

The Juridical Analysis of Ownership of Heritage Objects Types of Sharp Weapons

Muhammad Aditya Saputra¹⁾ & Bambang Tri Bawono²⁾

¹⁾ Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail:
marh4enist@gmail.com

²⁾ Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail:
bambang@unissula.ac.id

Abstract. *The provisions of Article 2 paragraph (1) and paragraph (2) of Emergency Law no. 12 of 1951. The sound of these two articles has the potential to give rise to legal interpretations, because in the formulation of these two articles it is never clearly explained what is meant by sharp weapons and heirlooms. If we examine in more depth the legal interpretations relating to control or possession of heirloom weapons from a criminal law perspective, especially those relating to the provisions of article 2 paragraph (1) and paragraph (2), then we must look into the aims and objectives of the provisions of article 18B paragraph (2) and 28I paragraph (3) of the NRI Constitution of 1945. This research aims to find out, explain and analyze the regulations regarding the prohibition on possessing sharp weapons and the juridical analysis of sharp weapons which can be categorized as heirlooms. The research uses a normative juridical approach, with the type of research being a statutory approach. The data sources used are primary, secondary and tertiary data. Data collection methods are through documentation studies and literature studies, as well as from the internet. The data obtained in this research was analyzed using qualitative juridical methods authentically, historically and systematically using law enforcement theory and legal certainty theory. The results of this research are that Emergency Law No. 12 of 1951 does not clearly describe sharp weapons in more detail. Then the rules regarding heirloom-type sharp weapons are still not regulated in Emergency Law no. 12 of 1951 because the article does not explicitly discuss the categorization of sharp weapons as heirlooms.*

Keywords: *Emergency; Ownership; Sharp; Weapons.*

1. Introduction

Rule of law as a term in the Indonesian vocabulary is a translation of *rechtsstaat* and rule of law. Both terms have the same direction, namely preventing absolute power for the sake of recognizing and protecting human rights.¹

Indonesia is a state of law as intended in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In simple terms, a state of law is a state whose basis for administering the state is based on law and not on power. organizing community life, as a basis for the validity of policies, actions and decisions taken, as a means of preventing and resolving conflicts and as an effort to protect human rights.²

The State mandates it in the 1945 Constitution of the Republic of Indonesia in Article 18B paragraph (2) which reads "The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic Indonesia, which is regulated by law."

The state has guaranteed the existence of customary law communities with the conditions regulated in law. The provisions in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia are strengthened by Article 28I paragraph (3) that cultural identity and traditional society are respected in line with developments over time and civilization. A customary law community is a territorial or geological community unit that has its own wealth, has citizens who can be differentiated from other legal communities and can act within or outside as a legal entity (legal subject) that is independent and governs itself.³ Customary law communities are community units that have the necessary equipment to be able to stand independently and have legal unity, unity of authority and environmental unity based on collective rights to land and water for all their members.⁴

¹Dadin Eka Saputra, "The Relationship Between Equality Before The Law in Law Enforcement in Indonesia and the Harmonization of Conflicts Between Law Enforcement Agencies", *Sharia: Journal of Law and Thought* Vol.15, No.1 (2015), p. 17, url:<https://jurnal.uin-antasari.ac.id/index.php/syariah/article/view/540> accessed 01 December 2023

²Andi Pradikta Alvat, "Legal Politics of Human Rights Protection in Indonesia", *Journal of Sovereign Law* Vol.2, No. 4 (2019), p. 513, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/8354/3873> accessed 09 December 2023

³Husen Altung. (2010). *Legal Dynamics in the Recognition and Protection of Indigenous Peoples' Rights to Land*. Yogyakarta: LaksBang Pressindo. h. 31.

⁴Rikardo Simarmata. (2006). *Legal Recognition of Indigenous Peoples in Indonesia*. Jakarta: Bangkok. h. 31.

