

Implications of Movement Limitation During the 1965-1966 Tragedy on Indonesian Exiles Citizenship Rights

Wahyu Nugroho

Faculty of Sharia and Law, Universitas Islam Negeri Sunan Kalijaga Yogyakarta
E-mail: wn70952@gmail.com

Lukman Khakim

Faculty of Sharia and Law, Universitas Islam Negeri Sunan Kalijaga Yogyakarta
E-mail: lkmkhakim@gmail.com

Kyra Tasanee Alifah

Faculty of Law, Universitas Padjadjaran
E-mail: tasaneekyra@gmail.com

Abstract: The political turmoil that occurred in 1965-1966 led the government at that time to impose limitation in freedom of movement with the aim of maintaining security and public order. However, these limitation affected the citizenship status of the Indonesian diaspora. This research aims to analyze and elaborate on the extent to which limitations on freedom of movement in the 1965–1966 tragedy can have implications for the citizenship rights of the Indonesian diaspora. The analysis of these problems is carried out through normative legal research methods with a conceptual approach. The results show that the substance of limitation in freedom of movement in international human rights instruments requires clarity on the purpose of limitation and the principle of proportionality and does not negate rights. This contrasts with the limitations on freedom of movement in the 1965–1966 tragedy, which were carried out disproportionately. As a result, many Indonesian diasporas at that time lost their citizenship status and its rights. Those who lost their citizenship status were then referred to as Indonesian exiles.

Keywords: *Limitation in Freedom of Movement; Indonesian Exiles; Citizenship Rights*

Introduction

Citizenship status is a civil and political right. With citizenship status, every person gain rights as citizens that are fully protected by the constitution. So it can be said that citizenship status is a sign of individual membership in a country. The matter of citizenship status

has also been regulated in international human rights instruments, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). This means that citizenship status is one of the human rights that must be fulfilled and safeguarded by the state. The absence of citizenship status for every person can make them lose all their rights as citizens and make them stateless.

If observed through a report made by the United Nations High Commissioner for Refugees (UNCHR), there are at least more than 10 million people in the world who are currently stateless.¹ By 2023, UNCHR estimates that there will be 930,978 stateless people worldwide, with 25.24% classified as children.² In the context of Indonesia, UNCHR mentions that there are several groups that are currently stateless. This includes a group of Indonesians who were exiled from Indonesia as a result of the political events that occurred in 1965.³ This group is then referred to as Indonesian exiles,⁴ and until now they are mostly stateless.

The transition of power from the Old Order to the New Order was characterized by an unstable political situation. The political turmoil made the Indonesian diaspora consisting of diplomats and bonded students, experience uncertainty. Along with the political stance of the Indonesian diaspora, which tended to support Sukarno and reject the legitimacy of the New Order under Soeharto, further exacerbated the situation. In the end, the Indonesian diaspora lost their citizenship status as a result of their political stance. As a result of the loss of citizenship status for the Indonesian exile group, they practically

¹ UNCHR, "Statelessness Around the World", accessed 13 June 2024, <https://www.unhcr.org/ibelong/statelessness-around-the-world/>.

² UNCHR Cote d'Ivoire, "Report on Statelessness 2023", 2023, 1, <https://data.unhcr.org/en/documents/details/107562>.

³ UNCHR Indonesia, "Orang-Orang Tanpa Kewarganegaraan," accessed June 13, 2024, <https://www.unhcr.org/id/orang-orang-tanpa-kewarganegaraan>; Aldyan Faizal, "Perlindungan dan Pemenuhan Hak Stateless Person Eks dan Keturunan Warga Negara Indonesia atas Status Kewarganegaraan," *Jurist-Diction* 3, no. 4 (2020): 1217, <https://doi.org/10.20473/jd.v3i4.20203>.

⁴ The term "Indonesian exiles" is applied to the Indonesian diaspora who reject the legitimacy of the New Order government. Exile itself means to be banished or forced out of one's hometown. This describes the condition of those who were forced to renounce their citizenship status along with all the rights attached to it because of their political views and attitudes.

lost their rights as citizens. Also, they were treated discriminatively, either by their country of origin or the country they traveled to.

See this reality, the New Order government, as a representation of the state, should respect, protect and fulfil the human rights of every individual. However, the policies taken by the New Order government at that time contrasted with the obligation of the state to protect human rights. Given these issues, this research will focus on the issue of Indonesian exiles as victims of the 1965-1966 tragedy. In this case, the research will further explain conceptually the extent to which limitations on freedom of movement by the state in the 1965-1966 tragedy can have implications for the citizenship rights of the Indonesian diaspora.

