


# **The Indonesian Government's Dilemma in Repatriating Former ISIS Members: Balancing Advocacy, Citizenship Status, and Human Rights**

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## **Abstract**

The Indonesian Government confronts a multifaceted challenge in repatriating former ISIS members, necessitating a delicate equilibrium between advocacy, citizenship status, and human rights principles. International conventions uphold the fundamental right to nationality,

articulated in Article 15 of the Universal Declaration of Human Rights, yet over 500 former ISIS members from Indonesia remain stranded in Syria, having illegally departed and destroyed their official documentation. While several countries in Southeast Asia and Europe have undertaken repatriation efforts under rigorous conditions, Indonesia faces a quandary. These individuals do not qualify as People with Social Welfare Problems under domestic law, complicating their reintegration. This classification divergence conflicts with international obligations requiring nations to accept and restore nationality to their citizens, notwithstanding their affiliation with extremist groups not recognized as refugees by the UNHCR. This paper delves into the legal and humanitarian imperatives compelling Indonesia to address this issue. It examines international frameworks and national legislation to argue for the necessity of repatriation, while also exploring the preventive and repressive measures Indonesia employs. Balancing the imperative to safeguard human rights with national security concerns presents a formidable task, demanding a nuanced approach that ensures compliance with international standards while safeguarding domestic stability and security.

## Keywords

*ISIS, Repatriation, Nationality, Human Rights, Policy-Making*

## A. Introduction

The emergence of radical Islamic political movements in the early 21st century is a notable phenomenon, posing a substantial political challenge in the contemporary global arena. These movements are geographically dispersed across the Middle East, Southeast Asia, Europe, and Africa, demonstrating a pervasive presence that spans nearly every region worldwide.<sup>1</sup>

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<sup>1</sup> Hillel Frisch, and Efraim Inbar. *Radical Islam and International security*. (London: Routledge, 2008). See also Mark Juergensmeyer, "Terror in the Mind of God: The Global Rise of Religious Violence." *Police Practice and Research* 6, no. 2 (2005): 201-208; Olivier Roy, "Globalized Islam: The Search for a New Ummah." *Islamology* 7, no. 1 (2017): 11-40; Quintan Wiktorowicz, ed. *Islamic Activism: A Social Movement Theory Approach*. (Burlington: Indiana University Press, 2004).

These radical Islamic groups campaigned for jihad against various non-Muslim governments with the aim of establishing an Islamic State. However, in this period of time there is one radical Islamic group that has done all this and started with acts of terror. The group named itself the Islamic State. This radical Islamic political movement is the richest, successful, and the most dangerous radical group in the world. Most of the world knows this group as The Islamic State in Iraq and Syria or the Islamic State in Iraq and al-Sham (ISIS).<sup>2</sup>

In spreading radical ideology in this era of globalization, these radical groups take advantage of the dissemination of information through international communication, spreading propaganda to provide threats and even invite civil society to join this movement. It has been proven that the phenomenon of foreign fighters in Iraq and Syria is truly global, with around 86 countries seeing at least one of their citizens leaving for Syria to fight alongside extremist groups there, especially the Islamic State movement. Massive movements for recruitment have emerged and are spreading in global flows. In February 2015, more than twenty thousand Muslims from all over the world had left for Iraq and Syria to fight jihad with the Islamic State movement.<sup>3</sup> They became a jihadist group through violence and tried to fight for Islam according to Kaffah, where Islamic law is the law of the land and tried to convince fellow Muslims that the use of violence was legal. The Islam Khilafah project launched by the Islamic State attracted a lot of attention from foreign fighters from all over the world and become a beacon for recruiting and facility/logistics networks. Furthermore, those who have fought alongside the Islamic State make connections with each other. The Islamic State also continues to build prestige and legitimacy in all its movements.<sup>4</sup>

Indonesia is one of the countries whose citizens are also members of ISIS. Until 2017, at least 671 Indonesian citizens (WNI) were involved with the terrorist group al-Dawla al-Islamiya al-Iraq wa al-

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<sup>2</sup> Robert Spencer, *The Complete Infidel's Guide to ISIS*. (New York: Simon and Schuster, 2015).

<sup>3</sup> Aswan Haryadi, and Nurhasanah Muthia. "Gerakan Politik Negara Islam Irak dan Suriah (ISIS) dan Pengaruhnya terhadap Indonesia." *Transborders: International Relations Journal* 1, no. 1 (2017): 1-19.

<sup>4</sup> Aaron Y. Zelin, *The War Between ISIS and al Qaeda for Supremacy of the Global Jihadist Movement*. (New York: The Institute for the Study of War, 2015).

Sham (Daesh) in Iraq and Syria. According to the National Police of Republic of Indonesia, the group comprises 524 men and 147 women.<sup>5</sup> In February 2019, ISIS faced encirclement by militias supported by the United States and Britain, leading to their rapid withdrawal. Many ISIS sympathizers, now combatants, reside in Syrian refugee camps. Kurdish authorities managing foreign nationals affiliated with ISIS, including former Indonesian members, have urged their respective countries to repatriate these individuals due to their strain on Kurdish Authority governance.

The International Centre for the Study of Radicalization (ICSR) reported that over 40,000 people from 80 countries became affiliated with ISIS.<sup>6</sup> At least 2,000 suspected foreign terrorist fighters (FTF) were being detained in Syria.<sup>7</sup> In addition, thousands of women, and children from over 45 nationalities are being detained in Iraq and Libya prisons and Syrian camps.<sup>8</sup> FTFs particularly children who are charged and

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<sup>5</sup> Yusmadi Yusmadi, "Ini Jumlah Warga Indonesia yang Bergabung dengan ISIS", *Tribun News Aceh*, retrieved from <<https://aceh.tribunnews.com/2017/09/19/ini-jumlah-warga-indonesia-yang-bergabung-dengan-isis>>. Furthermore, since 2017, The Soufan Center has reported that 600 Indonesian citizens (WNI) joined ISIS in Syria, comprising 113 women, 100 children, and the remainder being adult men. This number increased in 2018, with the National Counter-Terrorism Agency (BNPT) indicating that 1,321 WNI attempted to join ISIS in Syria. Data presented by the BNPT and Detachment 88 at a working meeting with Commission III of the DPR RI at the Parliament Complex in Jakarta on February 25, 2020, suggests that 1,276 WNI have joined ISIS, with only approximately 297 possessing Indonesian passports. However, this data remains unverified due to Indonesia's lack of access to the region in question. Consequently, the Indonesian government, through the BNPT, continues to seek collaboration with the International Committee of the Red Cross to document the presence of WNI in Syria. See Richard Barrett. *Beyond the Caliphate: Foreign Fighters and the Threat of Returnees*. (New York: The Soufan Center, 2017).

