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## International Terrorism and Citizenship: *Quo-Vadis* Citizenship Status (ex) ISIS Members

Roqiyul Ma'arif Syam<sup>1</sup>, Nauval Fitriah<sup>2</sup>, Salim Elkoshly<sup>3</sup>, Khoniq Nur Afiah<sup>4</sup>

<sup>1</sup> University of Indonesia, Jakarta

<sup>2</sup> Indonesia University of Education

<sup>3</sup> University of Tripoli, Libya

<sup>4</sup> State Islamic University of Sunan Kalijaga Yogyakarta, Indonesia

<sup>1</sup> Jl. Margonda Raya, Pondok Cina, Kecamatan Beji, Kota Depok, 16424.

<sup>2</sup> Jl. Dr. Setiabudi No.229, Isola, Sukasari, Kota Bandung, Jawa Barat 40154

<sup>3</sup> V65C+V9F, Tripoli University Rd, Tripoli, Libya

<sup>4</sup> Jl. Laksda Adisucipto, Papringan, Caturtunggal, Kec. Depok, Kabupaten Sleman, Daerah Istimewa Yogyakarta 55281

### ABSTRACT

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#### \*Correspondence Address:

[roqiyul.maarif@ui.ac.id](mailto:roqiyul.maarif@ui.ac.id)

The phenomenon of the emergence of the international terrorist group ISIS has succeeded in recruiting members from various countries in the world. This serious threat to national security is closely related to the issue of a person's citizenship status, either as a member or as a mere sympathizer. Several countries responded to the entry of their nationals into this international terrorist group with proposals to revoke their citizenship. On the one hand, international terrorism is a serious threat to state sovereignty, on the other hand the problem of denationalizing a former member or affiliated with ISIS is not an easy thing. Citizenship status is a human right that is protected, both in legal instruments in Indonesia and in international legal instruments. Citizenship law in Indonesia regulates in such a way regarding loss of citizenship. From an international perspective, international legal instruments strictly prevent member states from carrying out such denationalization efforts.

**Keywords;** Terrorism, ISIS, Citizenship, Denationalization

## Introduction

Since its declaration on April 9 2013, by Abu Bakar al-Baghdadi, the terrorist group known as the Islamic State of Iraq and Syria, commonly called ISIS, has escalated the armed conflict in the Middle East. In August 2014, this group which was originally an exponent of Al-Qaeda, launched propaganda that succeeded in attracting combatants and sympathizers from all over the world to the group. Indonesia is no exception; there are known fighters from France, Germany, Australia, Turkey, Jordan, and many other countries. In international terms, militants from various countries outside Iraq and Syria who join ISIS are known as "The Foreign Fighters", or TFF.<sup>1</sup>

Responding to this security threat, several countries considered denationalizing the TFF's citizenship status.<sup>2</sup> The denationalization program makes it easier for the state to prevent suspected terrorists from returning to their home countries. These plans take different forms and have various consequences. Some States, for example, are proposing to revoke the citizenship of terrorist suspects if they are dual nationals, thus leaving them with another nationality. Other countries have considered plans to render suspected terrorists stateless by stripping them of their sole nationality.<sup>3</sup>

In connection with this understanding, the response to former ISIS members in the form of denationalization, as practiced by several countries, needs to be reviewed in depth. From the human rights aspect stated in the Universal Declaration of Human Rights (UDHR), the right to citizenship is, in several respects, one of the most important aspects of the emerging field of the international human rights law regime. Hannah Arendt observes that basic civil and political rights flow through a person's citizenship.<sup>4</sup> Arendt draws a sharp distinction between human rights-universal rights that an individual should have based solely on human and civil rights. An individual holds these latter rights because he or she belongs to a different political community that is willing to uphold these rights. Statelessness effectively deprives a person of all rights other than those generally recognized in international law as fundamental human rights. Noting that states are ultimately the ultimate political entity in an anarchic international system, Arendt argues that states have little incentive to respect and uphold the human rights of the stateless and others. When these rights conflict with the national interests of the whole country.<sup>5</sup>

For Indonesia, even though the revocation of citizenship status is not against the constitution, denationalizing former ISIS members is not easy. Article 24D of the 1945 Constitution guarantees the right to citizenship. Article 23, letter (f) in Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia states: "Indonesian citizens lose their citizenship if the person concerned voluntarily takes an oath or declares an oath of allegiance to a foreign country or part of that foreign country." However, as a state based on law, citizenship issues must be carried out based on the provisions of the applicable laws and regulations.

