

# INDONESIA'S PREPAREDNESS MODEL FRAMEWORK IN THE FRAMEWORK OF THE PANCASILA LEGAL STATE FACING ISIS RETURNERS

**BUDIONO SANDI <sup>1</sup>, RETNO SARASWATI <sup>2</sup> and ANI PURWANTI <sup>3</sup>**

<sup>1</sup> Doctor in Law Program, Diponegoro University, Semarang. Email: budionosandi@students.undip.ac.id

<sup>2,3</sup> Lecturer in Law, Faculty of Law, Diponegoro University, Semarang.

Jl. Prof. Soedarto, SH., Tembalang, Semarang

## Abstract

This study aims to analyze the framework of the Indonesian preparedness model within the framework of the Pancasila state law to face returns. Terrorism is an extraordinary crime (extraordinary crime) that requires handling extraordinary ways. Terrorism has become a global phenomenon that has penetrated almost all countries in the world, including Indonesia. The research method used is a normative juridical approach, namely the Statute Approach. In this study, the author examines and examines using primary data, as the basic material for research by conducting a search on the laws, regulations and literature related to the crime of terrorism. The results showed that; a) The framework of ISIS terrorism as an Extra Ordinary Crime crime in Indonesia is currently reviewed from the theory of punishment showing that ISIS is an Extra Ordinary Crime crime including: crimes of genocide, crimes against humanity, war crimes, crimes of aggression. In crimes against humanity the attacks are widespread and systematic. ISIS conducts various ways to recruit members in Indonesia including; (1) Offer high-paying jobs; (2) Offer free umrah to new members, (3) They are taught advanced technology, (4) Bagi young women who want to join ISIS are usually treated like a princess; (5) Invited to travel or study abroad. b) Diplomation will be presented with various legal stakeholders, comparison of the criminal system against perpetrators of terrorism crimes in Indonesia in terms of criminal policy theory resulting in a form of international cooperation in law enforcement against ISIS as ordinary crime and international crime as follows; (1) Transfer of Offenders (Extradition/ extradition); (2) Transfer of Evidence (Mutual Legal Assistance); (3) Transfer of Proceedings; (4) Transfer of Sentence Person (TSP); (5) Transfer of Proceeds of Crime / Transfer of Asset Recovery. c) The future legal concept of the criminal system of perpetrators of ISIS terrorism returners in Indonesia if using the theory of legal protection shows that Returnees and deportees of ISIS still have the right to citizenship, and for some laws also protect the right to citizenship, then peme rintah should not refuse or, prevent Returnees and deportees from entering Indonesian territory, this is because Returnees and deportees still have the right to citizenship and are still Indonesian citizens. So that if we refer to the legislation, the state should not prohibit the entry of its citizens senself. The Indonesian government cannot also eliminate the citizenship of Returnees and deportees as Indonesian citizens because it is a right of Returnees and deportees, and the citizenship law also adheres to the principle of stateless so that Returnees have the right to Indonesian citizenship.

**Keywords:** Framework, Law Enforcement, ISIS Theorists, Law

## A. INTRODUCTION

Every citizen has the right to feel safe and free from harm all forms of violence based on the philosophy of Pancasila and the 1945 Constitution. This view is based on Article 28 of the 1945 Constitution, its amendment. <sup>1</sup>

"Article 28 G paragraph (1) of the 1945 Constitution everyone has the right to protection of himself, family, honor, dignity, and property under his control, and has the right to security and

protection from threats of fear to do or not do something that is a human right".

"Article 28 H paragraph (2) of the 1945 Constitution everyone has the right to facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice".

In social life, everyone has the right to receive a sense of security and comfort without being disturbed by terror. Therefore one can rest assured and not be disturbed in any form, threats and fears are always troublesome. This is in line with Article 4 of Law Number 4 Document Number 39 of 1999, concerning Human Rights which states: <sup>2</sup>

"The right to life, the right not to be tortured, the right to personal freedom, mind and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right not to be prosecuted on the basis of retroactive law are human rights that cannot be diminished under any circumstances and by anyone."

