



## State Fulfillment of Indonesian Children’s Civil Rights for Former Members of International Terrorist Organization

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*As the defeated Islamic State of Iraq and Syria (ISIS) raises neglected misfortune for Indonesian children whose parents once participated in the organization. Indonesia's Government's decision to repatriate has not yet been fully executed while circulating threatened punishment by the Government to withdraw the nationality of a person involved in ISIS to make it worse. In contrast, international law safeguards civil rights for children despite their status of unwillingly participating in terrorist organizations. Normative juridical research was conducted by taking statutory and conceptual approaches to examine national regulation of children's civil rights legal protection. The result shows that children's civil rights ex-ISIS remain valid as their indivisible fundamental rights while state compliance is necessary. Redefining children's status as children of terrorist network victims is mentioned in Article 59 (2) (k) of Law No. 35/2014 concerning Children's Protection. With a status as a victim, a particular procedure can be executed to restore and safeguard child civil rights. Ministry of Women Empowerment and Child Protection (Kemen PPPA) coordinates with National Counter Terrorism Agency (BNPT) mandates to exercise legal aid to provide education, counselling, rehabilitation, and social assistance.*

### 1. Introduction

In the operation of the state, there are often external threats that threaten the country's defense and security sector. These threats can take the form of acts of terrorism and radicalism by terrorist organizations. Where one of the terrorist organizations that launches extremist actions to the international scope is Islamic State of Iraq and Syria (ISIS). ISIS was a terrorist organization that applied and implemented a hardline ideology with the principle of jihad and committed acts of violence against its members and enemies (Bleker, 2020). The ideology introduced by ISIS can disrupt the sovereignty of a country, the impact of the movement can be felt in the Southeast Asian region, especially Indonesia (Baiquni, Rosida, & Nadiyya, 2021). Its evidenced by the presence of Indonesian citizens who joined ISIS as terrorist organization. ISIS itself has

been declared defeated and officially disbanded, but these defeat raises new problems where former ISIS people including Indonesian citizens and their children become neglected.

It's an issue that must be seen from humanitarian perspective, the Indonesian citizens did not just leave without any reason to join ISIS (Rusdi, 2020). Moreover, among the group of Indonesian Citizens ex-ISIS are women and children who may have been taken by their family heads without knowing anything. It is not uncommon for their families, both wives and children, to be involved in their jihad, now women and children are in a stranded conditions (Maryani & Sulisty, 2021). Indonesian Children ex-ISIS certainly have no other choice but to join their parents, as a result the rights of these children to obtain guarantees of certainty, justice, and legal benefits are neglected (Rapik & Permatasari, 2020). In September 2021, it is rumored that the Indonesian government may bring home the Indonesian Children ex-ISIS only, data from the National Counterterrorism Agency/BNPT shows that there are 1,251 Indonesians including women and children still in the Iraq-Syria conflict zone (CNN Indonesia, 2021). However, until now after 3 (three) years have passed this problem has arisen since February 2020, there is no clue when they will be repatriated.

Basically, based on national law Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, Article 3 of the Civil Code, and Law Number 35/2014 about Child Protection. Besides that, international law Article 3 the Universal Declaration of Human Rights (UDHR) 1948, Article 24 section 1 & 3 the International Covenant on Civil and Political Rights (ICCPR) 1966, and Article 2 Convention on the Rights of the Child (CRC) 1990. In general, there is harmony between national and international law which clearly stipulates that every child has civil rights in his life where the rights can be in the form of the right to life and the right to citizenship. It needs to be underlined that the law was created solely for humans, not vice versa, humans for the law (Rahardjo, 2009). Therefore, the Indonesian government policy has violated the constitution, national, and international law.

