Indonesia Obligation to Repatriate Nationals Who Had Joined the Islamic State of Iraq and Syria

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<td><strong>Keywords:</strong></td>
<td>According to the Montevideo Convention of 1993, the requirements for founding a state are fulfilled possession of people, a region, government, capability to relate to other states, and recognition of sovereignty from other states, making it still debatable whether ISIS can be considered a state or a belligerent organization. Islamic State of Iraq and Syria claim that they possess people, a region, and a government, but in reality, they cannot make diplomatic relations with other states. The National Counter-Terrorism Agency (BNPT) has declared ISIS a radical and terrorist movement. Based on BNPT and Detachment 88 data, it is suspected that 1,276 Indonesian nationals have joined ISIS, and only approximately 297 Indonesian nationals possess Indonesian passports. A debate arises regarding whether the state of Indonesia becomes responsible for its presence and whether they still possess the status of Indonesian nationals. This article is written as the results of normative juridical research that analyzes how the state is responsible for repatriating Indonesian nationals who have joined ISIS. The research found that the nationals who joined ISIS may be categorized as Foreign Terrorist Fighters. Nonetheless, international law does not regulate the nationality status of an individual when the individual becomes a part of FTF. In principle, each state can determine the regulations that organize the acquisition and deprivation of a person’s nationality; in other words, the nationality status of FTF who joined ISIS entirely depends on the national law of each state. Therefore, the government of Indonesia still possesses responsibility for returning (repatriating) WNI who have joined ISIS.</td>
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<td><strong>DOI:</strong></td>
<td>10.25041/fiatjustisia.v16no2.2574</td>
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A. **Introduction** *(Times New Roman (11 pt) & Bold)*

The first three requirements of state according to Article 1 of the Montevideo Convention of 1933 on the Rights and Duties of States form a single unity is inseparable. Without a certain region, it becomes impossible to found a nation, and it is similarly impossible to declare that there is a state without permanent people. Even if the two requirements of people and region are fulfilled, if the government is not a sovereign government with a national scope, such a “state” cannot be called an independent state.

As above, the fourth requirement regards the capability of creating international relations. This capability is often compared to sovereignty, which is something that must begin with recognition from other states. Recognition in international law is the free action of a state or several states that justifies the formation of an authoritative organization and accepts that authoritative organization as a member of the international community. Moore in Setyo Widagdo stated that recognition is useful to ensure that a new state can take up a reasonable place as a political organism that is independent and sovereign among the family of world states and thereby can safely and perfectly establish various relationships with other states, without the worry that its position as a political unit will be disrupted by existing states.

In the practices of several states, recognition more constitutes a political action than a legal action. Recognition constitutes a selective action that is based on the considerations of the interests of the recognizing state. As such, in the practices of several states, recognition is no longer a necessity as a result of having fulfilled the requirements as established by international law. As an additional remark regarding recognition, in addition to recognition of a state, recognition may be made for other International Legal Subjects, such as rebel groups, state liberation organizations, territorial claims, new treaties, and others. Recognition may be made in an overt as well as a covert manner; regarding the juridical implication of a recognition, recognition may be made in a *de jure* and *de facto* manner.

In relation to the requirements for the formation of a state as above, the international community had once debated about the statuses of Israel and Palestine. Over the course of the long history of conflict between Palestine and Israel, there have been differences in views in determining which one is to be recognized as a state, whether Palestine or Israel. In the end, on

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September 30, 2015, the flag of Palestine officially flew at the UN headquarters in New York. The flying of the Palestine flag constitutes the collective recognition of all UN members on the existence of Palestine as a state. In principle, only states that possess full sovereignty can become members of the UN. Even so, there were five UN member states that initially did not have full sovereignty when they joined the UN, but then they became fully independent within the years from 1946-1991.

Recognition is also tightly related to the existence of “rebels” in the internal conflict of a state. Conflict often arises because of the dissatisfaction of a party (the people) with the government in their territory (the state). Some of these problems of dissatisfaction fully developed as domestic affairs because of dynamics that occur within a state, but others also occur due to the role or influence of other states, which is often termed as “foreign intervention”. The counter-government party is then regarded as a rebel group that is recognized by international law, or called as a “belligerent”.

