

Emphasizing the Role of Diplomatic Agents for Repatriation of Ex-Foreign Terrorist Fighters (FTF): Study of Indonesia

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Abstract

Repatriation of the ex-Foreign Terrorist Fighters (FTFs) has been initiated since 2020 where many ex-Indonesians are trapped and scammed in the conflicting areas. These individuals, often branded as ex-nationals upon leaving their homelands, have engaged in violent conflicts in Syria, Iraq, and beyond. With ISIS's territorial grip weakening, these ex-FTFs now attempt to return to their origin countries, such as Indonesia. The analysis in this paper is mainly constructed by the role and function of diplomatic and consular agents on their repatriation. They are directed to the existence of customary international law as the primary source of international law in order to find out the relevance of their repatriation. It provides a legal framework of analysis on how the state conducts dealing with these complex emergencies abroad on state protection to its own nation abroad. The clarity and robust guidance could reduce complex dilemmas for the governments in managing this repatriation. While some call for imprisonment or even elimination, repatriation highlights the crucial role of reintegration and rehabilitation programs. It underscores the legal responsibilities of states under international law, advocating for the protection of human rights while maintaining national public safety conducted by diplomatic and consular agents.

Keywords: Diplomatic and consular functions; repatriation; human rights.

A. Introduction

One of the demanding obligations carried out by the Indonesian Government is to repatriate ex-Foreign Terrorist Fighters (FTFs) where the Coordinating Minister of Politics, Law, Security and Defence, and the Ministry of Foreign Affairs are tasked to assess and to execute.¹ Widagdo, Indrayanti, and Saraswati in 2021 proposed that repatriation as basic human rights shall be enjoyed by the Indonesian ex-FTFs, and they are mandatory to be returned.² It is important to note that the right to nationality is recognised under Article 15 of the Universal Declaration of Human Rights (UDHR), and this matter is considered a matter of fundamental human rights, as deprivations of this right would ruin other human rights.³ However, in some instances, it can be revoked. In order for this criterion to be implemented, five requirements need to be met, i.e., the deprivation of nationality must be in accordance with national law, have legitimate goals, be proportional to the intended outcome, and offer a way to challenge the decision through a separate legal process.⁴

- 1 Dandy Bayu Bramasta & Sari Hardiyanto, "Pro Kontra dan Dampak di Balik Rencana Pemulangan Ratusan WNI Eks ISIS...", www.kompas.com/pro-kontra-dan-dampak-di-balik-rencana-pemulangan-ratusan-wni-eks-isis, accessed 5 June, 2024; Adhi Muhammad Daryono, "Mahfud MD: Rencana Pemulangan Eks ISIS ke RI Ada Mudaratnya", kumparan.com/kumparan-news/mahfud-md-rencana-pemulangan-wni-eks-isis-ke-ri-ada-mudaratnya-1smUxNfuNFE, accessed 5 June 2024.
- 2 Setyo Widagdo, *et.al.*, "Repatriation as Human Rights Approach to State Options in Dealing With Returning ISIS Foreign Fighters", *SAGE Open*, Vol. 11, Num. 3, 2021, p. 1-12.
- 3 Barbara von Rütte, "Chapter 4 Beyond Sovereignty: The Right to Nationality in International Law", in *The Human Right to Citizenship*, Leiden: Brill, 2022, p. 87.
- 4 Human Rights Committee, General Comment 3, Article 2, para. 1, Implementation at the national level (Thirteenth session, 1981), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev.1 at 4 (1994); ASEAN, *ASEAN Handbook on International Cooperations in Trafficking in Persons*, 2010; Charles R. Beitz, *The Idea of Human Rights*, Oxford Academic, 2007, p. 10 & 73; Micheline R. Ishay, *The Human Rights Reader: Major Political Essays, Speeches and Documents from Ancient Times to the Presents*, Routledge, 2007, p. 161-263; Jack Donnelly, *Universal Human Rights In Theory and Practice*, Cornell University Press, 1985, p. 8-11.

The International Law Commission (ILC) has further declared that the arbitrary revocation of nationality will undermine fundamental human rights, as previously mentioned.⁵ The act of bringing people back to their homeland is called “repatriation” and this is an internationally recognised act. However, with regards to bringing back Indonesian nationals who have gone on to become FTFs goes directly against the international obligations of states that are *erga omnes* in nature.⁶ The tension lies in balancing states’ rights to sovereignty, governing repatriation, with their obligations under national law. Additional layer of contention is Article 12 of the Responsibility of States for Internationally Wrongful Acts,⁷ which stipulates that a state violates its international obligations when its actions deviate from the requirements set forth by those obligations, irrespective of the origin or nature of the agreement. In light of this, failure to fulfill international obligations may result in conflicts where another state could hold Indonesia accountable for its actions.⁸

Arguably, the Indonesian Government’s decision to refuse the repatriation of the ex-FTFs can be seen as a breach of international law principles.⁹ Basic principles like non-refoulement, prevention

5 United Nations Human Rights Council, “Human rights and arbitrary deprivation of nationality: Report of the Secretary-General”, A/HRC/25/28, 19 December 2013, p. 31-34.

6 P. M. Dupuy, “Reviewing The Difficulties of Codification: on Ago’s Classification of Obligations of Means and Obligations of Result in Relation to State Responsibility”, *European Journal of International Law*, Vol. 10, Num. 2, 1999, p. 1133-1136.

7 Draft articles on Responsibility of States for Internationally Wrongful Acts with commentaries, 2001, Article 12. It determines that (1). The conduct of an organ of the State acting in that capacity which takes place in the territory of another State or in any other territory under its jurisdiction shall not be considered as an act of the latter State under international law; (2). Paragraph 1 is without prejudice to the attribution to a State of any other conduct which is related to that referred to in that paragraph and which is to be considered as an act of the State by virtue of Article 5 to 30.

8 Muhamad Suryadi & Fauzia Gustarina, “Fronting the Return of Foreign Terrorist Fighters: The Rise and Fall of ASEAN Border Cooperation to Combat Non-Traditional Threats”, *Jurnal Hubungan Internasional*, Vol. 7, Num. 1, 2018, p. 1-7.

9 Irfan Amir, “Review of An Analysis of Jokowi’s Policy in Refusing the Re-

of statelessness, and the right to return to one's own country are Indonesian obligations, as a member of the international community, Indonesia must uphold to safeguard human rights and global peace. Fulfilling these obligations not only demonstrates Indonesia's responsibility as a nation but also its commitment to international standards.¹⁰ Therefore, it is incumbent upon the Indonesian government to reassess its approach and develop appropriate measures for repatriating ex-FTFs, ensuring both the security of its citizens and compliance with their international obligations. Consequently, the next question would be, how does the Government undertake this obligation in a prompt and timely manner? It is a very crucial question because since 2020 their repatriation hasn't been successfully delivered, and it is still an unresolved problem. In line with the aforementioned fact and argument, diplomacy using all available resources has to be manifested by the Indonesian diplomatic as well as consular agents in the fields.