Knowing the conceptual framework is important and fundamental in building and strengthening the theoretical argument of human rights in the issue of Indonesian exiles. Additionally, this study is also intended as a reflection so that every government policy that affects a person's citizenship status was carried out in such a way as not to injure human rights. Ultimately, the conceptual framework built in this research is an academic effort to support the fulfilment of human rights for Indonesian exiles who were victims of the 1965-1966 tragedy. Furthermore, in a broader spectrum, this research is an effort to enrich the horizon of human rights studies oriented towards the enforcement and fulfilment of human rights in Indonesia.

Research Methods

This research uses normative legal research methods to examine limitations on freedom of movement in the 1965-1966 tragedy and their implications for the citizenship rights of Indonesian exiles. Normative legal research, or doctrinal legal research, can be interpreted as a scientific effort to answer legal problems that are being studied through tracing legal rules, legal principles, legal doctrines, and relevant legal products.⁵ Therefore, the research will focus on analyzing legal and human rights norms relating to limitations on freedom of movement and citizenship rights. Furthermore, limitations on freedom of movement based on legal instruments and human rights will be

⁵ Jonaedi Efendi and Prasetijo Rijadi, *Metode Penelitian Hukum Normatif dan Empiris*, 5th ed. (Jakarta: Kencana, 2022), 124.

examined through a conceptual approach to elaborate the extent to which such limitations can have implications for a person's citizenship rights.

The source of this research comes from primary legal materials that refer to international human rights instruments. The use of international human rights instruments in this research includes the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights (Siracusa Principles). Beside that secondary legal materials, including books, journals, and legal expert opinions, are also used to strengthen the conceptual framework built in this research.

Data collection techniques in this research was conducted through document studies of written data. The data analysis technique was carried out qualitatively which includes the mechanism of data reduction, data presentation, and conclusion drawing.⁶ *Firstly*, the reduced data only covers the issues of limitations on freedom of movement, citizenship rights, the 1965-1966 tragedy, and Indonesian exiles. *Second*, the reduced data will be presented in a narrative manner. *Third*, conclusions will be drawn based on the reduced data that has been presented. Thus, the construction of data collection and data analysis in this research was carried out through a scientific mechanism.

Results and Discussion

Citizenship Rights and Limitations on Freedom of Movement in Human Rights Instruments

As part of human rights, citizenship status is a fundamental right owned by every individual as a citizen. With citizenship status, a citizen has a reciprocal relationship with the state. In this context, every citizen has rights and obligations towards their country, and the state is responsible for protecting the rights of its citizens.⁷ Ni'matul Huda then

⁶ Matthew B. Miles and A. Michael Huberman, *Qualitative Data Analysis: An Expanded Sourcebook*, 2nd ed. (California: SAGE Publication Inc., 1994), 10–12.

⁷ Ni'matul Huda, *Ilmu Negara*, 13th ed. (Depok: Rajawali Pers, 2022), 23; Moh. Kusnardi and Bintan R. Saragih, *Ilmu Negara* (Jakarta: Gaya Media Pratama, 1995), 105–107.

concluded that there is a negative status in the reciprocal relationship. Huda describes this negative status as a guarantee to citizens that the state should not intervene in citizens human rights issues. The state's participation in taking care of citizens human rights is limited to preventing arbitrary actions by the state. However, the state can limit or reduce the human rights of citizens under certain conditions.⁸

The existence of the right to citizenship status stated was several international human rights instruments, one of which is the UDHR. Article 15 paragraph (2) of the UDHR states, "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality". Thus, it can be seen that citizenship status is one of the rights that everyone should have. Moreover, citizenship status should not be revoked arbitrarily.⁹ This is due to the implications that occur if an individual is deprived of their citizenship status, it can make the individual lose their rights as a citizen. Furthermore, an arbitrary revocation of citizenship status can result in a person being stateless. At this point, citizenship status becomes important because a person who is stateless cannot access protection from their country of origin, making them vulnerable to discrimination.