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<sup>1</sup> Jessica Stern & J.M. Berger, ISIS and the Foreign Fighter Phenomenon, accessed on November 18, 2019.

<sup>2</sup> Australia on fact check: How does Australia's plan to strip foreign rights of citizenship compare to other nations?, Norwegia on Gianluca Mezzofiore, Norway "to Make Citizens Fighting for ISIS Stateless", accessed on November 18, 2019.

<sup>3</sup> Shiva Jayaraman, International Terrorism and Statelessness: Revoking the Citizenship of ISIL Foreign Fighters, in *Chicago Journal of International Law*, Vol. 17, No. 1, (2016), p. 181.

<sup>4</sup> Hannah Arendt, *The Origins of Totalitarianism*, (New York: Harcourt Brace, 1973), p. 277.

<sup>5</sup> Hannah Arendt, *The Origins...*, p. 290-302.

## Method

The discussion in this article uses a descriptive qualitative method to give a description of a particular society or group of people or description of a symptom or the relationship between two or more symptoms. Society or the group in this study is the Indonesian government, while what is meant with the symptoms in this study is terrorism.

Data collection techniques in this study using interviews and methods documentation. Interviews were conducted with the National Agency for Mitigation Terrorism and related informants.

The data sources in this article are primary data and secondary data. Primary data obtained through interviews with the Director of International Security and Disarmament Weapons of the Ministry of Foreign Affairs of the Republic of Indonesia, the National Counterterrorism Agency (BNPT) as well as related informants, while secondary data was obtained from books, official government reports, documents, journals, newspapers, magazines, and the internet.

In this article, techniques are used to test data validity and validity data obtained by means of source triangulation techniques. According to Moleong, triangulation is a data validity checking technique that utilizes something other than data.<sup>6</sup> This is for checking purposes or as a comparison against that data. Denzin distinguishes four kinds of triangulation as a technique for checking the validity of the data utilizing sources, methods, investigators.

## Discussions

### Losing Indonesian Citizenship According to the Citizenship Law (UU)

People (people) who live in a certain area with the state are called citizens (citizens). Citizens individually are legal subjects who bear rights and, at the same time, obligations towards the state.<sup>7</sup> The term citizenship itself has a meaning that shows the relationship or bond between the state and citizens. Citizenship is any relationship with a country that results in that country's obligation to protect the person concerned. Meanwhile, according to Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, Citizenship is all matters relating to citizens.<sup>8</sup> The definition of citizenship is divided into four, namely;

1. The existence of a legal bond between people and the state marks Citizenship in a juridical sense;
2. Emotional ties characterize citizenship in the sociological sense;
3. Citizenship in the formal sense indicates where the citizenship is domiciled;
4. Citizenship, in a material sense, shows the legal consequences of citizenship status, namely the rights and obligations of citizens.<sup>9</sup>

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<sup>6</sup> Lexy J. Moleong, *Metode Penelitian Kualitatif*, 2019.

<sup>7</sup> Jimly Asshididie, *Pengantar Ilmu Hukum Tata Negara*, (Jakarta: Rajawali Pers, 2009), p. 383.

<sup>8</sup> Constitution of the Republic of Indonesia on Citizenship of the Republic of Indonesia, UU No. 12 Tahun 2006, LN. Nomor 63 Tahun 2016, TLN. 4634 Pasal 1 Ayat (2).

<sup>9</sup> Rokilah, R., Implikasi Kewarganegaraan Ganda bagi Warga Negara Indonesia, in *Ajudikasi Jurnal Ilmu Hukum*, Vol. 1, No. 2, 2018, p. 55.

Meanwhile, revocation of citizenship for a person can cause a person to lose citizenship. According to Jimly Asshididie, a person can lose citizenship due to three things, namely:<sup>10</sup>

- a. Renunciation, namely the voluntary action of a person to renounce one of two or more citizenship statuses obtained from two or more countries;
- b. Termination, namely termination of citizenship status as a legal action, because the person concerned obtained citizenship from another country;
- c. Deprivation is a forced termination, revocation, or dismissal from citizenship status based on an order from an authorized official because there has been evidence of an error or violation in obtaining citizenship status or if the person concerned is proven disloyal or betrayed to the state and the Constitution.