History has indicated that the international community had once recognized the Palestine Liberation Organization (PLO) as a belligerent. The then-chief of the PLO, Yasser Arafat, attended the UN General Assembly session of 1974-1975, and at that time as well, the PLO was recognized as the leader of the Palestine liberation movement. Thus, in addition to the recognition of the chief of the PLO as a head of state, there is also the recognition of the Palestine liberation movement as a legal subject in international law, despite not possessing an absolute territory of sovereignty.

In relation to the recognition of new states and rebel groups, some time ago, the government of Indonesia had been troubled by the existence of a number of Indonesian Nationals (WNI) who joined ISIS and had asked the Government of Indonesia to repatriate them. The local authorities have detained 47 people because of them being involved in cases of terrorism or becoming Foreign Terrorist Fighters (FTF), and most of the other WNI are spread out in various places (successfully joined ISIS, stuck at refugee camps, or returned to Indonesia because of the failure to depart or being deported by the transit states). Of the 600 WNI who are supporters of ISIS in Syria, most are thought to be children and women who became refugees, because of having followed their husbands or families.⁶

Since 2017, The Soufan Center has stated that there are 600 WNI who have joined ISIS in Syria (composed of 113 women, 100 children, and the rest being adult men). The number increased in 2018, for according to the National Counter-Terrorism Agency (BNPT), there are 1,321 WNI who attempted to join ISIS in Syria.⁷ Based on data from the BNPT and Detachment 88 that was

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⁷ Ibid.
presented in the work meeting with Commission III of DPR RI in the Parliament Complex, Jakarta, on Tuesday on the date of February 25, 2020, it is suspected that 1,276 WNI have joined ISIS, and only approximately 297 WNI possess Indonesian passports. However, this data is not yet valid because Indonesia does not have access to the area in question. Therefore, the government of Indonesia through the BNPT still continues to attempt to collaborate with the International Committee of the Red Cross to conduct documentation of WNI in Syria.

Debates arise on several issues regarding them. Is the state of Indonesia still responsible for their presence? Do they still possess the nationality status of WNI (Indonesian)? Does the Islamic State of Iraq and Syria (ISIS) constitute a state? Or can the national army be considered a state? Or can they be categorized as a rebel group that may be recognized as a legal subject in the face of international law?

This leads to the next question: does the joining with ISIS annul the WNI nationality status? If yes, is the state still responsible for repatriating them? As well, there is the debate of the advantages and disadvantages of repatriating them for the stability and security of the state of Indonesia. This is considering several cases of bombings that have occurred, which are often closely related to former Afghanistan combatants, such as Mukhlas as the perpetrator of the 2002 Bali bombings who has been sentenced to death, and Amrozi and Ali Imron, two other perpetrators of the Bali bombings.

What is clear is that the National Counter-Terrorism Agency (BNPT) has declared the ISIS movement as a radical and terrorist movement. In relation to terrorism, the stipulations of Article 7 of Law Number 15 of Year 2003 on the Eradication of the Crime of Terrorism state that “Every person who intentionally utilizes violence or threats intended to create a situation of terror or fear toward other persons in a broad manner or to cause victims in a massive manner by the deprivation of liberty or the loss of life or wealth of other people, or to cause damage or destruction of strategic vital objects, or the

9 In the stipulations of Law Number 12 of Year 2006 on Nationality, it is stated that WNI can lose the Indonesian nationality they possess. Article 23 letter i regulates as the following: “Indonesian Nationals lose their nationality if the persons in concern:

…
d. enter into service of foreign military without prior permission from the President;
e. voluntarily enter into service of foreign countries, for which a similar service position in Indonesia according to the stipulations of legal regulations may only be served by Indonesian nationals;
f. voluntarily swear allegiance or state an oath of loyalty to a foreign country or a part of that foreign country.”;
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environment, or public facilities, or international facilities, is to be charged with a crime and a prison sentence of at most life in prison.”