<sup>6</sup> Joana Cook, and Gina Amy Vale. *From Daesh to 'Diaspora': Tracing the Women and Minors of Islamic State*. (London: International Centre for the Study of Radicalisation, King's College London, 2018).

<sup>7</sup> Ryan Browne, and Jennifer Hansler. "US Officials Say More than 2000 Suspected Foreign ISIS Fighters Being Held in Syria." *CNN*, April 17, 2019. Retrieved from <<https://edition.cnn.com/2019/04/17/politics/foreign-isis-fighters-syria/index.html>>

<sup>8</sup> Human Rights Watch. "Tunisia: Scant Help to Bring Home ISIS Members' Children." February 12, 2019. <https://www.hrw.org/news/2019/02/12/tunisia-scant-help-bring-home-isis-members-children>.

detained for their association with the terrorist group with regards to the national security.<sup>9</sup> This situation has made repatriation of FTFs one of the most pressing issues faced by the international community.<sup>10</sup> Countries are now facing a challenge on whether they should actively repatriate thousands of ISIS FTFs, who are still being held in prisons and refugee camps in the northeast Syria and Iraq or refuse their return on the grounds of protecting national security.<sup>11</sup> Most importantly, the main reason why countries are reluctant to accept repatriation is the potential threats that FTFs may pose to national security when they return.<sup>12</sup> If the country did not repatriate the fighters, any action

<sup>9</sup> United Nations General Assembly. *Children and Armed Conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict*. (United Nations General Assembly, December 28, 2018).

<sup>10</sup> Anita Perešin and Daniela Pisoii. *Repatriated Foreign Terrorist Fighters and Their Families: European Experiences and Lessons for P/CVE*. (Luxembourg: Publications Office of the European Union, 2021). Furthermore, the situation has made repatriation of Foreign Terrorist Fighters (FTFs) one of the most pressing issues faced by the international community due to significant security threats, legal challenges, and humanitarian concerns. Returning FTFs may continue terrorist activities or radicalize others, posing severe risks. Legal complexities arise from prosecuting FTFs, with varying international standards and evidence challenges. Additionally, many FTFs are accompanied by families, including innocent children in dire conditions. Effective repatriation requires international cooperation to share intelligence and resources, balancing security, legal, and humanitarian needs to address this urgent global issue. See also Setyo Widagdo, Kadek Wiwik Indrayanti, and Anak Agung Ayu Nanda Saraswati. "Repatriation as a human rights approach to state options in dealing with returning ISIS foreign terrorist fighters." *SAGE Open* 11, no. 3 (2021): 21582440211032679; Helen Stenger, "Victim versus villain: Repatriation policies for foreign fighters and the construction of gendered and racialised 'threat narratives'." *European Journal of International Security* 8, no. 1 (2023): 1-24; Emily Burchfield, "The Risks of Repatriating—Or Not—ISIS Foreign Fighters from the West", *Georgetown Security Studies Review*, 2019, retrieved from <<https://georgetownsecuritystudiesreview.org/2019/04/10/the-risks-of-repatriating-or-not-isis-foreign-fighters-from-the-west/>>

<sup>11</sup> Widagdo, and Saraswati. "Repatriation as a Human Rights Approach to State Options in Dealing with Returning ISIS Foreign Terrorist Fighters".

<sup>12</sup> Goos Hofstee, "The Debate Around Returning Foreign Fighters in the Netherlands." January 13, 2020. Available online at <<https://www.clingendael.org/publication/debate-around-returning-foreign-fighters-netherlands>>. See also Rik Coolsaet, and Thomas Renard. *Returnees: Who are they, why are they (not) coming back and how should we deal with them? Assessing*

deemed unjust, whether perceived or experienced negatively, holds the capacity to fracture the connections between these factions and the government, potentially inciting further radicalization and acts of terrorism.<sup>13</sup>

The Indonesian government, dealing with citizens who were ISIS supporters, is considering repatriating former ISIS members. This creates a dilemma because these individuals are not classified as Persons with Social Welfare Problems under the Social Welfare Law. These ex-ISIS members deliberately destroyed their identities, including passports, and left Indonesia illegally. However, international regulations compel countries to accept former ISIS members, as they are not considered refugees by the UNHCR. The key questions are how the Indonesian government will handle citizens proven to have fought as ISIS combatants in Syria or Iraq, and what their citizenship status will be under Citizenship Status Regulations.

## B. Method

The chosen research methodology for this study is empirical legal research, which represents a departure from the conventional approach to understanding law. Instead of viewing law solely as an autonomous normative concept, as seen in the dichotomy of *ius constitutum* (established law) and *ius constituendum* (law to be established), the empirical legal research method considers law as a tangible and observable phenomenon within the fabric of society.<sup>14</sup> In this context, the study perceives law not merely as an abstract set of rules but as

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*Policies on Returning Foreign Terrorist Fighters in Belgium, Germany and the Netherlands*. Vol. 101. (Egmont-Royal Institute for International Relations, 2018); Edwin Bakker, and Peter Grol. *Motives and Considerations of Potential Foreign Fighters from the Netherlands*. (Den Haag: International Centre for Counter-Terrorism, 2015).

