

Citizenship Status of ISIS Members from Indonesia

Jemmy Jefry Pietersz¹, Vica Jillyan Edsti Saija²
{jjpietersz@gmail.com¹, vicajes297@gmail.com²}

^{1,2}Faculty of Law Universitas Pattimura, Ambon, Indonesia

Abstract. The destruction of ISIS is due to the fate of its followers to be adrift without clarity, one of which is the fate of their citizenship, the legal issue seen by the researcher in this paper is how the citizenship status of former ISIS of Indonesian Citizens based on the laws and regulations that applied in Indonesia, in this regard aims to examine the citizenship status of Indonesian people who have joined ISIS, according to Indonesian laws, they are still Indonesian citizens or have lost their citizenship. The method used in this paper was normative legal research and the results of this research are based on Law Number 12 of 2006 in conjunction with Government Regulation of the Republic of Indonesia Number 2 of 2007, it can be assessed that an Indonesian citizens lose their citizenship if the individual concerned is related to another country or country foreign, so that the former ISIS of Indonesia Citizens is not a country but an organization, hence, it has not been tested that the former ISIS of Indonesia citizens has lost its citizenship.

Keywords: Citizenship Status, The former ISIS of Indonesian Citizens.

1. Introduction

Islamic State of Iraq and Syria (ISIS) is a guerrilla organization formed due to the invasion of US to Iraq in 2003. ISIS declares itself as a country but there is no agreement from Iraq or Syria and no recognition from the PBB and other countries in the world, and constitutionally, ISIS also does not fulfill the elements of state formation (region, society, and government). ISIS has many members from various countries around the world, with different recruitment approaches. The approach is not only the religious approach, but also the economic approach, life style, traveling, which is done through the internet media. Indonesia is also one of the countries whose thousands of people have joined ISIS. After the destruction of ISIS, there are problems for the repatriation of Indonesian Citizens who have joined ISIS, the fear of terrorism and its impact encourages some Indonesian citizens refuse the repatriation, however, the reason of human rights some Indonesian citizens also accept their repatriation.

Dealing with the issue, it arises the government's hesitation, between moral and security that must be noticed. As long as the former ISIS of Indonesian Citizens are in Syria, there have been burning passports, some of them have taken their passports and some of them also have lost their passports. Thus, the assumption that emerges is they have lost their citizenship, especially those who have long left Indonesia. Thus, the legal issue seen in this paper is how

the citizenship status of the former ISIS of Indonesia citizens is accordance with the laws and regulations that applied in Indonesia.

2. Method

The method used in this research was a normative legal research method, using the legislation approach and concept approach. The legal materials were used based on the literature study and then it was processed and analyzed to get answers to the legal issues discussed in this research.

3. Result and Discussion

3.1 Islamic State of Iraq and Syria (ISIS)

The development of ISIS is inseparable from Abu Musab al-Zarqawi, around 2000 Abu Musab went to Afghanistan in order to meet Osama bin Laden to form an organization called Tauhid wal Jihad in order to overthrow the government of Jordanian. "When the United States attacked Afghanistan, Abu Musab fled from Afghanistan to Iran and in 2002 moved from Iran to Iraq". Abu Musab was asked by al-Qaida leadership to facilitate the entry of militants into Iraq with the aim to against the coalition forces of US leadership in Iraq. "At that time Abu Musab al Zarqawi had not officially sworn in allegiance and joined al-Qaeda until 2004". Abu Musab led Tanzim Qaidatul Jihad fil Biladur Rafidain, which was later changed to al-Qaeda Iraqi Branch (AQI) in 2004. Furthermore AQI became Mujahidin Shura Council (MSC) in 2006 and in that year Abu Musab died at the hands of the United States. After his death, the name of the organization became the "Islamic State of Iraq (ISI)" and it was led by Abu Umar al-Baghdadi in October 2006.