Based upon the said problems, this paper aims to critically examine how ex-FTFs repatriate to Indonesia as a mandatory obligation under international human rights law. It then focuses on how the Indonesian diplomatic as well as consular agents perform their tasks to help shape plans and actions. In order to achieve this objective, this paper will be outlined into three main parts, as follow: *first*, relevance of the diplomatic and consular functions to repatriate ex-FTFs; *second*, legal status of the Indonesian ex-FTFs under the Indonesian as well as international laws; *third*, other international efforts facilitated by the diplomatic and consular agents to accelerate repatriation process; and *fourth*, Indonesia's diplomatic efforts toward the repatriation of Ex-FTFs. At the end, this paper will propose attainable recommendations for better coordination and simplification of procedure to repatriate Indonesian ex-FTFs within the diplomatic

turn of Former ISIS Foreign Terrorist Fighters Indonesian Citizens", *Al-Bayyinah: Journal of Islamic Law*, Vol. 4, Num. 1, 2020, p. 118-132.

10 Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation, "Gov't Will Not Repatriate Terrorist Fighters", setkab.go.id/govt-will-not-repatriate-terrorist-fighters/, accessed 3 May 2024.

and consular function to protect, represent, negotiate, report, and ascertain all possible ways of repatriation.

B. Relevance of the Diplomatic and Consular Functions to Repatriate Ex-FTFs

Diplomacy is mainly concerned with national interests because emerging transnational challenges in many areas can only be dealt through collective actions, and from the growing interpenetration and interdependence of national societies.¹¹ Then, diplomatic missions are crucial in the global fight against terrorism, including threats posed by organizations like the Islamic State of Iraq and Syria (ISIS). They perform several essential roles and functions to counter terrorism and promote international security and cooperation.¹² *First*, managing international perceptions. Diplomatic missions actively manage their country's image and clarify their stance on terrorism.¹³ This involves countering negative narratives that terrorist organizations might spread and promoting a positive image of their own government's efforts to combat terrorism.¹⁴ As an example, the United

11 Vienna Convention on Diplomatic Relations, 1961, Article 3. It stipulates that (1). The functions of a diplomatic mission consist inter alia in : (a) representing the sending State in the receiving State; (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law; (c) negotiating with the Government of the receiving State; (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State; (e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations; (2). Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

12 J. C. Barker, "The Function of Diplomatic Missions in Times of Armed Conflict or Foreign Armed Intervention", *Nordic Journal of International Law*, Vol. 81, Num. 4, 2012, p. 387-406.

13 United Nations Office on Drugs and Crime, US Department of States, and Badan Nasional Penanggulangan Terorisme, *Workshop on Strengthening Implementation of International Legal Instruments Against Proliferation on Chemical Weapons by Non State Actors, in Particular for Terrorist Purposes*, Bogor 13-14 September 2023.

14 Steven M. Presley, *et. al.*, "Threats and Vulnerability Associated with Bi-

States (US) embassies worldwide have public diplomacy sections that engage with local media, organize press conferences, and disseminate information about US counter-terrorism efforts.¹⁵ This helps shape public opinion and counteract terrorist propaganda. *Second*, facilitating international cooperation. Diplomatic missions foster cooperation among nations through information sharing, intelligence collaboration, and joint law enforcement efforts.¹⁶ These efforts are critical in addressing the transnational nature of terrorist threats. As an example, diplomatic missions of the United States (US), the United Kingdom (UK), Canada, Australia, and New Zealand work closely through the Five Eyes intelligence alliance.¹⁷ They share intelligence on terrorist threats, coordinate counter-terrorism operations, and support each other's security measures.¹⁸ *Third*, diplomatic missions ensure that counter-terrorism measures respect human rights and adhere to international legal standards. They promote the rule of law and due process in counter-terrorism efforts.¹⁹ As an example, the European Union (EU) delegations advocate for the integration of human rights considerations into counter-terrorism policies.²⁰ They

ological Weapons”, in Roland J. Kendall, *et.al.* (eds), *New Development in Biological, Chemical, and Terrorism Countermeasures*, CTC Press: Taylor and Francis, 2016, p. 51-55; Omer Elagab & Jehaan Elagab, *International Law Documents Relating to Terrorism*, Routledge, 1997, p. 265-268

- 15 Jessica R. Piombo, “Terrorism and U.S. Counter-Terrorism Programs in Africa: An Overview”, *Strategic Insights*, Vol. VI, Num. 1, 2007, p. 1-11.
- 16 Sanderijn Duquet & Jan Wouters, “Diplomatic and Consular Relations”, in Simon Chesterman, *et.al.* (eds), *The Oxford Handbook of United Nations Treaties*, Oxford Handbooks, 2019, p. 565-582.
- 17 Stockholm International Peace Research Institute, *SIPRI Yearbook 2015: Armaments, Disarmament and International Security*, Oxford University Press, 2015; E. P. Myjer & T. Marauhn, *Research Handbook on International Arms Control Law*, Edward Elgar Publishing, 2022, p. 531; United Nations Office on Drugs and Crime, *Manual on International Cooperations in Criminal Matters Related to Terrorism*, 2009, p. 27 & 67.
- 18 Corey Pfluke, “A history of the Five Eyes Alliance: Possibility for reform and additions”, *Comparative Strategy*, Vol. 38, Num. 4, 2019, p. 302-315.
- 19 Randall P. Peerenboom, *Asian Discourse of Rule of Law, Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the US*, Routledge, 2004, p. 47-50.
- 20 Balzacq Thierry & Sarah Léonard, *Information-Sharing and the EU Counter-Terrorism Policy: A ‘Securitisation Tool’ Approach*, New York: Macmillan Pub-

engage with host countries to ensure that actions against terrorist groups comply with international human rights laws, offering training and support to improve legal frameworks.²¹ Diplomatic missions are on the front lines of the global efforts to combat terrorism. By managing perceptions, facilitating cooperation, advocating for human rights, providing aid, and engaging with communities, they play a multifaceted role in addressing and mitigating the threat of terrorism. These activities help build a comprehensive and cooperative international approach to counter-terrorism, addressing both the immediate threats and the underlying conditions that contribute to the spread of terrorist ideologies.²²

One of the goals of diplomacy is to inspire a positive perception of the represented state.²³ Good branding serves as a way to open a new relationship with other nations which would lead to the state's benefits. However, having state's citizens engaging in terrorism activities, such as ISIS, may damage their reputation as members of the international community and erode public faith in their government's capacity to successfully fight terrorism.²⁴ Furthermore, United Nations (UN) member states aid in the spread of international

lishers, 2013, p. 127-142.