<sup>13</sup> Onur Sultan, Emanuela Biffi, and Pilar Cebrián. "Reintegration of ISIS Returnees: A Myth or Reality." *Horizon Insights* 3, no. 3 (2020): 1-16.

<sup>14</sup> Bachtiar Bachtiar, *Metode Penelitian Hukum* (Pamulang: Unpam Press, 2018). See also Agus Budianto, "Legal research methodology reposition in research on social science." *International Journal of Criminology and Sociology* 9, no. 1 (2020): 1339-1346; Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies." *Journal of Judicial Review* 24, no. 2 (2022): 289-304; Nicholas Mignanelli, "Critical Legal Research: Who Needs It?" *Law library Journal* 112, no. 3 (2020): 327-343.

something deeply embedded in the lived experiences and behaviors of individuals within a community. Connecting to the topic of the Indonesian government's dilemma in repatriating former ISIS members, while balancing advocacy, citizenship status, and human rights, the research employs an empirical approach to examine the practical implications of legal norms. It specifically investigates how these norms intersect with complex issues such as child marriages, revealing real-world scenarios where legal frameworks impact societal dynamics, including rights violations and forms of violence associated with early marriages. This approach underscores the broader context of legal challenges and societal consequences faced by governments when addressing sensitive issues like repatriation and human rights in the context of international terrorism.

## C. Result and Discussion

### 1. Policies and Regulations on Citizenship Status

In March 2019, following ISIS's defeat by the Syrian Democratic Forces (SDF) in Baghouz, Syria, hundreds of former ISIS members, including Indonesians, were stranded in the Syrian camp at Al Hol and expressed a desire for repatriation. In legal terms, "*repatriation*" signifies the formal return of individuals to their homeland or country of origin. According to the Indonesian Dictionary and legal dictionaries like Black's Law Dictionary, this process involves the act of returning individuals who may have been abroad or displaced back to their native country. It often involves legal procedures and considerations regarding citizenship, immigration, and international agreements governing the rights and obligations of both the individuals and the countries involved. Repatriation aims to restore individuals to their original national status and may involve logistical, legal, and humanitarian dimensions depending on the circumstances.<sup>15</sup> However, many countries face dilemmas in accepting these former ISIS members back, as they left voluntarily and often lost or damaged their personal documents such as passports or other state documents.<sup>16</sup>

<sup>15</sup> Bryan A. Garner. *Black's Law Dictionary*. (St. Paul: Academic Publishers, 2004).

<sup>16</sup> See also Aman Bajwa, "The Threat of ISIS-Affiliated Foreign Terrorist Fighters Towards Canadian National Security: Making the Case for the Development of a Prosecutorial-Reintegrative Model for Returnees." *The Journal of Intelligence*,

Based on Article 23 of Law Number 12 of 2006 on Citizenship (hereinafter referred to as Law 12/2006) in letters d, e and f which states that an Indonesian citizen loses his citizenship if the person concerned: enters foreign military service without prior permission from President; voluntarily enter the service of a foreign country, whose position in such service in Indonesia in accordance with the provisions of the laws and regulations can only be held by Indonesian citizens; and voluntarily take an oath or declare a pledge of allegiance to a foreign country or part of a foreign country. Then it is clarified in article 31 of Government Regulation number 2 of 2007 on Procedures for Obtaining, Losing, Cancelling and Regaining Citizenship of the Republic of Indonesia (hereinafter referred to as PP 2/2007) in letters c, d and e which states that Indonesian Citizens are automatically lost his citizenship due to: joining foreign military service without prior permission from the President; voluntarily enter the service of a foreign country, whose position in such service in Indonesia in accordance with the provisions of the laws and regulations can only be held by Indonesian citizens; voluntarily take an oath or declare a pledge of allegiance to a foreign country or part of a foreign country.

According to the Montevideo Convention of 1993, fulfilling the requirements for founding a state includes possessing a population, a defined territory, a government, capacity to engage with other states, and recognition of sovereignty by other states. The status of ISIS as a state or a belligerent organization remains contentious. While the Islamic State of Iraq and Syria asserts control over people, territory, and governance, it lacks the ability to establish diplomatic relations with other states.<sup>17</sup> The Indonesian government, along with the Indonesian Ulema Council, has agreed to emphasize that the Islamic State of Iraq and Syria (ISIS) is a radical movement that claims to represent Islam. There are three main reasons underlying this prohibition. The first reason is that ISIS reportedly obtains a significant portion of its funding from criminal activities. The second reason is the indoctrination of the

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*Conflict, and Warfare* 4, no. 1 (2021): 66-100; Francesca Capone, "The children (and wives) of foreign ISIS fighters: Which obligations upon the States of nationality?," *Questions of International Law* 60 (2019): 69-97.

<sup>17</sup> Hanif Nur Widhiyanti, and Mukhlisa Ilman Nafiah Medianto. "Indonesia Obligation to Repatriate Nationals Who Had Joined the Islamic State of Iraq and Syria." *Fiat Justisia: Jurnal Ilmu Hukum* 16, no. 2 (2022): 153-170.

concept of bai'at (violence) in ISIS actions, which clearly contradicts Islamic teachings. The third reason is that ISIS seeks to establish a caliphate or Islamic state, which is in direct conflict with the Unitary State of the Republic of Indonesia (NKRI), a fundamental principle of the country.<sup>18</sup>

Then the question arises of these regulations. If Indonesia revokes a person's citizenship because in this article, he swears to serve another country and joins foreign military service without prior permission, then Indonesia indirectly recognizes that ISIS is a sovereign country. Meanwhile, ISIS is not a country. Indonesian citizens whose citizenship is revoked will become stateless or stateless.<sup>19</sup> According to the National Counterterrorism Agency (BNPT), ISIS is considered to be a part of another country. Therefore, Indonesian citizens who deliberately pledge allegiance to ISIS can face the revocation of their citizenship and may be subject to criminal charges.<sup>20</sup>

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<sup>18</sup> Putra Perdana Ahmad Saifulloh, "Gagasan Kewajiban Mahkamah Konstitusi dalam Memberikan Fatwa Pencabutan Kewarganegaraan untuk Warga Negara Indonesia Mantan Anggota ISIS," *Varia Hukum* 5, no. 2 (2023): 124-140.