The relationship of ISI with al-Qaida became less harmonious, it was marked by an ideological split in which al-Qaida leaders were worried about tactics carried out carelessly and brutally by ISI which will result the ISI isolation from public support in Iraq. In 2013, Abu Umar al Baghdadi as ISI leader sent Abu Muhammad al Jaulani along with several militiamen to Syria to open a new front in Syria, a new front named an-Nusra. "After that in April 2013, Abu Umar al-Baghdadi announced that there had been an expansion of ISI to Syria and at the same time announced the change of a new name namely Islamic State of Iraq and Syria (ISIS)". The ISIS leader who declared the establishment of the Khilafah Islamiyah was Abu Bakar al-Baghdadi and at the same time he announced his appointment as the new elected caliph. The purpose of ISIS is to establish and maintain the institution of caliphate which they call Daulah Islamiyah. ISIS has a different main purpose with Al-Qaeda Center led by Osama bin Laden or Ayman Al-Zawahiri, although the Iraqi branch of Al-Qaeda is one of the main elements of ISIS. The purpose of ISIS is one step ahead of the goals rather than Al-Qaeda, it is due to ISIS has aspired to formal government institutions while Al-Qaeda is still at the level of resistance movements against western tyranny and its allies [1].

The recruitment pattern undertaken by ISIS is powerful and fast because it is conducted through online with maximizing the use of social media to spread announcements, invitations and videos. By using the internet, it will be easy to be accessed by many people, anywhere, and anytime. Apart from the recruitment techniques mentioned earlier, the approach is carried out further by communication built online. Recruiters take a very intensive approach with

candidates, to ensure they join offers in the economy, life style, traveling, all the persuasion are conducted maximally so that the candidates are trapped and eventually joined in the organization. Such a method that emerges many candidates to register and the number of candidate is increasingly day by day, no exception in it including Indonesian Citizens (WNI) who have joined ISIS. The attacks carried out by ISIS regardless of gender, ethnicity, religion or race, and carried out blindly with violence to victims using modern weapons of war. With these actions, their actions are categorized as terrorist acts wrapped in their ideology, the desire to create a caliphate state.

In order to realize its purpose, ISIS accommodates followers from all over the world regardless of origin and religion, not merely limited to the middle eastern region or merely Muslim, but anyone who agrees with the concept offered and is willing to join so then they will be welcomed by ISIS to become followers. Recruitment is carried out from the outside of Iraq and Syria is actually very beneficial for ISIS, because those who come from outside of Iraq and Syria, they do not know the exact situation and conditions over there, while those who are in Iraq and Syria have discovered and known the deeds of inhuman ISIS. War, torture, arson, bombing, rape, murder, are extraordinary forms of human rights violations committed by ISIS as stated in "Article 5 of the Rome Statute of the International Criminal Court, The jurisdiction of the Court should be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression".

As a serious crime, crimes committed by ISIS are categorized as the act of terrorism. Referring to Assad's opinion about terrorism in the article of the Poltak Partogi Nainggolan, that international terminology describes the acts of terrorism carried out, targets, including followers, supporters and sympathizers, and the purpose of the perpetrators who do not recognize boundaries or state entities. Even if state entities are still used, that is in meaning, which is no longer narrow, however, in the perspective of the universe (*mondial*) such as ISIS / IS with the concept of the caliphate. ISIS / IS, with its international acts of terrorism, has been categorized as one of the international terrorist groups. With other names and identities attached to the organization, such as the flag, the background of the perpetrators, and especially the ultimate goal to be realized, ISIS / IS has been categorized as a religious fundamentalist group that wants to fight for the establishment of the Islamic caliphate in the universe in a manner and target any target as it is intended justified by terrorists. Therefore, its followers, supporters and sympathizers deserve to be called as part of an international terrorist organization [2]. Based on the concepts presented, it can be concluded that the former ISIS of Indonesian citizen in its position as a follower, supporter and sympathizer, is part of the terrorists.

3.2 The Citizenship Status of ISIS Members from Indonesia

The issues that have been mentioned previously, it is clearly unknown to those from outside Iraq and Syria, therefore they are easily tricked and persuaded to join ISIS. Not surprisingly, many Indonesian have joined ISIS, due to their ignorance. The large income approach used by ISIS is very influential, seeing the appearance of ISIS which is equipped with a large number of modern weapons, the guarantees of a prosperous life for its members, and the mastery of ISIS toward the oil fields over there, certainly, it becomes an added point for ISIS's image offered to recruit as many members. Indonesian citizens as part of the

recruited members are recruited individually or in groups by bringing family members to participate as ISIS members.