In Emergency Law No. 12 of 1951, Article 2 paragraph (1) defines acts that constitute criminal acts, while in Article 2 paragraph (2) an exception is made to the terms "batting weapons, stabbing weapons, or stabbing weapons" used in Article 2 paragraph (1). Cases of sharp weapons will be prosecuted based on Article 2 paragraph (1) of Law Number 12/Drt of 1951. Thus, the term "sharp weapons" is almost synonymous with "batting weapons, stabbing weapons, or stabbing weapons".⁵

The concept of criminal law which regulates both formally and materially provides an overview of the regulation of the ownership of sharp weapons. Where this is explicitly formulated in the provisions of Article 2 paragraph (1) and paragraph (2) that:

(1) Any person who without the right enters into Indonesia, makes, receives, tries to obtain, hands over or attempts to hand over, controls, carries, has supplies to him or has in his possession, keeps, transports, hides, uses or takes out from Indonesia a beating weapon, a stabbing weapon, or a stabbing weapon (slag-, steek-, of stootwapen), is punishable by a maximum prison sentence of ten years.

(2) In the definition of beating weapons, stabbing weapons or stabbing weapons in this article, it does not include goods which are clearly intended to be used for agricultural purposes, or for household work or for the purpose of legally carrying out work or which clearly have the purpose of being goods, heirlooms or ancient items or magical items (merkwaardigheid).

The sounding of these two articles has the potential to give rise to legal interpretations, because in the formulation of these two articles it is never clearly explained what is meant by sharp weapons. Then, if it is linked to the provisions of article 18B paragraph (2) and the provisions of article 28I paragraph (3), it is also necessary to pay attention to legal regulations relating to indigenous communities and customary law. The constitution guarantees that indigenous peoples and customary law receive definite and clear legal protection, this is also related to the regulations made by customary law communities.

Customary law communities, through the mechanisms of customary regulations that they make, of course contain matters relating to heirloom weapons, for example those that apply in the life of the Dayak customary law community.

⁵Fransiska S. Watak, "Criminal acts relating to sharp weapons according to law number 12/emergency of 1951 (review of the Jember PN decision no. 847/pid.b/2008/pn.jr)", *Lex Crimen Journal* Vol.VII, No. 4 (2018), p. 29, url:<https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/20380> accessed 09 December 2023

Mandau weapons are not only used as tools in the daily lives of the people, but they are also used in Dayak traditional ritual processions. If we examine in more depth the legal interpretations relating to control or possession of heirloom weapons from a criminal law perspective, especially those relating to the provisions of article 2 paragraph (1) and paragraph (2), then we must look into the aims and objectives of the provisions of article 18B paragraph (2) and 28I paragraph (3) of the NRI Constitution. 1945.

2. Research Methods

The approach method used in this research is normative or doctrinal legal research⁶, namely researchers examine primary, secondary and tertiary data to answer the problems that are the focus of the research. The approach method used in this research is the statutory approach, namely by examining statutory regulations.⁷relating to Ownership of Sharp Weapons and Indigenous Peoples.

The research specifications used are analytical descriptive, namely research that seeks to describe and explain problems related to the ownership of heirloom objects such as sharp weapons. This research is intended to systematically describe the juridical analysis of ownership of heirloom objects such as sharp weapons from the perspective of Emergency Law No. 12 of 1951.

Data collection methods in this research were carried out through documentation studies and literature studies, as well as from the internet. To obtain the required data, researchers conducted data searches at the Regional Library of South Kalimantan Province. Data recording is done by note-taking, file copying and photocopying.

3. Results and Discussion

3.1. Regulation of the Prohibition of Controlling Sharp Weapons in the Perspective of Emergency Law Number 12 of 1951

In this law, the word sharp weapon is interpreted as stabbing weapons, stabbing weapons, and beating weapons, whereas if researchers study more deeply, stabbing weapons are short, sharp-edged weapons used in close-range fights such as daggers, stabbing weapons are weapons used in a relatively longer distance such as a spear, a bludgeoning weapon is a weapon that is used by hitting it like a mace. We also need to know about sharp weapons of the panebas type, for example machetes, to use them by slashing, not hitting, stabbing, let

⁶Soetandyo Wingjosoebroto. (2002). Laws, paradigms, methods and dynamics of the problem. Jakarta: elsa-huma. h. 146.