21 Violeta Vasiliauskienė & Martynas Vasiliauskas, "Definition of Terrorism and EU Counter-Terrorism Policy", *Border Security and Management* Vol. 3, Num. 8, 2020, p. 88-99.

22 Brendan Howe, *National Security, State Centricity, and Governance in East Asia*, Palgrave-Macmillan, 2018, p. 127-128; Mark E. Byrens, et.al., *Nuclear, Biological and Chemical Terrorism: Emergency Response and Public Protection*, Lewis Publisher, 2003, p. 168-170.

23 Rohit Ambast & Vinay Tyagi, "Ambassadors of Europe: An Insight into the Evolution of the European Union and International Diplomatic Law", *Studia Diplomatica*, Vol. 61, Num. 4, 2008, p. 181; Andrew F. Cooper, et.al., *Introduction: The Challenges of 21st Century Diplomacy*, Oxford Academic, 2013, p.2; Corneliu Bjola & Ilan Manor, *Digital Diplomacy in The Time of The Coronavirus Pandemic*, uscpublicdiplomacy.org/digital-diplomacy-time-coronavirus-pandemic, accessed 11 May 2024.

24 Eileen Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*, Oxford University Press, 2016, p. 20-23; Manfred Elsig & Karolina Milewicz, "The Politics of Treaty Signature: The Role of Diplomats and Ties that Bind", *International Negotiation*, Vol. 22, Num. 3, 2017, p. 521.

terrorism.²⁵ The international community's disdain for a state can have extensive and detrimental effects on its diplomatic, economic, humanitarian, political, and security interests.²⁶ It is well known that the international community has its own way to deal with terrorism, one of them is to impose sanctions such as freezing of assets and financial funds.²⁷ Nonetheless, states may have different views on the right counter-terrorism action, especially if that State's civilians are involved in another country's terrorism act. The state usually would ask for their citizens to be adjudicated in their own court. This could create distrust among states and it will be more likely for that state to receive restraint on their diplomatic mission. With the ever-changing international relations, the social and political order is going through a complicated reconstruction, in order to prevent conflicts.²⁸

Moreover, the challenges that are faced by diplomacy may not only put states relations in danger as it could also put diplomats' lives in danger. Terrorist strikes have made diplomatic missions and diplomats themselves prominent targets.²⁹ In addition to putting lives in

25 United Nations Office on Drugs and Crime, *CBRN Module: International Legal Framework Against Chemical, Biological, Radiological and Nuclear Terrorism*, 2016, p. 7-9; Amanda Cowl, "International Cooperation for Implementing the Chemical Convention", at *Workshop on Strengthening Implementation of International Legal Instruments Against Proliferation on Chemical Weapons by Nonstate Actors, in Particular for Terrorist Purposes*, Bogor 13-14 September 2023.

26 David Criekemans, *Regional Sub-State Diplomacy Today*, Martinus Nijhoff Publisher, 2010, p. 5; Julian Hermida, "A Proposal Toward Redefining The Model of Application of International Law in the Domestic Arena", *Singapore Journal of International and Comparative Law*, Vol. 7, Num. 2, 2003, p. 489-510.

27 Paul Nwala, "The Impact of International Diplomacy on Combating Global Terrorism", *Journal of Contemporary International Relations and Diplomacy*, Vol. 4, Num. 2, 2023, p. 772-786.

28 H. M. Virupakshiah, *Terrorism Challenge Diplomacy*, Delhi: Concept Publishing Company, 2009, p. 81; Hazel Smith, *European Union Foreign Policy: What It Is and What It Does*, London: Pluto Press, 2002, p.102; Colin Warbrick, "Diplomatic Representations and Diplomatic Protection", *The International and Comparative Law Quarterly*, Vol. 51, Num. 3, 2002, p. 727.

29 Andre Lecours, *Political Issues of Para diplomacy: Lessons from the Developed World*, Netherlands Institute of International Relations Clingendael, 2008, p. 2-4; Jorge Schiavon, *Comparative Paradiplomacy*, Routledge, 2019.

jeopardy, this makes diplomacy more difficult to operate, necessitating more security and occasionally limiting the movements and activities of ambassadors. According to the US Department of Justice, 321 diplomats were killed during terrorist attacks.³⁰ Through diplomatic missions, the crux lies in protection and repatriation focuses on one main thing; consular assistance. This would represent the core of Vienna Convention on Diplomatic Relations 1961 (VCDR) and the Vienna Convention on Consular Relations 1963 (VCCR); it protects nations in receiving states.³¹

Nonetheless, the article further mentions a disclaimer that no obligation shall be imposed if the state takes into consideration their own political and economic interest.³² For a more specific case, perspective through the legal system of the EU, consular assistance is divided into different parts. While certain arguments propose the elaboration of Article 23 of the Treaty on the Functioning of the European Union 1957,³³ along with Article 46 of the EU Charter implies an individual entitlement to protection by diplomatic and consular authorities, contrasting views hold that EU member states did not intend for these to establish a right to diplomatic protection, but rather to merely signify a non-discrimination clause³⁴ Further, in the Netherlands, a diplomatic protection to returnee ex-FTFs is loosely

30 A. Selth, "International Terrorism and the Challenge to Diplomacy", *Terrorism*, Vol. 10, Num. 2, 1987, p. 103-112

31 Article 3 of the Vienna Convention on Diplomatic Relations 1961 and Article 5 of the Vienna Convention on Consular Relations 1963.

32 Jan Melissen, *The New Public Diplomacy: Between Theory and Practice*, New York: Macmillan Publishers, 2005, p. 6-10; J. C. Barker, *The Protection of Diplomatic Personnel*, Farnham: Ashgate Publishing, 2006, p. 17-18; Adele Shank, et.al., *The Law of Consular Access: A Documentary Guide*, Routledge, 2010, p. 6 & 39.

33 Article 23 of the Treaty on the Functioning of the European Union 1957 determines that: "Every citizen of the Union shall [...] be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State".