Materially, the three reasons for losing a person's citizenship, as mentioned above in the laws and regulations in Indonesia, are regulated through Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, namely:<sup>11</sup>

- a. Obtain another nationality of his own volition;
- b. Does not refuse or does not give up other citizenship while the person concerned has the opportunity to do so;
- c. Declared to have lost their nationality by the President at his request, the person concerned is aged 18 (eighteen) years old or married, lives abroad, and by being declared lost of Indonesian citizenship does not become stateless;
- d. Enter into foreign military service without prior permission from the President;
- e. Voluntarily join the service of a foreign country, where a position in such service in Indonesia by the provisions of laws and regulations can only be held by Indonesian Citizens;
- f. Voluntarily take an oath or pledge allegiance to a foreign country or part of that foreign country;
- g. not obligated to participate in the selection of something constitutional in nature for a foreign country;
- h. Has a passport or letters like a passport from a foreign country or a letter that can be interpreted as a valid citizenship sign from another country in his name; or

Residing outside the territory of the Republic of Indonesia for 5 (five) continuous years not in the framework of state service, without a valid reason and intentionally not expressing his wish to remain an Indonesian citizen before the 5 (five) year period ends, and every 5 (five) following years the person concerned does not submit a statement wishing to remain an Indonesian citizen to the Representative of the Republic of Indonesia whose working area covers the place of residence in question even though the Representative of the Republic of Indonesia has notified the person concerned in writing, as long as the person concerned does not become without citizenship.

### **Procedure for Losing Citizenship according to Legislation in Indonesia**

To implement the quo law, the government issued Government Regulation (PP) of the Republic of Indonesia Number 2 of 2007 concerning Procedures for Obtaining, Losing, Canceling, and Reclaiming Indonesian Citizenship. The main contents regulated in this Government Regulation include procedures for submitting requests and submitting statements for:

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<sup>10</sup> Jimly Asshididie, *Pengantar Ilmu Hukum Tata Negara...* p. 398.

<sup>11</sup> Constitution of the Republic of Indonesia on Citizenship of the Republic of Indonesia, UU No. 12, 2006, LN. Number 63, 2016, TLN. 4634 Chapter 24.

- a. Obtaining Citizenship of the Republic of Indonesia through citizenship, adoption, because of a gift by the State to a service person or for reasons of State interest;
- b. Loss of Indonesian Citizenship, either by itself or at the request of the person concerned;
- c. cancellation of the acquisition of Citizenship of the Republic of Indonesia;
- d. Reclaiming citizenship of the Republic of Indonesia due to loss by itself, loss due to application, and due to dissolution of marriage;
- e. Remain an Indonesian Citizen for Indonesian Citizens who lose Indonesian Citizenship Due to Marriage; and
- f. Choosing Citizenship of the Republic of Indonesia for children with dual citizenship.

Loss of citizenship is procedurally regulated through Government Regulation (PP) of the Republic of Indonesia Number 2 of 2007 concerning Procedures for Obtaining, Losing, Canceling, and Reacquiring Citizenship of the Republic of Indonesia in 7 (seven) Articles in Chapter V part one which regulates procedures for losing citizenship.<sup>12</sup>

When viewed from the initial intention in the process of losing citizenship, there are two ways to lose citizenship of the Republic of Indonesia, namely:

1. Losing citizenship by itself. An Indonesian citizen automatically loses Indonesian citizenship as stipulated in Article 23 of Law no. 12 of 2006 concerning Citizenship of the Republic of Indonesia and Article 31 of Government Regulation Number 2 of 2007 concerning Procedures for Obtaining, Losing, Canceling, and Reclaiming Citizenship of the Republic of Indonesia; and
2. Loss of citizenship upon application.<sup>13</sup> Indonesian citizens are declared to have lost their citizenship by the President at his request if the person concerned is 18 (eighteen) years old or married, lives abroad, and by being declared to have lost Indonesian citizenship, does not become stateless. The application for loss of citizenship is referred to in stages: first, submitted in writing by the person concerned to the President or Minister. The application is made in the Indonesian language on sufficiently stamped paper and at least contains (a) full name; (b) place and date of birth; (c) residential address; (d) occupation, (e) gender, (f) marital status of the applicant; and (g) the reasons for the application. The application is submitted to the Representative of the Republic of Indonesia (Representative of the Republic of Indonesia), whose working area includes the applicant's residence, accompanied by attachments. If the application submitted is incomplete, the Indonesian Representative returns it to the applicant no later than 14 (fourteen) days from the date the application was received, in the case of an application from the Indonesian Representative submitting the said application to the Minister within a maximum period of 2 (two) months from the date the application is received completely. The Minister, after examining the application, in case the application is incomplete, returns the application to the Representative of the Republic of Indonesia within 14 (fourteen) days from the date the application was received for completion. Second, if the application is complete, the Minister will forward it to the President by 14 (fourteen) days from the date