<sup>19</sup> Kristian Erdianto, "Pencabutan Kewarganegaraan WNI Dinilai Berpotensi Pengakuan Kedaulatan ISIS", *KOMPAS*, January 1, 2016. Retrieved from <<https://nasional.kompas.com/read/2016/01/25/17395181/pencabutan.kewarganegaraan.wni.dinilai.berpotensi.pengakuan.kedaulatan.isis>>

<sup>20</sup> Rakhmat Nur Hakim, Bayu Galih, "Menkumham Kaji Opsi Kepmen untuk Cabut Kewarganegaraan WNI Eks ISIS", *KOMPAS*, February 20, 2020. Retrieved from <<https://nasional.kompas.com/read/2020/02/20/13105981/menkumham-kaji-opsi-kepmen-untuk-cabut-kewarganegaraan-wni-eks-isis>>. According to the National Counterterrorism Agency (BNPT), ISIS is perceived as an entity associated with another sovereign state or organization. In Indonesian legal context, individuals who willingly pledge allegiance or engage in activities supporting such entities can face severe legal consequences. These actions may lead to the revocation of their Indonesian citizenship under legal provisions concerning national security and allegiance to foreign powers. Furthermore, such individuals may be prosecuted under Indonesian criminal law for offenses related to terrorism, which are outlined in various statutes aimed at combating terrorism and protecting national sovereignty. See also Muhammad Anns, and Muhamad Syauqillah. "The Repatriation of Returning ISIS Foreign Terrorist Fighters: Analysis of the Factors Influencing Indonesia's Refusal and Its Implications on Counterterrorism Efforts." *Masyarakat, Kebudayaan & Politik* 36, no. 4 (2023): 475-487; Rohan Gunaratna, "Counter-terrorism in Asia: The state partnership with civil society organizations." In *Civil Society Organizations against Terrorism*. (London:

If Indonesia revokes the citizenship of Indonesian citizens who join ISIS, it risks rendering them stateless. This situation conflicts with Article 15 of the Universal Declaration of Human Rights (UDHR), which affirms that everyone has the right to a nationality and cannot be arbitrarily deprived of it or prevented from changing it. The right to obtain citizenship is a basic right of every human being, everyone has the right to obtain, change and maintain their citizenship. International Human Rights Law states that the right of States to decide who their citizens are is not absolute, and States must comply with their human rights obligations regarding the granting and loss of citizenship. Stateless status is also discussed in the 1954 Convention on the Status of Stateless Persons which defines a stateless person as a person who is not considered a citizen by any country under its legal operation. Declaring people stateless is a violation of their human rights to citizenship, and the State should provide legal certainty regarding the citizenship of their citizens. States should also be able to prevent their citizens from losing their citizenship.<sup>21</sup>

## 2. Implementation of Repatriation of Former ISIS Members in Other Countries

The dilemma in repatriating former ISIS members is not only experienced by Indonesia, but also by many countries throughout the world. Each country has its own firmness in accepting or rejecting the return of former ISIS members to their country. Four main options can

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Routledge, 2021), pp. 14-62; Connor H. Berrier, "Southeast Asia: ISIS's next front". *Dissertation*. (Monterey, California: Naval Postgraduate School, 2017).

<sup>21</sup> United Nations. *Universal Declaration of Human Rights* (1948). Retrieved from <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>; United Nations High Commissioner for Refugees (UNHCR). *Convention relating to the Status of Stateless Persons* (1954). Retrieved from <[https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons\\_ENG.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf)>. See also Helen Duffy, "Foreign Fighters', Syrian Camps and the Jurisdictional Quagmire." *Returning Foreign Fighters: Responses, Legal Challenges and Ways Forward* (2023): 89-116; Mark FN. Franke, "The unbearable rightfulness of being human: citizenship, displacement, and the right to not have rights." *Citizenship Studies* 15, no. 1 (2011): 39-56; Guy S. Goodwin-Gill, "The international law of refugee protection." *The Oxford Handbook of Refugee and Forced Migration Studies* (2014): 36-47.

be identified in response to repatriate the ex-fighter. The first option is to leave foreign fighters and their families where they are to be prosecuted by local authorities. The second option is to actively prevent foreign fighters from returning home, either by stripping them of their nationality or by using technical arguments to contest the existence of their initial citizenship. A third option is to recognize the foreign fighters' right to return but avoid active consular efforts to facilitate their repatriation. Finally, a fourth option is to actively repatriate foreign fighters and subject them to prosecution in their home country in addition to monitoring, rehabilitation, or reintegration efforts following their return.<sup>22</sup> It's crucial to refrain from taking a short-sighted approach to dealing with returnees and instead consider the enduring consequences of choosing not to repatriate them. This involves assessing whether deterring foreign fighters from returning to their home countries could potentially drive them to relocate to conflict-ridden or inadequately governed regions, where they could enhance their connections, refine their tactical abilities, and ultimately plot not only local but also global terrorist activities.<sup>23</sup>

United States President Donald Trump has urged European countries to take back their citizens still being held in detention camps in Iraq and Syria. Trump threatened that if European countries did not take back their citizens, US troops would free them so they could return to their own countries. However, several countries, including Germany, stated that it was not that easy to repatriate ISIS detainees and then take them to court.<sup>24</sup>

A leaked draft agreement between the Kurds and the EU foresaw among other items are following:

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<sup>22</sup> Brian Michael Jenkins, "Options for dealing with Islamic state foreign fighters currently detained in Syria." *CTC Sentinel* 12, no. 5 (2019): 11-23.

<sup>23</sup> Adam Hoffman, and Marta Furlan. *Challenges Posed by Returning Foreign Fighters*. (Washington: The George Washington University, 2020).

