

RESEARCH ARTICLE

US Right of Veto Against UN Resolution on Terrorism of ISIS Foreign Militias

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Abstract

This paper analyzes how the US proposes the right of veto in the UN-issued resolution concerning anti-terrorism, namely Persecution, Reintegration, and Rehabilitation system of foreign ISIS militants who are stranded in Syrian camps. How the veto of United States position on ISIS foreign prisoners has the potential to violate the veto provisions based on the UDHR, International Humanitarian Law, as well as the 1949 Geneva Convention and its Additional Protocols I and II 1997. This study was conducted to determine the effect of the US veto on the fate of ISIS foreign militias and the efforts and steps that could be taken to resolve the ISIS Foreign Militia problem from the perspective of international law. The research method employed in this study was juridical normative. A study found that the PRR resolution on ISIS foreign militias was canceled with the issuance of a veto by the United States. Several efforts can be made in dealing with this including maintaining the role of the PRR on foreign ISI militants detained in Syria holding camps, focusing on handling foreign ISIS militias, and countering terrorism through related conventions, such as the Universal Declaration of Human Rights (UDHR), The 1949 Geneva Convention, and Additional Protocols I and II of 1977, as well as continuing to urge all member states and all parties that all action taken against terrorism are required to meet obligations under international law, including humanitarian law, international human rights law, and international refugee law by still considering the impact of those actions.

Keywords: UN; Right of Veto; US; Terrorism

1. INTRODUCTION

The organ of the United Nation that functions in resolving conflicts are the Security Council. The UN Security Council is one of the 6 main organs of the United Nations (UN). The UN Charter leaves the mandate to the Security Council to protect international peace and security ([Wikipedia, 'Dewan Keamanan PBB', 2020](#)), the UN Charter delegates powers to the Security Council in:

- 1) Investigating a situation that is dangerous to world peace.
- 2) Recommending procedures for peaceful dispute resolution.
- 3) Directing all states parties to the United Nation in terminating economic, sea, air, mail, radio communication, and diplomatic relations.
- 4) Carrying out the decisions of the Security Council militarily, or in other ways.

Besides its powers and functions, in carrying out its duties, the Security Council is given a right called the right of veto. The right of veto is familiar for it is the right to cancel decisions, decrees, draft regulations, and laws or resolutions. Initially, this veto power was intended to protect the interests of the founders of the UN, the countries that won World War II. Historically, the veto power has been assigned to the five permanent members of the UN Security Council including the United States, Russia, England, France, and the People's Republic of China, since they were the winner of World War II.

By law, the powers of permanent members of the UN Security Council are a given privilege. However, they also have the same obligations and responsibilities legally as other UN member states. The Charter only defines primary responsibilities for international peace and security on the side of the Security Council ([Suwardi & Kurnia, 2019: 291](#)). Article 27 paragraph 1 of the UN Charter explained that each member of the Security Council has one vote. However, where there is connection between the provisions of Article 27 paragraph 1 and paragraph 3, there are procedural and non-procedural differences in voting rights between permanent members of the Security Council and non-permanent members of the Security Council.

The United States as one of the founders of the United Nations that is also part of the UN Security Council, in its

journey, is a country that has quite often issued its privileges to draft resolutions submitted by the United Nations after Russia. Currently, data shows the US has issued 82 veto rights. One of the recent vetoes issued by the US was concerning the draft resolution proposed by Indonesia as President of the UN Security Council for the 2019-2020 period. In the four resolutions submitted, the resolutions that were not accepted were related to the anti-terrorism movement. One of the targets to be achieved is related to countering terrorism, particularly issues of persecution, rehabilitation, and reintegration (PRR) as well as women's peace. Indonesia intends to encourage a comprehensive approach to dealing with terrorism. Thus, the UN Security Council is expected not only to focus on the aspect of law enforcement but also efforts to rehabilitate and reintegrate terrorists into society (CNN, 13 October 2020). However, the US argues this resolution is still inaccurate since it does not prioritize the 'repatriation' of standard foreign militants. According to the US, the repatriation of foreign militants to their home countries is the right step, because thousands of foreign ISIS militias among them are detained in Syria and Iraq. They have to undergo integration into society after serving prison terms, and the government of the home country is asked to provide support for their families. Repatriation and accountability for crimes committed by ISIS militants are very important to prevent them from being the next generation of ISIS ([Republika, 13 October 2020](#)). Furthermore, there is the issue of the execution by Kurdish forces detaining captured ISIS prisoners.

