



LEGAL ANALYSIS OF LAW ENFORCEMENT AGAINST CIVILIANS WHO USE UNAUTHORIZED FIREWEAPONS (Study of Decision Number 58/Pid.Sus/2024/PN Pbl)

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ABSTRACT

Law enforcement against civilians who possess or use firearms without permission in Indonesia is based on Emergency Law Number 12 of 1951, which stipulates a maximum criminal penalty of death, life imprisonment, or 20 years imprisonment for violators. Based on the discussion, it can be concluded that the legal regulations regarding the crime of possession and use of firearms are regulated in Emergency Law No. 12 of 1951, Government Regulation in Lieu of Law No. 20 of 1960, and the regulation of the Chief of Police No. SK Kepala Polri Number 82 of 2004 concerning the Implementation of Supervision and Control of Non-Organic Weapons. The penalty for possessing a firearm without a permit is also quite severe, namely in Emergency Law No. 12 of 1951, it is stated that the maximum penalty for possessing a firearm without a permit is a maximum of death, life imprisonment and 20 years imprisonment

1. Introduction

Indonesia is a state based on law, as stated in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a state based on law (rechstaat). This also means that Indonesia limits the behavior of its citizens through regulations or norms. "These regulations or norms must be in accordance with applicable law (ius constitutum)."

Laws are essentially passive products of legal politics. Without active enforcement by state officials, laws are ineffective until authorized state officials can effectively implement them.

The various problems that arise in society, with varying numbers and varieties, present a unique challenge for law enforcement officials in exercising their authority, as intended by the law. It becomes particularly problematic when a problem that arises in society becomes extremely complex to resolve. One such





issue concerns crime influenced by the circulation of firearms within the community. Firearms can essentially be owned by civilians through a fairly stringent process.

Crime in society has become a phenomenon, with news about criminal incidents appearing almost daily, both in print and electronic media. These crimes include theft, robbery, murder, and other crimes. These crimes create a sense of insecurity in society, leading individuals to strive for security and protection. One example of self-protection efforts undertaken by communities is owning firearms.

The primary reason for the widespread use of firearms is their ease of portability and use, as well as their ability to inflict rapid harm. Furthermore, firearms can now be purchased freely, legally, and openly. This ease of use has, in fact, led some individuals to misuse firearms by using them without a permit or distributing them illegally within the community.

There are many cases of misuse of firearms ownership without a permit, one of which is robbery, all of which is inextricably linked to the continued circulation of illegal firearms, both standard and custom-made. Many of these crimes involve firearms as a tool. This is because perpetrators can easily obtain illegal firearms circulating in the community. Yet, it's clear that using a firearm can endanger national security and stability. This is where the role of the police is crucial and necessary. However, it's important to understand that crime is a social problem for which responsibility rests with all levels of society.

The rise in firearm ownership is driven by a sense of security that is now very difficult for the public to obtain. The requirements and mechanisms for civilian firearms ownership permits issued by the Indonesian National Police (Polri) are strict, with the first requirement being a recommendation from the local police

2. Research Method

This research is descriptive analytical in nature, which reveals laws and regulations related to legal theories that are the object of research. Descriptive analysis is a method used to describe a condition or situation that is currently occurring or ongoing. The goal is to provide the most accurate data possible regarding the research object, thus exploring ideal aspects, which are then analyzed based on legal theory or applicable laws and regulations. This paper describes matters concerning the ownership of firearms by civilians without the right.

This research employs a normative juridical method, considering that this approach is considered sufficiently applicable to this topic. This research method





will obtain comprehensive normative data and information, from primary, secondary, and tertiary legal materials. The data or information obtained will be compared with laws and regulations related to the ownership of firearms by unauthorized civilians

3. Results And Discussion

Law Number 8 of 1948 concerning Registration and Issuance of Firearms Permits regulates the registration and granting of permits for the use of firearms. Firearms owned by civilians who wish to be registered must be registered with the local police where the person resides. This law stipulates that persons who are not members of the Indonesian National Armed Forces (TNI) or the Indonesian National Police (POLRI) who hold firearms must have a permit. This is regulated in Law Number 8 of 1948 concerning the registration and granting of permits for the use of firearms. What is meant by firearms in this law, are: firearms and their parts, flamethrowers and their parts, gunpowder and their parts such as "patroonhulsen", "slaghoedjes" and others, explosives, including objects containing explosives such as hand grenades, bombs and others. Within a maximum of 30 days from the date of enactment of this law all firearms must be registered. Starting from the date of enactment of this law, the transfer of firearms to other hands is prohibited, except for the transfer of firearms to other hands. Starting from the date this Law comes into effect until the closing date of the registration in question, the transfer of firearms to another location is prohibited, except for such transfers.