<sup>24</sup> Megan Specia, "Shamima Begum, Who Joined ISIS as a Teen, Loses Latest Bid to Regain U.K. Citizenship", *New York Times*, 2024. Retrieved from <<https://www.nytimes.com/2024/02/23/world/europe/shamima-begum-uk-citizenship-appeal.html>>; Sophie Tanno and Jessie Gretener, "British woman who joined ISIS as a teen loses UK citizenship appeal", *CNN*, February 23, 2023. Retrieved from <<https://edition.cnn.com/2023/02/22/europe/shamima-begum-ruling-intl-gbr/index.html>>

- a. Separation of the women based on their radicalization level and level of faithfulness to ISIS within Al-Hol Camp.
- b. Immediate set-up of schools to separate children from mothers during daytime and -if possible- during night through boarding schools to prevent radicalization.
- c. Categorization of the women as:
  - (1) Those who have been dragged there under pressure and have “shown themselves innocent”, and
  - (2) Those who have knowingly joined the terrorist group.
- d. Rapid repatriation of women in the first category to their home countries without delay “in consultation with their country”.
- e. Trial of the second group together with men through local courts that would not deliver death penalty, but would punish those:
  - (1) who committed the worst atrocities with 15 years to life imprisonment, and
  - (2) who can only be accused of membership of IS with up to four years in prison.
- f. Repatriation of those convicted also “after a period of time and in good conduct”.<sup>25</sup>

An example of one of the cases regarding the citizenship status of former ISIS members is the case of Shamima Begum, an England citizen who joined ISIS in 2015 when he was 15 years old and then married an ISIS member and had a child. Britain decided to revoke Shamima's citizenship and sparked a polemic regarding the status of Shamima's children.

At a meeting of the UN Human Rights Council on (24/06) in Geneva, the UN stated that tens of thousands of ISIS fighters and family members detained in Iraq and Syria must be tried or released. Countries should be responsible for their citizens and should take them back if proven innocent. Children of ISIS members in holding camps in Syria are experiencing serious violations of their human rights. According to

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<sup>25</sup> Guy Van Vlieden, “Koerden willen nu ook onze IS-vrouwen berechten: Wie zich liet meeslepen mag meteen naar huis”, *HLN*, February 25, 2020. Retrieved from <<https://www.hln.be/de-krant/koerden-willen-nu-ook-onze-is-vrouwen-berechten-wie-zich-liet-meeslepen-mag-meteen-naar-huis-a4c45275/>>. See also Charlie Savage, “The Kurds’ Prisons and Detention Camps for ISIS Members, Explained”, *The New York Times*, October 13, 2019. Retrieved from <<https://www.nytimes.com/2019/10/13/us/politics/isis-prisoners-kurds.html>>

UN Human Rights Commissioner Michelle Bachelet, there should be no doubt about the fate of the detainees. He said that family members of foreign nationals should be repatriated, unless they are tried for crimes according to international standards. The state, according to him, should provide these children with the same access to citizenship as children in other conflict areas.<sup>26</sup> According to a report by the International Center for the Study of Radicalization (ICSR), there were at least 3,704 foreign-born children brought by their parents or guardians to ISIS areas, including 640 from France, at least 350 from Russia and nearly 400 from Morocco. If the child must be separated from his parents, the child protection organization Save the Children opposes this because according to him separating children from their mothers can also damage the child's condition.<sup>27</sup>

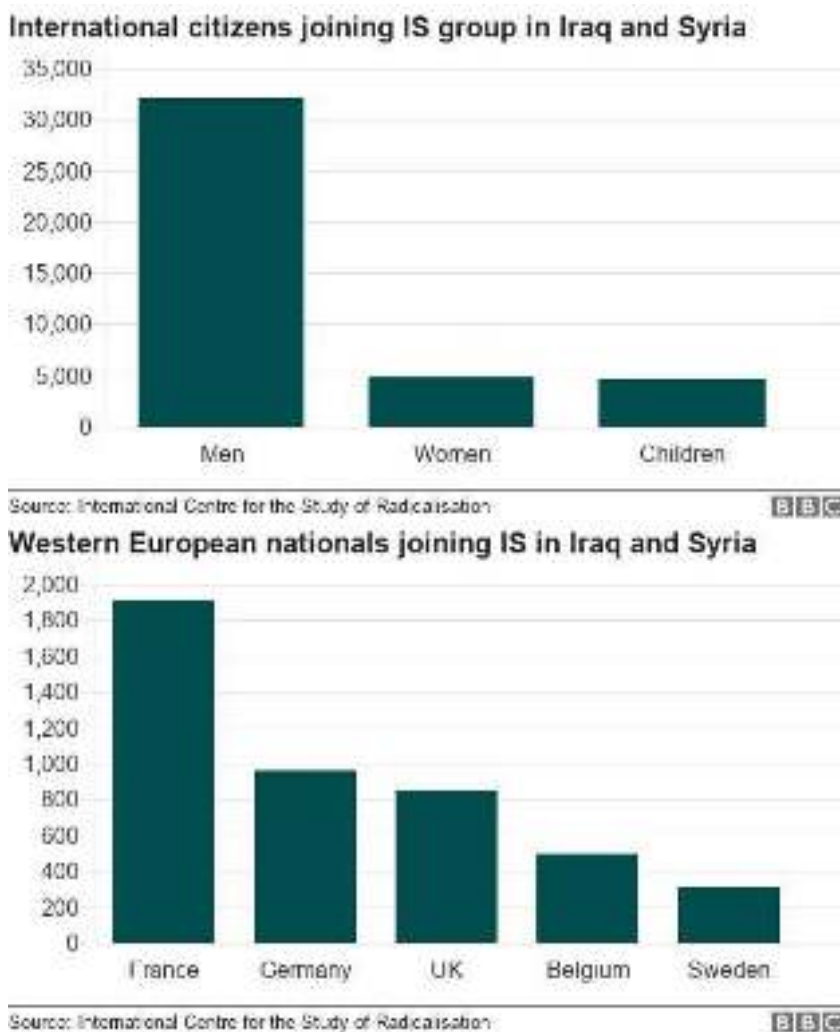
The following is data regarding the origins of children born to parents who are members of ISIS.