As part of civil and political rights, the right to nationality was also contained in the ICCPR. Article 24 paragraph (3) states, "Every child has the right to acquire a nationality". Interestingly, the formulation of citizenship status in the ICCPR uses the term "every child". In this case, the term cannot be interpreted simply as a child but must be interpreted further to mean that everyone must obtain citizenship status as soon as possible from birth.¹⁰ Thus, it can be seen that the ICCPR orients citizenship status as a very vital right, thus narrowing the possibility of the right being violated by the state.

In practice, the right to citizenship cannot be separated from the right to freedom of movement.¹¹ The limitation of freedom of

⁸ Huda, *Ilmu Negara*, 24.

⁹ Faizal, "Perlindungan dan Pemenuhan Hak Stateless Person Eks dan Keturunan Warga Negara Indonesia atas Status Kewarganegaraan," 1226.

¹⁰ David Weissbrodt and Clay Collins, "The Human Rights of Stateless Persons," *Human Rights Quarterly* 28, no. 1 (2006): 246, https://scholarship.law.umn.edu/faculty_articles.

¹¹ Freedom of movement is a part of human rights that relates to a person's right to mobility across national borders. In this context, a person has the right to

movement itself is a norm that has been contained in several international human rights instruments. The ICCPR is one of the international human rights instruments that regulates limitations on freedom of movement. In this case, limitations on freedom of movement are regulated in Article 12 paragraph (3) of the ICCPR. Based on this provision, the state can restrict freedom of movement with a limitation mechanism based on law. However, the limitation of this right cannot be carried out automatically by the state. As a requirement for limitation, the state must prove that the limitation of freedom of movement is carried out to protect security, public order, health, public morals, or the fundamental rights and freedoms of others. Based on these provisions, several conceptual frameworks can be mapped out as follows. *First*, the effect of limitations on freedom of movement on citizenship status. *Secondly*, the use of the ICCPR General Comment and the Siracusa Principles as a guide to interpret the considerations of the need for policies to restrict freedom of movement.

Freedom of movement is directly linked to citizenship status. In order to be able to perform mobility across national borders, one must have the citizenship status of a particular country, which is shown through official documents such as passports. It can be said that citizenship status is one of the determining conditions for a person to be accepted into another country legally. In this context, the necessity of having citizenship status rests on the consequences of one's membership of a country. This means that the country of origin is fully responsible for citizens who are in another country.¹² On top of this, citizenship status is an anticipatory procedure for matters that may

travel from one place to another within a country, leave the country, and then return to the country. The concept of freedom of movement is not only about mobility, but also relates to a person's activity to reside or work somewhere in a country. See more in Jérémie Gilbert, *Nomadic Peoples and Human Rights* (London & New York: Routledge, 2014), 73; Sara Iglesias Sánchez, "Free Movement as a Precondition for Integration of Third-Country Nationals in the EU," in *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, ed. Elspeth Guild, Kees Groenendijk, and Sergio Carrera (London & New York: Routledge: Routledge, 2013), 206.

¹² Ayudya Sera Nila, "Status Kewarganegaraan bagi Diaspora Indonesia Ditinjau dari Undang-Undang Nomor 12 Tahun 2006 tentang Kewarganegaraan Republik Indonesia (Studi Kasus Warga Negara Indonesia Berdomisili di Jepang)," *Jurnal Ilmiah Wabana Pendidikan* 9, no. 12 (2023): 63–64, <https://doi.org/10.5281/zenodo.8068470>; Huda, *Ilmu Negara*, 23–25.

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threaten the safety and order of the country being visited, or for potential human rights violations against a person who resides outside the country of origin.¹³

As a flexible right, freedom of movement can be limited under certain conditions based on provisions that have been formulated in international human rights instruments. With limitations on freedom of movement, a person cannot carry out their mobility as usual. Limitations on freedom of movement include limitations on travelling to various places within a country, limitations on travelling to leave the country of origin, and limitations on returning to the country of origin. Of course, these conditions can affect and trigger problems with one's citizenship status. Those most affected by limitations on freedom of movement are diaspora groups. Usually, this group live outside their home country for a relatively long period of time. Therefore, diaspora groups with limitations on freedom of movement are vulnerable to the loss of citizenship status, which leads to the status of a stateless person. Thus, the state needs to measure the extent of the urgency of imposing limitations on freedom of movement and must pay attention to the potential loss of citizenship status of diaspora groups due to these limitations.