Based on the chronology of the background above, this article takes the title of “The Responsibility of the State on the Repatriation of Indonesian Nationals Who Have Joined ISIS”, and through a normative juridical research, analyzes the status of ISIS in the perspective of international law and the responsibility of the state towards the repatriation of Indonesian Nationals (WNI) who have joined ISIS.

B. Discussion
1. The Status of ISIS in the Perspective of International Law

Regarding ISIS (Islamic State of Iraq and Syria, also ISIL, Islamic State of Iraq and the Levant), according to several resolutions of the Security Council of the United Nations (UN) as with Resolution No. 2245 of Year 2015, ISIS is considered as a terrorist group. The declaration of ISIS as a terrorist group is still actually debatable because there are several aspects that are not fulfilled by ISIS. Another problem that also becomes the attention of the international community is the way of regarding ISIS as an international legal subject.

According to Martin Dixon, an international legal subject is “a body or entity which is capable of possessing and exercising rights and duties under international law”.11 This means that an international legal subject should possess the capabilities to carry out their obligations and to claim their rights based on international law. There are various kinds of international legal subjects, among them being states; international organizations; international non-government organizations; individuals; trans-national companies; the ICRC; national liberation organizations; and belligerents. Based on these various kinds of international legal subjects, the debate regarding the consideration of ISIS as an international legal subject revolves around ISIS being the legal subject of a state and being a belligerent. This is because of the characteristics and objective of ISIS, which possess similarity with the classification of several of these international legal subjects. To evaluate the legal status of ISIS in international law, what needs to be analyzed first is the characteristics of ISIS in relation to an international legal subject.

The objective of the founding of ISIS is to establish an Islamic state that initially was only situated in the states of Iraq and Syria. However, over the course of time, the movement of ISIS in promoting the establishment of an Islamic state began to globalize. According to several studies, there are three primary objectives of ISIS: “[to] establish a caliphate in Iraq and the Levant, expand Islam and Sharia law worldwide, and recreate the power and glory of

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(Sunni) Islam”. To achieve these objectives, ISIS through information and communication technologies spread their ideologies and propaganda across the world. In their actions in Iraq and Syria, ISIS launched attacks toward people who do not agree with their ideology and committed several acts that may be categorized as severe crimes of human rights. In addition, ISIS in launching their attacks have violated the stipulations of customary international humanitarian law, such as attacks on historical sites that are protected by international law, and the failure of ISIS to take precautionary actions that are required to protect civilians.

The spread of the ideology of ISIS may be considered from the appearance of terrorist groups and terror attacks in various states by terrorist groups who claim that they are affiliates of ISIS. One of the examples is the establishment of Jamaah Ansarul Daulat (JAD) terrorist group in Indonesia, which according to the State Intelligence Agency (BIN) is one of the networks of ISIS that is found in Indonesia. Considering the movement, ISIS does not feel that they are bound by international legal regulations or international humanitarian law. Conversely, it openly distances itself from the framework of the international community.

To find out the proper status for ISIS based on the perspective of international law, the following is a comparison of the characteristics of ISIS according to several characteristics of international legal subjects, among others:

a. **ISIS as an International Legal Subject in the Form of a State**

The state is the first and foremost international legal subject that possesses the greatest authority. The state is also a unity that possesses rights and obligations in international law. There are several criteria that must be fulfilled for an entity to be able to be called a state, and therefore to be able to be regarded as an international legal subject.

As has been explained in the previous section, the stipulations of Article 1 of the Montevideo Convention (Pan American) of 1933 on the Rights and Duties of States asserts that: “The state as a person of international law should possess the following qualifications: A permanent population (Jus
Sanguinis, Jus Soli, Naturalization); A defined territory; (Legal) government; and Capacity to enter into (international) relations with the other states.” These four elements are cumulative in nature, which means that all the elements must be fulfilled by ISIS if ISIS wish to declare themselves as a state.

2. ISIS as a Belligerent
Rebel groups or belligerents are recognized by international law as an international legal subject. Belligerents are different from liberation organizations. This is because a belligerent organization in essence is triggered by a certain internal conflict in a state that causes a group to conduct an armed rebellion toward a sovereign government. The conflict resolution for a belligerent group is left completely up to the host state. However, recognition of belligerent groups can be made by the state from where the belligerent originates or by another state as a third party.