The writing of this paper refers to 3 (three) previous similar literatures, the first paper states that although de-jure ISIS has not been recognized by any other countries, however ISIS already fulfilled de-facto elements of a country then causing someone who is a member of ISIS will lose their citizenship (Firmansyah, Suhartono, & Nasution, 2020). Second paper, it states that when Indonesian citizenship violating to the Citizenship Law in this regard the member of ISIS who fulfils one of the elements of the provisions of an article "voluntarily entered into foreign military services" so resulting them lose their Indonesian Citizenship status (Cristiana & Anggono, 2022). The third paper states that since member of ISIS lose their Indonesian Citizenship status due to violating the provision of Citizenship Law, thus it is correct that the government did not repatriate them since the government doesn't have constitutional relationship of rights and obligations anymore to them,

furthermore the member of ISIS cannot conduct any legal actions to regain their status of Indonesian Citizenship (Bari, 2020). All of those papers conclude that in essence, former ISIS have lost their Indonesian citizenship status because they have violated Law Number 12/2006 about Citizenship. This paper does not necessarily agree with that, because in the data of Indonesian Citizens ex-ISIS there are children who need to be heeded from a humanitarian perspective. This article is more inclined to discuss the civil rights of Indonesian Children ex-ISIS where the children are also legal subjects who have the right to life and citizenship rights as regulated in national and international law. Until the time when this paper was compiled, there is no specific paper with similar title was found.

The purpose of this paper is to analyze the civil rights of Indonesian children who are joined ISIS as international terrorist organization and the legal protection that the Indonesian government can do for their civil rights. The civil rights reviewed only focus on the right to life and the right to citizenship.

## **2. Method**

The research method of this paper is normative juridical research type, where it is necessary to know the meaning of this type is a method based on primary legal materials by examining legal principles, legal concepts, and legal theories as well as laws and regulations related to research (Fitrah, 2021). The approach method used in this research are statute approach, conceptual approach, and case approach (Fatahaya & Agustanti, 2021). Furthermore, data sources are taken from 3 (three) sources of legal materials, that primary legal materials consists of:

- a. Constitution of the Republic of Indonesia 1945;
- b. Civil Law Code;
- c. Law Number 34 of 2004 regarding the Indonesia National Army;
- d. Law Number 12 of 2006 regarding Indonesian Citizenship;
- e. Law Number 35 of 2014 regarding Child Protection;
- f. Law Number 5 of 2018 regarding Eradication of the Crime of Terrorism;
- g. Presidential Regulation of the Republic of Indonesia Number 46 of 2010 regarding the National Counterterrorism Agency (BNPT);
- h. Government Regulation of the Republic of Indonesia Number 29 of 2019 regarding the Terms and Procedures for Appointing Guardians;
- i. Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia (Ministry of PPPA RI) Regulation Number 7 of 2019 regarding Guidelines for Protecting Children from Radicalism and Criminal Acts of Terrorism;
- j. The National Counterterrorism Agency (BNPT) Regulation Number 5 of 2021 regarding Procedures for Coordination, Monitoring, Evaluation, and Reporting on the Implementation of the National Action Plan for Preventing and Combating Violent Extremism Leading to Terrorism 2020-2024;

- k. The National Counterterrorism Agency (BNPT) Regulation Number 6 of 2021 regarding Coordination of the Implementation of the Terrorism Victims Recovery Program;
- l. Central Jakarta District Court Decision Number 11204/Pen.Pid/2014/PN.Jkt.Pst. dated October 11, 2014;
- m. Montevideo Convention 1933 on the Rights and Duties of States;
- n. The Universal Declaration of Human Rights 1948;
- o. Convention on the Reduction of Statelessness 1961;
- p. The International Covenant on Civil and Political Rights 1966, ratified dated October 28, 2005 with Law Number 12 of 2005 regarding Authorization of International Covenant on Civil and Political Rights; and
- q. Convention on the Rights of the Child 1990, ratified dated August 25, 1990 with Presidential Decree of the Republic of Indonesia Number 36 of 1990 regarding Authorization of Convention on the Rights of the Child.

Primary legal materials are authorities which in this case consist of laws and regulations, official records, or minutes of making laws and regulations (Marzuki, 2005). Secondary legal materials are consisting of law books, legal journals containing basic principles or legal principles, legal doctrines of legal experts, legal research results, and legal dictionaries (Muhaimin, 2020). Meanwhile, the third legal sources, tertiary legal materials are primarily as a support that includes materials by providing instructions and explanations for primary legal materials and secondary legal materials (Amiruddin & Zainal, 2012).

