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Legal Analysis on the Citizenship Status of Indonesian Citizens Ex-ISIS From the Perspective of International and Indonesian Law

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Abstract. The aim of this research is to determine the legal status of ISIS as a legal subject from an international law perspective and what are the legal implications of revoking the citizenship status of Indonesian citizens who leave ISIS. The research method uses a normative juridical approach and secondary data, while the data is analyzed qualitatively. Based on the discussion, the results obtained are that: The position of ISIS in the subject of international law is unclear. To become a state, ISIS actually meets the requirements, namely having a people, a certain territory and a government, but does not fulfill the capacity to cooperate with other countries. ISIS cannot be recognized as a country because there must be at least 1 (one) recognition from another country for the country that will be formed. Meanwhile, to become belligerent, ISIS does not meet the requirements for support from the people in the territory it controls. Thus, ISIS is not a state and is not belligerent but is just a group of militant terrorists whose aim is to establish a state. Revoking citizenship for Indonesian citizens who are former ISIS members is a preventive measure so that ideologies that conflict with Pancasila do not spread in Indonesia. However, revocation of citizenship refers to Article 23 F of Law no. 12 of 2006 concerning Citizenship will have the implication that the Indonesian state indirectly recognizes ISIS as a legitimate state or foreign service organization.

Keywords: Citizens, Members of ISIS, Status

1. Introduction

International law is all of the principles governing the relationship among international legal subjects. International law is based on the mind of an international community consisting of a number of sovereign and independent countries in the sense that each country stands alone and is not under the control of another country. The country is the subject of international law which is very important because it plays a dominant role in conducting international relations. There are 7 (seven) subjects of international law : 1). The Country; 2). The International Organizations ; 3). The International Red Cross; 4). The Holy See or Vatican; 5). The Company as an International Legal Entity; 6). The rebels (belligerent); 7. Individuals. [1]

In early 2014 there was a jihadist militant group called Islamic State of Iraq and Syria (ISIS), in which ISIS rebels had killed thousands of people. ISIS members

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have committed organized rape, sexual violence, and other crimes against humanity including on women, children and the elderly.

The ISIS movement in Indonesia is also troubling, in 2014, there were 56 Indonesian citizens involved in the ISIS organization and some even left for Iraq and Syria. The ISIS flag had also flown in front of the Hotel Indonesia, Jakarta during a demonstration denouncing Israel's actions to Palestine and a video appeared on YouTube calling on Indonesians to support ISIS's struggle to become the world's caliphate. The movement of ISIS in Indonesia is also troubling, there were 56 Indonesians involved in the organization in 2014 and some have even left for Iraq and Syria. The ISIS flag also lashed out in front of the Hotel Indonesia in Jakarta during a demonstration condemning Israel's actions to the Palestinians and also a video appeared on YouTube calling on Indonesians to support the fight by ISIS into a caliphate of the world.[2]

Regarding the citizenship status of Indonesian citizens (WNI) who are former members of ISIS, the Indonesian government's firm stance is to reject Indonesian citizens who voluntarily join ISIS back to Indonesia. This government's move is not automatically supported by all parties but there are still those who considered that the rejection step is contrary to the law and human rights. The former Supreme Court judge, Mr Gayus Lumbun argued that all Indonesian citizens should be processed through the courts, not by using the authority of the government.[3] This issue of citizenship status is very closely related to human rights, while the issue as an ex-ISIS is very closely associated with the state ideology. Four issues that led to the birth of the ISIS organization were philosophy, Sufism, Shia and Christians. The four issues were targeted and acted by anarchists in establishing a system of caliphate governance. The ideal of this Khilafah government system is to eliminate all these four issues.[4] In contrast to the ideology of Pancasila held by the State of Indonesia, our ideology contains the values of diversity and none of its content is contrary to religious values including Islam. From this ideological comparison, it is necessary to remember that Indonesian citizens who are members of ISIS must first be planted with an ideology that is believed by ISIS and must leave the Pancasila ideology.[2]

In 2019, it suffered a setback because it suffered many defeats in various battles in Iraq and Syria against the United States and its allies. ISIS's struggle reached an anti-climax when their leader was killed by an attack by American soldiers. As a result, many ISIS members wish to return to their respective countries, including from Indonesia. The return of ex-ISIS Indonesian citizens to Indonesia caused a polemic, there were those who supported and those who refused because they were no longer Indonesian citizens.