The statement made by the Ministry of Foreign Affairs can be inferred that Indonesia views the need for consideration of the international community in eliminating the right of veto. Moreover, Indonesia also supports restrictions on the use of the right of veto, such as using veto for situations that are truly dangerous, for example, human crimes and humanitarian situations. Therefore, Indonesia supports the proposal of the Accountability, Coherence, and Transparency (ACT) group in the formulation of a Code of Conduct regarding restrictions on the use of the veto.

The basis for granting the right of veto tends to be of political interest rather than legal considerations. Thus, this makes the 5 veto-holding countries have higher sovereignty than other UN member countries. However, it does not rule

out that the veto is proposed for the sake of good and a more mature design in the future. However, the anti-terrorism movement has to be voiced and emphasized to all member countries, and efforts to overcome it need to be given special attention to achieve the welfare of the entire nation. This is because the failure of the Council to adopt a draft resolution is an important matter. It not only stifles collective efforts in dealing with the threat of terrorism but also sends a bad image signal to the Council which is not united in the fight against the specter of terrorism.

The crime of terrorism is a crime against humanity that poses a serious threat to the integrity and sovereignty of a nation. Terrorism can be a threat to national security and sovereignty as well as world peace. One of the main causes of the crime of terrorism is radicalization. Currently, there has been no clarity in formulating the term terrorism, including the United Nations. Generally, the term terrorism is divided into State Terrorism and Non-State Terrorism. However, non-state terrorism often happens in the 21st century (Riza, 2006: 47-46).

One of the main factors that cause terrorism is radicalism and religious fundamentalism as well as social injustice. This is felt by a certain group who want to realize a religious, political, or ideological goal. Thus, acts of terror become a tool used in achieving this goal by targeting civilian and state targets due to resistance to capitalism in Western countries. Several elements are categorized as terrorism. Some of the doctrines of scholars as a source of law in the classification of acts of terrorism, namely:

- a) Actions of taking away human rights that are non-derogable rights.
- b) Actions accompanied by violence with non-selective, random, and indiscriminate targets.
- c) Actions accompanied by careful or organized planning.
- d) Actions cause real fear and great unrest in society.

International regulations on terrorism are more specifically contained in article 2 paragraph 1 of the International Convention for the Suppression of Terrorist Bombings, which stated that "*Any person commits an offense within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal devices in, into or against a place of public use, a State or government facility, a public transportation system*

or an infrastructure facility:(a) With the intent to cause death or serious bodily injury; or (b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or are likely to result in major economic loss".

In solving the terrorism issues, the role of international institutions is needed, with all the tasks and authorities that have been determined, since the United Nations as an organization aims to carry out world peace. Furthermore, the role of each member and all parties is necessary to ensure that all measures are taken to combat terrorism meet obligations under international law, including humanitarian law, international human rights law, and international refugee law by taking into account the potential effects of counterterrorism act exclusively.

Previous studies related to this research article, referring to several journals, discussed the effects of the use of veto power by the United States on cases of Israeli aggression in Gaza, where the influence of the veto proposed by the United States created a never-ending conflict in the Gaza since after a resolution is given a veto, the resolution turns into a draft resolution and cannot take effect ([Hardianti, Widagdo, & Nurdin, 2015](#)). This illustrates that every decision taken by the Board will produce a significant effect. Furthermore, the discussion regarding the granting of veto rights proposed by Russia ([Widagdo, Kusumaningrum, & Prasetyo, 2019](#); [Hardianti, Widagdo, & Nurdin, 2015](#)) in the armed conflict in Syria. This situation made several conflicts that occurred not resolved quickly due to the issuance of the veto. This is because the substance of the use of the veto and the regulations contained in article 27 paragraph 1 and 3 of the UN Charter has not found a correlation. Permanent member countries do have privileges apart from voting rights in general. However, this requires further explanation. Thus, further alternative solutions can be sought for conflicts that have arisen and have not received resolution. As the article compiled by the researchers, concerning the veto that was proposed by the United States on the resolution of terrorism by ISIS foreign militias, America needs to express its opinion and reasons for the veto issued.