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<sup>12</sup> Chapters said: Chapter 32, Chapter 33, Chapter 34, Chapter 35, Chapter 36, Chapter 37, Chapter 38 dan Chapter 39. See in the Republic of Indonesia, Government Regulations concerning Procedures for Obtaining Loss of Cancellation and Reclaiming Citizenship of the Republic of Indonesia, PP. Number 2, 2007, LN. Number 2, 2007, TLN. 4676.

<sup>13</sup> Regulation of the Government of the Republic of Indonesia concerning Procedures for Obtaining Loss of Cancellation and Reclaiming Citizenship of the Republic of Indonesia, PP. Number 2, 2007, LN. Number 2, 2007, TLN. 4676, Chapter 35-39.

the application is received. Third, the President stipulates a decision regarding the loss of Indonesian citizenship. The five Indonesian representatives convey the presidential decision to the applicant by 7 (seven) days from the date the presidential decree is received. Finally, sixth, the Minister shall announce the names of persons who have lost Indonesian citizenship as referred to in the State Gazette of the Republic of Indonesia.

### **Indonesian Citizenship Status (Former) Member of ISIS: Is it Possible to Revoke it?**

To answer the issue of the status of Indonesian citizenship for former ISIS members, it is necessary to refer to Article 23 letter e and letter f of RI Law Number 12 of 2006, which states that Indonesian citizens lose their citizenship if the person concerned:

Word e: "*Voluntarily entering the service of a foreign country, a position in such service in Indonesia in accordance with the provisions of the laws and regulations can only be held by Indonesian citizens*";

Word f: "*Voluntarily take an oath or pledge allegiance to a foreign country or part of said foreign country.*"

Based on the provisions of the Article above, things that can cause a person to lose their citizenship are broadly related to what that person has done that has something to do with other countries. In this case, the Citizenship Law emphasizes to whom a person takes an oath or declares an oath of allegiance. Not only on the motives or actions that he did. Therefore, before concluding that someone who joins ISIS can lose and be revoked the government of Indonesian citizenship, it is important to examine the existence of ISIS as a state entity.

In connection with the claim of ISIS as a group that wants to establish a state, it is generally known that several forming elements must be fulfilled to establish a sovereign state. Some forming elements are absolute or constitutive, and some are additional or declarative. The first element is an absolute requirement, so if even one element is not present, the state does not exist. The elements of the state that fall into this category, in the formulation of the 1933 Montevideo Convention, consist of three important elements: people, territory, and sovereign government. While the additional element is recognition from other countries.<sup>14</sup>

According to the 1933 Montevideo Convention on the Rights and Duties of States, Article 1 states that:

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

Referring to the 4 (four) provisions in Article 1 of the Montevideo Convention above, ISIS does not fulfill as an entity as a state. This is because to be categorized as a country, ISIS: (a) does not have a permanent population; (b) has no clear territory; (c) sovereign government; and (d) can build relationships with other countries. Because ISIS is not a state entity, the provisions in Article 23 of RI Law Number 12 of 2006 cannot be applied to former ISIS members. Therefore, the Indonesian citizenship status of former ISIS members cannot be revoked.

### **Contemporary Islamic Perspectives on Citizenship**

Slightly wider than the issue of international terrorism, the issue of citizenship status that is emerging today departs from the vulnerability of minorities in domestic

<sup>14</sup> R. Rokilah, *Implikasi Kewarganegaraan Ganda ...* p. 53.

affairs. This is a consequence of their small population, non-dominant position in the country's political structure, and the possibility of being pressured by the majority of the population if it is not protected by law or the country's constitution. This condition encourages the importance of an evolution of the understanding of Islamic law in matters of citizenship status.

