors shaped the country's preference for foreign policymaking. Internal factors emphasize more on the relationship between society and the State, while external factors emphasize the international structure such as relations with other countries and the world situation.

In decision making, the Indonesian government prioritizes internal factors as a basis for making the decision not to repatriate ex-ISIS. Decision making is influenced by internal factors which include state security, environmental aspects, political support, and the domino effects of society in the future. The issue of security is one of the things highlighted in the discourse of repatriating ex-ISIS Indonesian citizens. It is feared that the ex-ISIS Indonesian citizens who have been exposed to extremism will spread their ideology at home. The decision to repatriate must be analyzed in depth so that the understanding and ideology adopted by the former ISIS in the future will not backfire for the Indonesian government.

Apart from that, there are new environmental problems that will be faced by them in the future. Amid many people's rejection of individuals who have been involved in acts of terrorism, joining back in society is considered to be difficult because of the lingering stigma of terrorism followers. Even the President of Indonesia, Joko Widodo refused to repatriate the ex-ISIS Indonesian citizens to Indonesia. This decision also received support from the Coordinating Minister for Political, Legal, and Security Affairs Mahfud MD, who personally refused to send them home (Liputan6, 2020).

Seeing some ISIS propaganda videos, wherein the video they have burned their Indonesian passports as a sign of leaving and submitting to the ISIS organization. Automatically, their rights as Indonesian citizens have been lost. Coordinating Minister for Political, Legal, and Security Affairs Mahfud MD said the government would not revoke the citizenship status of the former ISIS. He said the government simply did not allow them to return home. According to him, if the government revokes citizenship, it must go through a legal process. The revocation of citizens' rights in this case also does not qualify.

Today 689 ex-ISIS Indonesian citizens are stateless. They became stateless on their own accord because they burned their passports, not on the decision of the Indonesian government. However, the government is considering and still opening opportunities to repatriate 10-year-old children and orphans from Suriah. President Jokowi has asked the National Counterterrorism Agency (BNPT), the National Intelligence Agency (BIN), and the police to carry out verification and identification of 689 ex-ISIS Indonesian citizens. The data verification process is estimated to take up to four months. The completed data will be sent to Immigration Office so that they would not be able to enter Indonesia by any means, moreover, returning by using illegal means (BBCNews Indonesia, 2020).

3.2 Why It is not a Good Idea

3.2.1 It is not in Accordance with The Universal Declaration of Human Rights

One of the most important piece of writings in international relations is The Universal Declaration of Human Rights (UDHR). Since its first emergence more than 70 years ago, the set of rules written in UDHR has always been the most respected compass to protect human rights from potential harms by state actors. The declaration strongly underlines the importance of protecting human dignity as

the foundation of freedom, justice, and peace in the world. Needless to say that this declaration, as the name implies, is universally valid and all humans regardless of their race, ethnicity, or political beliefs, no matter where they are or where they come from, have the same set of values that must be protected.

This declaration is not a treaty, so it does not directly create legal obligations to countries. It is best to describe UDHR as an international regime, based on Krasner's (1983: 141) definition. International regimes are a set of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge. There is indeed no legal binding to force this declaration into practice, however countries that have ratified this declaration share the same views on the fundamental values of human rights, and as of today, it is possible to consider UDHR as customary international law.

Indonesia has created its own set of laws to ensure human rights protection as an effort to fulfill its obligations as a party member of UDHR. The main manifestation of Indonesia's willingness to ensure human rights protection is UU no. 39 year 1999 about human rights. This law was enforced by taking consideration of several points, which are stated in the preamble:

1. Humans are created by the god with the responsibility to manage and protect the universe for the good of humankind, by their creator blessed with rights to ensure their honor and dignity.
2. Human rights are the basic rights, universal and inseparable from a human. Those rights must be protected, respected, defended, and must not be ignored, reduced, or taken by anyone.
3. Besides human rights, humankind also has basic responsibilities between one another and people in general, as part of society, nation, and state.
4. Indonesia as a member of the United Nations is burdened by moral and legal responsibilities to uphold and implement The Universal Declaration of Human Rights, and other instruments that have been ratified by the Republic of Indonesia.
5. Based on the mentioned points above, to execute People's Consultative Assembly's Order number XVII/MPR/1998 about human rights, it is considered necessary to create a set of regulations about human rights.