A study conducted by [Buana & Adwani \(2018\)](#) also discussed the juridical review of the use of the United States'

veto power as the UN Security Council, as well as the function of the Security Council in general, namely maintaining international peace and security. The peace referred to as stipulated in Chapter VI and Chapter VIII of the UN Charter is the peaceful settlement of disputes and steps that can be taken if there is a threat to the peace, violation, or an act of aggression. Moreover, if there is a conflict between the obligations of UN members (under the UN Charter) and their obligations under international agreements, it is their obligations under the UN Charter that take precedence. The research conducted by [Soemitro \(2015\)](#) regarding the Phenomenon of ISIS Radicalism Movement in International Law concluded that ISIS as the perpetrator of terror acts continues to claim lives and triggers the fear of the international community both individually (individually and in government). However, this cannot be used as a reference in categorizing a radical movement group as a subject of international law. Supporting elements are needed to finally determine the appropriate category and then become the basis for fighting terrorism. A similar study was also carried out by [Aryani \(2017\)](#) regarding Russia's attack on ISIS in Syrian territory according to the National Humanitarian Law. The armed conflict that at that time was carried out by ISIS in Syria made the Syrian Government allow Russia to carry out airstrikes on its territory to attack the anti-terrorism coalition. However, this action creates a responsibility that is required to be resolved, since it raises an element of a violation of international law in human rights law.

Based on this background of the study, the authors formulated the following problems: How does the US veto influence the fate of ISIS foreign militias and the efforts and steps that can be taken to resolve the ISIS Foreign Militia problem from the perspective of International Law.

2. METHOD

A. Type and Approaches of the Research

This study is a normative juridical study, which uses the main legal material, namely examining theories, concepts, and principles, and laws related to this study ([Yudiono, 2013](#)). The approach used in this study was a qualitative approach, where the researchers investigate, find, describe, and explain social influences that cannot be explained by a

quantitative approach. Furthermore, a statutory approach was also used, which is an approach carried out by examining all laws and regulations that are related to the legal issues being handled (Marzuki, 2010: 93).

B. Data Sources

The data in this study were obtained in the form of secondary data, namely data from library research. Secondary data consists of 3 (three) legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials as follows:

- 1) Primary Legal Sources are binding legal materials in the form of applicable laws and regulations related to the issues being discussed. In this study, primary legal materials consist of:
 - a) International Humanitarian Law.
 - b) Universal Declaration of Human Rights.
 - c) Article 27 paragraph 2 of the UN Charter.
 - d) The 1949 Geneva Convention.
 - e) The 1977 Additional Protocol I to the Geneva Conventions on the protection of victims of international armed conflict.
 - f) The 1977 Additional Protocol II to the Geneva Conventions on the Protection of non-international armed conflicts.
- 2) Secondary Legal Sources are materials that provide an explanation of secondary legal materials, such as books, theses, published or unpublished articles, journals, newspapers, the internet, research findings, expert opinions, or law graduates who can support in solving the problems studied in this study (Soekanto, 2007: 52).
- 3) Tertiary Legal Sources are legal materials as a complement to the two previous legal materials, namely the legal dictionary and the results of interviews or empirical observations as a support to provide a complete picture either normatively, sociologically, or empirically.

C. Data Collection Method

The data collection technique was taken from normative study legal materials, mostly obtained through legal documents, including statutory regulations, legal books, and legal journals.

D. Data Processing Method

The data generated in this study in the form of a case study. A case study is generated to develop understanding by describing cases under the research subject. The research findings were presented in the Analytical Descriptive form. Descriptive is an explanation of the findings of research conducted to obtain a comprehensive and systematic picture. Then, analytic is a picture obtained from research based on careful analysis to obtain evidence of the formulated problem that is the background of this study.

3. RESULT AND DISCUSSION

The development of Human Rights to this day is still quite worrying. The world after the World War, expected to bring about a more peaceful situation, still shows the ongoing bloodshed nowadays. One of them is the emergence of Islamic State militant groups in Iraq and Syria. They call themselves the ISIS (Islamic State of Iraq and Syria). Its ideology follows a radical, hardline Islamic ideology that plans to establish an Islamic state in the form of a Caliphate like the time of the Prophet. ISIS did not hesitate to behead detainees themselves, one of which was the beheading of US journalist James Foley. This illustrates how humanitarian principles are still being violated, and shows an insult to human dignity (Soejipto, 2015: 1).

According to Wahid, Abdul (Sunardi & Sidik, 2004: 24-29), ISIS (Islamic State of Iraq and Syria) is a *jihadi* militant group whose existence and all its activities have developed and are known by the entire international community. All of its activities are dominated by acts of violence that disturb the international community because they are considered to disturb world security and peace. ISIS is a group that was initiated by Al Qaeda which always attempts to make large-scale expansion in its political struggle. The Sunni Wahabi-based ISIS in the Middle East region has declared its country's status as an Islamic (caliph) state which rules over all Muslims around the world. After the fall of Saddam Hussein's regime in Iraq, there have been prepared people who might create chaos and as soon as possible build an Islamic caliphate.

