

## A LEGAL REVIEW OF THE APPLICATION OF CRIMINAL PENALTIES TOWARDS USERS OF SHADOW WEAPONS BY MOTORCYCLE GANGS (Study of Decision Number 57/Pid.Sus/2024/PN.Tbt)

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### ABSTRACT

Motorcycle gangs are part of a culture (subculture) of society that is generally formed from young men or young men with the same social, regional, or school background, who associate themselves with riding motorbikes as a form of expression. All crimes committed by motorcycle gangs are very disturbing to Indonesian society today, including the people of Tebing Tinggi City, because it is not uncommon for motorcycle gangs to carry sharp weapons. Based on the position of the case and decision number 57/Pid.Sus/2024/PN.Tbt above, the Application of Criminal Law by the judge as a consideration in deciding the crime of not having the right to carry sharp weapons by motorcycle gangs in Decision 57/Pid.Sus/2024/PN.Tbt committed by the Defendant looks at the Public Prosecutor's Indictment, the Public Prosecutor's Demands, witness statements, defendant statements and evidence.

### 1. Introduction

The presence of motorcycle communities has created social problems within the community. The behavior of motorcycle communities in riding is actually nothing new. The negative public view of motorcycle communities is reinforced by various incidents, such as incidents of motorcycle gang members vandalizing roadside stalls.

Factors contributing to the emergence of motorcycle gang violence, such as robbery, motorcycle theft, and public disturbances, include the large number of unemployed youth, lack of parental attention, the desire for recognition by motorcycle gangs, and encouragement from other motorcycle gangs.

The phenomenon of motorcycle gang crime has become a trending topic and is typically committed by teenagers. All crimes committed by motorcycle gangs are currently deeply disturbing to Indonesian society, including the people of Tebing Tinggi City. These crimes include not only minor violations such as traffic

violations, but also crimes such as vandalism of public facilities, clashes between motorcycle gangs, assaults that result in death, extortion, and often the use of sharp weapons by motorcycle gangs.

In fact, cases of misuse of sharp weapons are increasingly common, not only by adults but also by teenagers and minors. Therefore, possessing a sharp weapon without a permit is a crime and the perpetrator is subject to criminal sanctions.

A case of possession of a sharp weapon involved a 21-year-old man from Jalan Lintas Medan Tebing Tinggi Rampah Kiri, Firdaus Village, Sei Rampah District, Serdang Berdagai Regency. The young man was detained by police after being found carrying a sharp weapon in the form of a sickle/machete. Police apprehended the man with evidence of a sickle/machete made of iron with a handle wrapped in white rope. Due to the possession of this sharp weapon, the defendant's actions are regulated and punishable by Article 2 paragraph (1) of Law No. 12 of 1951 concerning the Misuse of Sharp Weapons, Firearms, and Explosives in conjunction with Article 55 paragraph (1)

1. In the jurisdiction of the Tebing Tinggi District Court, there is a case, namely case number 57/Pid.Sus/2024/PN.Tbt. In this case, the witness saw the defendant and his entourage carrying sharp weapons while riding a motorcycle and dragging the sharp weapons onto the asphalt road. According to the witness's statement, on Sunday, December 3, 2023, at approximately 00.30 WIB, the witness and his friends were sitting in front of the hospital. Pamela Tebing Tinggi City, then the witness saw from the direction of Tebing Tinggi City towards Medan City there were 4 (four) motorbikes, each motorbike was carrying 3 (three) people carrying sharp weapons in the form of 2 (two) sickles, Base Ball sticks and ice cube cutters, where 1 (one) motorbike carrying 3 (three) people carried 1 (one) weapon, the motorbikes used were 1 (one) black Vario motorbike with red trim, 1 (one) blue Verja motorbike, 1 (one) black Supra Fit motorbike and 1 (one) Vario motorbike dragging the Base Ball stick onto the asphalt road while the ice cube cutter and long knife were pointed upwards while shouting "But it is not clear what was said" and spontaneously the witness and his friends immediately chased the perpetrators using motorbikes and the perpetrators immediately drove their motorbikes towards Medan City, when the witness chased the perpetrators, the perpetrators scattered, some went first and some went later, likewise the witness and his friends chased the perpetrators Splitting up, the witness chased the perpetrator with a friend named Fahrul, who was riding a Vario motorcycle, to the Tebing Tinggi Toll Gate intersection. However, they were unable to reach the perpetrator and turned back towards Tebing Tinggi City.

## 2. Research Method

This study employs a normative juridical approach, which involves examining theories, concepts, and relevant legislation, or a statutory approach. Normative research is a study of legal systematics, primarily aimed at identifying legal concepts or foundations.

The author's approach to this thesis is descriptive analysis, describing applicable legislation in relation to legal theories and the practice of implementing positive law related to the formulated problem. Legal research employs several approaches, enabling researchers to obtain information from various aspects of the issue being addressed. This research employs a statutory approach. Normative research must utilize a statutory approach, as the various legal regulations that form the focus and central theme of the research will be examined.