The discourse on the repatriation of Indonesian citizens (WNI) associated with the conflicts in Syria and Iraq has sparked debate among the public in government policy makers. On the one hand, there are concerns that the repatriation of Indonesian citizens, most of whom are sympathizers of the Islamic State of Iraq and Syria (ISIS), could present a security threat. Those who have been involved as combatants and have mastered abilities and skills that can one day be used in acts of terror at home.<sup>3</sup>

The potential spread of radical ideology espoused by ISIS sympathizers is a source of concern. On the other hand, the repatriation of Indonesian sympathizers of ISIS is considered necessary in the name of humanity. Most of the women and children linked to ISIS are currently in poor conditions in refugee camps in Syria. In addition, the push for the Indonesian government to facilitate the repatriation of Indonesian sympathizers of ISIS is also seen as a form of state responsibility to protect its citizens.<sup>4</sup>

Terrorism as a political activity of war has been known for a long time. In ancient Greek history, Xenophon (430–349BC) used psychological warfare, in an attempt to weaken opponents. Terror as a means used by a group against the regime. Terrorism then becomes a school or stream of belief through the coercion of the will to voice the message, the principle by committing illegal acts. Leading to violence, atrocities and even murder dubbed terrorists, the term became widely known around the world.<sup>5</sup>

Generally, terrorists have standards that cover the use of illegal violence or violations of the law that are planned, measured, opposed by civil society and carried out by professional groups. It is part of a state or individual, and generally their actions have the goal of political, ideological or religious change. Thus causing fear or insecurity. Their actions are planned, systematic and do not comply with laws or <sup>6</sup>rules. They plan to frighten victims with psychological shock and use unusual political methods.<sup>7</sup>

In his book *Interdisciplinary of Terrorism* the definition of Yonah and Seymour in 1977. Terrorism is a contemporary phenomenon lies in the very nature of modern civilisation itself. Complex technological society is extremely vulnerable to unsuspected and ruthless attacks of

terrorism). Terrorism is a contemporary phenomenon located in human civilization. A complex society can easily lead to unexpected and brutal terrorist attacks.<sup>8</sup>

Regarding terrorism, Michel Wieviorka distinguishes two forms of terrorism: terrorism as a method of action and terrorism as an act. It is important to understand this it happens to be targeted by terrorists or insurgents, since both threats require pressure at different points in the evolution of the threat and different emphasis on specific response elements. Meanwhile, according to Muradi, terrorism is an extraordinary <sup>9</sup>crime that must be handled in an extraordinary measure for various reasons.<sup>10</sup>

According to Farouk Muhammad there are two reasons for committing terrorist crimes as a more malicious response by the perpetrator. Terrorism as a crime does not stand alone (interactionism) and can be classified as a crime of revenge (hate crimes). First, the more sinister view itself is more like a perception than a fact. Therefore, the main prerequisite for the occurrence of terror is the attitude of the actions of a group of people and even the policies of the ruler (state) which are subjectively viewed by the perpetrator or group of perpetrators as mendzolim, arbitrary, discriminatory and / or unfair to others. Second, that the perpetrator does not have the ability to react (maliciously) directly and openly while on the other hand there are no legitimate means to correct the attitude of the act and / or policy in question. These two conditions are the root of the problems that foster acts of terror.<sup>11</sup>

There are at least three to fulfill the elements that must be met in the above definition of elements are political motives, plans or intentions, and the use of force. According to the 1937 United Nations (UN) convention, terrorism has various forms of crimes directed against the state to create a form of terror against a particular person, group of people or wider community.<sup>12</sup>