2. Problems

Based on this description, the formulations of the problem are: What is the legal status of ISIS as a legal subject from the perspective of international law and What are the

legal implications of revoking the citizenship status of Indonesian citizens who leave ISIS?

3. Method

The research method uses normative juridical with a statutory approach. The data used is secondary data, including Law No. 12 of 2006 concerning citizenship and data analysis was carried out descriptively qualitatively.

4. Discussion

4.1. The Position of ISIS in the Perspective of International Law

ISIS's position on the subject of international law remains unclear. ISIS claims that they are an Islamic state but do not meet the requirements for the formation of a country and also do not qualify as belligerent (rebels). Elements of a state are regulated in Article 1 of the Montevideo Convention on Rights and Duties of State 1933 which read as follows:

“The state as person of international law should possess the following qualification: a). permanent population; b). defined territory; c). government; and d). capacity to enter into relations with other state.”

ISIS qualifies as having people, certain regions and the governments, but does not meet the capacity to cooperate with other countries. To be recognized as a country, there must be at least 1 (one) recognition from another country against the country to be formed. As long as there is no recognition, diplomacy or cooperation will never be established with other countries.

The difference aspect between the rebels and the national independence movement is difficult to distinguish because in general the objectives of the two are almost the same; rejecting and opposing legitimate government leadership.[5] Rebels are defined as a growing group of people in a country and they oppose the current government. There are two types of rebels, namely insurgent and belligerent. Insurgent is the beginning of belligerent but insurgent is not an unorganized organization to carry out resistance in a country while ISIS is a group that is organized in realizing their ideology. Insurgent can be belligerent if it meets the following conditions: a). There is the existence of civil war followed by open strife; b). There is the occupation of certain territories and the administration of their governance; c). There is a leader; d). There is a third country that has expressed a position on the dispute.[6]

The objective criteria that must be met are: a). The rebels must be well organized and orderly under clear leadership; b). The rebels wore clear identification to show their identity; c). The rebels must control most of the territory effectively so that it is clear that the territory is under their control; d). The rebels must get the support of the people in the territory they have controlled. e). The rebels obeyed the

laws and customs of war such as protecting the civilian population and differentiating themselves from the civilian population.[7]

The criteria that have been met by ISIS are as follows: a). ISIS has a clear leadership under Abu Bakr Al Baghdadi, has an organized system of organization and establishes governments in the areas they control. b). ISIS has special identification as its identity. ISIS has a special emblem and attributes that the general public can identify. c). ISIS has effectively controlled parts of the territory.[8]

ISIS does not meet the requirements for support from the people in the territory it controls. ISIS has many supporters but they do not get sympathy from the population because ISIS attacks civilians including women and children. ISIS has also never obeyed international humanitarian law, namely the Geneva Conventions and the Hague Conventions. but always violates conventions by attacking civilians, for example by carrying out attacks without heeding the principle of differentiation between civilians and the military and exploiting children and women.[9]

Belligerent is recognized as an international subject with the consequences of participating in carrying out international obligations and rebels are recognized as warring parties so that the rebel party must comply with international humanitarian law and the Geneva Conventions. ISIS as the executor of acts of terrorism is not subject to the Geneva Conventions because it does not comply with international obligations in carrying out its actions.[10]

In international humanitarian law, rebellion is an armed resistance movement against the state with the aim of becoming an independent state. Based on the brief description above, ISIS is not a state and is not a belligerent, but only a group of militant terrorists aimed at establishing a state.