<sup>26</sup> BBC World, "Islamic State captives 'must be tried or freed', says UN's Bachelet", *BBC*, June 24, 2019. Retrieved from <<https://www.bbc.com/news/world-middle-east-48742972>> See also Asya Metodieva, "Balkan foreign fighters are coming back: What should be done?," *Strategic Policy Institute* (2018): 1-25.

<sup>27</sup> Eleanora Kulenbekova and Daniel Wittenberg, "Women and children who went to live with IS in Syria are being brought home", *BBC*, January 24, 2024. Retrieved from <<https://www.bbc.com/news/world-asia-67926617>>.

The following is data from ICSR regarding how many international citizens and specifically Western European citizens joined ISIS.



Based on the data, there are more than 30,000 international citizens affiliated with ISIS, including approximately 5,000 children and over 1,800 citizens from Western European countries. This raises the critical question: how are different countries responding to the return or repatriation of their citizens and their children who joined ISIS?<sup>28</sup>

<sup>28</sup> International Crisis Group, “Calibrating the Response: Turkey’s ISIS Returnees”, *International Crisis Group Report No 258*, June 29, 2020. Retrieved from

Russia has pioneered the repatriation of its citizens who joined ISIS, with around 4,500 individuals involved. By February 2019, Russia had successfully repatriated 200 women and children affiliated with ISIS. Similarly, Kosovo, a European nation with a predominantly Muslim population, has repatriated 110 of its citizens from Syria.

In the other side, France is currently evaluating the documents of its citizens in Syria and is making repatriation decisions on a case-by-case basis. Significant repatriation efforts include the return of 12 orphans on June 10, 2019, five orphans in mid-March, and a three-year-old girl whose mother is serving a life sentence in Iraq.

Meanwhile, Belgium has been notably affected, with approximately 400 of its citizens having joined ISIS since 2012. Presently, around 50 to 60 Belgian children remain in Syrian holding camps. On June 13, 2019, Belgium announced its intention to repatriate six orphans from these camps. Belgium, along with other European countries, is preparing to evacuate citizens suspected of ISIS affiliations from detention camps in Syria.

In addition, Germany has undertaken the repatriation of dozens of children of ISIS fighters from Iraq since March 2019. German authorities have underscored that these children are "*victims*" and should be repatriated if there are families willing to take them in.

Children who have been radicalized will be placed in special institutions but will not be restrained, while Germans with dual citizenship who join foreign terrorist militias will later lose their citizenship. Germany will prepare a lawsuit against its citizens who joined ISIS. German authorities have issued arrest warrants for 18 of the 63 German citizens currently detained in Syria, Iraq, Turkey and Greece.<sup>29</sup> It is recorded that around 1000 people have left Germany

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<<https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkiye/calibrating-response-turkeys-isis-returnees>>; Danu Damarjati, "Sikap AS hingga Turki soal Pemulangan Keluarga ISIS", *Detik News*, June 20, 2019. Retrieved from <<https://news.detik.com/internasional/d-4592870/sikap-as-hingga-turki-soal-pemulangan-keluarga-isis>>

<sup>29</sup> Alistair Walsh, "Jerman Siapkan Gugatan Terhadap Warganya Yang Bergabung ISIS", *DW*, February 19, 2019. Retrieved from <<https://www.dw.com/id/jerman-siapkan-gugatan-terhadap-puluhan-warganya-yang-bergabung-dengan-isis/a-47584075>>;

since 2013 to join ISIS. A third of them have returned to Germany, some have been prosecuted or placed in rehabilitation programs.<sup>30</sup>

Furthermore, Denmark has announced its decision to revoke the citizenship status of children born to ISIS members. This decision is grounded in a draft law prepared by the Danish government in March 2019, stipulating that children of ISIS members born abroad will not be granted Danish citizenship. Meanwhile, Washington, D.C., has been actively encouraging Western countries to repatriate their citizens who joined ISIS. The United States itself has repatriated several of its citizens, including two women and six children from suspected ISIS families in early June. Additionally, in July 2018, the U.S. repatriated three ISIS fighters to stand trial and facilitated the return of a woman and her four children.

The British government is looking for ways to repatriate British children from refugee camps in Syria. But Britain is reluctant to repatriate its adult citizens, and several adults who were ISIS members have had their citizenship revoked. Based on data from the Telegraph, there were more than 900 British people who went to Syria. Of this number, approximately 20 percent have been killed, while 40 percent have returned to England. Former ISIS members who have returned are immediately investigated by British security authorities to find out whether they have committed criminal crimes or not. Further analysis is also needed to determine whether the person concerned has the potential to pose a threat to national security after returning to British citizenship.<sup>31</sup>

Based on UN data in 2015, around 5,000 Tunisians joined ISIS. Human Rights Watch highlighted the problem of no children being repatriated from Syria reported by human rights activists in Tunisia, because the Tunisian government was concerned that repatriating children would speed up the return of their parents who were members of ISIS.

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<sup>30</sup> See Kerstin Braun, "'Home, Sweet Home': Managing Returning Foreign Terrorist Fighters in Germany, The United Kingdom and Australia." *International Community Law Review* 20, no. 3-4 (2018): 311-346.

<sup>31</sup> Akhmad Muawal Hasan, "Dilema Shamima Begum: Apakah Eks ISIS Berhak atas Kesempatan Kedua?", *TIRTO*, February 24, 2019. Retrieved from <<https://tirto.id/dilema-shamima-begum-apakah-eks-isis-berhak-atas-kesempatan-kedua-dhDa>>

There are around a thousand Tajik citizens who have joined ISIS. As of May 2019, 84 children of ISIS members had been repatriated to Tajikistan.<sup>32</sup> Similarly, Uzbekistan repatriated 156 of its citizens, predominantly women and children, in May 2019. At the end of May 2019, Iraq repatriated 188 children of suspected ISIS members to Turkey. These actions reflect the varied responses of different countries to the issue of repatriation. While some countries have chosen to accept former ISIS members and their children, others have refused to repatriate them, leading to ongoing international debates. In light of these differing approaches, the critical question remains: what stance will Indonesia take in dealing with this complex issue?