Furthermore, in imitating freedom of movement, guidelines must be considered to interpret the considerations regarding the urgency of implementing limitations on freedom of movement. These guidelines become a benchmark for the extent to which there is a need for limitations on freedom of movement theoretically and praxis, as well as the implications for human rights. Meanwhile, Satjipto Rahardjo

¹³ Included in this context that the potential for multinational crimes such as terrorism, drug trafficking, and human trafficking. See more in Suci Mubriani et al., "Status Kewarganegaraan dan Wacana Larangan WNI Eks ISIS Kembali ke Indonesia Perspektif *Siyāṣah Dasturiyah*," *Al-Balad: Jurnal Hukum Tata Negara dan Politik Islam* 2, no. 1 (2022): 49–52, <https://doi.org/10.59259/ab.v2i1.97>; Astrid Claudya Kalalo, "Eksistensi Pelaksanaan Ekstradisi Pelaku Kejahatan Narkoba yang Berdampak Internasional," *Lex et Societatis* I, no. 2 (2013): 94–95, <https://doi.org/10.35796/les.v1i2.1752>; Muhammad Arief Hamdi, "Pemeriksaan dan Tindakan Hukum bagi Orang Asing yang Tidak Memegang Paspor di Wilayah Indonesia," *JIKK: Jurnal Ilmiah Kajian Keimigrasian* 1, no. 2 (2018): 130, <https://doi.org/10.52617/jikk.v1i2.27>.

argues that the law cannot work without interpretation.¹⁴ So, legal interpretation in this position is used to find out the intention and orientation of the formulation of norms based on information that comes from the most authoritative party. The General Comment itself was drafted by the UN Human Rights Committee with the aim of clarifying normative provisions that are still vague in the construction of the ICCPR body.¹⁵ The issue of freedom of movement is contained in General Comment 27, adopted on 18 October 1998 as the *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*.¹⁶

General Comment 27 emphasizes the aspect of firmness in the interpretation¹⁷ of the purpose of the imitations set out in Article 12 paragraph (3) of the ICCPR. This means that the state may not impose imitations for reasons that are not listed in the provisions of the article. Limitations must be made for the purposes specified in the article, which include: protecting security, public order, health, public morals, or the fundamental rights and freedoms of others. Thus, the need to limitate freedom of movement must rest on and be directly related to the purpose of the limitations set out in Article 12 paragraph (3) of the ICCPR.¹⁸ For example, with reference to the substance of this research, when the state imposes imitations on mobilization within the country, abroad, or returning to the country of origin. If the limitaion has a direct relationship with the purpose and/or need to protect security and public order after the political conflict that occurred in 1965-1966,

¹⁴ Satjipto Rahardjo, "Penafsiran Hukum yang Progresif", in Anthon Freddy Susanto, *Semiotika Hukum: Dari Dekonstruksi Teks Menuju Progresivitas Makna* (Bandung: Refika Anditama, 2005), 6.

¹⁵ Faiq Tobroni, "Pembatasan Kegiatan Keagamaan dalam Penanganan Covid-19," *Jurnal Komunikasi Hukum (JKH)* 6, no. 2 (2020): 375, <https://doi.org/10.23887/jkh.v6i2.28062>; Ihsan Ali Fauzi Panggabean, Samsu Rizal Firawati, and Titik Husni Mubarak, *Mengelola Keagamaan: Pemolisian Kebebasan Beragama di Indonesia* (Jakarta: Yayasan Paramadina, 2012), 70.

¹⁶ Komnas HAM RI, *Komentar Umum Kovenan Internasional Hak Sipil dan Politik-Kovenan Internasional Hak Ekonomi Sosial dan Budaya* (Jakarta: Komnas HAM RI, 2009), 68.

¹⁷ The aspect of strictness in interpretation emphasized in General Comment 27 is aimed at narrowing the meaning of the provisions of Article 12 paragraph (3) of the ICCPR, so that the material content of the article cannot be interpreted in different contexts.

¹⁸ Komnas HAM RI, *Komentar Umum Kovenan Internasional Hak Sipil dan Politik-Kovenan Internasional Hak Ekonomi Sosial dan Budaya*, 70.

then the limitation has a direct relationship with the purpose of the limitation stipulated in Article 12 paragraph (3) of the ICCPR.