In general, there are four elements that must be fulfilled by a belligerent to be able to be categorized as an international legal subject:

a. It must be organized neatly and orderly under a clear leadership;

b. It must possess an identifying mark as its identity;

c. It must effectively control a portion of the regions;

d. It must obtain support from the people in the region of its control.

There are differing opinions regarding what elements must be fulfilled by a rebel group in order to be called as a belligerent. In general, there is another element that may also be taken into consideration, as recognition from a host state or a third-party state that admits that the group may be categorized as a belligerent.

According to war law, a belligerent may possess positions and rights as a party that is engaged in conflict in a certain condition, for which the objective is for the belligerent party to feel that its position is recognized as one of the representatives for voicing out the concerns of the people as the dissatisfaction of the people toward the government of concern. Because the problem occurred due to the dissatisfaction of a certain group in a certain state, then as it should be, its resolution is fully the affair of the state in concern. But if the rebellion continues to develop, such as in the form of a civil war with consequences beyond humanity, and even spreads to other states, then one of the stances that may be taken is the recognition of the existence or acceptance of a belligerent as a standalone individual, even if this stance will be regarded as a hostile act by the government of the state wherein the rebellion occurs.

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18 Masalah Status Belligerent Sebagai Subjek Hukum Internasional (Studi Kasus Hamas di Palestina) [The Problem of the Belligerent Status as an International Legal Subject (A Case Study of Hamas in Palestine)], p. 10.


20 Sefriani, op. cit.
With such a recognition, this means that from the viewpoint of the state that recognizes the belligerent, the belligerent possesses the status as an individual or an international legal subject.

Considering the characteristics of ISIS, what can be clearly seen is that ISIS fulfill two out of the four elements. First, ISIS possess a clear organizational structure in that there are structures for the caliphate, cabinet, and ministries.\(^1\) Second, ISIS possess an identifying mark as a black flag with writing in Arabic script in white that means “there is no God but Allah; Muhammad is the messenger of Allah” and the phrase “Muhammad is the messenger of Allah” that is present with a white circle under it. The phrases constitute the Shahada (declaration of faith) in the religion of Islam, which was then utilized by ISIS as their identifying mark.\(^2\)

Meanwhile, the other elements have not been fulfilled by ISIS. As has been previously explained, after the defeat of ISIS in the city claimed as their capital, Raqqa, in 2019 and other cities that become the strongholds of their power, the group underwent a movement of spreading out among the cities in Iraq and Syria, and therefore lacks a defined territory. The absence of a clear and defined territory over their dominion of power also affect the non-fulfillment of the element of support from the people in the region of control.

Another element that also becomes a consideration is the existence of recognition from the host states, as Iraq and Syria, toward ISIS as a belligerent group. Although this element is an element that is political in nature, this element also determines whether a certain rebel group can possess rights and obligations that are regulated in international law. In connection to the current condition of ISIS, Iraq and Syria, as well as other states do not recognize that ISIS is a belligerent group. In fact, states and even the UN consider ISIS as a terrorist group.\(^3\) It can therefore be concluded that ISIS also cannot be said to be a belligerent, and thus cannot possess rights and obligations as an international legal subject.

3. The Responsibility of the State for the Repatriation of Indonesian Nationals (WNI) Who Have Joined ISIS

To find out the responsibility of the state in repatriating ex-ISIS WNI, the process first begins by identifying the status of ex-ISIS WNI based on international law and the national law of Indonesia. This is then followed by identifying international obligations toward the issue of repatriating the WNI in order to finally find out the responsibility that occurs from the obligations of the state as an international legal subject.

a. The Status of Indonesian Nationals (WNI) When Becoming ISIS Members

In order for ISIS to achieve their objectives, they do not only recruit members that are present in the regions of Syria and Iraq, but also make the effort for other Muslims in other states to be moved to become members of ISIS. Through information and communication technologies, ISIS spread their ideologies and propaganda, with the objective of obtaining support in both financial and physical form from Muslims around the world. ISIS conducted the process by displaying their propaganda videos regarding the “prosperity” of cities that are controlled by ISIS and the promise of a life that is guaranteed, secure, and peaceful under Islamic (Sharia) law.24