Mashood A. Baderin analyzes at least three perspectives in identifying citizenship status in Islamic law. First, the perspective that follows the classical *dhimmi* system and advocates a restrictive traditional view to protecting the Ahl al-kitāb (Christians and Jews) because only minorities are recognized in Muslim-majority countries. Such a restrictive perspective is neither theoretical nor practical sustainable.

Second, the perspective that proposes integrating the general principles of classical *dhimī* rules into the structure of a modern state, where the rights of non-Muslim minorities are guaranteed subject to limitations by the Islamic ideology of the state. This perspective can also be challenged because modern Muslim-majority countries, in general, have deviated from the classical idea of religious nationhood in which the Muslims within dar al-Islam gain full nationality. At the same time, the *dhim* people only receive territory/political affiliation that is limited.

Third, the perspective considered by Mashood A. Baderin as a more interesting concept to develop is that of those who propose rethinking and reformulating classical *dhimmi* rules on contextual reality. Mashood A Baderin, there is a need to re-examine the concept of the *dhimmi* through the evolutionary perception of Islamic law to meet the modern notion of equal citizenship and improve international standards of protection of minorities in modern countries. Supporters of this concept consolidate their arguments by referring to the doctrine of *maqashid al-shari'ah*, which promotes human welfare in general (*mashlahah*).

Fundamentally, this argument proposes adopting the concept of equal citizenship (later called *al-muwātanah*) for all citizens of modern Muslim-majority countries regardless of religious belief, as well as guaranteeing equal rights for all religious minorities, replacing the traditional *dhimmi* system by adopting the basis of the Medina Charter at the time of the Prophet Muhammad.<sup>15</sup> A concept of citizenship in which the emphasis on citizenship identity is based on loyalty to the state, namely Medina, to live together in peace, helping each other between citizens beyond religious identity, as well as a commitment to warding off danger from outside.

According to Mashood A. Baderin, the concept of *al-muwātanah* is the most relevant in contemporary Islamic jurisprudence, with the following justifications:<sup>16</sup>

1. Following several provisions of the Qur'an, such as the prohibition of coercion in religion (Q.S. Al-Baqarah (2): 265); the commandment of justice, doing good, and freedom for relatives, as well as the prohibition of all acts of shame and injustice and rebellion (QS. An-Nahl (16): 90); and do good and justice to fellow human beings as long as they do not fight because of their beliefs or expel them from their homeland (Q.S. Al-Mumtahanah (60): 8)
2. realizing the need for the protection of minorities
3. Promoting the general welfare (*mashlahah al-'ammah*) through a relationship of reciprocal facilities to protect the rights of Muslims as a minority living in a non-Muslim or modern secular country. This is recognized in terms of Islamic law as *mu'āmalah bi al-mitsl*.
4. Fulfilling the principle that the legitimacy of the majority power must depend on the general guarantee of minority rights

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<sup>15</sup> Mashood A. Baderin, Islamic Law and International Protection of Minority Rights in Context, on *Jurnal ResearchGate*, 2003, p. 341.

<sup>16</sup> Mashood A. Baderin, Islamic Law ..., p. 342.

From the explanation of the concept of *al-muwathanah* above, it can be seen that there is an emphasis on the requirement of loyalty to the state as one of the prerequisites for individual citizenship. Referring to Q.S. An-Nahl (16):90 the ex-ISIS themselves have indeed carried out rebellions on the battlefield against the legitimate government. Especially for those who come from abroad outside the territory of Iraq and Syria in particular. Thus, the granting of citizenship status for ex-ISIS does not get justification from the perspective of contemporary Islamic law, namely the concept of *al-muwathanah*. The reason is that it is clear that the TFF have violated the provisions of the Qur'an in verse above by rebelling against the legitimate government and renouncing their allegiance to the country of origin, which is the fundamental status of citizenship.

