

The Legal Liability for Criminal Acts Misuse of Firearms for Civil Society

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Abstract. *The purpose of this study is to examine and analyze the legal responsibility for the crime of misuse of firearms for civil society. The approach method used in this paper is normative juridical. The specification of this writing is descriptive analytical. In Indonesia, exact figures on the trade in firearms, both legal and illegal, are difficult to obtain, although circulation in civil society is certain to increase sharply. Due to administrative reasons for the possession of firearms and the lack of proper supervision, the police officers do not know for sure how many firearms are circulating in the community, so that it is very difficult to trace the ownership of firearms. The existence of civil society who still have illegal firearms, law enforcement must be carried out by the police in providing shock therapy for people who have illegal firearms so that they no longer possess or store illegal firearms. So that people who find firearms should immediately hand them over to the Police. However, the people who found firearms actually wanted to keep or control these firearms. There are separate provisions regarding the ownership of firearms by civil society. Ownership of firearms in general is regulated in Emergency Act No. 12 of 1951 which is criminal in nature. In the context of misuse of firearms, criminal liability applies in Article 1 paragraph (1) of Emergency Act No. 12 of 1951.*

Keywords: Abuse; Firearms; Liability.

1. Introduction

The Third Amendment to the 1945 Constitution of the Republic of Indonesia has added norms regarding the rule of law in Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia which reads: "Indonesia is a country based on law".¹This provision is a form of normalization originating from the content in the Elucidation of the 1945 Constitution of the

¹Ahmad Firmanto Prasedyomukti and Rakhmat Bowo Suharto, The Role of Judicial Commission on Supervision of Judge's Crime in Indonesia, Journal of Daulat Hukum Volume 1 Issue 4 (2018), p.896

Republic of Indonesia which states "The State of Indonesia is based on law (Rechtsstaat) not based on mere power (Machtsstaat)". By loading it into the norms of the 1945 Constitution of the Republic of Indonesia, the concept of a rule of law in the Elucidation of the 1945 Constitution of the Republic of Indonesia has binding legal force as the highest norm in the Indonesian national legal system.²

Terminologically, the term "rule of law" in the provisions of Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia does not specifically refer to one of the main concepts in the Western legal tradition, both the Rechtsstaat and the Rule of Law. This means that the term "rule of law" in the 1945 Constitution of the Republic of Indonesia is a relatively 'neutral' concept which opens up space for interpretation for new understandings according to the paradigm and reality of the Republic of Indonesia.³

The development of the times is currently experiencing very rapid growth progress, not only in the world of industrial and trade engineering, but also in the world of law. The development of the era is also followed by the development of the crime rate, where the development of the crime rate is influenced by the circulation of firearms in society. Firearms can basically be owned by civil society but through a fairly long process. Currently there are many cases of misuse of firearms ownership, one of which is fighting, fighting and robbery, all of this cannot be separated from the circulation of illegal firearms in society, both standard and assembled. By owning a firearm, everyone feels they have enough strength to attack their "enemy", without them realizing that their "enemy" also has the same firearm. As a result several lives were lost in vain.

Emergency Act No. 12 of 1951 was made as an amendment to the Ordonnantietijdelijke Bijzondere Strafbepalingen (STBL. 1948 Number 17) and the Law of the Republic of Indonesia Number 8 of 1948. This Emergency Law regulates sanctions for acts related to sharp weapons and firearms. The provisions stipulated in the Emergency Act No. 12 of 1951 was made taking into account the Constitution Articles 96, 102 and 142 of the Provisional Law of the Republic of Indonesia with consideration of the urgent situation and for the benefit of the government so that it was deemed necessary to make changes to the two provisions above.

The existence of civil society who still have illegal firearms, law enforcement must be carried out by the police in providing shock therapy for people who have illegal

²Nur Dwi Edie W, and Gunarto, Analysis of Judicial Policy in Deciding Criminal Acts Based Alternative Indictment (Case Study Decision Number 82 / Pid.B / 2019 / PN. Blora), Jurnal Daulat Hukum Volume 3 Issue 1, (2020), p .147

³Beno, Gunarto and Sri Kusriyah, Implementation of Fully Required Elements in the Crime of Planning Murder (Case Study in Blora State Court), Journal of Daulat Hukum Volume 3 Issue 1, (2020), p.109

firearms so that they no longer possess or store illegal firearms. So that people who find firearms should immediately hand them over to the Police. However, the people who found firearms actually wanted to keep or control these firearms. Rules regarding the prohibition of illegal possession of firearms in Emergency Act No. 12 of 1951, are less effective, because civil society has not understood them in detail and are complex, in fact these actions have been threatened with severe punishment.