In this regard the Islamic State of Iraq and Syria (ISIS) was declared on April 9, 2013 by Abu Bakr Al Baghdadi in Syria. ISIS became the main jihadist group fighting government forces in Syria and building up military power in Iraq. In 2013, they took control of the Syrian city of Raqqa, then on January 4, 2014 took control of the cities of Fallujah and Ramadi (Iraq). On June 9-11, 2014, ISIS also took control of Mosul, Iraq's second-largest city, followed by Tikrit. This makes ISIS a threat to the Middle East region. The group relies on funding and wealthy individuals in Arab countries, especially Kuwait and Saudi Arabia, who support the battle against President Bashar al-Assad. Currently, ISIS controls a number of oil fields in eastern Syria, and then sells back oil supplies to the Syrian government. Another source of income is obtained from the kidnapping and ransom of foreigners. For the past four years, at least ISIS and its likes.<sup>13</sup>

It is estimated that around 80% of western fighters in Syria joined the group. ISIS claims to be from Britain, France, Germany and the United States. The strength of ISIS cannot be separated from many factors such as the failure of democratic transitions in Iraq, Egypt, Libya, Yemen and Syria. This group can cause instability, sect conflicts, and even civil war. Now there are many border areas in this area being the hometown of the jihadists. With the exception of Egypt, Iran and Turkey, almost all border regions of the Middle East are easy to change rulers. This

explains why Egypt is so strong in guarding and policing the border.<sup>14</sup>

With the aim of declaring provinces in Eastern Indonesia or in the Southern Philippines and Indonesia included in one of the countries where its citizens are involved in ISIS in Syria. According to a report from the Institute for Policy Analysis of Conflict (IPAC), Indonesian involvement in ISIS in Syria began in late 2012, and then departures increased in late 2015 and 2016. Data from The Soufan Group regarding the official tally of foreign nationals who joined ISIS in Syria in 2015, shows that no more than 500 Indonesians joined, although according to the Indonesian government the number reached 700.<sup>15</sup>

There is no definite data in analyzing the number of Indonesian citizens who joined ISIS in Syria alone, so the data provided is seen based on the number of Indonesian citizens deported from countries adjacent to Syria, namely Turkey. According to Sidney Jones, director of IPAC said that from 2014 to 2017 Indonesian citizens deported from Turkey when they wanted to join ISIS in Syria amounted to 573 people, with the highest year in 2017 amounting to 226 people.<sup>16</sup>

IPAC believes that the number of Indonesian citizens participating in ISIS operations in Syria is mainly based on the interest of Indonesian citizens to participate in the victory of Islam in Syria and obtain better economic conditions. When Indonesian citizens return to Indonesia due to deportation or voluntary repatriation, Indonesian participation in ISIS in Syria can cause many problems. This problem is Indonesia's security condition threatened by terrorist attacks, public anxiety, and relations between ISIS and local Islamic militant groups caused by ISIS and Indonesian citizens who hope or have joined ISIS in Syria and return to Indonesia.<sup>17</sup>

Indonesian citizens involved in the Syrian conflict who went to Iraq or Syria numbered more than 600 individuals, while if combined according to their categories; deported first by Turkish authorities before reaching their destinations in Iraq and Syria and returned to Indonesia, then the number of Indonesian citizens in 2017 was around 500 individuals. The number of Indonesian citizens in the category of 'Returnees' was also mentioned by the Chief of the Indonesian National Police, General Tito Karnavian in the International Center for Counter-Terrorism (ICCT), namely in May 2018 the total Indonesian citizens who were still in Syria or Iraq were 500 Indonesian citizens, had been returned and 103 died as a result of fighting there.<sup>18</sup>

The number of Indonesian citizens in the Syrian conflict divided by categories as mentioned above is in line with the explanation of U.N. Security Council Resolution 2178 regarding the definition of Foreign Terrorist Fighters (FTF). According to the U.N. Security Council Resolution, FTFs are individuals who attempt to travel to a country other than the country of origin for the purpose of crime, planning or preparation or participation, acts of terrorism or receiving terrorism training, including matters related to armed conflict.<sup>19</sup>