### 3. Indonesian Policy on Former ISIS Members Repatriation

Indonesia is actually not much different from other countries when considering the repatriation of Indonesian citizens who are former ISIS members. Some of the questions that the government is trying to answer are whether the government will repatriate everyone who wants to go home or categorize them based on the level of risk and will only repatriate those with the lowest level of risk, such as orphans? How does the government convince the public that they must accept former ISIS members back, especially if those who have returned commit acts of terrorism again? And what steps need to be taken in organizing the process of repatriating Indonesian citizens who are former ISIS members, do rehabilitation or reintegration actions have to take place before the verification and analysis process to accept them back?

The Indonesian government itself is facing this situation with various considerations because the repatriation of former ISIS members could affect domestic security. In this case, the government has three types of policies that can be taken to handle the repatriation of former ISIS members, namely, first, by accepting back all former ISIS members. Re-accepting all Indonesian citizens who were former ISIS members is a challenging action to take in the short term because there is not yet a mature preventive plan in place if a bigger problem arises for state security with the return of all Indonesian former ISIS members.

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<sup>32</sup> See Ilhomjon Bekmirzaev, "Concepts of Islam and Its Politicization in Central Asia." *World Bulletin of Social Sciences* 17 (2022): 103-109.

Second, by not accepting back all former ISIS members. Government actions like this are seen as humane actions in the international world. The government will experience quite high social pressure as a response from the international community which sees the large number of Indonesian citizens who are former ISIS members surviving in refugee camps.

Third, by only accepting women and children who are in refugee camps. This option is considered the most profitable and possible for Indonesia, which is then followed up with rehabilitation, deradicalization, reintegration, monitoring and supervision programs.

In implementing this policy, Indonesia has three state institutions that have important functions and roles in implementing it, namely, the National Counterterrorism Agency (BNPT), Special Detachment 88 (Densus 88), and the Ministry of Foreign Affairs of the Republic of Indonesia (Kemenlu). These three institutions can create and implement policies regarding the repatriation of Indonesian citizens who are former ISIS members, especially BNPT as the leading sector which has been mandated by Presidential Regulation number 46 of 2010 concerning the National Counterterrorism Agency as amended by Presidential Regulation number 12 of 2012. BNPT in terms of It has been given the task of formulating policies, strategies and programs in the field of counterterrorism, coordinating relevant government agencies in implementing and implementing policies in the field of counter-terrorism, and forming a crisis center and task forces in the field of counter-terrorism.

In January 2017, Turkey forcibly repatriated 75 Indonesian citizens, 70% of whom were women and children. Their return home is followed by rehabilitation and reintegration. Based on data conducted by the International Center for Counterterrorism (ICCT), the implementation of rehabilitation and reintegration is not running optimally. In carrying out rehabilitation, former ISIS members who were sent to rehabilitation centers have not received appropriate treatment.

In terms of reintegration, it is hoped that Indonesian citizens who are former ISIS members can be released and live side by side with society. This is implemented because it is in line with the actions of the BNPT which has issued a deradicalization blueprint which focuses on reintegration as the ultimate goal of efforts to deradicalize Indonesian

citizens who are former ISIS members. The reintegration initiative carried out by BNPT is in order to create conditions in society that are able to eliminate suspicion and fear of former ISIS members and on the other hand increase empathy and mutual respect for each other. However, in reality, society still cannot fully accept people who are former ISIS members. Through this, it can be seen and stated that the goals of reintegration initiated by BNPT are still not being implemented optimally.

In the conclusion of the DPR Commission III hearing meeting with BNPT regarding the repatriation of Indonesian citizens who were former members of ISIS, BNPT provided a report in which since 2016 BNPT and the Ministry of Social Affairs have worked together to accommodate 591 Indonesian citizens who were former members of ISIS who were deported from various countries such as Turkey, Japan and Singapore. This repatriation also goes through very long stages which begin with the importance of carrying out a verification process. The verification process is a process of checking that former ISIS members who are returned to Indonesia are truly Indonesian citizens. Proving citizenship is difficult to do because initially the majority of former ISIS members left Indonesia without carrying official documents or leaving illegally. After going through the verification process, the government must analyze the physical and psychological condition and then assess the extent to which the person has been exposed to radicalism. After carrying out this verification and analysis process, the government can determine whether Indonesian citizens who are former ISIS members can be repatriated and given a deradicalization process.<sup>33</sup>

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<sup>33</sup> In the Indonesian legal context, repatriation involves a lengthy process starting with crucial verification. Verification ensures that returned former ISIS members are indeed Indonesian citizens, complicated by their initial departure without official documents or through illegal means. Following verification, the government must analyze their physical and psychological conditions and assess their exposure to radicalism. These stages pose significant challenges, including proving citizenship and evaluating radicalization levels accurately. The process's complexities highlight the need for thorough procedures to determine eligibility for repatriation and subsequent deradicalization efforts amidst legal, logistical, and humanitarian challenges. See M. Zaki Mubarak, "Dari NII ke ISIS: Transformasi Ideologi Dan Gerakan dalam Islam Radikal di Indonesia Kontemporer." *Epistémé: Jurnal Pengembangan Ilmu Keislaman* 10, no. 1 (2015): 77-98; Cameron Sumpter, "Countering violent extremism in Indonesia: Priorities, Practice and the Role of

In July 2019, Coordinating Minister for Political, Legal, and Security Affairs announced the establishment of a Task Force aimed at comprehending the challenges faced by Indonesian citizens in Syria, essential for shaping a repatriation policy. Immediate formation of this Task Force is crucial as Indonesian citizens abroad are susceptible to indoctrination, radicalization, and potential violence. Delaying their return from refugee camps could exacerbate their situation, complicating repatriation efforts significantly.