Along with the strict interpretation of the purpose of the limitation, General Comment 27 also emphasizes the aspect of proportionality in the limitations stipulated in Article 12 paragraph (3) of the ICCPR. In this case, limitations on freedom of movement based on the purpose of the limitation must be determined by law. The aspect of proportionality in limitation of movement is a form of anticipation of state arbitrariness against human rights. Therefore, the state is prohibited from limiting freedom of movement arbitrarily without being determined by law¹⁹ and implemented in accordance with the objectives of protecting security and public order in society.²⁰ For example, if the state imposes limitations on freedom of movement that are not determined by law, then the limitations are merely directed at political interests to suppress certain groups that oppose the government's direction. This kind of procedural limitation is prohibited under the ICCPR, as it contradicts the purpose of maintaining security and public order specified in the law.

Furthermore to the General Comment of the ICCPR, the next clue in interpreting the urgency of limiting freedom of movement is the Siracusa Principles. Similar to General Comment 27, the Siracusa Principles provide a conceptual framework regarding limitations on freedom of movement, which can be used as a guide to interpret the necessity of such limitations. The spectrum reached in the Siracusa Principles is not only limited to freedom of movement but also covers all human rights that have been regulated in the ICCPR. However, when compared to Article 12 paragraph (3) of the ICCPR, the purpose of limitations in the Siracusa Principles is formulated in more detail by including public safety.²¹ The Siracusa Principle itself is one of the provisions in international human rights instruments that specifically provides guidance on the limitation and reduction of human rights. As such, the Siracusa Principles explicitly separate "limitations" and

¹⁹ At this point, the law acts as a protector to the purpose of the limitation that have been enshrined in Article 12 paragraph (3) of the ICCPR.

²⁰ Komnas HAM RI, *Komentar Umum Kovenan Internasional Hak Sipil dan Politik-Kovenan Internasional Hak Ekonomi Sosial dan Budaya*, 71.

²¹ See and compare with Tobroni, "Pembatasan Kegiatan Keagamaan dalam Penanganan Covid-19," 376.

“derogations”, both of which have different implications for human rights.

The Siracusa Principles specify the following requirements for the limitation of rights: “prescribed by law”, “in a democratic society”, “public order”, “public health”, “public morals”, “national security”, “public safety”, “rights and freedoms of others,” or the “rights or reputations of others”, and “restrictions on public trial”. In essence, the limitation requirements in the Siracusa Principles do not differ substantially from the provisions of Article 12 paragraph (3) of the ICCPR and General Comment 27. The limitation provisions on a right in the Siracusa Principles must pay attention to the aspect of firmness in interpreting the purpose of the limitation. Besides, the Siracusa Principles also emphasize proportionality. Thus, the Siracusa Principles focus on the harmony and proportionality between the purpose of setting limitations and the procedures or mechanisms used for limitations, so that they do not have implications for the elimination of rights.

In the aspect of firmness, the Siracusa Principles emphasizes that limitations on rights in the ICCPR must be in accordance with the purpose of the limitations as stated in the ICCPR itself. The emphasize on the aspect of firmness in the Siracusa Principles and the ICCPR shows that the state, in carrying out limitations must be such that it does not get out of the purpose of the imitations that have been determined. Meanwhile, the aspect of proportionality in the Siracusa Principles generally has a similar conception to the ICCPR, only in the Siracusa Principles there is further emphasize on the aspect of comparability and the guarantee that limitations do not have implications for the elimination of rights.

The emphasize on the aspect of comparability in the Siracusa Principle refers to the concept that the object of the restricted right must be comparable to the objective to be achieved in the limitation. This means that if a limited right does not have a relevant relationship with the purpose of the right limitation, then the state is prohibited from linking the limitation of the right with that purpose. Thus, the limitation of rights must have a comparable relationship with the purpose of the limitation specified in the human rights covenant. This

is intended to avoid arbitrariness of the government as the representation of the state in limiting rights.²²

As for the guarantee that limitations do not have an impact on the elimination of rights in the Siracusa Principles, it can be described that the limitations are not interpreted in such a way that they have the potential to injure rights.²³ In this context, if the state imposes limitations on freedom of movement, the limitations only regulate affected groups, such as the diaspora, not to carry out travel activities to the country of origin. The limitations imposed by the state only interfere with the freedom to travel so as not to negate other rights. Furthermore, if it is related to the aspect of comparability, in a state that carries out limitations on movement with the aim of realizing security and public order, then the comparability between the purpose of the limitations and the implementation of the limitations must be carried out so that the limitations do not injure the right to citizenship status. In order not to lose the right to citizenship of the diaspora, the state must ensure that the status of citizenship of the diaspora is maintained regardless of the political direction and stance of the diaspora group. Up to this point, limitations on freedom of movement can be in line with the principle of proportionality and do not harm human rights.