As a group associated with al-Qaeda, ISIS follows the Islamic Fundamentalist trend. Furthermore, as an Islamic militant group, ISIS adheres to a political and radical form

of Islam, namely thinking that Islam is a comprehensive and exclusive solution to all the world's political, economic, and social problems. Furthermore, it should be noted that ISIS is not a nationalist group operating under a religious label, but a *jihad* group committed to liberating Muslims around the world. ISIS aims to build an Islamic caliphate that covers the entire territory of Iraq, Levant, Lebanon, Syria, and others. Thus, Islam is interpreted as an ideology in politics, not a purely theological one. Therefore, the ISIS struggle was taken from outside the realm of religion which had historically been placed in secular politics. ISIS has the goal of establishing an Islamic caliphate in the country or territory they struggle with and once this local caliphate is established, the global caliphate will be pursued ([El Renova, 2016](#)).

Judging from the general description of ISIS, ISIS can be classified as a terrorist organization. According to the facts, ISIS is based on elements contained in the characteristics of terrorists, such as actions carried out individually or in groups, causing fear (terror), and the existence of certain motives. Since the defeat of ISIS by Kurdish forces under Abu Bakr Al Baghdadi in 2018, more than 9,000 family members of ISIS fighters are reportedly still in the Al-Hol camp, Northeast Syria, of which 6,500 are children ([CNN, 26 March 2019](#)).

In this regard, Syrian President Bashar al-Assad plans to indict foreign ISIS militants in his country, especially those imprisoned in Kurdish-controlled North Syria camps. Assad argued that this condition could be used as a way to reunite a divided Syria. Besides that, some of the local ISIS militants have been tried in court by Kurdish forces, but not by foreign militants since Kurds have asked the Syrian government to take responsibility for them. However, some Western countries from the International Coalition refuse to repatriate their nationals from Syria for security reasons. Then, Amnesty International stated the possibility that detainees might not reach trial, as tens of thousands of prisoners have disappeared in prison since the start of the war in 2011. Meanwhile, thousands more have been executed without trial, when others have been tortured to death. Therefore, the Security Council is trying to re-submit a resolution related to fighting against world security threats, hoping that if this resolution can be adopted, this

might become the main instrument for the Council and all member states of the United Nations, as well as the United Nations system, to build a comprehensive strategy and long term in countering terrorist acts and violent extremism that are conducive to terrorism and preventing the recurrence of terrorist acts ([Liputan 6, 28 November 2019](#)).

Under international law, foreign militants stranded in Syrian holding camps deserve to be handled by their respective countries. However, those who stated that they left their country were threatened with statelessness and several countries refused to accept them again on the grounds of threats to national security. The anticipation of former terrorism returning home but at risk of attack in the country, by making new and invisible alliances. According to UNHCR, a stateless person is a person who is stateless in any country. In the 1954 Convention Relating to the Status of Stateless Person, it was stated how everyone still provides legal protection for Stateless Person and proper treatment as a human being. The rights contained in this Convention shall be granted and shall not be discriminated against based on religion, race, or country of origin. The 1954 Convention relating to the Stateless Person stipulates that the country of residence of stateless persons is obliged to protect human rights to citizens or foreign nationals who legally reside in the territory of the state's sovereignty. However, this condition still has not found a midpoint with the actual situation ([Salim, 2017: 141-155](#)).

The Universal Declaration of Human Rights (UDHR) and regulatory instruments and conventions govern international human rights that have existed since 1948. These instruments are still being developed to this day because almost everyday reports from around the world against violations of humanitarian law continue to emerge. The classic approach to human rights is suggested by David Forstyle and Jack Donnelly. This approach explains how the evolution and development status of human rights after World War II. One of the human rights politics shows several characteristics, including:

- 1) The contestation between classical norms of state sovereignty with new norms of domestic standards that apply in each country.
- 2) Contestation between human rights formulations in the political, economic, and social fields.

3) A statement that basic human rights are different (not universal).