The explanation of the categories of Returnees and deportees is in line with the definition referred to by the Indonesian government in the Institute for Policy Analysis of Conflict. Returnees, the name used by the Indonesian government, are citizens who successfully cross into Syria or Iraq and return voluntarily. They were among those who joined the militia, pro-Islamic State, and went on to provide humanitarian aid through Ahrar al-Sham and other

militias. The Returnees are not directly pro-ISIS fighters. Deportees are people who never set foot in Syria because they were captured first. In the Syrian conflict as deportees according to the Institute for Policy Analysis of Conflict.<sup>20</sup>

In fact, the Terrorism Law is considered to show less significant reduction in acts of terrorism and less deterrent effect. The Terrorism Law is considered less effective in tackling acts of terrorism in Indonesia, so to overcome it does not have to rely on the Law alone, but in a non-penal way as well, between it and the deradicalization program.<sup>21</sup>

The handling of the backflow of ISIS sympathizers is not the first time Indonesia has faced the problem of foreign terrorist fighters (FTF). During the period from 1985 to 1992, at least 192 Darul Islam cadres took part in military training on the Pakistan-Afghanistan border. Their goal was not to fight the Soviet Union, which was then engaged in armed conflict against the Afghan Mujahideen, but to acquire military skills that would later be used in Indonesia. These cadres also received radical teachings from international jihadist figures, including Abdullah Azzam. Afghan alumni later played a vital role in a number of terror acts in Indonesia, including the Bali Bombings I and II, the bomb attack on the JW Marriot Hotel in 2003, and the bomb attack in front of the Australian Embassy in Jakarta in 2004.<sup>22</sup>

Basically, those who have been involved with ISIS terror activities can threaten security in the following ways:

1. Carry out terror attacks,
2. Planning or directing terror attacks,
3. Form a new terrorist organization or strengthen an existing organization, and
4. Using his status and credibility to radicalize and recruit new terrorist networks.<sup>23</sup>

Despite the low blowback rate, the impact of terror attacks carried out by FTF or Returnees is likely to be greater than attacks carried out by those with no experience in Syria. Of the roughly 40 terror attacks that have taken place in France, Belgium, Germany and the UK over the past three years, for example, only three have been allegedly carried out by the FTF or the Returnees. This shows that although the chances of FTF or Returnees committing acts of terror are small, the potential victims if the attack is successfully carried out are greater.<sup>24</sup>

The findings indicate the FTF chose Southeast Asia as a relocation target on instructions from ISIS leaders. Efforts to establish ISIS territory in Southeast Asia have been going on for a long time. Another factor that makes Southeast Asia an attractive choice for relocation is the visa-free facility applied in the region.<sup>25</sup>

In fact, the Terrorism Law is considered to show less of a significant decrease in acts of terrorism related to ISIS returnees and less of a deterrent effect. The Terrorism Law is considered less effective in tackling acts of terrorism that occur in Indonesia, so to overcome it does not have to rely on the law alone, but through non-penal methods as well, one of which is the deradicalization program. The terrorism deradicalization program itself is one of the programs that is considered to be able to help efforts to eradicate terrorism. Deradicalization

of terrorism is carried out as an early prevention effort, thus breaking the potential for the development of the terrorism movement. This effort can run with the delivery of appropriate information to the community, community strengthening, so that the community can participate in terrorism prevention.

## **B. RESEARCH METHODS**

The research method used is normative juridical research with a statutory approach and a concept approach.<sup>26</sup>

### **1. Types Of Research**

This research is included in the type of doctrinal research, where the approach method used is normative juridical. The study method used in this study is normative legal research, which is a study conducted by examining certain legal problems based on the implementation of applicable laws and regulations or applied to a legal case.<sup>27</sup>

### **2. Research Approach**

- a. Statute approach is an approach taken by reviewing laws and regulations related to the legal issues raised.<sup>28</sup>
- b. Conceptual approach (conceptual approach) is an approach that departs from the views and doctrines that develop in legal science.<sup>29</sup>

### **3. Data Sources And Data Collection**

The research source used in this study is the result of data collection carried out with library research data.