Human Rights Discourse on Limitations on Freedom of Movement and Citizenship Rights in the Indonesian Exile Issue

As a newly independent country, Indonesia is certainly faced with various complexities of inequality that occur in various sectors. See these conditions, independence is needed in various fields such as economics, politics, and government infrastructure to support justice and prosperity of the country. For Wahyudi Akmaliah, there are practical efforts that can be taken towards this independence. *Firstly*, there is a need to develop human resources. Efforts can be made by sending the nation's children to study in developed countries, as well as send delegations to conduct diplomacy or comparative studies in the

²² See and compare with Nicola Colbran, "Kebebasan Beragama atau Berkeyakinan di Indonesia: Jaminan Secara Normatif dan Pelaksanaannya dalam Kehidupan Berbangsa dan Bernegara," in *Kebebasan Beragama atau Berkeyakinan: Seberapa Jauh?*, ed. Tore Lindhom et al. (Yogyakarta: Penerbit Kanisius, 2010), 752.

²³ Tobroni, "Pembatasan Kegiatan Keagamaan dalam Penanganan Covid-19," 378.

country being visited. *Second*, building relationships with the international community. This can be done through cooperation with other countries that are oriented towards the interests of the country.²⁴ These two things can be combined into a practical and applicable concept to support the progress of the country.

Recognizing the importance of independence for Indonesia, in the 1950s the Indonesian government opened diplomatic missions to various major countries, such as the United States, China, Japan, Southeast Asia, the Middle East, and Africa.²⁵ Conducting diplomatic missions was not an easy matter in the midst of the cold war situation that divided the axis of the international world into two camps, namely the Western capitalist camp and the Eastern socialist-communist camp. However, thanks to the foresight of the Indonesian Government at that time, by carrying out a free-active foreign policy, Indonesia was relatively independent of the cold war fragmentation.²⁶ Indonesia continued to conduct diplomatic missions to various countries and produced various strategic agreements for Indonesia, including agreements on education.

As a result of Indonesia's diplomatic missions, since 1960, many Indonesian students have been sent to studied in the Soviet Union. This was a result of Sukarno's 1956 visit to the Soviet Union. The number of Indonesians sent to studied then increased along with various agreements between organizations, parties, and other institutions, such as the military. The total number of students sent to studied in the Soviet Union reached 2,000.²⁷ Meanwhile, during the same period, Indonesia conducted diplomatic cooperation with the United States. The result of these diplomatic efforts were student exchanges and cultural visits with scholarships funded by the Ford Foundation in 1957 to students majoring in economics. Scholarships

²⁴ Wahyudi Akmaliah, "Indonesia yang Dibayangkan: Peristiwa 1965-1966 dan Kemunculan Eksil Indonesia," *Jurnal Masyarakat & Budaya* 17, no. 1 (2015): 67, <https://doi.org/10.14203/jmb.v17i1.122>.

²⁵ Jennifer Lindsay, "Heirs to World Culture 1950-1965", in *Heirs to World Culture: Being Indonesian 1950-1965*, ed. Jennifer Lindsay and Maya H.T. Liem (Leiden: KITLV Press, 2012), 9.

²⁶ Akmaliah, "Indonesia yang Dibayangkan: Peristiwa 1965-1966 dan Kemunculan Eksil Indonesia," 67-68.

²⁷ Tomi Lebang, *Sababat Lama Era Baru: 6 Tahun Pasang Surut Hubungan Indonesia-Rusia* (Jakarta: Grasindo, 2010), 21; David T. Hill, "Indonesia's Exiled Left as the Cold War Thaws," *Review of Indonesian and Malaysian Affairs* 44, no. 1 (2010): 28.

were mostly awarded to students from the Faculty of Economics at the University of Indonesia to study at the University of Berkeley.²⁸

Besides the Soviet Union and the United States, the government also sent students to China, and several socialist-communist countries in Eastern Europe, Asia, and the Middle East. In the context of China, Indonesia has a close relationship with the country through its network affiliation with the Partai Komunis Indonesia (PKI). This closeness led to several Indonesians being sent to study in China. Through the Chinese embassy in Jakarta, more than 20 Indonesians have received scholarships to study in China. The majority of them came from several ministries and received study assignments. Furthermore, there were also PKI members and activists of the Lembaga Kesenian Rakyat (Lekra) who made study visits to China. As for other communist socialist countries, there were several people sent to studied in countries such as Albania, Hungary, Romania, Czechoslovakia, Vietnam, North Korea, and Egypt. A rough breakdown is that about 40 people received scholarships in Albania, dozens more in Romania, and so on.²⁹