Then, the data collection technique is carried out by library research which is related to theoretical studies and several references that will not be separated from scientific literature (Ramanda, Akbar, & Wirasti, 2019). The data analysis technique is processed qualitatively by organizing the data used includes data collection, reduction, analysis and interpretation of data which is then conveyed through descriptive analytics to solve a research (Suyanto, Sugiyono, & Oktalia, 2020). Qualitative analysis is a data analysis that does not use numbers, but rather provides descriptions in words of the findings, and therefore it prioritizes the quality of the data, not the quantity (Salim & Nurbani, 2017).

### **3. Analysis & Discussion**

#### **3.1. The Civil Rights of Indonesian Children Who Participate in International Terrorist Organization**

The participation of children in the practice of terrorism shows that radicalization has penetrated from an early age. The position of children in terrorism like this becomes a new legal issue, whether they are determined as perpetrators or victims. Children's vulnerability to recruitment by ISIS can be influenced by many factors, including geographic proximity, economic vulnerability, social/political marginalization, exposure to permissive social

networks, and exposure to extremist propaganda. However, the relative importance of these factors varies individually and according to circumstances (Darden, 2019). This fact reinforces that children who joined ISIS are not of their own volition, but caused by external factors.

The civil rights of the children that are studied are divided into 2 (two), namely the right to life and the right to citizenship. Starting from the right to life, in national law based on Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia that "Every child has the right to survival, growth, and development and the right to protection from violence and discrimination". Article 1 point 12 of Law Number 35/2014 states that "Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, the state, government, and local governments". Meanwhile, the rules of international law based on Article 3 UDHR 1948 "Everyone has the right to life, liberty, and security of person".

Added with the ICCPR 1966 which has been ratified by Law Number 12/2005 about the Ratification of ICCPR in Article 24 paragraph (1) states "Every child has the right to receive the necessary measures of protection because of his status as a minor, against the family, society and the state, without discrimination based on race, color, sex, language, religion, national or social origin, wealth or birth". Reinforced by the CRC 1990 has been ratified into the Presidential Decree of the Republic of Indonesia Number 36/1990 about the Ratification of CRC in Article 2 reads "The rights of the child apply to all children without exception, The child shall be protected from all types of discrimination against him or her or discrimination resulting from the beliefs or actions of parents or other members of his or her family".

Then, regarding citizenship rights as Article 28D of the 1945 Constitution states "Everyone has the right to citizenship status" and Article 1 paragraph (2) of Law Number 12/2006 explains that "Citizenship is all matters relating to citizens". International law is also in line, where in Article 15 section 1 of the UDHR 1948 "Everyone has the right to a nationality" and the ICCPR 1966 in Article 24 paragraph (3) reads " Every child has the right to acquire a nationality". So, citizenship rights are very important for children because by getting citizenship status, they will also get the rights as citizens.

From the regulations of national and international law, it is found that from the moment a child is born he has the right to life, the right to citizenship, and the right to protection from all discrimination and violence. Basically, children must be cared for and treated as human beings, no one is allowed to commit violence or discrimination, even if it is done by their own family and even more so by other people or the state. Children are legal subjects who are the responsibility of parents and the state. Thus, the Indonesian Government which has not yet to repatriate the Indonesian Children ex-ISIS, it's the same



neglecting responsibility for them, which is not in accordance with national and international law.

Regarding the punishment of the Indonesian citizens former ISIS by losing citizenship status, that is an action that cannot be done immediately, because the principle of human rights protection is very fundamental in making such decisions (Arifin, 2020). Even in national law, based on Explanation part of Law Number 12/2006 page 2 states that "This law basically does not recognize apatride or stateless". Reinforced by Article 15 section 2 UDHR 1948 "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality". It is also emphasized details in CRC 1990 Article 8 states "Every child has the right to an identity, name, nationality, and family ties, and to receive assistance from the government if any part of its identity is lost".