Secondary data are then grouped into three sources of legal materials used in this study are primary legal materials, secondary legal materials, and tertiary legal materials as follows:

#### **a. Primary Legal Materials**

Primary legal materials are data that are materials in binding legal research sorted based on the hierarchy of legislation.

#### **b. Secondary Legal Material**

Secondary legal research is material in the form of all publications on law that are not official documents, including textbooks, legal dictionaries, legal journals, and commentaries on court decisions

#### **c. Tertiary Law Materials**

Tertiary legal material, is also legal material that can explain both primary legal material and secondary legal material, in the form of dictionaries, lexicons and others related to the focus of research.

#### 4. Data Analysis

The research technique in this dissertation is descriptive analytical, where analysis is carried out critically using various theories of research problems. The collected data is analyzed descriptively with a qualitative approach, namely by providing a thorough and in-depth presentation and explanation (holistic / verstelen) scientifically.

### C. RESEARCH RESULTS AND DISCUSSION

#### 1. Framework Of ISIS Terrorism As An Extra Ordinary Crime In The State Of Indonesia Is Currently Viewed From The Theory Of Punishment

Today's evil no longer always uses old methods that have occurred for a long time along with the passage of this earth. Of the many types of crimes that occur in people's lives, there is a type of crime that has an impact on world safety and peace, namely extra ordinary crime or better known as extraordinary crime. When viewed from its history, extraordinary crimes only include 4 types of crimes, namely war crimes, crimes of aggression, genocidal crimes and crimes against humanity. However, the development of crime now shows that there are several recent crimes that are assumed to be the same as all four types of crimes. The crime of terrorism is often interpreted as an extraordinary crime because the impact of the crime is almost the same as the four types of crime.

In Indonesia, the interpretation of the criteria for extraordinary crimes is increasingly widespread. There are some crimes that do not directly kill human beings are also categorized as extraordinary crimes. These crimes are corruption, narcotics and psychotropic drugs as well as environmental pollution crimes. In Indonesia's own positive law, there has never been found a nomenclature about the categories of crimes, both ordinary crimes and extraordinary crimes. However, in Indonesian criminal law there is only a clustering of violations and crimes. Therefore it is necessary to conduct an analysis of the criteria for extraordinary crimes so that it can be a measure of any crime that can be included in extraordinary crimes.

One of the crimes that is worldwide and has a negative impact on human civilization are crimes that are classified as extra ordinary crimes or extraordinary crimes. There are several terms used to interpret the term extra ordinary crime such as extraordinary crimes, extreme crimes, and serious crimes, crimes that have a broad and systematic impact on social, economic, political, legal and cultural life. Whatever term is used to describe the interpretation of the term extra ordinary crimes, but certainly the crime is different from conventional crimes both in nature, character, and manner of committing and the impact of the crime.

As we discuss the issue of extraordinary crimes, all interpretations are directed at crimes against humanity and genocide, both of which are types of gross violations of human rights. The term extra ordinary crime originally emerged from gross human rights violations. This can be seen in Article 5 of the Rome Statute of 1998 which specifies that the criteria of the most serious crimes concern to international community are genocide, crimes against humanity, war crimes, and crimes of aggression.<sup>30</sup>