The climax then occurred in the 1965-1966 tragedy, characterized by the 1965 G30S. Indonesia's regional and international political landscape practically changed after the transition of power from Sukarno to Soeharto. The socio-political conflict that occurred in 1965-1966 marginalized the position of the PKI through an anti-communist military campaign. Political activities and attitudes that were considered leftist and supportive of Sukarno were then disarmed. Approximately 100,000 to 1 million Indonesians were killed because they were considered part of the PKI.³⁰ Meanwhile, more than 1 million people were imprisoned without trial for more than 20 years. During this period, Soeharto also suspended diplomatic relations with the Soviet Union and China.³¹ These conditions affected the Indonesian diaspora, which consisted of Mahids and diplomats.

²⁸ Hill, "Indonesia's Exiled Left as the Cold War Thaws", 27.

²⁹ Hill, 28-30.

³⁰ Robert Cribb, "Masalah-Masalah dalam Penulisan Sejarah Pembantaian Massal di Indonesia," in *The Indonesian Killings: Pembantaian PKI di Jawa dan Bali 1965-1966*, ed. Robert Cribb, 6th ed. (Yogyakarta: Matabangsa, 2016), 19-20.

³¹ Akmaliah, "Indonesia yang Dibayangkan: Peristiwa 1965-1966 dan Kemunculan Eksil Indonesia," 69-70.

Although the Indonesian diaspora did not experience arrests and killings, they faced uncertainty about their continued existence. On May 7, 1966, Soeharto, through the Minister of Education, announced instructions to the Indonesian diaspora, which included students, public intellectuals, and cultural figures, to undergo an examination and declare their loyalty to the New Order government. If they refused to undergo the examination, they would only be given a one-time stamp of permission to return to Indonesia. If the government refuses to give them a passport and the passport expires, they cannot return to Indonesia and will gradually lose their status as Indonesian citizens.³²

Soeharto's instruction had a big impact on Mahid who was studying or a diplomat on assignment. There was limited information among the diaspora about the new policy, which resulted in them losing their Indonesian citizenship status. Meanwhile, many of the Mahids and diplomats sided with Sukarno and refused the examination. They refused on the grounds that the New Order had staged a coup against the legitimate government.³³ The Indonesian diaspora who rejected the loyalty check to the New Order were mostly Mahids and diplomats affiliated with leftist movements who were abroad. They staged massive demonstrations to reject and threaten the passport policy under the titles of the Gerakan Mahasiswa Revolusioner (Gemarev) and the Gerakan Pembela Ajaran Sukarno (GPAS).³⁴ Their opposition led to them being marginalized and slowly losing their Indonesian citizenship status. Thus, this group became known as Indonesian exiles.

The revocation of passports which had a direct impact on the loss of citizenship status, makes Indonesian exiles unable to return to Indonesia. Another point to consider, the loss of Indonesian citizenship status also makes Indonesian exiles live without the auspices of the country of origin (stateless). Indonesian exiles were then treated discriminatively, either from their country of origin or the country they

³² Martin Aleida, *Tanah Air yang Hilang: Wawancara dengan Orang-Orang "Kelayaban" di Eropa* (Jakarta: Kompas Media Nusantara, 2017), 5–6; Akmaliah, "Indonesia yang Dibayangkan: Peristiwa 1965-1966 dan Kemunculan Eksil Indonesia," 71.

³³ Hill, "Indonesia's Exiled Left as the Cold War Thaws", 31–32.