The basis for the existence of a criminal act is the principle of legality, while the basis for the punishment of the maker is the principle of error.⁴This means that the perpetrator of a criminal act will only be punished if he has a fault in committing the crime. In Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia is a country based on law. That is a country that stands above the law that guarantees justice to its citizens. The author's research objective is to study and analyze legal responsibility for the crime of misusing firearms for civil society.

2. Research Methods

To conduct an assessment in this writing the author uses a normative juridical approach or a written legal approach (statutory approach).⁵ Writing specifications are carried out using a descriptive analytical approach. The data used for this writing is secondary data. The main data collection method used in the literature study is secondary data obtained from library books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed with qualitative analysis.

3. Results and Discussion

3.1. Misuse of Firearms

In this case it is distinguished regarding the ownership and control of firearms. Ownership is aimed at individuals with requirements and licensing processes that must be met. Meanwhile, mastery is aimed at someone who because of his work makes it possible to hold firearms along with permits that are different from ownership. In Indonesia, it is possible for civil society to own firearms. However, not all civil society in Indonesia can own and/or use firearms because there are certain limitations and conditions that must be met before obtaining a permit. The limitations in question are the existence of certain types of firearms, the purpose of possession and use of certain. Therefore, not just anyone can own, use and

⁴Suharto. 2013. *When You Face Criminal Cases*. Jakarta; Prenamedia Group, p.3

⁵Soemitro. 1998. *Legal and Jurimetric Research Methodology*, Jakarta, Ghalia Indonesia, p. 24

obtain a license to own firearms.⁶

Misuse of firearms in a general sense is using firearms inappropriately and violating applicable regulations.⁷ However, there is a difference in the concept of misuse of firearms by ordinary civilians and members of the military. The misuse of firearms by civil society can be carried out not only when they do not have a permit, even if they have a permit, these firearms can be misused. As for members of the military who clearly have permission to carry and use firearms, they have control over these firearms. However, if a member of the military who controls firearms uses firearms not in accordance with the rules, then an abuse of possession of firearms occurs. Every grant of power to someone, is always accompanied by a specific purpose or purpose. So that in carrying out the task of granting the power of attorney must be in line with the goals or purposes that have been given. So that if the use of power is not in accordance with the intended purpose or purpose, then there has been abuse of power. Firearms controlled by members of the military may not be taken out of the headquarters or post. If anyone brings firearms out of the headquarters or post, they must have a permit to carry firearms.

3.2. Legal Responsibility for the Crime of Misuse of Firearms for Civil Society

In law, an act does not have the nature of being against the law before the act is given the nature of being against its prohibition (*wederrechtelijk*).⁸ by loading it as prohibited in statutory regulations, it means that its prohibited nature is due to or originates in its being contained in statutory regulations. In criminal law, the term accountability is known, in Dutch it says *toerekenbaarheid*, in English criminal responsibility or criminal liability. Criminal liability, Roeslan Saleh mentions "criminal responsibility", while Moeljatno says "responsibility in criminal law", other legal experts mention more as "criminal responsibility".⁹

In Indonesia, it is possible for civil society to own firearms. However, not all civil society in Indonesia can own and/or use firearms because there are certain limitations and conditions that must be met before obtaining a permit. The limitations in question are the existence of certain types of firearms, the purpose of possession and use of certain.¹⁰ Therefore, not just anyone can own, use and

⁶Detanti Asmaningayu Pramesti, 2011, Misuse of Firearms Under Law 12/Drt/1951, FH Unair, p.15

⁷Kansa Ahsani Maf'ula, Misuse of Firearms by Military and Civilian Actors, Airlangga University, Jurist-Diction Vol. 3 No.1 (2020), p.215

⁸Lintje Anna Marpaung, The Influence of Legal Political Configuration on the Character of Legal Products. Legal Institutions Vol.7 No.1, (2012). p. 1–14.