Moreover, stateless is also prohibited on another international law Article 8 section 1 Convention on the Reduction of Statelessness 1961 "A Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless". Furthermore Article 9 strengthened that "A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds". Also explained in Article 3 of the Civil Code states "No punishment shall result in civil rights death, or in the loss of all rights of citizenship". This reinforces that a state may not revoke the citizenship of a citizen whose revocation results in the person becoming stateless. Besides that, in basic principle a person cannot be punished only for what he thinks, it's called *cogitationis poenam nemo patitur* (Rusdi, 2020).

Legal standing of ISIS is not a foreign military service as the same as Article 23 letter d of Law Number 12/2006. Referring to Article 1 point 21 of Law Number 34/2004 about the Indonesian National Army reads "Soldiers are citizens who are prepared and armed for national defense tasks to face military threats and armed threats". It needs to determine whether ISIS as a country or not. Look at Article 1 Montevideo Convention 1933 "The state as a person of international law should possess the following qualifications: a. a permanent population; b. a defined territory; c. government; and d. capacity to enter into relations with the other states".

From the above description, it can be concluded that ISIS is not an army, because soldiers are citizens who are assigned to maintain the country's defense in the face of military or armed threats, while members of ISIS are not an army because they don't defend a country. Theoretically, according to the doctrine of state science, the elements of a state consist of territory, people, and a sovereign government (Sibuea, 2014). Therefore, ISIS doesn't fulfill the requirements of a state. Thus, the legal standing of ISIS is not a sovereign state.

What is the legal standing of ISIS, referring to UN Security Council Resolution Number 1267 of 1999 which was updated with Number 1989 of 2011, UN Security Council Resolution Number 2170 of August 15, 2014 that ISIS terrorist group on 1 Ramadan 1435 Hijriyyah or July 2014 was declared as a terrorist organization. Then based on national law in the Central Jakarta District Court Decision Number 11204/Pen.Pid/2014/PN.Jkt.Pst. dated October 11, 2014 along with the List of Suspected Terrorists and Terrorist Organizations Number DTTOT/2723/XI/2014 dated November 20, 2014 that ISIS is set as a terrorist organization in the country of Indonesia. Thus, it is clear that the legal standing of ISIS is a terrorist organization.

Regarding to whether an international terrorist organization is a subject of international law or not. An international organization will only be recognized as a subject of international law according to international law after it has been decided by International Court of Justice (Sumedi, Rasji, & others, 2021). ISIS has never been declared a subject of international law, but only a terrorist organization. Thus, Indonesian government must respect international law because the state is a subject of international law to have full sovereignty to conduct international relations recognized by other countries (Jawahir & Iskandar, 2006).

Based on the National Police Headquarters List of Suspected Terrorists and Terrorist Organizations Number DTTOT/P-10f/15/III/RES.6.1./2022 dated March 04, 2022 as well as the Central Jakarta District Court Decision Number 19/Pen.Pid-DTTOT/2021/PN.Jkt.Pst dated November 17, 2021 states that the status of most parents or adults of Indonesian citizens ex-ISIS has been determined as suspected terrorists. The existence of these stipulation, resulting in the parents of Indonesian Children ex-ISIS have neglected to carry out their obligations and responsibilities as parents. Instead of protecting and caring their children, parents lead them into a dangerous life situation.

Referring to Article 20 of Law Number 35/2014 states "The State, Government, Local Government, Community, Family, and Parents or Guardians are obliged and responsible for the implementation of Child Protection". Since the parents are incapacitated, the rights protection of the Indonesian Children ex-ISIS should be the responsibility of the Indonesian government. Based on Article 59 paragraph (2) letter k of Law Number 35/2014 that "Special Protection to Children is given to: Child victims of terrorism networks", then the Indonesian Children ex-ISIS are included in the criteria of this terms. They should be positioned as "victims" without having to see the status of their parents who have become part of terrorists.