Firearms held by persons other than members of the Army or Police must be registered by the Chief of the Residency Police (or the Chief of the Special Region Police, hereinafter referred to as the Chief of the Residency Police) or a designated person. Firearms held by members of the armed forces are registered according to the instructions of the Minister of Defense, and those held by the Police according to the instructions of the National Police Center. Each firearm to be registered must be brought to the registration location and presented to the Chief of the Residency Police or a designated person. Those registering their firearms receive a registration certificate according to the model determined by the Chief of the National Police Center. The registration certificate for registered firearms serves as a temporary firearms use permit, hereinafter referred to as a temporary permit. Within 7 days from the closing date of registration, the Chief of the Residency Police shall report the results of the registration to the Chief of the National Police Center.

Every person who is not a member of the Army or Police who owns and uses a firearm must have a firearms permit according to the model determined by the





Chief of the National Police. A permit must be issued for each firearm. The person authorized to issue a firearms permit is the Chief of the Residency Police or a person designated by him. All firearms become the property of the State, if after 16 days from the closing date of firearms registration, the firearm does not have a firearms permit. A firearms permit (including a temporary permit) can be revoked by the party authorized to issue it if the firearm is misused, and the firearm can be confiscated.

According to applicable provisions, the method of owning a firearm must meet the following requirements:

- a. Applicants for firearms permits must meet certain medical and psychological requirements. Applicants must be medically fit, free from any physical disabilities that could impair their ability to carry or use firearms, and have normal vision.
- b. Applicants must be individuals who are not easily nervous or panicky, are not emotional, and are not easily angered. Fulfillment of these requirements must be proven by the results of a psychological test conducted by a team appointed by the National Police Headquarters Psychology Service.
- c. The suitability, interests and other safety considerations of potential firearm users must be considered, to avoid any deviations or endangering the lives of others;
- d. The applicant must have good behavior and have never been involved in a criminal case as proven by an SKKB;
- e. Applicants must pass the screening carried out by the Head of IPP and Sub-Directorate of Pamwassendak.
- f. Applicants must be between 21 and 65 years of age; and
- g. Applicants must also meet administrative requirements and have a Special Firearms Rights Permit (IKHSA).

After fulfilling the above requirements, the applicant must also know the next procedure as directed according to existing provisions, including:

- a. The initial application procedure requires a recommendation from the local Regional Police (Polda), with the aim of finding out the applicant's domicile so that it can be easily recorded, so that weapon ownership can be easily traced.
- b. After receiving a recommendation from the Regional Police, you must pass the psychological, physical health, talent and skills tests at the National Police Headquarters as required.
- c. To obtain a certificate of completion for Class I to Class III qualifications, candidates must pass a skills test. Class III qualification requires successfully firing ten rounds and hitting a target with a score between 120 and 129 (as





evidenced by a certificate issued by a National Police-licensed Shooting Training Institution and authorized by a designated National Police official).

- d. The permit process and firearms possession test must be completed within three to six months. Failure to do so within this timeframe will result in the National Police refusing to proceed with the possession test.

Law Number 8 of 1948 concerning Registration and Issuance of Firearms Permits It is stated that firearm ownership permits are only granted to certain officials, including:

- a. Private or banking officials, namely president director, president commissioner, commissioner, main director and finance director;
- b. Government officials, namely Ministers, Chairman of the MPR/DPR, Secretary General, Inspector General, Director General, and Cabinet Secretary, as well as Governors, Deputy Governors, Regional Secretaries, Regional Inspectors, Chairman of the DPRD-I and Members of the DPR/MPR;
- c. TNI/Polri and retirees.