34 Peter van Ham, *European Integration and the Postmodern Condition: Governance, Democracy*, Routledge, 2001, p. 5; Tassilo Herrschel & Peter Newman, *Governance of Europe's City Regions: Planning, Policy & Politics*, Routledge, 2003; Paramjit Sahay, *Indian Cultural Diplomacy: Celebrating Pluralism in a Globalised World*, Delhi: Vj Books India Pvt Ltd., 2019.

implemented given the political climate of current terrorist threats occurring in the Netherlands with the data provided by the Dutch National Coordinator for Security and Counterterrorism.³⁵ As a matter of fact, consular assistance will only be provided to return home if they are able to present themselves at the Dutch diplomatic posts in the region (i.e. Ankara or Baghdad).³⁶ From the two aforementioned cases of laws, it can be inferred that duties of diplomatic missions are highly subject to the state applicable law along with the political circumstances within the state pertaining to the issue of ex-FTFs.³⁷

C. Legal Status of the Ex-FTFs in Indonesia

In Indonesia, the legal status of the ex-FTFs relies on their marriage status, children, and private matters complicating their repatriation. Because Indonesia is not a signatory nor a ratifier of the 1957 United Nations Convention on the Nationality of Married Women, this problem regarding their rights and obligations lies on the domestic policies. Another key outline of the problem regarding the rights and obligations with respect to marriage is the legitimacy of the marriage conducted within ISIS territories.³⁸ Under Indonesian law, marriages are governed by the Indonesian Law Number 1 of 1974 concerning Marriage (Indonesian Marriage Law). Article 2 (2) of this law

35 Meghan Ingram, "Between Dystopia and Utopia: The 'Response-Ability' of European States to Ensure the Rights of Children of Foreign Terrorist Fighters Held in Syria", Thesis, Leiden University, 2021, p. 1-18.

36 Chisje Sandelowsky-Bosman & Ton Liefwaard, "Children Trapped in Camps in Syria, Iraq and Turkey: Reflections on Jurisdiction and State Obligations under the United Nations Convention on the Rights of the Child", *Nordic Journal of Human Rights*, Vol. 38, Num. 2, 2020, p. 141-158.

37 Brunno Simma & Andreas L. Paulus, "The International Community, Facing the Challenge of Globalization", *European Journal of International Law*, Vol. 9, Num. 2, 1998, p. 266; Halvard Leira & Nina Græger, "Introduction, The Duty of Care in International Relation", in Nina Græger & Halvard Leira (eds), *The Duty of Care in International Relations: Protecting Citizens Beyond the Border*, Routledge, 2019, p. 1-15.

38 Anita Perešin, *et.al.*, "The Role of Women in Post-IS Jihadist Transformation and in Countering Extremism", in Serafettin Pektas & Johan Leman (eds), *Militant Jihadism: Today and Tomorrow*, Leuven University Press, 2019, p. 101-122.

stipulates that a marriage is valid if it is conducted and recorded in accordance to this law. However, if the marriage was conducted within ISIS territories which is extraterritorial of the Indonesian territory, it may not be recognized by the Indonesian government due to the lack of recognition of ISIS as a legitimate state.³⁹ The lack of recognition of these marriages can have significant implications for repatriation. If the marriages are not recognized, the spouses and children cannot be considered as part of the family unit, which could lead to difficulties in obtaining the necessary documentation and support for repatriation. This could also create legal and social challenges for the individuals involved, as they may not be recognized as part of a family unit by the Indonesian government. This uncertainty is further exacerbated by the rules of which a marriage is binding. Under the *lex loci celebrationis* principle, a marriage is only binding where the marriage contract took place and where such country can validate the marriage contract.⁴⁰ But because ISIS is not formally recognized by the Indonesian government, under the aforementioned law, the Indonesian court can annul the marriage based on Article 26 of Indonesian Marriage Law due to the unauthorized marriage registrar which, in the case of the ISIS marriage registrar, is not neither authorized nor recognized by the Indonesian government. The family from the linear descent can file a request to the Indonesian court that the marriage is to be annulled.

A concerning problem that arises when it comes to the issue of children of parents who are ex-Indonesian FTFs is indoctrination.⁴¹ Indoctrination can be defined as the process of repeating an idea or belief to someone to the point of accepting without criticism.⁴² Sec-

39 Fredy B. L. Tobing & Erwin Indradjaja, "Islamic State in Iraq and Syria (ISIS) and Its Impact in Indonesia", *Global: Jurnal Politik Internasional*, Vol. 21, Num. 1, 2019, p. 101-125.

40 Charles W. Taintor, "Marriage in the Conflict of Laws", *Vanderbilt Law Review*, Vol. 10, Num. 4, 1995, p. 607.

41 Mohamad Rapik and Bunga Permatasari, "Penanganan Anak ISIS Dalam Perspektif Hukum Indonesia," *Undang: Jurnal Hukum*, Vol. 3, No. 2, 2020, p. 291.

42 Institute for Policy Analysis of Conflict, *The Evolution of ISIS In Indonesia*, 2014.

ond, the Indonesian government faces the problem if the children are born within ISIS-held territories but their parents are former Indonesian citizens.⁴³ Another concern is with regards to the status of their citizenship as regulated under Indonesian Government Regulation Number 21 of 2022 concerning Amendment to Government Regulation Number 2 of 2007 concerning Procedures for Obtaining Loss and Cancellation and Regaining Citizenship of the Republic of Indonesia (Indonesian Government Regulation Number 21 of 2022). Article 31(1)(e) of this regulation stipulates that any Indonesian citizen will automatically lose his/her citizenship by voluntarily taking an oath or pledge of allegiance to a foreign state or part of a foreign state. However, due to the status of this subject being a child, it would go against the Article 8 of the UNRC to which Indonesia is a ratifier. If Indonesia was to revoke the status of these children then it would reasonably go against international law.⁴⁴ On the contrary, Indonesia must ensure that it respects its international rights and obligations by adhering to the UNRC by respecting the right of the child to preserve his or her identity including nationality.⁴⁵

There is an intricate problem when it comes to the private status, it could refer to the general citizenship of the person. Under national domestic law, the issue of citizenship fails to punish ex-Indonesian FTFs due to the strict interpretation of the law, specifically Indonesian Government Regulation Number 21 of 2022. Article 31(1)(e) only mentions that any citizen of Indonesia who voluntarily pledges or promises to a foreign nation or a part of a foreign nation will lose their citizenship. However, when we observe see the structure of ISIS, there is an intense debate of whether or not it is a state.

43 Nadim Houry, *et.al.*, “The ‘Unreturned’: Dealing with the Foreign Fighters and Their Families Who Remain in Syria and Iraq”, in Serafettin Pektas & Johan Leman (eds), *Militant Jihadism: Today and Tomorrow*, Leuven University Press, 2019, p. 59-82.

44 John Tobin, *The UN Convention on the Rights of the Child: A Commentary*, Oxford University Press, 2019, p. 26.

45 Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia, “Polemik Kepulangan WNI EKS ISIS: Mencari Solusi Terbaik” tatanegara.ui.ac.id/polemik-kepulangan-wni-eks-isis-mencari-solusi-terbaik/, accessed 10 May 2024.

If it is considered a state based on the international customary law on the recognition of a state, then the ex-Indonesian ISIS FTFs would have immediately lost their citizen status as an Indonesian citizen based on the regulation above. However, when the criterion is not fulfilled for ISIS to become a state, its consequence is that Indonesia can not, by law, revoke the citizenship of the ex-Indonesian ISIS FTFs. Evidence in Indonesian Law Number 12 of 2006 concerning Citizenship (Indonesian Citizenship Law), Article 23(f) strictly defines that a person can only swear fealty to a state. Because in the case that ISIS is not a state, it is against the law for the government to revoke the citizenship of these Indonesian FTFs.