The story of Aleeyah Mujahid (it not the real name) about how she wants to follow ISIS as a religious vocation that feels like a pacifying heart, she wants to get a better life, makes her deceive parents to travel to Turkey but actually she goes to Syria to join ISIS , her interest in ISIS is based on videos uploaded on social media and it is easy to get the contact of people who takes to Syria where ISIS is gathered. After being over there, she gets married and has a child. However, her expectation is not in accordance with the reality. She is currently separated from her husband because men are obliged to fight and is currently in a refugee camp with her children in the hope of returning to Indonesia [3].

In addition, there is also the story of Nada who is in the Al-Hol refugee camp in northeast Syria. Altogether with her family, they left Indonesia to join ISIS and are currently separated from her father who is brought by ISIS. Over there, she watches a lot of violence and experienced a tense atmosphere due to the war. She and her family were taken by their father a few years ago to Syria and at this moment, there is great hope that she can return to Indonesia [4]. Dealing with the two stories conveyed, it can be compared that based on the intention to be part of ISIS so then the desire is a form of desire that is born from oneself or the wishes of others. In this regard, the family which is then obeyed by other family members.

While Indonesian citizens are in Syria and are part of ISIS, some of them have burned Indonesian passports and declared themselves firmly as members of ISIS by accepting ISIS ideology and are eager to be part of ISIS's wars, however some of them also assert that that their passports are missing, and some are taken by ISIS leader. The promise of ISIS with a decent life that will be obtained over there and it is also freedom of entry and exit from ISIS, in fact, it is not as sweet as what has been promised because it is not in accordance with the initial promise when they recruit the members. All terrorist acts claimed by ISIS both in Iraq and Syria or in other countries, one of which is Indonesia and then resulting in the fall of innocent victims, it is the main cause of public fear in Indonesia if they return so then they will trigger new acts of terrorism in Indonesia, moreover their number is not small namely it is around 689 people.

After the destruction of ISIS, the problems emerge in relation to the fate of ex- ISIS members residing in Syria. The various pros and contra thoughts about the return of ex-ISIS of Indonesia citizens are a legal problem, which is related to the citizenship status of them. It is caused that there are those who think their citizenship status has been lost when the passport is burned, but some of them also think otherwise. If it is based on the statutory approach, so then in Article 23 of Law Number 12 Year 2006 concerning "Citizenship of the Republic of Indonesia" which states "that Indonesian citizens lose their citizenship" if the concerned:

- a. obtain other nationalities of his own volition;
- b. not refusing or not letting go of the other citizenship, while the person concerned has the opportunity to do so;
- c. is declared lost of citizenship by the President at his own request, the person concerned is 18 (eighteen) years old or has been married, resides abroad, and by being declared missing Citizenship of the Republic of Indonesia does not become without citizenship;
- d. enter the foreign army service without prior permission from the President;
- e. voluntarily enter the service of a foreign country, the position of such service in Indonesia in accordance with the provisions of the legislation can only be held by Indonesian citizens;

- f. voluntarily take an oath or declare a pledge of loyalty to a foreign country or part of that foreign country;
- g. it is not required but to participate in the selection of something constitutional to a foreign country;
- h. has a passport or letter that is a passport from a foreign country or a letter which can be interpreted as a valid citizenship mark from another country on his behalf; or
- i. residing outside the territory of the Republic of Indonesia for 5 (five) years continuously and the purpose is not due to the state service, without a valid reason and deliberately, they do not express their desires to remain an Indonesian citizen before the end of the 5 (five) years period, and every 5 (five) the following year concerned does not submit a statement wanting to remain an Indonesian citizen to the Representative of the Republic of Indonesia whose working area covers the residence in question even though the Representative of the Republic of Indonesia has notified in writing to the person concerned, as long as the person concerned does not become without citizenship.