⁷Peter Mahmud Marzuki. (2007). Legal Research. Jakarta: Kencana. h. 96.

alone stabbing. Daggers can still be categorized as stabbing weapons, however, as researchers point out regarding examples of sharp cutting weapons, even these are not clearly regulated in Emergency Law No. 12 of 1951, meaning that unclear descriptions of sharp weapons can give rise to doubt and uncertainty. If Emergency Law No. 12 of 1951 does not clearly describe sharp weapons in more detail then law enforcement will also be inappropriate because law enforcement as we know is an effort to realize the ideas of justice, legal certainty and social benefit. In order to create ideal, just law enforcement, it must have legal certainty in order to create social benefits.

3.2. Juridical Analysis of Sharp Weapons That Can Be Categorized as Heirlooms in the Perspective of Emergency Law Number 12 of 1951

Sharp weapons are not clearly stated in the article. What is mentioned is only beating weapons, stabbing weapons or stabbing weapons. Even though in the practice of law enforcement, the police, in this case, use the interpretation of sharp weapons in the explanation of article 15 paragraph 2 letter e of the 2002 Republic of Indonesia Police Law, this does not necessarily answer the certainty and clarity of the existing law because in criminal law, especially the principle the principle of legality is prohibited from making analogies.

So, if we examine it in depth, the rules regarding heirloom-type sharp weapons are still not regulated in Emergency Law no. 12 of 1951 because the article does not explicitly discuss the categorization of sharp weapons as heirlooms. Then, in law enforcement, a person cannot be immediately punished if he carries a sharp heirloom type weapon during a traditional ritual ceremony. Law enforcers must look again at their aims and objectives in accordance with the provisions of the 1945 Constitution of the Republic of Indonesia, Article 18B paragraph (2) which states that the state recognizes and respects customary law community units and Article 28I paragraph (3) states that the rights cultural identity and traditional society to be respected in line with developments over time and civilization.

4. Conclusion

It is necessary to know about sharp weapons of the panebas type, for example machetes, to use them by slashing, not hitting, stabbing, let alone stabbing. If a dagger can still be categorized as a stabbing weapon, however, as researchers point out regarding examples of sharp cutting weapons, even that is not clearly regulated in Emergency Law No. 12 of 1951, meaning that unclear descriptions of sharp weapons can give rise to doubt and uncertainty. Then heirloom-type sharp weapons are still not regulated in Emergency Law no. 12 of 1951 because the article does not explicitly discuss the categorization of sharp weapons as heirlooms. Regarding legal certainty, Emergency Law no. 12 of 1951 should also

specifically regulate the categorization of types of sharp weapons that are classified as heirloom items so that in the future they do not cause conflict with existing norms in society, especially within the scope of indigenous communities. Law enforcers, in this case police officers, should understand and look at the context of the scope of applicable customary community legal norms, as the 1945 Constitution of the Republic of Indonesia recognizes and respects the norms of indigenous community units.

5. References

Journals:

Andi Pradikta Alvat, "Legal Politics of Human Rights Protection in Indonesia", *Journal of Sovereign Law* Vol.2, No. 4 (2019), p. 513, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/8354/3873>

Dadin Eka Saputra, "The Relationship Between Equality Before The Law in Law Enforcement in Indonesia and the Harmonization of Conflicts Between Law Enforcement Agencies", *Sharia: Journal of Law and Thought* Vol.15, No.1 (2015), p. 17, url:<https://jurnal.uin-antasari.ac.id/index.php/syariah/article/view/540>

Fransiska S. Watak, "Criminal acts relating to sharp weapons according to law number 12/emergency of 1951 (review of the Jember PN decision no. 847/pid.b/2008/pn.jr)", *Lex Crimen Journal* Vol.VII, No. 4 (2018), p. 29, url:<https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/20380>

Books:

Burhan Bungin, 2014. *Qualitative research data*, PT. Raja Grafindo Persada, Jakarta;

Husen Alting, 2010, *Legal Dynamics in the Recognition and Protection of Indigenous Peoples' Rights to Land*, LaksBang Pressindo, Yogyakarta;

Rikardo Simarmata, 2006, *Legal Recognition of Indigenous Peoples in Indonesia*, Bangkok, Jakarta;

Peter Mahmud Marzuki, 2007, *Legal Research*, Kencana, Jakarta;

Soetandyo Wingjosoebroto, 2002, *Law, paradigm, methods and problem dynamics*, elsa-huma, Jakarta.