There are different factors and reasons for why in the end many Indonesian Nationals (WNI) chose to join with ISIS. According to research, there are three main factors, which are ideology, obligation to defend fellow Muslims in Syria, and the role of financial incentives and material rewards.25 This propaganda of ISIS can be said to be successful because in 2015, it was estimated that there were 25,000 foreign nationals outside of Iraq and Syria who joined ISIS.26 Then, in 2018, there were at least 500 WNI that were still present in Iraq and Syria.27

Based on international law, there is the recognized concept of foreign fighters or Foreign Terrorist Fighters (FTF), which based on UN Security Council Resolution 2178 are:28

“...nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training, including in connection with armed conflict”

FTF are nationals who go or try to go to other states than where they live or to which they belong, and other individuals who go or try to go from their territories to those other states, with the aim of planning, preparing, arranging, or taking part in terrorism, or giving or receiving training in terrorism that may also relate to armed conflict. Considering the understanding of FTF according

24 Febri Ramdani, 300 Hari di Bumi Syam [300 Days in the Levant], 2020, p. 23.
to the UN, then WNI who joined ISIS in Syria and Iraq may be categorized as FTF.

The nationality status of FTF also becomes a source of debate in the international community. In international law, there are no regulations that organize regarding the nationality status of individuals when they become FTF. This is because in principle, every state can determine regulations that organize the acquisition and deprivation of the nationalities of people. 29 What this means is that the nationality status of FTF who have joined ISIS wholly depends on the national law of each state.

Based on laws that apply in Indonesia, nationality is regulated in Government Regulation No. 2 of Year 2007 on the Methods of Acquisition, Loss, Revocation, and Reacquisition of Nationality to the Republic of Indonesia, and Law No. 12 of Year 2006 on Nationality to the Republic of Indonesia (Law 12/2006). According to the statement of the Coordinating Minister in the Field of Politics, Law, and Security, Mahfud MD, he states that a WNI who joins ISIS automatically loses the Indonesian nationality. 30 This is based on Article 23 Point d of Law Number 12 of Year 2006, which regulates that WNI may lose their nationality if those in concern enter foreign military service without requesting permission first from the President. 31

Therefore, in relation to the status of ISIS as a terrorist group, then a question arises as to whether ISIS or other terrorist groups may be categorized as “foreign military” as stated in the Article. Based on the statement, it can then be considered that the standpoint of the government of Indonesia toward WNI who join ISIS as FTF is that it no longer recognizes them as WNI or of Indonesian nationality.

Although there are no international laws that explicitly regulate how a state must regulate when the nationality of an individual may be deprived, in an indirect manner, international law also limits states in conducting acts of deprivation of nationality. This can be seen in several conventions and general principles of international law that are related to human rights. For example, Article 15 of the Universal Declaration of Human Rights (UDHR) regulates that every person is entitled to a nationality. 32 This matter is considered as a fundamental human right because the limitation of this right will ruin other human rights. 33

30 https://en.tempo.co/read/1307600/mahfud-md-isis-supporters-will-lose-citizenship (August 1, 2020)
31 Article 23, Law No. 12 of Year 2006 on Nationality to the Republic of Indonesia (Law 12/2006).
32 Article 15, the Universal Declaration of Human Rights (UDHR).
The deprivation of the nationality of an individual must consider five aspects: “in accordance with domestic law; legitimate purpose; be the least intrusive measure possible to achieve that purpose; be proportionate to the legitimate purpose; and install procedural guarantees”\textsuperscript{34}. This means that the deprivation of nationality must be in accordance with national law, with valid objectives, proportional to the aim of the deprivation, and able to provide a procedural guarantee to contest the decision to an independent agency. The International Law Commission has also stated that the deprivation of nationality in an arbitrary manner will ruin human rights that are fundamental in nature. In addition, the deprivation of nationality that causes an individual to become stateless or without nationality is also forbidden by international law\textsuperscript{35}.