The same stipulation of the above law can also be found in Article 31 “Government Regulation of the Republic of Indonesia Number 2 of 2007 concerning Procedures for Obtaining, Losing, Cancellation and Reclaiming Indonesian Citizenship”. If it is tested normatively based on Law Number 12 of 2006, starting from letter a, it cannot apply to Indonesian citizens who are ex-ISIS because ISIS has not been eligible to become a state based on the elements of state formation, so, when the individual joins ISIS, it does not mean that they get new citizenship. ISIS status is a non-state organization, unless the ex-ISIS of Indonesian citizens have been accepted by other countries as citizens, however, dealing with the same problems that occur in almost all countries whose citizens are followers of ISIS, it is very difficult to accept ex-ISIS in a country. Letter b is related to letter a, regarding the status of ISIS which is not a country so that Indonesian citizens who join ISIS are not ISIS citizens, even though being ISIS citizens is their desire. In letter c, this can apply to ISIS followers from Indonesia, who have submitted an application to the President of Indonesia to lose their citizenship. Entering the foreign army service in letter d, it cannot be interpreted as foreign army of an organization but foreign army from other countries with the result that in the next article, namely Article 24, it is stated that the provisions referred to in Article 23 letter d do not apply to those who join the program of education in other countries that require the conscription. Furthermore, for letters e to h, the same reasons indicate that ISIS is not a state organization, by itself these points cannot be applied. The provisions in letter i can be used for ex-ISIS of Indonesian citizens if they have been there without a valid reason for 5 (five) years and deliberately do not declare their intention to remain an Indonesian citizen.

Based on all the reasons, for the loss of citizenship that have been described, it is only the provisions of letter i can be used as a basis for losing citizenship although there is a continuation of the article that every 5 (five) years concerned the person does not submit a statement wanting to remain an Indonesian citizen to the Representative of the Republic of Indonesia whose jurisdiction covers the place of residence concerned even though the Representative of the Republic of Indonesia has notified in writing to the relevant person even though the Representative of the Republic of Indonesia has notified in writing to the person concerned, as long as the person concerned does not become stateless. The concessions are carried out due to the conditions beyond the capability of the person such as the limitation of mobility due to its passport is not being in the possession of the relevant person, the official notification is not received, or representative of the Republic of Indonesia is difficult to be

achieved from the place of residence concerned, however, the researcher doubts if the further explanation is the reason for certain the former ISIS of Indonesian citizens, dealing with their enthusiasm for participation and strong idealism. Therefore, if this point is used as a basis, the government must pay attention as long as they are over there. What the researcher means that as long as they are in the ISIS settlement area not in the refugee camp.

With regard to passports that have been burned, lost or taken by ISIS leader, according to the explanation above, there is no element of citizenship loss due to the absence of passports. Proof of citizenship by an Indonesian citizen is based on Article 4 paragraph (2) of the Decree of the President of the Republic of Indonesia Number 56 of 1996 concerning Proof of Citizenship of the Republic of Indonesia mentioned for citizens of the Republic of Indonesia who already have an Identity Card, or Family Card, or Birth Certificate, fulfilling the requirements for certain interests it is sufficient to use an "Identity Card", or "Family Card", or "Birth Certificate". Thus it can be concluded that the Citizenship "Identity Card, Family Card, Birth Certificate" is a type of "proof of citizenship" for citizens "of the Republic of Indonesia", if a former ISIS of Indonesian citizens who do not have a passport can show one of the three types of evidence mentioned, then, it can be used as evidence that the individual is an Indonesian citizen, according to the researcher, it can be further regulated by the government in proving data that is matched with data from immediate family, relatives, neighbors or RT / RW that are concerned, because if the data used is not proven certainty, it can occur infiltration which certainly will occur troubles the government. The problem with not having an ex-ISIS of Indonesian citizen passport is how they will cross national borders if they do not have official documents to be proven, when they will return to Indonesia.

4. Conclusion

The conclusion of this research is the status of Indonesian citizenship of ex-ISIS based on "Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia" in conjunction with "Government Regulation of the Republic of Indonesia Number 2 of 2007 concerning Procedures for Obtaining, Losing, Canceling, and Reclaiming Citizenship of the Republic of Indonesia" are Citizens of the Republic of Indonesia Indonesia, it remains Indonesian citizens because based on the element of losing Indonesian citizenship status, they are not related to other countries or foreign countries moreover the position of ISIS as an organization Unless they had been there for more than 5 (five) years without any legal reason and intentionally not stating their willingness to stay becoming an Indonesian citizen.

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