### International Perspectives: Comparisons, Laws, and Arguments

From a global perspective, TFF joining the ISIS terrorist group seriously threatens national security. For the countries where the TFF originates, the issue of recruiting ISIS members, either voluntarily or coercively, is not only an issue of international terrorism that threatens national security alone but also becomes a polemic over the issue of the citizenship status of its members. Both when ISIS existed and when the group was declared to have disappeared.<sup>17</sup>

As stated above, one of the responses of countries to the phenomenon of international ISIS terrorism is to denationalize the citizens of each country who are members, either as members (militants), sympathizers, supporters, or even part of families affiliated with ISIS. However, this step will overlap with the spirit of the United Nations Commission for Refugees (UNHCR) to end statelessness by 2024.<sup>18</sup>

In Shiva Jayaraman's observation, there were three proposals, along with their arguments based on international law, carried out by several countries in the denationalization of TFF, which was a member of ISIS. Here are the three proposals:<sup>19</sup>

#### 1. Denationalization of citizens with dual citizenship

Countries that adhere to the principle of dual citizenship, such as Canada, have imposed denationalization on their citizens if they are proven to have committed espionage, terrorism, or similar activities.<sup>20</sup> So does the UK. In the aftermath of the London bombings in 2006, the UK enacted a law that allowed it to strip the citizenship of two citizens. The law was revised in 2014 to allow the government to withdraw the citizenship of British citizens with only one citizenship. If the Secretary of the Interior finds that a person has committed acts of terrorism or espionage, he can revoke that person's citizenship without trial. The suspect has less than a month to challenge these findings before a special immigration judge.<sup>21</sup>

The legal argument in favor of this denationalization option is that the UDHR does not outline the state's legal obligations for protecting the citizenship status of its citizens. It also contemplates situations where states can revoke citizenship. Given the lack of clarity in this area of international law and the fact that citizenship is traditionally an area where respect is accorded to states, this policy of denationalization

<sup>17</sup> Alvin Noor Sahab Rizal, "Mengukuhkan Moderasi Islam untuk Menyelesaikan Terorisme dan Hoax." In *Al Aqidah (Jurnal Studi Islam)* Vol. 1. No. 2, 2019, p. 270.

<sup>18</sup> UNHCR, *The Campaign to end Statelessness*, accessed on November 18, 2019.

<sup>19</sup> Shiva Jayaraman, *International Terrorism and ...* p. 199-209.

<sup>20</sup> This Regulation by the Government of Canada is enacted through Bill C-24. *Strengthening Canadian Citizenship Act, Canadian bar Association: National Immigration Law Section 4*, accessed on November 18, 2019.

<sup>21</sup> Katrin Bennhold, *Britain Expands Power to Strip Citizenship From Terrorism Suspects*, accessed on November 18, 2019.



is legal under international law. While Article 15 of the UDHR makes nationality a right and prohibits its arbitrary revocation, it does not elaborate further on dual citizenship under international law.

Meanwhile, the arguments against this proposal are even stronger. Article 15 of the UDHR guarantees individuals a procedural right. First, Article 15(2) of the UDHR prohibits "arbitrary" revocation, which provides some procedural protections at the very least. Some plans to revoke citizenship for dual citizenship, such as Canada's citizenship law, have no issues being decided in court. Instead, the law defines the decision for immigration officials. This provides limited options for affected individuals to challenge this decision or provide evidence disproving its association with terrorist activities. British citizenship laws work similarly, passing decisions to the head office of government. A suspected terrorist has a limited period to appeal the denationalization decision to a special immigration court.<sup>22</sup>

From a procedural point of view, the existing legal scheme is troubling. Some conventions, such as the ICCPR and UDHR, guarantee individuals the right to access domestic courts.<sup>23</sup> Here, the unilateral actions taken by the executive branch with limited judicial review violate the conventional understanding of a fair legal process. Instead of letting a suspect fight over his status, presenting evidence alleging his innocence, and scrutinizing the evidence against him, a bureaucrat makes a one-sided decision. No isolated and independent body reviews the government's factual determinations, nor are defendants given the right to challenge their decisions. Given the political rhetoric in the United States and Western European countries around immigrants, naturalized citizens, and Muslim minorities, there is understandable concern about the political actors making these kinds of decisions. In addition, trials before independent courts are more likely to limit potential abuses and overuse of the law's application of denationalization while minimizing wrongdoing if courts hold the government accountable and allow suspects to enter pleas.

## 2. Proposal to grant statelessness

Several countries have enacted or are considering legislation that strips TFF suspects of only one nationality, rendering them stateless. Norway, for example, is considering a plan that would strip terrorist suspects of their citizenship, regardless of whether this would render them stateless (in the case of suspects having dual citizenship). This could be a potential "next step" for countries planning to renounce the citizenship of those with dual citizenship. As discussed earlier, after the 2006 London bombings, the US passed a law that allowed the Home Office to strip the citizenship of two United States citizens. In 2014, this law was expanded to cover individuals with only British citizenship, rendering those people stateless.