The decision not to repatriate hundreds of its citizens suspected of membership in the ISIS is not in line with Indonesia's humanist core institution and UDHR. There are two articles in UDHR that which are directly ignored by this decision:

1. Article 13 of the UDHR provides that "everyone has the right to leave any country, including his own, and to return to his country." Dowty and Loescher (1996: 56) in their paper about refugee flows once emphasize that it is the undoubted duty of a state to receive back its nationals. Even exile as a legal punishment is conditional, it would not be considered as a legal option if no state agrees to take them in. Indonesia also does not own any regulation to penalize criminals by exile.
2. Article 15 of the UDHR provides that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." The human right not to be stateless, or the right to a nationality, is important because many states only allow their nationals to exercise full civil, political, economic, and social rights within their territories. With citizenship being the "right to have rights," stateless persons have traditionally been seen as having no rights. (Wessbrodt and Collins, 2006: 248)

Keeping its citizens away would leave them stateless. There would not be any direct consequences for Indonesia in the case that it ignores certain principles written in the UDHR, however, it would raise questions about Indonesia's commitment to the declaration. UDHR is not legally binding but has always been considered as a moral force and customary international law. What is more ironic is because Indonesia was a part of the United Nations Human Rights Council in 2020-2022 and expected

to play a much bigger role to encourage human rights protection (Indonesia Office of Assistant to Deputy Cabinet Secretary for State Documents and Translation, 2020).

3.2.2 Lack of Legal Ground

According to the United Nations High Commissioner for Refugees, the international legal definition of a stateless person is a person who is not considered as a national by any state under the operation of its law. In Indonesia, a person could lose his national because of renunciation, termination, or deprivation. Renunciation of citizenship is the voluntary act of relinquishing one's citizenship or nationality. Termination of citizenship occurs when a person acquires citizenship from another country. Deprivation of citizenship is a forced act of removing one's citizenship as a consequence of committing violation or betraying the country and its constitutions (Asshiddique, 2009: 398).

Indonesian citizens could have their citizenship renounced, terminated, or deprived by the provisions of UU no. 12 year 2006 about Citizenship of Republic of Indonesia article 23 as follow:

1. obtain another nationality of his own accord;
2. not refusing or not giving up another nationality, while the person concerned has the opportunity to do so;
3. declared as losing his Indonesia citizenship by the President at his own request, the person concerned is 18 (eighteen) years of age or is already married, resides abroad, and by declaring the loss of his Indonesia citizenship does not become stateless;
4. entering into the service of foreign soldiers without prior permission from the President;
5. voluntarily joining a foreign country service, whose position in such a service in Indonesia in accordance with the provisions of the legislation can only be held by an Indonesian citizen;
6. voluntarily take an oath or pledge allegiance to a foreign country or part of the said foreign country;
7. not obliged but participate in the election of something of a constitutional nature for a foreign country;
8. have a passport or a passport letter from a foreign country or a letter which can be interpreted as a valid citizenship mark from another country on his behalf; or
9. residing outside the territory of the Republic of Indonesia for 5 (five) years continuously not in the framework of state service, without valid reasons and deliberately not expressing his desire to remain an Indonesian citizen before the 5 (five) year period expires, and every 5 (five) years the person concerned does not submit a statement of wanting to remain an Indonesian citizen to a Representative of the Republic of Indonesia whose working area includes the residence concerned, even though the Representative of the Republic of Indonesia has notified him in writing, as long as he does not become stateless".