To date, many civilians have applied for firearms ownership permits, whether for self-defense, sport, hunting, or even for the hobby of collecting various types of firearms. This certainly presents a problem, given that the permitted items are considered extremely dangerous. Civilians are essentially permitted to use firearms for self-defense, collectibles, sport, and hunting, provided they meet certain administrative licensing requirements. Granting firearms permits to civilians is a form of dispensation granted by state officials. Once a firearms ownership permit (dispensation) is obtained, the firearm becomes the responsibility of the permit holder, in addition to the police who issued the policy, regarding its use, storage, and supervision.

A weapon is a tool used to injure, kill, or destroy an object. Weapons can be used for offense or defense, as well as for threat and protection. Anything capable of causing harm (even to the human psyche and body) can be considered a weapon. Weapons can be as simple as a club or as complex as a ballistic missile.

A firearm is a weapon that fires one or more projectiles propelled at high speed by gases produced by the combustion of a propellant. This rapid combustion process is technically called deflagration. Early firearms generally used black powder as a propellant, while modern firearms now use smokeless powder, cordite, or other propellants. Most modern firearms use a circular barrel to impart spin to the projectile and increase trajectory stability.

A firearm is defined as any device, whether mounted or not, operable or incomplete, designed or modified, or readily modified to discharge a projectile as a result of the development of gases resulting from the ignition of flammable





materials within the device, and includes any additional equipment designed or intended to be installed on such a device.

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Indonesia has two laws that, despite their "old" age, remain effectively in effect. One of them is Law Number 12/Drt of 1951 concerning Firearms (the Firearms Law). This law is the only law still effectively enforced against perpetrators of firearms abuse. This law explicitly regulates the elements of the crime of firearms abuse in Indonesia.

The provisions of Law No. 12 of 1951 essentially regulate temporary special punishments. This regulation also establishes criminal sanctions for anyone who misuses firearms and explosives.

Anyone who, without the right, brings into Indonesia, makes, receives, tries to obtain, hands over or tries to hand over, controls, carries, has a stockpile of or has in his possession, keeps, transports, hides, uses or takes out of Indonesia any firearm, ammunition or explosive material, shall be punished with the death penalty or life imprisonment or a maximum temporary imprisonment of twenty years.

The definition of firearms and ammunition also includes all items that have been amended by the Ordonnantie dated 30 May 1939 (Stbl. No. 278), but does not include in that definition weapons that clearly have the purpose of being antiques or magical items (*merkwaardigheid*), and are not weapons that remain unusable or are made in such a way that they cannot be used. The definition of explosives includes all items that can explode, as intended in the Ordonnantie of May 9, 1931 (Stbl. No. 168), all types of gunpowder, incendiary bombs, mines (*mijnen*), hand grenades and in general all explosives, whether they are single chemical mixtures (*enkelvoudige chemische verbindingen*) or mixtures of explosives (*explosieven mengsels*) or explosive inserts (*inleidende explosieven*), which are used to explode other explosive items, but are not included in the definition of munitions.

This regulation is usually used for cases of firearms misuse and smuggling into Indonesia. Emergency Law No. 8 of 1951 is still in effect and has not been repealed. It also specifically regulates sanctions for firearms misuse. However, as stated in the articles above, these prohibited acts can be committed if the person has the right to own a firearm, assault weapon, stabbing weapon, or thrusting weapon (*slag-, steek-, or stootwapen*).



Anyone who without the right brings into Indonesia, makes, receives, tries to obtain, hands over or tries to hand over, controls, carries, has a stockpile of or has in his possession, stores, transports, hides, uses or removes from Indonesia any weapon for striking, stabbing or piercing (slag, steek of stoot wapen), is punished with imprisonment for a maximum of ten years.

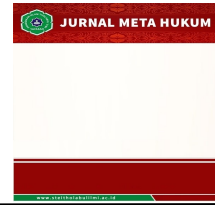
In the definition of a weapon for hitting, a weapon for stabbing or a weapon for stabbing in this article, it does not include items which are clearly intended for use in agriculture, or for household work or for the purposes of carrying out work legally or which clearly have the purpose of being heirlooms or antiques or magical items (merkwaardigheid).