4.2. Legal Implications of The Revocation of Citizenship (WNI) status of ex-ISIS members

The ISIS movement diminishes the spirit of nationalism and national identity of a country and destabilizes world security. Indonesian citizens who have joined radical movements are no longer actively participating in government activities. They are even willing to leave their citizenship status to join these radical groups.[10]. Several countries in the world have created laws and regulations regarding the revocation of citizenship for those who join ISIS, such as Australia.

Extremist actions create big gaps in various aspects of life. Extremists do not always come from uneducated and low economic circles.[11] Human involvement in extremist acts regardless of gender, age and background. Acts of terrorism are not only dominated by men but also by the wives of these men. The role of women is not the main role but the role of a helper who hides the husband or family members involved in acts of terrorism. The terrorists use many means to carry out their actions. [12]

With regard to citizenship issues, citizenship is the membership of a person who is under the control of a certain political unit (state) with which it carries the right to participate in political activities. There are 2 (two) aspects of the meaning of

citizenship, the first is the formal aspect which means paying attention to the place of citizenship in the legal systematics and the second is the material aspect which sees the legal consequences of the meaning of citizenship. In legal systematics, citizenship law is a branch of public law because citizenship issues are related to one of the joints of the state, that is the people of the state.[13] Article 1 point 2 of Law No. 12/2006 on Citizenship, explains that citizenship is everything related to citizens.

Indonesia has laws and regulations governing citizenship, which is outlined as follows: a). Article 26, Article 27, Article 28B paragraph (2), Article 28D paragraph (1) and paragraph (4), Article 28E paragraph (1), Article 28I paragraph (2) and Article 28J of the Constitution of 1945 the Republic of Indonesia; b). Law No. 12 of 2006 on Citizenship of the Republic of Indonesia; c). Government Regulation No 2 of 2007 on Procedures for Acquiring, Losing, Cancellation and Reclaiming Citizenship of the Republic of Indonesia.

Article 26 of the Constitution of 1945 the Republic of Indonesia states that the citizens are native Indonesians and those of other nationalities who are legalized as citizens. Article 27 paragraph (1) and (3) of the Constitution of 1945 the Republic of Indonesia states that all citizens have the same position in law and government and are obliged to uphold the law and government without exception and every citizen has the right and obligation to participate as well as in efforts to defend the state.

Article 23 letters (d), (f) and (i) Law No. 12 of 2006 on Citizenship of the Republic of Indonesia states that an Indonesian citizen loses his/her citizenship if the person in question enters the service of a foreign army without prior permission from the President, voluntarily taking an oath or pledge of allegiance to a foreign country or part of that foreign country and 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 end of the 5 (five) year period and every 5 (five) years after that the person concerned does not submit a statement of wanting to remain an Indonesian citizen to the representative of the Republic of Indonesia whose working area includes the residence concerned even though the representative of the republic of Indonesia has notified the person concerned in writing, as long as he / she does not become stateless.[14]

Revocation of citizenship for ex-ISIS Indonesian citizens through The Law No 12 of 2006 on Citizenship will reflect that the Indonesian state indirectly recognizes ISIS as a legitimate state or foreign service organization. This is because in Law No. 12 of 2006 on Citizenship there is no stated of the reasons for revocation due to joining a terrorist group. Indonesia has made an agenda for amendments to the Anti-Terrorism Law by including the penalties for revocation of citizenship status in article 46A in the draft bill. The article states:

"Every Indonesian citizen who carries out military training, paramilitary training, other training, and / or participates in war abroad for the crime of terrorism, the official who has the authority to revoke his passport and declare that he has lost the citizenship of the Republic of Indonesia in accordance with the provisions of the laws and regulations."