Specifically, Article 8 (1) of the 1961 Convention on the Reduction of Statelessness regulates this. The provisions of Article a quo appear to prohibit the state from stripping suspected terrorists of their citizenship if doing so would render them stateless. Nevertheless, there are important qualifications and many unanswered questions stipulated by the exceptions to Article 8. The provisions of Article 8 of the Convention have many exceptions to the general prohibition of denationalization which would render a person stateless. Article 8 Paragraph (2) states that if a person obtains his citizenship using fraud, a country can revoke his citizenship, regardless of whether he has only one citizenship (thus becoming stateless) or has dual citizenship. Article 8 Paragraph (3) letter (a) number (ii) also describes another exception for someone who has "committed a serious act that harmed the vital interests of the state." Article 8 Paragraph (3) letter (b) further states that if a person has provided evidence of his determination to refuse his allegiance to the state party with which a citizenship contract

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<sup>22</sup> Katrin Bennhold, *Britain Expands...*, p. 5.

<sup>23</sup> ICCPR Chapter 14.

binds him, then that is sufficient to revoke his citizenship, even if doing so would render him disabled citizenship.<sup>24</sup>

### 3. Proposal to Revoke the Citizenship of a Person Affiliated with TFF

While no country has amended its citizenship laws to denationalize persons affiliated with suspected ISIS TFFs, Australia has tabled legislation. This raises the question of whether the state can denationalize an individual based solely on his association with a suspected TFF/terrorist.<sup>25</sup>

If the individual is a dual national, it may be argued that as long as the denationalization decision is not procedurally "arbitrary," there may be no prohibition against stripping this individual of citizenship. However, at the same time, if the term "arbitrary" provided substantive protection to individuals, then the exceptions to the 1961 Convention would apply. Therefore, the state cannot revoke the citizenship of an affiliated individual unless he meets one of the exceptions. Stated in Article 8 of the 1961 Convention. Suppose a child with dual citizenship, for example, does not participate in the alleged terrorism of his parents. In that case, denationalization in any form based solely on the child's kinship with the parents is "arbitrary."

In addition, there are specific international conventions relating to the rights of women and children. In the case of married couples, especially women, the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Convention on the Nationality of Married Women (CNMC) protect women's citizenship. In particular, the Convention stipulates parity in national rights between women and men. It prohibits a change in the nationality of a spouse based on a change in the husband's nationality. Whereas in the case of children, Articles 7 and 8 of the Convention on the Rights of the Child (CRC) impose an obligation on the state to preserve the identity and citizenship of children.

## Conclusions

The problem of international terrorism intersects directly with the problem of citizenship. In connection with a large number of members and people affiliated with international terrorist groups, in this case, ISIS, the proposal to revoke citizenship (denationalization) has become an issue that has surfaced in various countries, including Indonesia.

Indonesia does not adhere to the principle of statelessness (patricide) or dual citizenship (bipartite). In connection with the large number of Indonesian citizens who joined the TFF in the ISIS group, many voices stated that the government should revoke citizenship. Even though the Indonesian constitution and citizenship law do not prohibit this, the denationalization of Indonesian citizens who are former terrorist members or those affiliated with them is not an easy matter. The Citizenship Law states that a person loses citizenship if he "voluntarily takes an oath or pledges allegiance to a foreign country or part of that foreign country...". In this case, based on Article 1 of the Montevideo Convention, ISIS cannot be categorized as a state entity. So that former members and those affiliated with them cannot automatically lose their citizenship status.

Responding to this, several countries are strictly considering denationalization (plans/proposals) for members and people affiliated with ISIS through their domestic legal instruments, such as in the UK, Canada, Australia, and other countries. In the case of a person whose citizenship will be revoked, he is a dual citizen or a single citizen, thus making himself stateless. Because of this, although international law does not prohibit member countries from doing so, international legal instruments provide strict

<sup>24</sup> Chapter 8 Convention on the Reduction of Statelessness 1961.

<sup>25</sup> Shalailah Medhora, *Children May Lose Australian Citizenship under Proposed Legislation*, accessed on November 18, 2019.

obstacles for countries that wish to denationalize their citizens. Especially for women and children whose rights to citizenship status are protected by international conventions.

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