States are enjoined to exercise restraint in employing the drastic measure of citizenship deprivation as a sweeping counterterrorism strategy, particularly concerning offenses linked to FTFs.⁴⁶ If resorting to citizenship stripping becomes unavoidable, it must be reserved for truly exceptional circumstances, meticulously avoiding arbitrary application to prevent the undesirable consequence of rendering individuals stateless.⁴⁷ Furthermore, any subsequent actions taken, such as denial of entry or deportation, should be rigorously justified, adhering strictly to the principles of proportionality and necessity.⁴⁸ Article 15 of the International Covenant on Civil and Political Rights 1967 underscores the cardinal principle of ‘*nullum crimen sine lege*’ or ‘*nulla poena sine lege*’,⁴⁹ accentuating the imperative of legal

46 Meghan Ingram, *op.cit.*, p. 27-33; Susanna Collins, “The Legality Under International Human Rights Law of Citizenship Deprivation as a Security Measure in the UK”, Master Thesis, Lund University, 2022.

47 Kiran M. Banerjee, *Rethinking Membership: Statelessness, Domination, and the Limits of Contemporary Citizenship*, Canada: University of Toronto, 2016, p. 19-25.

48 Émilien Fargue, *et.al.*, *When States Take Rights Back: Citizenship Revocation and Its Discontents*, Routledge, 2020, p. 11-23.

49 Article 15 of the International Covenant on Civil and Political Rights 1967. It determines that (1). No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of

frameworks being devoid of retroactivity and imbued with elements of certainty, precision, and foreseeability.⁵⁰ Human rights treaties unequivocally proscribe deviations from the foundational notion that individuals should not face penal consequences for actions that were not considered criminal at the time of their commission.⁵¹ Moreover, these rights necessitate interpretation in a manner that guards against arbitrary prosecution, conviction, and punishment, thereby demanding strict application and narrow interpretation of criminal laws, with any ambiguities resolved in favor of the accused.⁵²

Criticism has been levied against the obligations imposed on states by UNSC Resolution 2178 of 2014,⁵³ which mandates the establishment of criminal offenses pertaining to FTFs without providing a clear delineation of the requisite mental and material elements. The absence of a precise definition of terrorism exacerbates these challenges, especially the fact that a definition is already provided in resolution 1566, and all that is needed to do is to refer to resolution 1566 to better limit the scope of the resolution and avoid a risk of abuse and disproportional use.⁵⁴ While Resolution 2178 sets forth a framework of obligations, the onus lies on individual states to translate these mandates into actionable criminal legislation while upholding the foundational principle of legality and elucidating the contours of criminality. Thus, it is imperative for states to ensure that their domestic legal frameworks unequivocally define the mental

the lighter penalty, the offender shall benefit thereby; (2). Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

50 Centre for Civil and Political Rights, *Simple Guide on The International Covenant on Civil and Political Rights (ICCPR): An overview of Articles 1-27*, 2021.

51 Mark A. Drumbl, *Atrocity, Punishment, and International Law*, Cambridge University Press, 2007, p. 32-40.

52 *Ibid.*

53 United Nation Security Council Resolution 2178 (2014) S/RES/2178.

54 Bibi van Ginkel, "The New Security Council Resolution 2178 on Foreign Terrorist Fighters: A Missed Opportunity for a Holistic Approach", [iccnl.nl/new-security-council-resolution-2178-foreign-terrorist-fighters-missed-opportunity](https://www.iccnl.nl/new-security-council-resolution-2178-foreign-terrorist-fighters-missed-opportunity), accessed on 24 May 2024.

and material elements constituting FTFs-related crimes. The attempt from states to conquer this issue required significant attention and focus.⁵⁵ The phenomenon of return of ex-FTFs is crucial due to the presumptions of advanced levels of battlefield experience, connections within terror networks, diminished sensitivity to violence, and deep-seated ideological indoctrination.⁵⁶

There are two main actions to ensure effective protection towards states from returnees through legislation; i.e., elimination and reintegration.⁵⁷ Elimination is deemed as the last resort to deal with returnees as indicated with a long process and in-depth analysis of returnee verification within the time of arrival; multi-disciplinary teams at embassies or consulates.⁵⁸ The embassies will provide risk assessment tools to denote violent extremism posed by returnees carried out by trained professionals (e.g. police officers and social services workers) with the main purpose to gather relevant information; confirming the returnee produced a small possibility of security harm to the state and no such elimination is required. Reintegration and rehabilitation are similar to the prior approach. Their regulation also differ from one state to another. The prior programs are essential to be conducted in a personal manner one-on-one and tailor made for each returnee to ensure effective issue addressing.⁵⁹ For the case of European countries, the states are focusing on individualized mentoring, reconnecting family ties along with providing adequate economic opportunities as the method of reintegration to guarantee robust long-term commitment to human rights and dignity.⁶⁰

55 Arsla Jawaid, “From Foreign Fighter to Returnee: The Challenge of Rehabilitation and Reintegration Policies”, *Journal of Peacebuilding & Development*, Vol. 12, Num. 2, 2017, p. 102-107.

56 Modern Security Consulting Group, “Should They Stay or Should They Go: What to Do with Detained Foreign Fighters”, mosecon.com/should-they-stay-or-should-they-go-what-to-do-with-detained-foreign-fighters/.

57 David Malet & Rachel Hayes, “Foreign Fighter Returnees: An Indefinite Threat?”, *Terrorism and Political Violence*, 2022, p. 1-19.

58 Radicalization Awareness Network, *Responses to Returnees: Foreign Terrorist Fighters and Their Families*, 2017, p. 29.

59 Arsla Jawaid, *loc.cit.*

60 *Ibid.*

D. Other International Efforts on the FTFs Issues Facilitated by the Diplomatic and Consular Agents

Currently, only one international cooperation is made under an international body specifically for FTFs, ISIL (Da'esh), and Al-Qaeda Sanctions Committee under the UNSC Resolution 1267 of 1999, 1989 of 2011, and 2253 of 2015.⁶¹ Despite international cooperation under UNSC Resolution 2178 of 2014 calling for returnees or captured ex-FTFs to be reintegrated into society.⁶² Most efforts by the ISIL (Da'esh) and Al-Qaeda Sanctions Committee are sanctioning FTFs. Other international cooperation capturing FTFs is INTERPOL,⁶³ who assists the ISIL (Da'esh) and Al-Qaida Sanctions Committee. In this matter, INTERPOL engages in biometric data sharing to law enforcement to prevent movements of FTFs, including data on DNA and fake identities.⁶⁴

In terms of regional initiative on cooperation dealing with FTFs, there are quite plenty. In the EU region for example is the European Counter Terrorism Centre (ECTC) at Europol, whose essential mandate is to stop terrorism or identify and block syndicates and movements as well as investigate methods to cut off firearms trafficking by FTFs.⁶⁵ Their contribution to returnees is then reviewing what each EU member does in dealing with returnees and providing a platform for them to cooperate.⁶⁶ Other cooperations such as the European Commission then form directives to prosecute terrorism but not co-

61 United Nations Press, "Security Council ISIL (Da'esh) and Al-Qaida Sanctions Committee Amends Seven Entries to Its Sanctions List", press.un.org/en/2024/sc15556.doc.htm.