According to UU no. 12 year 2006 voluntarily take an oath or pledge allegiance to a foreign country could terminate an Indonesian citizenship automatically. However, joining ISIS is should not be considered voluntary allegiance to a foreign entity because the group is an illegal terrorist organization. Montevideo Convention on the Rights and Duties of States year 1933 in Article 1 states that: "the state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states". ISIS as previously mentioned does not have all the necessary elements of a state, thus the decision to strip the citizenship of the ex-ISIS members could not be based on UU no. 12 year 2006.

3.2.3 Potential Security Risk in The Future

The current security narrative about the potential harm that might be caused by ex-ISIS citizens if they return to Indonesia is the major reason for rejection by policymakers and Indonesian people in general. There is a certain assumption that people who are involved in terrorist groups would always

carry the radical ideas and spread it. This assumption could be considered reasonable, however the rejection would not completely solve the problem.

The ex-ISIS Indonesian citizens are currently sheltered in several camps in the Syrian territory. Indonesia's decision to not take them back could arguably be considered as transferring the problem to other countries. Milton, Spencer, and Findley (2013) in their paper titled *Radicalism of The Hopeless* emphasize the causal relation between frustration in refugee camps and interstate conflicts. Isolating the refugees may cause frustration and encourage their willingness to engage in terrorism. Even though refugees and stateless people are two different kinds of status, technically they share the same situation and vulnerability to radicalism. Shutting them out could potentially cause bigger harm in the future.

3.3 Alternative Views

Based on previously explained pros and cons, it is viable for us to propose a reconsideration of the decision to not repatriate ex-ISIS Indonesian citizens in Syria. The decision to not repatriate the ex-ISIS citizens not only lacks legal ground and ignores the principles of human rights, but also has the potential to cause security threats in the future. This paper argues that repatriation is a better choice as long as the Indonesian government ready to make a commitment to increase its capacity on counter terrorism measures and deradicalization.

The Indonesian government should make the decision based on data. The data required should be able to identify the numbers of citizens and their motivations to get involved with ISIS. Based on their motivations the Indonesian government would be able to investigate whether they have terrorist tendencies or forced to join the organization. The investigation's result will provide the necessary information to further categorize whether they could be repatriated or not. The investigation should be thoroughly concluded with the involvement of psychologists, criminologists, and other related experts.

Furthermore, when they have permission to return, they should immediately be rehabilitated in deradicalization facilities. There is not yet any scientific basis to measure the level of radicalization, thus it is important to strictly monitor their mental and psychological being in the facilities. Children in particular need proper education in an effort to prevent radical ideas, even after they leave the facilities. It is also important to note that the children in this scenario are the victims of their parents' decisions, so they should not be held accountable for what happened.

Repatriating its ex-ISIS citizens would not only beneficial to Indonesia because they will be able to closely monitor the citizens to prevent future threat, but also because Indonesia would be able to show its consistency and commitment to human rights protection in international stage. Having repatriation as an option would put huge burden to Indonesia in order to increase its capacity, however it will be the better choice than ignoring the principle of human rights in its core constitution.

4. Conclusion and Recommendation

Establishing a strict policy to keep the radicalized citizens from going back to Indonesia will not automatically equal to fixing the problem. It is more important to create comprehensive and well-tailored policies to be able to monitor the citizens as an effort to deradicalize them. The option of deradicalization not only will be able to save the citizens' lives but also eliminate a potential source of instability and conflict in the future.

The decision to not repatriate the ex-ISIS citizens not only lack legal ground and ignore the principles of human rights, but also has the potential to cause security threat in the future. Repatriating its ex-ISIS citizens would not only beneficial to Indonesia because they will be able to closely monitor the citizens to prevent future threat, but also because Indonesia would be able to show its consistency and commitment to human rights protection in international stage. Having repatriation as an option

would definitely put huge burden to Indonesia in order to increase its capacity, however it will be the better choice than ignoring the principle of human rights in its core constitution.

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