⁹Sampur Dongan Simamora & Mega Fitri Hertini, 2015, Criminal Law in the Chart, FH Untan Press, Pontianak, p.166

¹⁰Evan Munandar, Suhaimi, and M. Adli, Handling the Crime of Possession and Use of Firearms Without Permission in the Criminal Justice System (The Tackling Of Criminal Act On The Illegal

obtain a license to own firearms.

In accordance with the Decree of the Chief of Police number 82/II/2004, there are provisions regarding people who may apply for possession of firearms, including private officials or banks, those who are allowed to own weapons. respective directors: president director, president commissioner, commissioner, chief director, and finance director. For government officials, each Minister, Chairperson of the MPR/DPR, Secretary General, Inspector General, Director General, and Cabinet Secretary, as well as the Governor. Deputy Governor. Sekwilda, Irwilprop, Chairperson of DPRD-I and Members of DPR/MPR. As for the ranks of the TNI/Polri, those who are allowed to have only high-ranking officers and middle-ranking officers with the lowest rank Colonel but have special duties. Likewise for retirees only high-ranking officers and middle-ranking officers with the last rank of Colonel who hold important positions in Government/Private are allowed. As with firearms for self-defense, firearms used for sports are also regulated very strictly by the Perbakin organization. Each Perbakin member can own firearms, but the number that can be owned by each member is limited. For example, for hunting, each person is allowed to have 8 to 10 shoots.¹¹For this hunt the weapon used is a long-barreled weapon commonly called a shoulder weapon. As for the target shooting branch, shooting members or athletes are allowed to own or keep firearms according to the number they specialize in.

The misuse of firearms in Indonesia is regulated in several positive laws (regulations) or related to that. These positive laws include the 1945 Constitution of the Unitary State of the Republic of Indonesia; Law of the Republic of Indonesia Number 8 of 1981 concerning criminal procedural law; Law of the Republic of Indonesia Number 8 of 1948 concerning registration and granting of permits to use firearms; Emergency Act No. 12 of 1951 concerning the use of firearms; Presidential Instruction of the Republic of Indonesia Number 9 of 1976 concerning firearms; Decree of the Minister of Defense and Security No. KEP-27/XII/1977 concerning policy demands to increase the supervision and control of firearms; Law of the Republic of Indonesia Number 2 of 2002 concerning the State Police of the Republic of Indonesia;¹²

There are separate provisions regarding the ownership of firearms by civil society. Ownership of firearms in general is regulated in Emergency Act No. 12 of 1951 which is criminal in nature. Article 1 paragraph (1) Emergency Act No. 12 of 1951 states "Whoever, without the right to enter Indonesia, makes, receives, tries to

Ownership And Use Of Firearms The Criminal Justice System), Syiah Kuala Law Journal, Vol . 2 No.3 (2018), p.338

¹¹I Wayan Suwanda, I Wayan Juliartha Suda, Regulations and Procedures and Mechanisms for Licensing Firearms, Journal of Ganec Swara, SINTA 5, Vol. 15 No.2, (2021), p.1196

¹²Mardiono Marco Tombokan, Implementation of Emergency Law Number 12 of 1951 Concerning the Use of Firearms in Cases of Shootings that Cause Death, Lex Crimen Vol. VII No. 7 (2018), p.22

obtain, surrenders or tries to surrender, controls, carries, has supplies on him or has in his possession, keeps, transports, hides, uses or takes out of Indonesia something firearms, ammunition or explosives, shall be punished with death penalty or life imprisonment or a maximum temporary imprisonment of twenty years”.

From the provisions of the article above, there is broad coverage regarding the possession of firearms which is punishable by a crime ranging from making firearms to removing from Indonesia. If the possession of firearms above is carried out without rights (without legal rights, it is classified as a crime) then criminal sanctions can be imposed in the form of the death penalty, life imprisonment, or imprisonment of up to 20 years.