Based on the explanation above, it can be concluded that a state possesses the authority to confer or deprive the nationality of an individual, and thus the nationality status of FTF for ISIS is again dependent on the national law of each state. Based on the statement of the government of Indonesia, it can be seen that the government of Indonesia does not admit WNI who become FTF for ISIS as having the nationality of the state. However, the state cannot conduct the deprivation of nationality in an arbitrary manner because such acts of the state are limited by regulations and general principles of international law.

Another matter that also becomes problematic in this issue of FTF for ISIS is when there are FTF (of Indonesian Nationals) who wish to return to Indonesia. Thus, to find out what limits must be considered by the government of Indonesia in relation to the acceptance of ex-ISIS WNI, the next step becomes to review the international obligations of the state in re-accepting FTF back to the state.

b. International Obligations of Indonesia in the Repatriation of Ex-ISIS WNI

In February 2020, it was recorded that there were approximately 689 ex-ISIS WNI who are spread out in a number of regions such as in Syria and Turkey\textsuperscript{36}. They were reported to have asked the government of Indonesia to be aided to be able to return to Indonesia. However, President of Indonesia Joko Widodo has stated that the government will not accept the repatriation of ISIS FTF to Indonesia\textsuperscript{37}. The consideration was made because according to the government, their repatriation may lead to threats and the spread of new

\textsuperscript{35} Ibid., p. 58.
\textsuperscript{37} Ibid.
terrorism among Indonesian people. Yet the Government will also consider the repatriation of children under the age of 10 years.\textsuperscript{38}

The bringing back of people to their homeland (state of origin) is called “repatriation”. The phenomenon of repatriating FTF is not unique to WNI only. The same phenomenon also occurs for ISIS FTF from other states. The response of different states toward repatriation also differ. This is because the decisions to do so are regulated by the national regulations of each state.

The phenomenon of repatriation of ISIS FTF often gives rise to debates because a majority of states rejects the repatriation of nationals who become FTF. This matter, according to several experts, is in conflict with the international obligations of a state as an international legal subject. The international obligations of a state may arise from international conventions that are ratified by the state, bilateral agreements, multilateral agreements, international customary law, and international obligations that are \textit{erga omnes} in nature.\textsuperscript{39}

Based on the Commentary on the Draft Articles on State Responsibility Article 48 Paragraph 8-9, an \textit{erga omnes} obligation is an “obligation owed ‘towards the international community as a whole’”.\textsuperscript{40} It refers to an obligation or right that is due for the entire international community. Therefore, to find out how the regulations regard state obligations in responding to the matter, it becomes necessary to review regulations and principles of international law that are related to the repatriation of FTF.

4. The Responsibility of the State Based on International Law toward the Repatriation of Ex-ISIS WNI

The principle of state sovereignty in international law is very much dominant. The state possesses full sovereignty over the people, objects, and actions that are present in its territory. Yet, the state cannot arbitrarily utilize that sovereignty. As such, international law regulates for the sovereignty that there is an obligation to not abuse that sovereignty. In the interaction between states, there is likely to be a great possibility of the state making mistakes or committing violations of the obligation and causing detriment to other states, and it is here that the responsibility of the state becomes apparent.\textsuperscript{41} The laws


\textsuperscript{40}https://casebook.icrc.org/case-study/international-law-commission-articles-state-responsibility#:~:text=Article%2031&text=The%20responsible%20State%20is%20under,wrongful%20act%20of%20a%20State. Article 48, Paragraph 8-9.

\textsuperscript{41} Sefriani, \textit{op. cit.}, p. 253; Mohammad Burhat Tsani, \textit{Hukum dan Hubungan Internasional (Law and International Relations)}, Liberty, Yogyakarta, 1990, p. 47.
on state responsibility was created based on customary laws that emerge from practices of states, doctrines, and international court verdicts.