62 United Nations Security Council Resolution 2178 (2014) S/RES/2178, p. 2, para. 14.

63 *Ibid.*, p. 3 & 6, para. 13.

64 Amira Paripurna, *et.al.*, "Implementation of Resolution No. 4/2016 of the ICPO-INTERPOL Concerning Biometric Data Sharing: Between Countermeasures against Terrorist Foreign Fighters (FTFS) and Protection of the Privacy of Indonesian Citizens", *Brawijaya Law Journal*, Vol.5, Num. 1, 2018, p. 118.

65 Nils Duquet & Kevin Goris, *Firearms Acquisition by Terrorists in Europe*, Brussels: Flemish Peace Institute, 2018, p. 35 & 37.

66 European Parliamentary Research Service, *The Return of Foreign Fighters to EU Soil: Ex-Post Evaluation*, 2018, p. 11-13.

operate the members.⁶⁷ Member states then choose to apply some directives in their regulations on the trial process, rehabilitation, and reintegration programmes, as well as child returnee policies.⁶⁸ Then in Central Asia, it was noted that most policies in dealing with FTFs are based upon bilateral cooperation of each state with the US's Counterterrorism Policy.⁶⁹ However, the cooperation is unlikely to help Central Asia deal with returnees and only terrorists at an active stage.⁷⁰ Then in ASEAN, there is a ministerial-level forum that focuses on transnational criminal issues called AMMTC which agreed on the ASEAN Convention on Counter-Terrorism (ACCT) agreement.⁷¹ Though the cooperation is criticized as through the Merawi conflict, ASEAN discovers that it still has low border supervision and prevention of social media propaganda.⁷²

Up to here, it can be concluded that there are international cooperations to deal with ex-FTFs. Then, noting the preamble of VCDR which installs a mission for diplomats to "...[maintain] international peace and security, and the promotion of friendly relations among nations", diplomatic missions should then be involved in terrorism-related discussions as it relates to security and relations. It is well known that non-military threats such as the potential of insurgency from ex-FTFs can be considered a threat to security.⁷³ Further, many citizens have been kidnapped by organizations like Al-Qaeda,⁷⁴

67 Bibi van Ginkel, *et al.*, *The Foreign Fighters Phenomenon in the European Union*, ICCT, 2016, p. 15.

68 European Parliamentary Research Service, *op.cit.*, p. 47-48.

69 Thomas Lynch, *et al.*, *The Return of Foreign Fighters to Central Asia: Implications for U.S. Counterterrorism Policy*, Washington DC: National Defense University Press, 2016, p. 15.

70 *Ibid.* p. 4.

71 Andri Siallagan, "The Failure of ASEAN Counter-Terrorism Cooperation in Preventing the Arrival of Foreign Terrorist Fighters in the Marawi Conflict", *Journal of Terrorism Studies*, Vol. 5, Num. 1, 2023, p. 3-5.

72 *Ibid.*, p. 7-11.

73 Martti Koskeniemi, *The Politics of International Law*, Oxford: Hart Publisher, 2011, p. 92

74 J. Peter Pham, "Foreign Influences and Shifting Horizons: The Ongoing Evolution of Al Qaeda in the Islamic Maghreb", *Orbis*, Vol. 55, No. 2, 2011, p. 240-254.

which a diplomat should respond to as protection of state interest in an emergency. Hence, diplomats should and are inevitably engaged in dealing with ex-FTFs in the context of post-terrorism. As of today, however, aside from the UNSC which engages diplomats of member states to take actions on their collective decisions on terrorism,⁷⁵ diplomatic missions are mostly only involved in discussion to minimize tensions or bring ‘peace talks’ to countries’ heads of state instead of dealing with ex-FTFs directly.

In the book “*Terrorism and U.S. Foreign Policy*”, the US diplomats for example, pursuant to Article 3(1)(a) of VCDR, have only the job of representing the US sentiments report the conditions of the receiving state.⁷⁶ For example in representing states, diplomats provide speeches showing support to a state facing terrorists.⁷⁷ In the same branch, diplomats can also declare a position that their sending state is not affiliated with any fighting groups.⁷⁸ As for dealing with ex-FTFs directly, the literature or documentation found had been the European Union experience in the book “*Jihadism, Foreign Fighters and Radicalization in the EU*” which discusses how the EU country members deal with ex-FTFs who have rested and are in the process of deradicalization. It is noted that strategies are often nation based, such as the Spanish Ministry of the Interior’s National Strategic Plan to Combat Violent Radicalization,⁷⁹ or how member states individually convict ex-FTFs from Syria or Iraq.⁸⁰ Hence, in dealing with ex-FTFs, diplomats are seemingly not engaged directly, and are more engaged on policy and discussion matters.

75 Martti Koskeniemi, *op.cit.*, p. 86.

76 Paul R. Pillar, *loc.cit.*

77 *Ibid.*, p. 28.

78 Ganser Daniele, *NATO’s Secret Armies: Operation GLADIO and Terrorism in Western Europe (Contemporary Security Studies)*, Routledge, 2005, p. 169.

79 Inmaculada M. Rocha & Humberto M. Trujillo, *Jihadism, Foreign Fighters and Radicalization in the EU*, Routledge, 2018, p.191-192.

80 *Ibid.*, p. 52.

E. Indonesia's Efforts toward the Repatriation of Ex-FTFs

The Indonesian government has actively engaged in diplomacy and collaboration with international bodies to study and classify the modes of intervention available for addressing the issue of Ex-FTFs.⁸¹ These efforts are embodied in the creation of the FTF Task Force (*Satgas* FTFs),⁸² an intergovernmental body chaired by the National Counterterrorism Agency (BNPT). BNPT plays a pivotal role in compiling and coordinating data on potential FTFs who pose national security risks and in providing repatriation recommendations. To support the work of *Satgas* FTFs, the Indonesian diplomatic as well as consular agents have actively engaged with neighboring countries of Syria, such as Jordan, Turkey, and Iraq. In addition, close encounters with international organizations, such as the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children Funds (UNICEF),⁸³ and international non-governmental organizations, such as Save the Children and World Vision International have also been conducted to seek the most suitable and appropriate intervention methods and repatriation process, particularly for women and children.⁸⁴ They bridge complexities among legal and political interests, resilience, and different approaches to the Indonesian ex-FTFs existence and their particular problems.⁸⁵

81 Rudine Emrich & David Schulze, "Diplomacy in the 21st Century: What Needs to Change?", (Presentation of the main findings of SWP's "Diplomacy in the 21st Century" project), German Institute for International and Security Affairs, 2017, p. 6-9; Christian Reus-Smith, *The Moral Purpose of the State: Culture, Social identity, and Institutional Rationality in International Relations*, New Jersey: Princeton University Press, 1999.