From there the term extra ordinary crime is always directed to the four types of crime. Although war crimes and crimes of aggression are hard to find or impossible to happen again at a time when democracy is starting to grow in almost every country in the world. However, in accordance with current legal developments, the term extra ordinary crime is not only applied to the four types of crimes but is also used to crimes that have similar characteristics with the four types of crimes, such as terrorism, narcotics and psychotropic crimes. Extraordinary crimes translate into Indonesian into extraordinary crimes. Ford was of the view that the extraordinary crimes referred to here were gross human rights violations. Extra ordinary crimes are acts committed with the intention of eliminating human rights and become the jurisdiction of the International Criminal Court, and the death penalty can be imposed on the perpetrators of these crimes.<sup>31</sup>

According to Winarno,<sup>32</sup>extra ordinary crime not only has a negative impact on economic problems but also has an ecological, social and cultural impact in a country. Mar A. Drumbl said extraordinary crime is an extreme crime that is quantitatively different from crime in general. This crime is serious, widespread and massive and is an enemy of mankind.<sup>33,34</sup>

Since the establishment of the Rome Statute of International Criminal Court in 1998, the term the most serious crimes concern to international community has been introduced. According to Article 5 of the Rome Statute, the most serious crimes concern to international community is interpreted into four types of crimes: genocide, crimes against humanity, war crimes, and crimes of aggression. These four crimes are seen as extraordinary crimes because the consequences can injure the conscience of humanity and are grave violations that threaten the peace, security and well-being of the world. Based on these criteria, criminal acts of gross human rights violations and terrorism can be categorized as extraordinary crimes because they are based on two reasons, namely a pattern of criminal acts that are very systematic and usually committed by the power holders so that these crimes can only be tried if the power collapses and the crime is very contrary and seriously injures humanity.<sup>35</sup>

According to Muladi, the nomenclature of extraordinary crimes is specified in Law No. 26 of 2000 concerning Human Rights Courts which adopts the norms contained in the Rome Statute. The extraordinary crimes<sup>36</sup> covered in this law are gross human rights violations limited to two forms, namely genocide and crimes against humanity where the definitions of both crimes are the same as those defined in Articles 6 and 7 of the Rome Statute.

The crimes of genocide and crimes against humanity have a very special status in International Law. This crime is the most serious crime of international concern as a whole. This crime includes violations of the norms of Jus Cogens and Erga Omnes, which are the highest norms in international law that trump other norms (overriding norms) and in the event of such offenses all states are obliged to take legal action against the perpetrators.<sup>37</sup>

Genocide is one of the most dangerous and illegal crimes. This is because, the crime of genocide can destroy all or part of a group with national, ethnic, racial, or religious background. The crimes of genocide and crimes against humanity in international criminal law are extraordinary crimes. The crime of genocide and crimes against humanity is a gross violation



of human rights which is categorized as an enemy of mankind (*hostis humanis generis*). Legal literature states that the crimes of genocide and crimes against humanity are *jus cogens*, i.e. coercive laws and are in the highest hierarchical position compared to all other norms and principles. The norm of *jus cogens* considered absolute (<sup>38</sup>peremptory) and cannot be ignored. For this crime, every human being has a responsibility (*obligatio erga omnes*) to punish justly. Both crimes, along with War Crimes and Crimes of Aggression were later regulated in the Rome Statute of 1998 for the International Criminal Court.<sup>39</sup>

Furthermore, based on the criteria mentioned above, terrorism crimes have similarities and can be matched as extraordinary crimes because terrorism is carried out in a planned, systematic and organized manner and the targets of these crimes are foreigners and surrounding communities who are innocent and have nothing to do with foreign interests. In addition, terrorism can be categorized as an extraordinary crime because it not only kills people but also destroys all public facilities, worsens the national economy and disrupts national security stability. This is a form of gross human rights violation, especially against the most important essential right, namely the right to live safely and properly wherever one wants.<sup>40</sup>

The statute is also supplemented by the formulation of the elements of the crime and its own procedural and evidentiary procedures. The Rome Statute also affirms that an order for reason for an order by a superior or commander does not absolve his criminal responsibility for not knowing that the order is unlawful or not manifestly unlawful. Orders to commit genocide and crimes against humanity are clearly unlawful, so the pretext that the act was committed by order of office or ignorance that the act was not unlawful does not abdicate criminal responsibility from the perpetrator.