In addition, there is also international law that agrees where it is in CRC 1990 Article 38 reads "Any child under the age of 15 should not be required to join armed forces or take part in armed conflict, Children in war zones should receive special protection". Therefore, the Indonesian government is obliged and fully responsible for the implementation of giving special protection to

the Indonesian Children ex-ISIS to accommodate their return and restore their physical condition, soul, and mind as well as their rights. Thus, the answer for the rights of the Indonesian Children ex-ISIS are still valid.

### **3.2. Providing Legal Protection for Children Former Members of International Terrorist Organization**

Regarding the form of special protection given to child victims of terrorism networks, based on Article 69B of Law Number 35/2014 explains that "Special protection for child victims of terrorism networks as referred to Article 59 paragraph (2) letter k is carried out through:

- a. education on academic, ideology, and nationalism values;
- b. counseling about the dangers of terrorism;
- c. social rehabilitation; and
- d. social assistance".

Then, the form of special legal protection is detailed by Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia (Ministry of PPPA RI) Regulation Number 7/2019 about Guidelines for Protecting Children from Radicalism and Criminal Acts of Terrorism in Article 3 and confirmed by the Press Release of the Ministry of PPPA RI Number B-230/Set/Rokum/MP.01/11/2018 that special legal protection for children from radicalism and terrorism is aimed at (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, 2018):

- a. Child Victims;
- b. Child Perpetrators;
- c. Child of the perpetrators;
- d. Child Witnesses.

It's getting explained more detail in Article 4 paragraph (1) Ministry of PPPA RI Regulation Number 7/2019 which states that "Guidelines for Protecting Children from Radicalism and Criminal Acts of Terrorism include the necessary steps in carrying out:

- a. Prevention;
- b. Education on academic, ideology, and nationalism values;
- c. Counseling about the dangers of radicalism and terrorism;
- d. Social rehabilitation;
- e. Psychosocial Rehabilitation and/or Psychological Rehabilitation;
- f. Assistance;
- g. Monitoring, evaluation, and reporting; and
- h. Other services".

It should be noted that the above forms of social, psychosocial, and psychological rehabilitation must be carried out in a persuasive, coercive, and motivative manner both within the family, community, and social institutions. Besides that, because the Indonesian Children ex-ISIS got terrorism mindset outside the Republic of Indonesia and are still in the Iraq-Syria region. Therefore, they are also included in the criteria of terrorism



victims outside the territory of the Republic of Indonesia. This is as stated in Article 13 of BNPT Regulation Number 6/2021 about Coordination of the Implementation of the Terrorism Victims Recovery Program which states that "The implementation of the Terrorism Victims Recovery Program outside the territory of the Republic of Indonesia is intended to be carried out by providing:

- a. Medical Assistance;
- b. Psychosocial Rehabilitation and Psychological Rehabilitation;
- c. Compensation for the family in the situation of Terrorism Victims dies outside the territory of the Republic of Indonesia; and/or
- d. Compensation".

In the event that the Indonesian government organizes legal protection as described above, it is necessary to repatriate Indonesian Children ex-ISIS to motherland first. Because it is impossible to accommodate all of them, so the Indonesian government must filter them. First, the Indonesian government must ensure that the Indonesian Children ex-ISIS who will be repatriated are not determined guilty by the Iraq-Syria government for committing terrorism crimes based on the national laws in that region. Based on Article 38 CRC 1990, so the second is to limit the repatriation of the Indonesian Children ex-ISIS who are those under the age of fifteen.

After making the selection, the Indonesian government giving assessment to the Indonesian Children ex-ISIS that they should be separated from their parents who have been appointed as terrorists in Iraq-Syria. The process of assessment by giving understanding is important for the Indonesian Children ex-ISIS because their parents cannot return to Indonesia so that they can understand why they must be kept away from their parents (Mustika, 2021). This purpose in order to the Indonesian Children ex-ISIS don't misunderstand and not holding grudges against the Indonesian government cause of separating them from their parents.