The rampant spread of firearms among civilians is a global phenomenon. Even though normatively Indonesia is a country that is strict in implementing the rules for owning firearms, judging from a number of legal bases that regulate it starting from the Emergency Law of the Republic of Indonesia No. 12 of 1951 concerning changing "Ordonantietijdelijke bijzondere strafbepalingen" (stbl. 1948 No.17) of the former Law of the Republic of Indonesia Number 8 of 1948 concerning Registration and Granting of Permits to Use Firearms.¹³The rest are regulations issued by the police, such as SK Kapolri NO. Skep/244/II/1999, SK Chief of Polri Number 82 of 2004 concerning the Implementation of Supervision and Control of Non-Organic Weapons, and Regulation of the Chief of Police No.Pol: 13/II/2006 concerning Supervision and Control of TNI/Polri Non-Organic Firearms for the Benefit of sport. However, due to the disorderly ownership of firearms, both legal and illegal, owned by civil society, police officers and the TNI, that is why crimes involving the misuse of firearms have arisen in Indonesia.¹⁴

The responsibility of perpetrators of misuse of firearms, either as owners of firearms or as people who do not own firearms but misuse them, will be accounted for in accordance with how that person relates to a crime that occurred. So it must be seen again how someone can misuse the firearm. In Article 56 of the Criminal Code:

Punished as assistants in a crime, namely:

- 1) Those who have knowingly provided assistance in committing the crime.

¹³Rilano VS Umboh Nola TS Mallo Djemi Tomuka, Patterns of Wounds in Death Victims Due to Firearms in the Medicolegal Forensic Medical Sciences Section of FK UNSRAT-Prof.Dr.RDKandoumanado Hospital Period January 2007-December 2013. Journal of e-Clinic (eCI), Volume 3, Number 1, (2015), p.28

¹⁴Weli Wahyudi, Application of the Elements of the Crime Act of Possessing Possession of Possessing Stock or Storing Firearms Without Permission, Swara Justisia, Volume 6, Issue 3, (2022), p.261

- 2) Those who intentionally provide opportunities, means or information to commit the crime.

The perpetrator of the offense can be held accountable for his criminal actions if he has an element of error.¹⁵A person can be said to have made a mistake, if at the time he committed a criminal act, seen from the point of view of society, he can be reproached because, namely, why did he commit an act that is detrimental to society when he is able to know the meaning of the act, and therefore he can even avoid such an act.

The elements of a crime of firearms are a person or actor as a legal subject of a crime who will be consciously responsible for the crime committed.

The scope of the proceedings in the trial stages of the Panel of Judges will consider Article 359 of the Criminal Code, in which the elements consist of:

- a. First element
"Whoever" according to the law is every citizen or anyone who is capable of being responsible who is subject to regulations set by the government.
- b. Second Element
Whereas from the words without rights in the formulation of this delict, it has been confirmed that a person (both military and non-military) insofar as matters relating to firearms, ammunition or explosives must have permission from the authorities for that.
- c. The third element
Surrender, possess, carry, have in stock or have in his possession, store, transport, hide, a firearm, ammunition or explosives.

This element is alternative in nature, so the assembly will choose an element related to the facts revealed at trial, namely "handing over" means giving, entrusting, delivering to (in this case a firearm) another person. Whereas what is meant by "firearms" is according to the firearms regulations Article 1 paragraph 1 Staatblaad 1937 Number 170 which was amended by Ordonantie dated May 30, 1939, Staatblaad 278 is firearms and their parts including ammunition as accessories.

4. Conclusion

There are separate provisions regarding the ownership of firearms by civil society. Ownership of firearms in general is regulated in Emergency Act No. 12 of 1951

¹⁵Hidayat, Muhammad Fajar, and Ririen Ambarsari. Annotation of the Ruling of the Constitutional Court of the Republic of Indonesia Number 46/PUU-XIV/2016 in the Perspective of Legal Hermeneutics. *Conscience Law* Vol.3 No.2, (2020). p. 11

which is criminal in nature. In the context of misuse of firearms, criminal liability applies in Article 1 paragraph (1) of Emergency Act No. 12 of 1951 states "Whoever, without the right to enter Indonesia, makes, receives, tries to obtain, surrenders or tries to surrender, controls, carries, has supplies on him or has in his possession, keeps, transports, hides, uses or takes out of Indonesia something firearms, ammunition or explosives, shall be punished with death penalty or life imprisonment or a maximum temporary imprisonment of twenty years".

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