## **2. In The legal Competition With Various Legal Stakeholders, The Comparison Of The Penal System Against Perpetrators Of Criminal Acts Of Terrorism In Indonesia Is Viewed From The Theory Of Criminal Policy**

Diplomacy with various legal stakeholders, comparison of the criminal system against perpetrators of criminal acts of terrorism in Indonesia is a solution to legal problems of law enforcement against criminal acts of terrorism which are part of ordinary crime, international crime, and organized crime, namely through international cooperation. International cooperation can be carried out within the scope of bilateral cooperation, regional cooperation, and multilateral cooperation.

Bilateral international agreements, namely parties or countries that are bound participants are only two parties or two countries. For example, territorial boundary line agreements, continental shelf boundary lines, or trade cooperation agreements between two countries.<sup>41</sup>

This regional agreement is an international agreement whose scope of validity is limited to a particular region. For example: international agreements between countries of the Latin American region, the African region, the Middle East region and other regions. However, an international treaty can already be viewed as a regional international agreement, even though not all countries in the region have signed it, which is important that the agreement shows its regional characteristics and patterns.<sup>42</sup>

For example, the Bangkok Declaration of August 8, 1976 on the establishment of ASEAN can already be viewed as a regional international agreement, although not all Southeast Asian countries have signed it and have not become members of ASEAN. In terms of regional cooperation in the field of mutual assistance, Indonesia has ratified the Treaty on Mutual Legal Assistance in Criminal Matters, 2004 with Law Number 15 of 2008. This Treaty on MLA involving 8 (eight) countries in the ASEAN region was signed on November 29, 2004.

This multilateral international agreement is an international agreement in which parties or countries that are participants of more than two countries and are not bound to a particular region. This agreement is open to countries that did not initially participate in the negotiation process that gave birth to this agreement. If a country wishes to become a party or participant, it can do so by expressing consent to be bound to the treaty. Because its openness is also called universal, because this international treaty gives birth to legal methods that apply universally not only to countries involved in the negotiating process (negotiating states), but also to countries that do not participate and want to become parties. Examples: 1982 Convention on the Law of the Sea, 1948 Declaration of Human Rights, etc.

Diplomacy will be presented with various legal stakeholders, a comparison of the criminal system against perpetrators of criminal acts of terrorism in Indonesia in terms of criminal policy theory resulting in a form of international cooperation in law enforcement against ISIS as an ordinary crime and international crime as follows; (1) Transfer of Offenders (Extradition); (2) Transfer of Evidence (Mutual Legal Assistance); (3) Transfer of Proceedings; (4) Transfer of Sentence Person (TSP); (5) Transfer of Proceeds of Crime / Transfer of Asset Recovery.

### **3. Future Legalconceptions On The Criminal System Of ISIS Terrorism Returnees In Indonesia When Using The Theory Of Legal Protection**

The future legal concept in the criminal system of ISIS terrorism returnees in Indonesia when using the theory of legal protection, namely the difference in rights between Returnees for the right to citizenship, there is no difference in rights between Returnees and deportees because they Returnees and deportants still have the right to citizenship, and for some laws also protect the right to citizenship, to Returnees and deportants still have the right to citizenship, their right to citizenship is still considered as Indonesian citizens because they Returnees and deportees are not revoked their citizenship, and still have citizenship status as Indonesian citizens, so the government may not refuse or prevent Returnees and deportants from entering Indonesian territory, because Returnees and deportants still have the right to citizenship and are still Indonesian citizens. So if we refer to laws and regulations, the state may not prohibit the entry of its own citizens.<sup>43, 44</sup>