Acts punishable under this Law are considered crimes. If an act punishable under this Law is committed by or under the authority of a legal entity, prosecution may be initiated and punishment may be imposed on the administrator or his local representative. Goods or materials with or against which a punishable act is committed may be confiscated, even if the goods do not belong to the accused. Goods or materials confiscated must be destroyed, unless the goods are given another purpose by or from the Minister of Defense for the benefit of the State.

Parties entrusted with dealing with acts that can be punished under articles 1 and 2 are apart from people who have generally been appointed to investigate acts that can be punished, as well as people who, by statutory regulations, have been or will be appointed to investigate crimes and violations relating to firearms, munitions and explosives. Investigating employees and those who accompany them always have the right to enter places, which they deem necessary to enter, in order to carry out their duties carefully. If they are prevented from entering it, they can, if necessary, ask for help from the authorities.

In Indonesia, the legal provisions regarding firearms and explosives are regulated in Law Number 8 of 1948 concerning Registration and Granting of Permits for the Use of Firearms, in Part I concerning general rules in Article (1) it is explained: "That the firearms referred to in this law are firearms and their parts, flamethrowers and their parts, gunpowder and their parts such as patroonhulsen, slaghoeajes and others, explosives, including objects containing explosives such as hand grenades, bombs, and others."

Article 1 paragraph (1) of Law Number 8 of 1948 concerning Registration and Granting of Firearms Use Permits states: "Anyone who, without the right, brings into Indonesia, makes, receives, tries to obtain, hands over or tries to hand over, controls, carries, has a stockpile of it or has in his possession, keeps, transports, hides, uses or removes from Indonesia any firearm, ammunition or explosive



material, shall be punished with the death penalty or life imprisonment or a temporary prison sentence of up to twenty years."

Based on the Decree of the Chief of the Indonesian National Police Number 82 of 2004 concerning the Implementation of Supervision and Control of Non-Organic Weapons, a permit applicant must have a minimum shooting skill of III, meaning someone must be able to shoot accurately. Above that, more advanced are level II and level I. This ability must be proven by a certificate issued by a Shooting Training Institution that has been licensed by the Indonesian National Police. The certificate must also be validated by an appointed Indonesian National Police official. Of course, he must also be of good behavior and have never been involved in a criminal case as evidenced by a Certificate of Good Conduct (SKKB). Regarding age, the applicant must be an adult but not exceeding 65 years of age

4. Conclusion

Legal regulations regarding the crime of possession and use of firearms are regulated in Emergency Law No. 12 of 1951, Government Regulation in Lieu of Law No. 20 of 1960, and the regulation of the Chief of Police No. SK Kepala Polri Number 82 of 2004 concerning the Implementation of Supervision and Control of Non-Organic Weapons. The penalty for possessing a firearm without a permit is also quite severe, namely in Emergency Law No. 12 of 1951 it is stated that the maximum penalty for possessing a firearm without a permit is a maximum of the death penalty, life imprisonment and 20 years in prison.

Law enforcement against illegal possession of firearms by civilians is by taking action preventive and repressive. Carrying out preventive measures involves carrying out outreach, guidance, and development activities, tasks that aim to prevent the intersection of intent and opportunity, thus preventing a crime from occurring. Carrying out repressive measures involves eradicating a crime by collecting all available evidence, from the pre-investigation stage to the prosecution stage if a crime occurs.

The judge's legal considerations in decision Number 58/Pid.Sus/2024/PN PblisAll elements of Article 1 paragraph (1) of Emergency Law Number 12 of 1951 have been fulfilled, then the Defendant must be declared to have been legally and convincingly proven to have committed a crime as stated in the single indictment. The Panel of Judges did not find anything that could eliminate the nature of criminal responsibility in the Defendant, either as a justification or excuse and during the examination of the Defendant the Panel of Judges obtained a conviction of the Defendant's guilt, then the Defendant must be



declared to have been legally and convincingly proven guilty of committing a crime and therefore the Defendant deserves to be sentenced

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