However, this proposal was later rejected because it was considered to violate the provisions of the United Nations of Human Rights which stated that everyone has the right to have citizenship, in line with UNHCR, Law No 12 of 2006 concerning Citizenship. The Republic of Indonesia also does not recognize dual citizenship (*bipatride*) or do not have any citizenship (*stateless*). This means that citizenship removal can only be done if the subject of the law is not stateless. Revocation of citizenship which gives *stateless* consequences is called extraordinary punishment which can be justified only in extreme cases where there are fundamental violations of the rights and obligations of a citizen towards another citizen or against the state guaranteed through constitutional relations. Violation of constitutional rights and obligations is different from violations of other (criminal) laws and regulations. Violation of law or crime is a violation of state sovereignty to create social order, while constitutional violations are violations that result in violation of the rights of citizens guaranteed by the state through a constitution based on fundamental and universal things including human dignity.

The real thing that is attacked by ISIS is ideology, there are cases of former ISIS members who even though they have received guidance by the Government but in fact they have returned to committing acts of terror, for example the Jolo bomb case that occurred in the Philippines in 2019 where the perpetrator was a husband and wife from Indonesia from the Jamaah Ansar Daulah (JAD). An observer of terrorism at the University of Indonesia, Ali Abdullah Wibisono, stated that in his research only 30 percent of terrorist convicts had succeeded in changing through the deradicalization program.[15] The reason for the rejection of citizenship revocation due to human rights violations is irrelevant because terrorism is an extraordinary crime and has been proven to violate other human rights.

Victims of terrorism not only concern the State but also the terrorist's family. ISIS proclaims that jihad with them is the way to heaven so that even if only 1 (one) person is exposed to radicalism, he will infect other family members so that they have one understanding and belief in carrying out jihad according to ISIS doctrine. ISIS seriously threatens Indonesia's sovereignty because ISIS ideology is growing rapidly, which indicates the success of ISIS propaganda. Radicalization is carried out by interpreting that Islam is the most true religion among other religions. [16]

Indonesia has the rights of state sovereignty so that Indonesia has the right to make laws and regulations related to revocation of citizenship for Indonesian citizens who join ISIS. Revocation of citizenship is also related to the form of state responsibility in maintaining the stability of state security. If the revocation of citizenship is said to violate human rights, then it must be rethought for other people's right to life, which could be taken away at any time. The state must not give priority to the human rights of someone who has clearly committed an extra ordinary crime and overrides other human rights.

From the perspective of international law, the decision to revoke a person's citizenship is not something that is not allowed but is something that is avoided. This decision must be made with due observance of the human rights possessed by individuals as stated in the Universal Declaration of Human Rights (UDHR) in 1948. [17] A person cannot be presumed guilty until there is a verdict from the court based

on valid evidence. The revocation of citizenship must pass through a valid judicial mechanism.

Article 10 UDHR states that every person in full equality, entitled to a fair and open trial by a free and impartial court, in establishing his rights and obligations and in any criminal charges brought against him. This article implies the punishment imposed on a person must be based on the court's ruling. This also applies to ex-ISIS of Indonesian citizens if the legislation allows them to revoke their citizenship.

A Stateless person has an umbrella of law under an international treaty ratified by a Member State of the United Nations that is the Convention on Stateless Persons in 1954 governing anyone and how a person will be covered under this convention. Stateless persons are very weak because they don't have a country to protect them. But this convention does not apply to people who have committed crimes against humanity and are guilty of acts contrary to the aims and principles of the United Nations.[18]

In the Convention of 1954 on Stateless Persons Article 2 paragraph (3) which states:

This Convention does not apply: (iii) to those who have serious reasons given that: a). They have committed crimes against peace, war crimes, or crimes against humanity, as defined in the international instruments drawn up for making provisions in respect of these crimes; b). They have committed serious non-political crimes outside their country of residence before they entered that country; c). They have been guilty of acts contrary to the aims and principles of the United Nations.