The Indonesian government does not yet have a comprehensive strategy for former ISIS foreign fighters and their families. Even unilaterally Defense Minister Ryamizard Ryacudu said the plan of Indonesian citizens supporting ISIS to return to Indonesia must promise to support Indonesia. The former Defense Minister asked the former ISIS FF to make oral and written agreements. The former FF pledged allegiance to Pancasila. If he has promised, he believes Indonesia will accept the ex-ISIS.<sup>45, 46</sup>

Strategies against the Returnees that have been implemented through deradicalization programs for months or years have not been effective enough. ISIS sympathizers went to Syria raising money and selling all their assets in Indonesia. This shows that they have a strong willingness to do anything to join the Jihad in Syria. The impact is that upon their return from Syria they no longer have any assets in Indonesia and become a new threat if not managed properly.<sup>47</sup>

After the last pocket of ISIS in the village of Baghouz al-Fawqani, Dayr az-Zawr, was attacked by Syrian Kurdistan forces in March 2019. About 200 Indonesian women and children are now displaced in AlHaw. The Indonesian government is still waiting for a political decision and developing an effective strategic plan regarding Indonesian citizens who took up arms with ISIS FF and who are prisoners of war. If referring to the 2018 terrorism law, the Government of Indonesia has been able to make a strategy in dealing with FF Returnees. Where the law has regulated the crime against people who participate in supporting acts of terrorism. In fact, this law enforcement is not only for former terrorism convicts, but also people exposed to extremist ideology. But interministerial cooperation to respond to the return and reintegration of ISIS Returnees is a top priority.

#### **D. CONCLUSION**

The framework of ISIS terrorism as an Extra Ordinary Crime in the State of Indonesia today in terms of penal theory shows that ISIS is an Extra Ordinary Crime including: crimes of genocide, crimes against humanity, war crimes, crimes of aggression. In crimes against humanity the attacks are widespread and systematic. ISIS conducts various ways to recruit members in Indonesia including; (1) Offer high-paying jobs; (2) Offering free Umrah to new members, (3) They are taught advanced technology, (4) Girls who want to join ISIS are usually treated like a princess; (5) Invited to travel or study abroad

Diplomasi will be presented with various legal stakeholders, comparison of the criminal system against perpetrators of criminal acts of terrorism in Indonesia in terms of criminal policy theory resulting in a form of international cooperation in law enforcement against ISIS as an ordinary crime and international crime as follows; (1) Transfer of Offenders (Extradition); (2) Transfer of Evidence (Mutual Legal Assistance); (3) Transfer of Proceedings; (4) Transfer of Sentence Person (TSP); (5) Transfer of Proceeds of Crime / Transfer of Asset Recovery.

The future legal concept in the penal system for ISIS terrorism returnees in Indonesia when using the theory of legal protection shows that Returnees and ISIS deportees still have the right to citizenship, and for some laws also protect the right to citizenship, the government must not refuse or counteract Returnees and deportants to enter Indonesian territory, this is because Returnees and deportants still have the right to citizenship and are still Indonesian citizens. So if we refer to laws and regulations, the state may not prohibit the entry of its own citizens. The Indonesian government cannot eliminate the citizenship of Returnees and deportees as Indonesian citizens because it is a right of Returnees and deportants, and the citizenship law also adheres to the principle of stateless so that Returnees still have the same rights, namely still having the right to Indonesian citizenship. The State cannot refuse and ban Returnees and

deportees because the right of return is the right of Returnees and deportees as stipulated in Article 27 of Law No. 39 of 1999 concerning Human Rights also states that "Indonesian citizens have the right to leave and re-enter the territory of the Republic of Indonesia, in accordance with the provisions of laws and regulations". Therefore the government must protect Returnees and deportees through repatriation because it is from the right of Returnees and deportees have the right of return. Furthermore, rehabilitation was carried out for the Returnees and ISIS deportees so that they would return to become Indonesian citizens who love their State and Nation.

#### Notes

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