This principle encourages the development of Positivist thinking, namely the idea that the regulation of rights must be carried out by state and political authorities. In positivist thinking, sources of law have to be listed in the law and accompanied by sanctions for violations of the law. The state is a means for the protection of basic human rights. The positivist approach becomes the basis for the concept of state sovereignty which is widely adopted by IR theory. In article 5 of the UDHR, Article 7 of the ICCPR, it is stated: “no one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment.” In a democratic society, this idea is being seriously enforced and structures regional and national human rights frameworks and legislation that ensure that these values can be extended equally to all citizens (Soejipto, 2015: 9-13).

Terrorism according to the perspective of international law is not a simple problem, because terrorism issues can contain many aspects such as politics, economy, ethnicity, ideology, and so on. Acts of terrorism have recently had a serious impact on causalities among the civilian population. Acts of terrorism are a problem that cannot be resolved partially by each country. However, global acts of violence have to be resolved jointly by the international community in a comprehensive manner (Soejipto, 2015: 213).

Chadwick (1996), “Self-determination, Terrorism and The International Humanitarian Law” stated that International Humanitarian Law (IHL) can be used as a legal guide in cases of terrorism since IHL regulates the tools/weapons, the methods used, the protection of prisoners of war, as well as objects that can be protected in armed conflict. Some of the regulations in IHL include a strict prohibition on all acts aimed at spreading terror among civilians, and the Ministry of Health, as well as international affairs also prohibiting acts that are considered terrorist acts. Besides, IHL contains several regulations governing the obligation to follow up on violations of these prohibitions, as well as many regulations related to the enforcement mechanism of these obligations.

ISIS status in international law is not as a state, but as a non-state actor (Nasution, 2017). ISIS does not fight against colonial domination and foreign occupation, nor does it seek

self-determination against racist governments. Therefore, the war against ISIS in IHL does not refer to article 2 of the Geneva Convention and does not include an international armed conflict since it does not meet the criteria as an international armed conflict based on the Geneva Conventions of 1949 and Additional Protocol I of 1977.

However, under the research raised, related to foreign ISIS militants who in this case act as people who are not or are no longer bound to war and their status as hostages being held in holding camps in Syria, acts of terror along with the stipulating provisions will be explained as in the IHL, the Geneva Convention of 1949 and Additional Protocols I and II of 1977 (Kusumaatmadja, 1963: 82-83).

- 1) The taking of hostages is provided for in article 75 of Protocol I Article 3 of the Geneva Convention, and Article 4 paragraph (2)(b) of Protocol II.

Article 3:

“In the case of an armed conflict that is not of an international nature taking place within the territory of one of the participating parties. Each party to the conflict will be obliged to carry out at least the following provisions:

- (1) *Individuals who do not participate actively in the conflict, including members of the war who have put down their weapons and those who are no longer participating (host de combat) due to illness, injuries, detention, or any other cause, are under, however, it is required to be treated with humanity, without any adverse distinction based on race, color, religion or creed, gender, ancestry, or any other criterion.*

For this purpose, the following actions are prohibited and will still be prohibited from being carried out against these individuals at any time and place:

- a. *Violence on body and soul, especially every kind of murder, bullying, cruel treatment, and persecution;*
- b. *Taking hostages;*
- c. *Destruction of personal honor, especially humiliating and degrading treatment;*
- d. *Convicting and carrying out the death penalty without the precedence of a decision handed down by a court that is established regularly, which provides all judicial guarantees recognized as a necessity by civilized nations.*

- (2) *The wounded and the sick should be collected and cared for.*

An impartial humanitarian body, such as the International Committee of the Red Cross, can offer its

services to the parties to a conflict.

The parties to the conflict shall further endeavor to enforce by way of special agreement all or part of the other provisions of this Convention."

The implementation of the above provisions will not affect the legal position of the parties in dispute.

- 2) The killing of persons who are not or are no longer bound in warfare is regulated in article 75 of Protocol I, Article 3 of the Geneva Convention, and article 4 paragraph (2a) of protocol II, which reads "*against the persons referred to in paragraph I are and shall remain prohibited at any time and in any place whatsoever; Violence to the life, health, and physical or mental well-being of persons in particular murder as well as cruel treatment such as torture, mutilation, or any form of corporal punishment.*"

Furthermore, Article 27 states that "protected persons under all circumstances, have the right to respect for themselves, family rights, religious beliefs, and practices, as well as their customs and habits. They have to always be treated with humanity and have to be protected against all acts of violence or threats of violence and humiliation. They also cannot be used as objects for the public."