The repatriation program for Indonesian citizens ex-ISIS was actually not the first time for the Indonesian government. In 2017, the Indonesian government had repatriated 18 (eighteen) Indonesian former ISIS from Iraq-Syria. Based on the narrative from one of the Indonesian citizens ex-ISIS, the repatriation process was not easy, starting from 1 (one) month undergoing examination and interrogation in Tell Abyad. Then, for 3 (three) weeks stayed at Erbil International Hotel, Erbil, Iraq. For several days, being interrogated by the Ministry of Foreign Affairs, BNPT, BIN, and the Indonesian Police, as well as Iraqi intelligence. Until finally on August 12, 2017, flown to Indonesia and immediately put into the BNPT dormitory in Sentul, Bogor, West Java and received deradicalization program for 1 (one) month before finally being released back to the community (Ramdani, 2020).

The Government of Indonesia in this matter through the authorized institution, which BNPT has duties and authorities based on Presidential Regulation Number 46/2010 about BNPT and Articles 43E, 43F, and 43G of

Law Number 5/2018 about Eradication of the Crime of Terrorism. Basically, the problem of terrorism is so complex because it involves more than one law or called transnational law. The importance to understanding of the risks of a transnational legal action both related to civil and criminal aspects so as to gain understanding in order to obtain legal protection (Lutfi, Rizkianti, Sugiyono, & others, 2021). In the implementation of legal protection for Indonesian Children ex-ISIS, BNPT certainly cannot work alone and must establish coordination and synergy with other institutions. Whereas in BNPT Regulation Number 5/2021 about Procedures for Coordinating, Monitoring, Evaluating, and Reporting on the Implementation of the National Action Plan for the Prevention and Counterterrorism, a Joint Secretariat of RAN PE was formed, chaired by the Head of BNPT and consisting of members from the Ministry of Political, Legal and Security Affairs, Ministry of Coordinating Human Development and Culture, Ministry of National Development Planning, Ministry of Home Affairs, and Ministry of Foreign Affairs.

Following up on parents of the Indonesian Children ex-ISIS who are unable to carry out their parental obligations, the Indonesian government needs to switch the appointment of guardians of the Indonesian Children ex-ISIS. It is stated in Article 33 paragraph (1) of Law Number 35/2014 which reads "In the event that the parents and family of the child are unable to carry out their obligations and responsibilities, a person or legal entity that meets the requirements may be appointed as the guardian of the child concerned". There are priority levels that can be appointed as guardians of children contained in Article 3 paragraph (1) of Government Regulation Number 29/2019 about Requirements and Procedures for the Appointment of Guardians that "To be appointed as a guardian because the parents are absent, the parents are unknown, or for some reason the parents cannot carry out their obligations and responsibilities, a person who can be appointed as a guardian from:

- a. Child's family;
- b. Siblings;
- c. Other person; or
- d. Legal entity,

have to qualified the requirements for the appointment of a Guardian and through a Court order".

#### **4. Conclusion**

The civil rights including the right to life and citizenship rights of the Indonesian Children ex-ISIS are still valid. It is because the Indonesian Children ex-ISIS are underage who should not be in or participate in armed conflict, actually their parents who force their children to participate in such circumstances. With determining the Indonesian Children ex-ISIS as children of victims of terrorism networks who need to be given special protection as stated in Article 59 paragraph (2) letter k of Law Number 35/2014, then the children's civil rights can be restored. Thus, these policies are in accordance with the applicable legal provisions both nationally and internationally,

which the 1945 Constitution of the Republic of Indonesia, Law Number 35/2014, UDHR 1948, ICCPR 1966, and CRC 1990.

Legal protection that can be done by the Indonesian government to the Indonesian Children ex-ISIS by referring to Article 69B of Law Number 35/2014 which outlines by providing education, counseling, social rehabilitation, and social assistance. The technical provision of legal protection for the Indonesian Children ex-ISIS is further regulated in Ministry of PPPA RI Regulation Number 7/2019 which basically states to provide special protection for child victims, child perpetrators, child of the perpetrators, and child witnesses; and BNPT Regulation Number 6/2021 which basically provides recovery for victims caused by terrorism outside the territory of the Republic of Indonesia.

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