³⁴ David T. Hill, "Indonesian Political Exiles in the USSR," *Critical Asian Studies* 46, no. 4 (2014): 623, <https://doi.org/10.1080/14672715.2014.960710>.

travelled to.³⁵ For the New Order under Soeharto, diasporas who rejected the legitimacy of his leadership would be considered affiliated with the PKI. In the context of legal and moral stigma that developed at that time, anyone who was considered affiliated with the PKI and leftist movements would be marginalised and exiled.³⁶ As a result, Indonesian exiles had to seek new citizenship and identities to protect their human rights. This is not an easy task, as there is a strong anti-foreigner sentiment in some European countries. This stereotype had led to massive violence against exiles and they are treated discriminatively. Moreover, the uncertainty about their future, both in terms of employment and socio-economic status is also a problem for Indonesian exiles.³⁷

Based on this historical framework, the state after the 1965 G30S actually limited freedom of movement. This was based on the premise that the 1965 G30S tragedy was identified as a coup attempt against the government. As important, the emergence of political conflict between the Sukarno camp and the Soeharto camp after the 1965 G30S tragedy exacerbated the socio-political situation in the 1965-1966 tragedy.³⁸ Based on this situation, the state took the initiative to restrict freedom of movement in order to maintain security and public order.³⁹ In this context, the state imposed limitations on travelling within the country, abroad, and returning to one's home country. The view that the PKI and other leftist movements were rebels who had to be eliminated because they disturbed the stability of the state was used as an excuse for the state at the time to negate other rights beyond freedom of movement. Indonesian diasporas who rejected the legitimacy of the New Order government were then denied rights other than freedom of movement, namely the right to

³⁵ Yohanes Victor Baro Bitan Lamatokan and Robertus Wijanarko, "Different Treatment bagi Eksil Korban Peristiwa 1965 di Eropa," *Jurnal Hukum dan Sosial Politik* 2, no. 4 (2024): 76–77, <https://doi.org/10.59581/jhsp-widyakarya.v2i2.1527>.

³⁶ Amin Mudzakkir, "Hidup di Pengasingan: Eksil Indonesia di Belanda," *Jurnal Masyarakat & Budaya* 17, no. 2 (2015): 173, <https://doi.org/10.14203/jmb.v17i2.282>.

³⁷ Mudzakkir, "Hidup di Pengasingan: Eksil Indonesia di Belanda," 178.

³⁸ Salim Haji Said, *Gestapu 65: PKI, Aidit, Sukarno, dan Soeharto* (Bandung: Penerbit Mizan, 2015), 240.

³⁹ See in Michel van Langenberg, "Gestapu dan Kekuasaan Negara di Indonesia", in *The Indonesian Killings: Pembantaian PKI di Jawa dan Bali 1965-1966*, 71–72.

citizenship, on the grounds that they were affiliated with leftist movements that were dangerous to the survival of the state.

At this point, the state can be considered to have violated its obligations in an act of commission against individuals as rights holders. The state is considered not respecting human rights enshrined in international human rights instruments. In this case, the limitations on freedom of movement carried out by the state in the 1965-1966 tragedy were not carried out in accordance with the principles of limitations set out in the ICCPR and the Siracusa Principles. *Firstly*, although the state's purpose in limiting freedom of movement is to maintain security and public order, such limitations are not regulated in law. There are no legal instruments found in the 1965-1966 tragedy that directly refer to limitations on freedom of movement in accordance with the purpose of the limitations. *Second*, limitations on freedom of movement are not interpreted narrowly with the purpose of the limitations so that they have implications for the elimination of the right to citizenship of the Indonesian diaspora. *Third*, limitations on freedom of movement do not pay attention to aspects of compatibility with the purpose of the limitations. This incompatibility can be seen in the political reasons underlying the limitations on the Indonesian diaspora. Thus, the state's actions at that time could not be justified, considering that the treatment was not in line with the principle of proportionality and the principle of non-discrimination that should exist even though the state imposed limitations on the rights of the Indonesian diaspora.

Conclusion

Limitation on freedom of movement, as regulated by Article 12 paragraph (3) of the ICCPR, were allowed for security, public order, health, morals, or fundamental rights reasons. These must be carefully applied to avoid affecting the citizenship status of diaspora communities. General Comment 27 and the Siracusa Principles guide the necessity, proportionality, and fairness of these limitations, ensuring they don't deprive individual of their rights or citizenship. In the context of the 1965-1966 tragedy, the state implemented limitations on freedom of movement due to the unstable political situation following the 1965 G30S tragedy. The New Order government imposed these limitations to protect security and public order.

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However, these limitations tended to be political, resulting in many Indonesian diasporas losing their citizenship status and rights, thus becoming known as Indonesian exiles. The state's actions, lacking legal oversight, strict interpretation, and compatibility with the intended purposes of the limitations, violated international human rights obligations. These actions failed to adhere to the principles of proportionality and nondiscrimination, rendering the state's limitations on rights unjustifiable.

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