Closely related to article 27, which requires the parties to the convention to protect and respect protected people, the provision in article 31 "prohibit coercion, both physical and spiritual, to obtain information from them. Any act causing bodily suffering or the extermination of a protected person is prohibited by the Convention." This prohibition does not only cover murder, maltreatment, and other acts which are also mentioned in article 12 Protocol I and Protocol II of Geneva Convention but also covers any other acts of violence such as using civilian or military state equipment. Therefore, it is necessary to pay more attention and appropriate steps to the fate of foreign militias if they are positioned as people who have been protected due to defeat in war and in eradicating terrorism.

One of the agenda for the UN Security Council discussion regarding "*Threats to international peace and security caused by terrorist acts*" was held on August 31, 2020, with draft resolution number S/2020/852 (UN, 2020) was not reached. The draft includes:

- 1) Emphasizing its decision in resolution 1373 (2001) that all Member States are obliged to ensure that everyone

who participates in the financing, planning, preparation, or act of terrorism or support of terrorist acts is brought to justice.

- 2) Keeping in mind its decision that all Member States should ensure that their domestic laws and regulations establish sufficient, serious criminal offenses to provide the ability to prosecute and punish the activities described in paragraph 6 of resolution 2178 (2014), and paragraph 5 of resolution 2462 (2019) in a way that reflects the seriousness of the offense.
- 3) Calling on the Member States to assess and investigate suspected individuals who they believe to be terrorists, including FTF suspects and their accompanying family members, entering member states of the territory, to develop and implement comprehensive risk assessments for their individuals, and to take appropriate action, including taking into account appropriate prosecution, rehabilitation, and reintegration measures, as well as emphasizing that the Member States have to ensure that they take all such actions following international law, especially international human rights law, international humanitarian law, and international refugee law.
- 4) Reaffirming that those who are responsible for committing or otherwise responsible for terrorist acts, and violations of law or international humanitarian or human rights violations in this context, must be held accountable.
- 5) Summoning on the Member States to analyze the application of national criminal charges related to terrorism, to consider whether it results in the application of criminal penalties which should reflect the gravity of the offense, when treating terrorism convicts act humanely and respect their human rights, and provide for the rehabilitation and reintegration of prisoners into a community where possible to reduce recidivism and encouraging the Member States to share relevant experiences on the application of criminal penalties for criminal offenses, rehabilitation of persons convicted of criminal offenses, rehabilitation of persons convicted of criminal acts of terrorism and measures that have to be taken to reintegrate individuals into society, including the conditions that suit of a court-

supervised exemption.

However, the American representative, Kelly Craft, at that time said that the draft resolution did not prioritize the reparation of ISIS foreign militia detainees, which was deemed inappropriate and bad enough. The following are some of the reasons America has denied the draft (UN, 2020):

- 1) America believes that this draft resolution is intended to address the prosecution, rehabilitation, and reintegration of terrorists, including foreign terrorist fighters and their family members. Yet, it even fails to include a reference to an important first step – repatriation to the country of origin or nationality.
- 2) America strongly regrets that the Security Council could be satisfied with a draft resolution that lacks the security ramifications of leaving international terrorist fighters to plan their escape from custody and leave their family members without any escape, opportunity, or hope.
- 3) America believes that persecution and reintegration are breeding grounds for the generation of ISIS fighters.
- 4) America argues that terrorist fighters and their families are easily overlooked if they are an unrelated problem.

The statement shows that America is not cooperating with the other fourteen councils in eradicating the conditions of foreign militias being held in Syria. America considers that the benefits of rehabilitation and reintegration programs are still varied, ranging from risks and needs, including psychosocial, educational, and family.

One of the statements in another UN resolutions, namely Resolution 2483 (UN, 2019), regarding the threat of terrorism, it is stated that “Recognizing that prisons can be a potential incubator for radicalization for terrorism and terrorist recruitment, and the proper assessment and monitoring of people convicted of terrorist offenses is essential to reducing terrorists' chances of attracting recruits, and also recognizing that Member States may need to continue to engage with offenders upon release from prison to avoid recidivism, following relevant international law and taking into account, where appropriate, the UN Standard Minimum Rules for the Treatment of Prisoners, or the “Nelson Mandela Rules.” It also states that “Given the importance of the Counter-Terrorism Executive Directorate (CTED) to include in CTED country assessments, where

appropriate, information on Member State efforts to address the issue of trafficking in persons and its relationship to sexual violence in conflict and post-conflict situations perpetrated by terrorist groups as part of their strategic and ideological objectives, and used as a tactic by certain parties for armed conflict, including non-state armed groups designated as terrorist groups."