82 Genta T. Mawangi, "BNPT Akan Periksa Anggota FTF yang Diduga WNI Usai Pandemi", www.antaraneews.com/berita/bnpt-akan-periksa-identitas-ftf-yang-diduga-wni-usai-pandemi, accessed 8 September 2024.

83 Institute for Policy Analysis and Conflict, *Indonesia: Urgent Need for A Policy On Repatriation Of Pro-ISIS National from Syria*, 2019, p. 30-31.

84 Institute for Policy Analysis and Conflict, *Extricating Indonesian Children From ISIS Influence Abroad*, 2021, p. 3-6.

85 Brian Hocking, "Rethinking 'New' Public Diplomacy, The New Public Diplomacy: Soft Power in International Relations", in Donna Lee & Marcus Holmes (eds), *Studies in Diplomacy and International Relations*, New York: Macmillan Publishers, 2005, p. 28-30; Gearóid Ó. Tuathail, et.al., *The Geo-*

Undoubtedly, the diplomatic mission serves as crucial intermediary between the Indonesian government and those neighboring countries of Syria and international organizations, facilitates negotiations, provides consular assistance to its citizens abroad, and ensures compliance with international legal norms.⁸⁶ In the context of repatriation, diplomatic missions play a central role in balancing the rights of individuals with the international obligations of states, particularly regarding issues such as nationality revocation, adherence to fundamental human rights principles, and accountability under international law.⁸⁷ By effectively engaging with diplomatic missions, Indonesia can address the intricate challenges posed by the repatriation of the ex-FTFs while upholding its responsibilities as a member of the international community and safeguarding the interests of its citizens and global peace.⁸⁸

In line with the aforementioned facts, the Indonesian government has also implemented various policies, programs and actions aimed at deradicalizing these individuals, but the effectiveness of these efforts remains a topic of debate.⁸⁹ While some argue that these individuals should be allowed to return and undergo deradicalization, others are concerned about the potential risks they pose to national security and the community.⁹⁰ The government's dilemma lies in balancing the need to address the humanitarian aspects of the

politics Reader, Routledge, 2006, p. 263-265.

86 Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary*, Cambridge: Cambridge University Press, 2010, p. 241-276; Hans J. Heintze & Andrej Zwitter, *International Law and Humanitarian Assistance: A Crosscut Through Legal Issues Pertaining to Humanitarianism*, Springer, 2011.

87 Setyo Widagdo, et.al., op.cit., p. 3-5; Institute for Policy Analysis and Conflict, 2019, op.cit., p. 10-15.

88 United Nations, "Foreign Terrorist Fighters", un.org/foreign-terrorist-fighters, accessed 5 June 2024.

89 Siti Rachma, et.al., "The Repatriation of Foreign Terrorist Fighters in Indonesia: Its Dilemma and Debates", *Deviance Jurnal Kriminologi*, Vol. 6, Num. 1, 2022, p. 10.

90 Kirsten E. Schulze, "Indonesia's Approach to Jihadist Deradicalization", ctc.westpoint.edu/indonesias-approach-to-jihadist-deradicalization/, accessed 4 May 2024.

situation with the need to protect the nation from potential threats.⁹¹ Diplomatic missions collaborate with national authorities developing and implementing the deradicalization programs, often involving intelligence sharing, technical assistance, and policy support. They help synchronize efforts across government agencies and provide access to international resources and expertise. However, national authorities may resist foreign involvement, seeing it as a threat to sovereignty, and bureaucratic obstacles can hinder coordination.

Throughout the process, several communication attempts have been made, but none have truly welcomed the ex-FTFs. For example, BNPT has been communicating with the United Nations Office of Counter-Terrorism (UNOCT) and UNICEF, who help them note those who can be repatriated. However, the repatriation policy is only given by BNPT to children below 10 years of age.⁹² Indonesia's main communication to international cooperation has then been that Indonesia refuses to accept ex-FTFs unless they are children.⁹³ Further, Indonesia also has communications with the ICRC going back to the Japanese occupation in 1942 when they first entered Indonesia. In the bigger picture, Indonesia has not had any wider communications on the repatriation of Indonesian ex-FTFs. However, this is not to say that there is no communication as there is precedent for the ICRC's assistance with the repatriation of Indonesian migrant workers from Syria in 2012. Through these responsibilities, Indonesia maintains a position to jump off from to conduct its activities in managing the problem of ex-FTFs, with further communications with the ICRC in order to maintain its relations to Syria, Iraq, and Turkey having the plausible interpretation of being a manifestation of that responsibili-

91 Ervina Marthadani, "The Role of Islamic Boarding School in Deradicalization Process in Indonesia: Case Study in Pesantren Darun Najah Tasikmalaya," *Jurnal Theologia Sanctus*, Vol. 7, Num. 1, 2018, p. 101.

92 Siti Y. Hukmana, "BNPT Data WNI Jadi Foreign Terrorist Fighters Di Luar Negeri", metrotvnews.com/b2lCrDj0-bnpt-data-wni-jadi-foreign-terrorist-fighters-di-luar-negeri, accessed 2 May 2024.

93 Dyah A. Kartika, "Extricating Indonesian Children from ISIS Influence Abroad", newmandala.org/extricating-indonesian-children-from-isis-influence-abroad, accessed 3 May 2024.

ty.⁹⁴

Indonesian diplomats have encountered difficulties when dealing with issues related to citizens who have joined extremist organizations, especially ISIS. This challenge is exacerbated by Indonesia's unique historical and religious context, including its large Muslim population and the long-standing involvement of Indonesian nationals in various Islamist movements. This situation creates a conflict of interest between Indonesia's desire to protect its citizens and its obligations to the international community. The historical context of Indonesian involvement in terrorist activities is notable, starting with proto-jihadist movements like Darul Islam in the 1950s and 1960s, as well as the establishment of proto-Islamist movements in the framework of nationalism in the middle of the 20th century.⁹⁵ The rise of ISIS, especially in Southeast Asia, including Indonesia, has been a significant factor in the ongoing struggle against FTFs.⁹⁶ Indonesian diplomats, however, have had limited direct engagement in dealing with the rise of these foreign fighters, with involvement typically confined to high-level discussions rather than on-the-ground engagement. This discussion is a fierce issue that Indonesian diplomats must face when negotiating with other states, as biases from the perception of Indonesians being prone to radicalization influence how states communicate with Indonesia.