This provision can be used as a basis by the Indonesian state to become a reference in forming positive legal rules so that it can become a legal provision to revoke the citizenship status of Indonesian citizens who are involved in acts of terrorism. This article indicates that the state has the power to determine who and how a person can be categorized as eligible for revocation of citizenship status. A fairly well-known case is the revocation of Zakir Naik's citizenship by the Indian government because the Indian intelligence agency found indications that Zakir Naik was involved in acts of terrorism. With the removal of one's citizenship, it will be lost to the social rights, civil rights, and political rights of those Citizens. The revocation of citizenship will be clear and will not be contrary to Law No. 12 of 2006 if Article 23 F is revised. Article 23 F contains:

"An Indonesian citizen loses his or her citizenship if the person willingly swears or declares a pledge of allegiance to a foreign country or part of that foreign country"

The article is incomplete so that the phrase "as well as international organizations and terrorist groups both from within and outside the country" so as to be:

"An Indonesian citizen loses his or her citizenship if the person willingly swears or declares a pledge of allegiance to a foreign country or part of that

foreign country as well as international organizations and terrorist groups both from within and outside the country "

The revocation of citizenship is a form of political punishment. The repeal was carried out with the aim of maintaining constitutional ties as a common commitment to state ties. The abolition of citizenship is the only decisive way to provide deterrent effects for Indonesian citizens who have joined terrorist organizations/groups and prevents no one from entering the terrorism network. ISIS is a generic humanist hostist or enemy of mankind and those who willingly join and support the movement of terrorism will not get the opportunity to spread radical understanding to the wider community so that it can be handled preventively and repressively. Considering the State of Indonesia is a constitutional state so that the Government of Indonesia also cannot arbitrarily revoke the status of citizenship unilaterally without the inkrah ruling from the court. Usman Hamid, Executive Director of Amnesty International Indonesia, stated in his written statement that if ex-ISIS citizens pose a threat to national security then the revocation of citizenship must be processed legally, proportionately and in accordance with democratic order [19], so a unilateral ruling should be avoided.

Ansyaad Mbai, the former head of the National Counterterrorism Agency (BNPT) emphasized that the government needs to draft a law that aims to protect the nation's ideology because if people who intend or have joined ISIS or other radical groups return to Indonesia and it turns out that the state does not have strong handling, it is feared that radical values will be absorbed by others. [20]

5. Conclusion

ISIS's position on the subject of international law remains unclear. In order to become a state, ISIS actually qualifies as having people, certain territories, and governments, but does not fulfill the capacity to cooperate with other countries. ISIS cannot be recognized as a State because there must be at least 1 (one) recognition from other countries of the country to be formed, while to become a belligerent ISIS does not meet the requirements for support from the people in the territory it controls. ISIS has many supporters but they do not get sympathy from residents in the territory it controls because ISIS attacks civilians including women and children. Thus, ISIS is not a State and not a belligerent but just a group of militant terrorists aimed at establishing a State. The revocation of citizenship for Indonesian citizens of former ISIS members is a preventive effort so that ideologies contrary to Pancasila do not spread in Indonesia. However, the revocation of citizenship status through Law No. 12 of 2006 on Citizenship (Article 23 F) will imply that the State of Indonesia indirectly recognizes ISIS as a legitimate country or a foreign official organization. This is in accordance with Article 23 F, that: "Indonesian citizens lose their citizenship if they are concerned; willingly swear or declare a pledge of allegiance to a foreign country or part of that foreign country".

Article 23 F of Law no. 12 of 2006 needs to be revised from what originally contains: "Indonesian citizens lose their citizenship if they willingly swears or declares a pledge of allegiance to a foreign country or part of that foreign country".

added with a phrase : "As well as international organizations and terrorist groups both from within and outside the country" thus becoming: "Indonesian citizens lose their citizenship if the person willingly swears or declares a pledge allegiance to a foreign country or part of that foreign country as well as international organizations and terrorist groups both from within and outside the country". Indonesian citizens who are former ISIS members need to be continuously trained to be loyal to the Pancasila ideology.

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