The ISIS group is considered to have violated international human rights law since it has carried out attacks without any principle of discrimination between the civilian population and the military. It also has exploited children and women. Thus, ISIS can be tried by national courts as long as the country is deemed "*capable and willing*:" to prosecute them. However, if the national state is deemed unable and willing to prosecute international human rights violators, the International Criminal Court (ICC) has the competence to prosecute perpetrators of international human rights violations in the Iraq and Syria conflicts.

Therefore, in facing this situation, the Security Council seeks to increase the role of PRR, namely Persecution, Rehabilitation, and Reintegration of ISIS foreign militant prisoners who cannot return to their country. The conviction of the perpetrators of terrorism is an important step in maintaining security stability in the future. The pattern of punishment might be different, that is, all measures are taken to maintain a safe and humane environment in the prison. The means that help to counter radicalization and the recruitment of terrorists will be developed. The pattern of correctionalization is carried out to prevent further terrorist radicalization in prisons and is expected to be able to foster and educate detainees better. However, the implementation of the concept of social rehabilitation and reintegration has not yet shown optimal results. One of the reasons is that at the stage of coaching terrorist convicts, many recidivists have repeated their actions.

There are three main points of thought about the goals to be achieved from a punishment, namely:

- 1) Correcting the criminal's personality.
- 2) Making people deterred from committing crimes.
- 3) Making certain criminals incapable of committing other crimes, that is criminals who have otherwise been irreparable.

The terrorist convict coaching aims to eliminate radical

elements in terrorist teachings. Due to its formation through recruitment and formation in several places, the teachings given are quite firmly entrenched. Eradicating the criminal act of terrorism does not mean eliminating the life of the perpetrator of the crime, but rather eliminating the causative factors of terrorists in their actions. Thus, a way to eliminate these causative factors is to carry out coaching in a correctional institution.

The terrorist convict coaching is also a demand for international interests since juridically, this crime also threatens the security of the world. In several points in Resolution 2490 on Threats to World Security and Peace, the United Nations welcomes the great efforts of the Iraqi Government to defeat ISIL and calls for assistance from the international community to ensure that ISIL members are held accountable for their crimes in Iraq and Syria, as well as wherever these crimes against humanity occur.

In dealing with acts of terrorism, the UN has also made several efforts. The General Assembly has held actions and international cooperation to prepare agreements and actions through the Security Council. The result is the issuance of 12 conventions on terrorism which have been approved by 185 countries as follows:

- 1) Convention on Offences and certain Other acts Committed on Board Aircraft ("*Tokyo Convention*", 1963-Safety of Aviation).
- 2) Convention for the Suppression Unlawful Seizure of Aircraft ("*Hague Convention*", 1970 – Aircraft Hijacking).
- 3) Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation ("*Montreal Convention*", 1971 – applies to acts of Aviation sabotage such as bombings aboard aircraft in flight)
- 4) Convention on the Prevention and Punishment of Crime Against Internationally Protected Persons (1973 – outlaw attacks on senior government officials and diplomats).
- 5) International Convention Against the Taking of Hostages ("*Hostages Convention*", 1979)/
- 6) Convention on the Physical Protection of Nuclear Material ("*Nuclear Materials Convention*", 1980 – combats unlawful taking and use of nuclear material)/
- 7) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil

Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil aviation (Extends and Supplement the Montreal Convention on Air Safety, 1980).

- 8) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, (1988 – applies to terrorist (1988 – applies to terrorist activities on ships).
- 9) Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelve (1988 – applies to terrorist activities on fixed offshore platforms).
- 10) Convention on the Marking of Plastic Explosives for Detection (1991 – provides for chemical marking to facilitate detection of plastic explosives, e.g., to combat aircraft sabotage).
- 11) International Convention for the Suppression of Terrorist Bombing, 1997; UN General Assembly Resolution.
- 12) International Convention for the Suppression of the Financing of Terrorism, 1999.

Besides those 12 conventions, the United Nations has also established the United Counter-Terrorism Implementation Task Force (CTITF) in July 2005 to ensure all coordination and coherence in the effort to fight against terrorism. Supports were provided by member countries. Furthermore, after the meeting, 23 CTITF members joined to collaborate.

Apart from the aforementioned efforts, other efforts made by the United Nations include paving the way for cooperation between the authorities with financial matters or world financial institutions to supervise funds obtained by terrorists to carry out their actions, as well as countries or parties that provide assistance funds to commit terrorism crimes. Therefore, the UN General Assembly established the *International Covenant for the Suppression of the Financing of Terrorism* which was put into effect in early 2002 (Islami, 2017: 183-186).