The government in 2020 decided not to repatriate hundreds of former ISIS members. This decision was made in a closed cabinet meeting chaired by President Joko Widodo and several ministries at the Presidential Palace in Bogor, West Java, on Tuesday, February 11, 2020. Subsequently, the government stated that vulnerable women and children under 10 years old would be repatriated after undergoing verification processes.<sup>34</sup> There must be a new legal regulation specifically governing Indonesian nationals who join the ISIS movement.<sup>35</sup> Presidential Chief of Staff Moeldoko also stated that those who joined ISIS are now considered stateless. Furthermore, the government plans to issue a decree listing the names of individuals who have lost their

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Civil Society." *Journal for Deradicalization* 11 (2017): 112-147; Umi Najikhah Fikriyati, "Perempuan dan Deradikalisasi: Peran Para Istri Mantan Terpidana Terorisme dalam Proses Deradikalisasi." *Jurnal Sosiologi Reflektif* 12, no. 1 (2017): 1-16; Dewa Gede Sudika Mangku, and Ni Putu Rai Yulianti. "Indonesia's Role in Combating Terrorism in Southeast Asia." *Unnes Law Journal* 7, no. 1 (2021): 89-114; Ali Masyhar, and Silaas Oghenemaro Emovwodo. "Techno-Prevention in Counterterrorism: Between Countering Crime and Human Rights Protection." *Journal of Human Rights, Culture and Legal System* 3, no. 3 (2023): 625-655; John Erick, "The Terrorist Experiences: Capturing Deradicalization and Counterterrorism in Indonesia." *Indonesian Journal of Counter Terrorism and National Security* 3, no. 1 (2024).

<sup>34</sup> Muhammad Irham, "Eks ISIS asal Indonesia dan program deradikalisasi: Pemerintah belum siap dalam format dan pelaksanaan", *BBC Indonesia*, February 14, 2020. Retrieved from <<https://www.bbc.com/indonesia/indonesia-51493322>>

<sup>35</sup> Ade Idra Suhara, and Tunziah Tunziah. "Status Kewarganegaraan Warga Negara Indonesia (WNI) Eks ISIS Ditinjau dari Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia." *Publika: Jurnal Ilmu Administrasi Publik* 7, no. 1 (2021): 92-102.

Indonesian citizenship due to their affiliation with ISIS. These individuals will be banned from entering Indonesia.<sup>36</sup>

The government possesses the prerogative to reject the return of former ISIS members to Indonesia, an act termed as '*denial*' under the provisions of Law Number 6 of 2011 on Immigration.<sup>37</sup> According to Article 98, paragraph 1, this authority represents the state's sovereignty in upholding security and public order, exercised on the grounds of immigration considerations.

The technical criteria for denial are further elucidated in Government Regulation Number 21 of 2013 concerning the Implementation of the Immigration Law. According to Article 236, individuals implicated in organized transnational crimes may be refused entry into Indonesia. Paragraph 2 of the same article specifies that reasons for immigration denial encompass: a. confirmed or suspected involvement in organized transnational crimes; b. demonstrating hostility towards the Indonesian government or engaging in actions that besmirch the reputation of the Indonesian nation and state; c. suspected engagement in activities contrary to public security and order, morality, religion, and the customs of Indonesian society; d. utilization of counterfeit passports or falsified documents to secure visas or residency permits for entry and residence within Indonesian territory; and/or e. being subject to Immigration Administrative Measures such as deportation from Indonesian territory.

Even if the government decided to not repatriate the ex-fighters, there were some ex-fighters that have been repatriated. Three Indonesian citizens, Abu Farros, Wildan Bahriza, and Syahrul Munif, who were previously involved with the militant group ISIS in Syria have been repatriated. They are actively working to counter extremist ideologies and promote anti-extremism narratives within their communities. Their journey from radicalization to redemption serves as

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<sup>36</sup> Normand Edwin Elnizar, "Polemik Pencabutan Kewarganegaraan WNI Eks ISIS", *HukumOnline*, February 18, 2020. Retrieved from <<https://www.hukumonline.com/berita/a/polemik-pencabutan-kewarganegaraan-wni-eks-isis-lt5e4b6e8e8d64e/>>

<sup>37</sup> Arasy Pradana A. Azis, "Dapatkah Menolak Eks Anggota ISIS Pulang ke Indonesia?", *HukumOnline*, February 12, 2020. Retrieved from <<https://www.hukumonline.com/klinik/a/dapatkah-menolak-eks-anggota-isis-pulang-ke-indonesia-lt5e3d017b5916a/>>

a cautionary tale and underscores the importance of rehabilitation and community support for former militants.<sup>38</sup>

## D. Conclusion

Finally, this study highlighted that former ISIS members who originate from Indonesia cannot have their citizenship revoked immediately due to the risk of rendering them stateless, which constitutes a serious violation of their human rights. The United Nations has underscored the importance for nations to accept the return of their citizens who have not been proven guilty of terrorism. In response, Indonesia has adopted a compassionate approach by repatriating Indonesian citizens who are former ISIS members following thorough verification and data analysis. This process aligns with Indonesia's de-radicalization blueprint, as developed by the BNPT, which emphasizes the steps of identification, rehabilitation, re-education, and integration back into society.

It is imperative for the government to discern the genuine intentions of former ISIS members in refugee camps regarding their potential for rehabilitation and reintegration into society. Delaying their repatriation increases the risk of heightened radicalization and exposes them to potential abandonment and violence. Therefore, prompt assessment and decision-making by the government are crucial to prevent further radicalization and to facilitate the successful reintegration of these individuals back into Indonesian society.

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<sup>38</sup> Heyder Affan, "ISIS, terorisme dan pertobatan tiga WNI 'eks jihadis' di Suriah: Kamu harus pulang, ayah dan ibumu tak restui kepergianmu", *BBC News Indonesia*, May 4, 2021. Retrieved from <<https://www.bbc.com/indonesia/indonesia-56841107>>

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