### 3. Results And Discussion

Based on the facts presented in the trial, evidence was presented regarding the elements of the charges charged by the Public Prosecutor. The elements fulfilled in this case were the single charge of Article 2 paragraph (1) of Law No. 12 of 1951 concerning the Misuse of Sharp Weapons, Firearms, and Explosives in conjunction with Article 55 paragraph (1) 1 of the Criminal Code, the elements of which are as follows:

a. Element of Whomever;

- Considering, that what is meant by "whoever" here is a person or human being as a legal subject as a supporter of rights and obligations who is able to be responsible for the actions he/she has committed;
- Considering, that in relation to this case, based on the testimony of the witnesses and the testimony of the Defendants in court, which are mutually consistent with each other, it is clear that what is meant by whoever in this case is the Defendant Muhammad Alwi alias Alwi complete with all his identities, not anyone else and in court the Defendant has confirmed his identity;

- b. Unauthorized elements bring into Indonesia, make, receive, try, obtain, hand over or try to hand over, control, carry, have a stock of it or have it in their possession, store, transport, hide, use or remove from Indonesia any weapon for hitting, stabbing or piercing weapons (slag-, steek-, or stootwapen);

In this case, the author observes that the formal and material processes in decision

57/Pid.Sus/2024/PN.Tbt are consistent. Therefore, the application of substantive law in decision 57/Pid.Sus/2024/PN.Tbt complies with applicable law.

The implementation of Emergency Law Number 12 of 1951 can be seen in decision 57/Pid.Sus/2024/PN.Tbt, where the judge delivers both the verdict and his opinion. In the above case of the criminal act of carrying a sharp weapon, the sentence applied by the Judge is to apply a prison sentence of 1 (one) year and 6 (six) months, as well as the demands of the public prosecutor who generally demands 1 (one) year and 6 (six) months which is generally the same as the Judge's decision, if we look at this here, the Prosecutor is too light in terms of giving demands to the Defendant for various reasons behind it, the Panel of Judges has applied the same sentence as the Prosecutor's demand, but the Panel of Judges should also be able to use their authority, because the freedom and independence of a Panel of Judges is guaranteed by law, then the Panel of Judges can impose less, the same, or even exceed the prosecutor's demands, this is because such actions can be threatened in Article 2 Paragraph 1 of Emergency Law Number 12 of 1951, which is a maximum of 10 years.

Regarding the imposition of a criminal sentence on a defendant, it depends entirely on the assessment and belief of the panel of judges regarding the evidence and facts revealed at trial. According to Article 193 paragraph (1) of the Criminal Procedure Code, if the court is of the opinion that the defendant is guilty of committing a crime, then the court will sentence him.

In Decision No. 57/Pid.Sus/2024/PN.Tbt, the decision-making process carried out by the Panel of Judges, according to the author, was in accordance with applicable legal regulations and was based on valid evidence. In this case, the evidence used by the Judges was the defendant's testimony, witness testimony, and evidence in the form of a sharp weapon, namely 1 (one) sickle blade made of iron. They then considered the defendant's responsibility for his actions, considering that at the time of committing the act, the defendant was aware of the consequences.

Based on the results of the author's research, the author can conclude that based on Decision No. 57/Pid.Sus/2024/PN.Tbt, the author agrees with the Panel of Judges who found the defendant guilty of violating Article 2 paragraph (1) of Law No. 12 of 1951 concerning the Misuse of Sharp Weapons, Firearms, and Explosives in conjunction with Article 55 paragraph (1) 1 of the Criminal Code because the elements of the crime have been fulfilled and proven as facts before the court.

The judge's decision is the result of the authority to adjudicate each case handled and is based on the Indictment and the facts revealed in court and is linked to the application of a clear legal basis, including the severity of the application of

imprisonment or deprivation of liberty. This is in accordance with the principle of criminal law, namely the principle of legality regulated in Article 1 paragraph (1) of the Criminal Code, namely that Criminal Law must be sourced from the law, meaning that punishment must be based on the law. Regarding judges who impose minimum sentences on defendants, according to the author, this cannot always be applied because it has the potential to become jurisprudence in the future. However, the Law on Judicial Power stipulates that judges' decisions are independent and must be free from intervention from any party. In such conditions, all judges' decisions must fulfill the public's sense of justice. The author hopes that the Panel of Judges in Case No. 57/Pid.Sus/2024/PN.Tbt. will emphasize a harsher sentence, considering that this crime is the starting point for other, more serious crimes, such as murder, theft with violence, and assault, which certainly involve victims, both injured and dead.

#### 4. Conclusion

In the application of criminal penalties to the perpetrator of the crime of participating in a crime without the right to carry a sharp weapon in the case of the defendant's actions, he was charged with Article 2 paragraph (1) of Law No. 12 of 1951 concerning the Misuse of Sharp Weapons, Firearms, and Explosives in conjunction with Article 55 paragraph (1) Ke-1 of the Criminal Code and Law No. 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations with the judge's decision, namely imprisonment for the defendant, therefore with a prison sentence of 1 (one) year and 6 (six) months.

The judge's considerations in sentencing the perpetrator of the crime of participating in a crime without the right to carry a sharp weapon in case number 57/Pid.Sus/2024/PN.Tbt include legal considerations (charges, demands, evidence, and physical evidence) and non-legal considerations (sociological and philosophical considerations).

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