The United Nations is the holding of all growing international organizations. Several bodies are formed under it such as The General Assembly, The Security Council, The Economic and Social Council, The Trusteeship, The International Court of Justice, and The UN Secretariat.

Article 103 of the Charter of the United Nations explains that in the event of a conflict or conflict between the obligations of UN members (according to the UN Charter) and their obligations under international agreements, then their obligations under the UN Charter take precedence. The supremacy also applies to international treaties that were concluded after the entry into force of the UN Charter. Meanwhile, international treaties that were issued before the UN Charter cannot apply. Besides that, in international law, there are alternatives used to keep working on the fate of the foreign ISIS militias. In Resolution 2474, it was stated that "*each state party to the 1949 Geneva Convention to respect and ensure respect for the convention in all situations.*" Thus, related to the eradication of terrorism, referring to the Geneva Convention of 1949 and Additional Protocols I and II of 1977 can be an alternative (Islami, 2017: 174-175).

Eradicating terrorism requires multilateral cooperation and a strong national defense system. Thus, crimes on humanity can be classified as state and non-state actors. As in the draft UN resolution that cannot be implemented, all member states continue to supervise and guard against terrorism and pay attention to the fate of their citizens who are detained in holding camps in Syria by Kurdish forces. Article 49 of 1949 Geneva Convention I, it is stated that "each member state is obliged to establish regulations related to armed conflict, seek and follow up people who commit violations, and ensure fair action to the violators who have been found." This regulation requires member states to play an active role in upholding the principles of international law by upholding human values. Therefore, under any circumstances, including dangerous conditions, all will adhere to human values.

4. CONCLUSION

This research concluded and emphasized that the influence of the US veto on the fate of foreign ISIS militias and the efforts and steps that can be taken to resolve the issue of ISIS Foreign Militias from the perspective of International Law. The influence of the US veto on the fate of ISIS foreign militias is that the ISIS foreign militants detained by Kurdish forces are still in holding camps on Syrian territory without any further handling. International Amnesty maintains the possibility that detainees may not reach trial, as tens of

thousands of detainees have disappeared in prison since the beginning of the war in 2011, thousands more have been executed without trial, while others have been tortured to death. However, the need for conducive handling in preventing radicalization into terrorism, recruitment of members, financial support for terrorists, forms of promotion carried out through politics, and religion, et cetera cannot be tolerated. To put an end to and resolve these armed conflicts, gender participation and equality, facilities for investigation, prosecution, reintegration, and rehabilitation are required. Efforts and actions that can be carried out on ISIS foreign militias from the perspective of international law include as follows: *First*, prioritizing the role of the PRR on ISIS foreign militants detained in Syrian holding camps. The conviction of the perpetrators of terrorism is an important measure in maintaining security stability in the future; *Second*, enacting alternatives used to keep working on the fate of the ISIS foreign militias. Resolution 2474 stated that “each state party to the 1949 Geneva Convention has to respect and ensure respect for the convention in all situations.” Thus, referring to the Geneva Convention of 1949 and Additional Protocols I and II of 1977 can be an alternative to the eradication of terrorism. Foreign prisoners have no right to be tortured or treated cruelly and inhumanly or to be humiliated. Besides the efforts and measures taken from an international legal perspective, there are also several steps that the UN can pay attention to in handling ISIS foreign militia prisoners, including the following: First, United Nations can continue to carry out surveillance and monitoring, in particular, the United Nations Office for Counter Terrorism (UNOCT) and UNODC, as well as other Global Compact entities. They can continue to provide technical assistance and capacity building to the Member States to support them in strengthening their responses to the linkages between international terrorism and organized crime, whether domestic or transnational, including by developing instruments that can help tackle the radicalization of terrorism in prisons and assess the risk of terrorist recruitment, being consistent with international law, and encouraging the Counter-Terrorism Committee (CTC). With CTED support, they can continue cooperating in facilitating technical assistance and capacity building, including by

sharing information, with relevant bilateral and multilateral technical assistance providers; Second, the Security Council in carrying out its function of maintaining world peace and security continues to encourage all member states and all parties, that all actions are taken to eradicate terrorism have to meet the obligations under international law, including humanitarian law, international human rights law, and international refugee law by considering the impact of the action.

5. DECLARATION OF CONFLICTING INTERESTS

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