Indonesian diplomats and consular agents must effectively communicate with other states the reasoning behind Indonesia's stance on ex-Islamic FTFs, chasing after resolutions that will affect the way Indonesia manages its ex-Islamic FTFs.⁹⁷ In response, the Indonesian government developed a strategy to control the repatriation of In-

94 N. W. Veronika & D. A. P. Wishanti, "Engagement Policy Towards Repatriated Indonesian Women from Overseas Jihad Battlefronts", *Proceedings of the First Brawijaya International Conference on Social and Political Sciences, BSPACE*, Malang 26-28 November 2019.

95 C. A. O. van Nieuwenhuijze, "The Darul-Islam Movement in Western Java", *Pacific Affairs*, Vol. 23, Num. 2, 1950, p. 169-183.

96 Kumar Ramakrishna, "The growth of ISIS Extremism in Southeast Asia: Its Ideological and Cognitive Feature and Possible Policy Responses", *New England Journal of Public Policy*, Vol. 29, Num. 1, 2017, p. 6.

97 Adele Shank, *et.al.*, *op.cit.*, p. 4 & 39.

Indonesian citizens who have been linked to terrorism overseas and are referred to as FTFs, with the goal of minimizing any unfavorable effects. Tasked with identifying dangers and providing recommendations for repatriation in compliance with the Minister of Foreign Affairs Regulation, the *Satgas* FTFs gathers information on Indonesian individuals engaging in overseas terrorist operations. Although this strategy involves people who have a history of terrorism, which creates a unique situation that experts are still debating, doing nothing could worsen the issue, particularly when taking the principle of proportionality into account. In Indonesia, there is still debate to repatriate these individuals, with humanitarian reasons taking precedence over worries that they would recruit more members.⁹⁸ However, given the pressing threat of terrorism and its consequences, the Indonesian government has opted to implement the repatriation policy, ultimately declining the return of Indonesian nationals linked to terrorism abroad in order to safeguard national security.⁹⁹

Overall, the Indonesian diplomats and consular agents are supposed to represent and protect state interest in emergency situations.¹⁰⁰ Currently, however, they are mostly involved by representing in high-level discussions. This chapter supports a higher deal of Indonesian diplomat involvement in representation, such as diplomats being tasked to meet the local population and diffuse tensions to protect, by mediating terrorism-related activities such as in the case of Israel-Arab relations and report back to their sending state.¹⁰¹ The US diplomats did great in this, in the La Belle Bombing in “*The Forgotten Flight*” by Libyan Soviet-backed terrorists in 1986, the US diplomats were involved in discussions with Libya to reduce their involvement

98 Siti Rachma, *op.cit.*, p. 1-15.

99 Paramitaningrum, *et.al.*, “Model Diplomasi Perlindungan Pemerintah Indonesia terhadap Warga Negara Indonesia Pekerja Sektor Formal dan Informal di Luar Negeri”, *Global Strategis*, Vol. 12, Num. 1, 2018, p. 18-36.

100 Arie Afriansyah & Hadi Rahmat Purnama, *Indonesia and the Absence of a Yearbook on International Law*, Netherlands Yearbook of International Law, 2021, p. 5.

101 Paul R. Pillar, *Terrorism and U.S. Foreign Policy*, Washington DC.: Brookings Institution Press, 2021, p. 71.

in supporting and training terrorists.¹⁰² It was also the US diplomats who persuaded France, Spain, and Italy to refuse permission for Libyan jets to fly over their respective territory before the US bombed Libya.¹⁰³ Lessons learned from this experience, these kinds of lower-level involvement of diplomats in dealing with ex-FTFs should be promoted in regard to the repatriation of the Indonesian ex-FTFs.

F. Concluding Remarks

Since the initiation of repatriation efforts in 2020, Indonesia has grappled with the challenges posed by individuals returning from conflict zones, particularly those influenced by extremist ideologies. The role of diplomatic and consular agents is pivotal in this context, as they navigate the complexities of international law, engage with foreign governments, and facilitate the safe return of ex-Indonesian FTFs. They serve as crucial intermediaries between the Indonesian government with other countries, international bodies, and non-governmental organizations. Diplomatic missions actively engage with various stakeholders to facilitate communication and coordination aimed at safely returning Indonesian citizens. This endeavor is essential for developing effective strategies that prioritize the safety and rights of returning individuals, particularly vulnerable groups such as women and children.

Indonesia's obligations under international human rights law necessitate a careful balance between protecting individual rights and ensuring national security. This balance is particularly challenging given the potential risks posed by returning ex-FTFs, which have sparked intense debate within Indonesian society and government. One of the primary roles of diplomatic agents is to provide robust guidance on how states conduct dealings with complex emergencies abroad while protecting their nationals' rights and interests. This guidance can significantly reduce the dilemmas faced by governments in managing repatriation processes. By adhering to custom-

102 Stuart H. Newberger, *The Forgotten Flight: Terrorism, Diplomacy and the Pursuit of Justice Hardcover*, Simon and Schuster Publisher, 2017, p. 15-20.

103 *Ibid.*, p. 21.

ary international law, diplomatic agents ensure that repatriations are conducted within legal frameworks that uphold human rights principles such as non-refoulement and prevention of statelessness.

Some argue for strict punitive measures against these individuals, others advocate for rehabilitation and reintegration strategies that address underlying issues contributing to radicalization. In cases involving potential threats from returned individuals, the diplomatic agents collaborate with national authorities to develop effective deradicalization programs. These initiatives often involve intelligence sharing, technical assistance, and policy support to synchronize efforts across governmental agencies and access international resources and expertise. The establishment of *Satgas* FTFs reflects Indonesia's commitment to systematically addressing these challenges through coordinated efforts among various governmental agencies. However, bureaucratic obstacles can hinder coordination among these entities, highlighting the need for streamlined processes facilitated by diplomatic engagements. The effectiveness of these programs remains a contentious topic, highlighting the need for ongoing evaluation and adaptation based on empirical evidence.

In conclusion, the critical functions performed by diplomatic agents in facilitating repatriation underscore their indispensable role in managing complex emergencies related to former terrorist fighters. Their ability to navigate intricate legal frameworks while advocating for human rights highlights their importance in maintaining balance between national security concerns and international obligations. Future research should focus on evaluating existing deradicalization initiatives, exploring best practices from other nations, and assessing community engagement strategies to foster acceptance and support for returning individuals. By addressing these areas, Indonesia can develop more effective policies that not only comply with international standards but also promote social cohesion and security within its borders.

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