At present, regulations on the responsibility of the state can be seen in the Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA draft). However, the regulations still remain in draft form because the International Law Commission (ILC) up to today is still attempting to develop those regulations. Although the regulations regarding the responsibility of states are still in draft form, the draft can still become a legal basis because the regulations are formed from international customary laws. Internationally wrongful acts may emerge from the actions of the state in doing something or not doing something (omission). Internationally wrongful acts possess two elements:\(^{42}\)

1) They can be transferred to the state based on international law;
2) They constitute breaches of international obligations regarding international law.

As has been explained in the previous section, in relation to the repatriation of FTF, there are international obligations that must be taken into account by states and cannot be violated because there are several obligations that are *erga omnes* in nature. In the ARSIWA draft, the regulation on the emergence of violations toward international obligations are stated in Chapter III. In Article 12 of the chapter, it is regulated that there is a violation of international obligations by a state when the action of the state is not in line with what is demanded for it by the obligations, regardless of the origin or characteristics of the agreement.\(^{43}\) According to the ILC, the Article applies and can be applied generally. The obligations that are referred in the Article applies for all forms of international obligations of states. These obligations may be in the form of obligations that are established in international agreements, international customary law, or general principles that apply in the structure of international law.\(^{44}\)

In connection to the phenomenon of repatriation, there are several international legal principles that must be considered such as statelessness, right to enter one’s country, and non-refoulement. These three principles of international law comprise obligations that must be complied by each state because the obligation to comply with the principle concerns all states. Based on Article 48 of the ARSIWA draft, it is regulated that other states have the right to request a state to be responsible for the actions of the state that does not fulfill an international obligation that concerns all states.\(^{45}\) Toward the international obligation, a certain responsibility then emerges for individual states. This means that there are consequences if a state does not fulfill its

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\(^{42}\) Draft Articles on State Responsibility, 2001, Article 2.


\(^{45}\) Draft Articles on State Responsibility, 2001, Article 48.
obligation as an international legal subject. Based on the Article, states that possess the right to request a state to be responsible are not only states that feel that they are at a detriment; other states may request a state to be responsible as long as the request is related to obligations that must be fulfilled for the entire international community (owed to the international community as a whole).

As a sovereign state, certainly Indonesia possesses rights and obligations that must be fulfilled. The nonfulfillment of the international obligations will certainly lead to conflict in which another state may request the responsibility of Indonesia for its actions. The decision of the Government of Indonesia in rejecting the repatriation of FTF can be said to violate principles of international law. General principles such as non-refoulement, statelessness, and the right to enter one’s country are obligations that Indonesia must comply with, as one of the international legal subjects, in order to uphold human rights and peace in the world in high regard. The fulfillment of those certain obligations also reflects the fact that Indonesia has fulfilled its responsibility as a state. As such, the government of Indonesia possesses the responsibility to reformulate the appropriate measures to be able to conduct repatriation of ISIS FTF that also considers the security of the Indonesian people as well as its obligations as part of the international community.

C. Conclusion

ISIS cannot be categorized as a state because by both de jure and de facto, the territory and government of ISIS is not recognized by other states. ISIS also cannot be categorized as a belligerent, because Iraq and Syria as well as other states do not recognize ISIS as a belligerent group, and several other states as well as the UN consider ISIS as a terrorist group. As such, ISIS also cannot possess the rights and obligations as an international legal subject.

Considering the understanding of Foreign Terrorist Fighters (FTF) according to the United Nations, then the WNI who joined ISIS in Syria and Iraq may be categorized as FTF. Even so, international law does not regulate regarding the nationality status of an individual when the individual becomes a part of FTF. In principle, each state can determine the regulations that organize the acquisition and deprivation of nationality of a person; in other words, the nationality status of FTF who joined with ISIS fully depends on the national law of each state. General principles such as non-refoulement, statelessness, and the right to enter one’s country are obligations that Indonesia must comply with, being one of the international legal subjects, in order to highly uphold human rights and peace in the world. Therefore, the government of Indonesia still possesses responsibility for bringing back (repatriating) WNI who have joined ISIS.

For the effort of repatriation, the government of Indonesia needs to reformulate measures that are appropriate for doing so for ISIS FTF with
considerations of the security of the Indonesian people and the obligation of
the state as part of the international community.

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