

THE EFFECTIVENESS OF LAW NUMBER 12 YEAR 1951 AGAINST THE USE OF FIREARMS IN MAKASSAR FROM THE SOCIOLOGY OF LAW PERSPECTIVE

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Abstract

This study aims to analyze the effectiveness of Law Number 12 Year 1951 in preventing the misuse of firearms in Makassar from the perspective of legal sociology. This research is sociological legal research. Sources of data in this study are direct interviews with respondents as the primary data source and literature study as a secondary data source. The collected data was then analyzed qualitatively. This study shows that (1) The effectiveness of Law Number 12 Year 1951 in preventing the misuse of firearms in Makassar City from the perspective of legal sociology is still less effective because seen from the licensing and control procedures for firearms, it is very strict but in the application of sanctions that do not the maximum and even in many cases the application of sanctions is less than half of the maximum threat as regulated in the Law Number 12 Year 1951; and (2) Obstacles faced in implementing the Law Number 12 Year 1951 concerning firearms in Makassar are due to law factors, law enforcement officials, facilities and infrastructure factors, cultural factors, and community factors. Among these five factors, cultural factors are quite influential in the effectiveness of law enforcement against the misuse of firearms in Makassar, it can be seen that cultural factors can actually encourage others to commit crimes.

Keywords: effectiveness, firearms, use

INTRODUCTION

The term crime is a very basic term in criminal law, criminal acts have an abstract meaning from concrete events in criminal law. The term *strafbaarfeit* is an event that can be punished while *delictum* means an act for which the perpetrator can be punished (criminal).¹ Society is always faced with problems and conflicts of interest between fellow human beings, therefore a law is needed to regulate relations between humans in society in order to maintain security and peace in the life of the nation and state. The enactment of the law can maintain balance, order and welfare in society because it can reduce prohibited actions or actions that can be categorized as criminal acts or violations through the mechanism of sentencing. Crimes that occur in society are a violation of positive law, namely criminal law that has been codified in the form of law. Crimes and violations regulated in the Criminal Code (hereinafter abbreviated to the Criminal Code) can be seen as objective criminal law, namely a crime classified according to the provisions of the law itself and subjective criminal law, namely the provisions in the law regarding the rights of the ruler. apply the law.

The number of criminal acts in Indonesia from year to year continues to increase, one of which is the crime of misuse of firearms. Unlike the case with crime, it has been generally acknowledged that crime has caused misery, suffering, and unrest for the people of various countries in the world. This is not only found in poor countries or developing countries, but also developed countries.

The circulation of firearms will certainly cause unrest in the community, considering that firearms are very dangerous. The use of firearms is legal or licensed, such as those owned by members of the police, TNI, service/agencies, and the general public. However, there are also those that are illegal or unlicensed, violate the law, and have the potential to be used for criminal acts. The use of legal firearms in practice can not be separated from various problems, in addition, there are officers who abuse their firearms, and there are also people who have firearms licenses who violate the rules, such as for criminal acts.

The use of firearms by civil society can actually be reduced if there is a security guarantee, and this is a shared task between the apparatus and the community. Regarding illegal firearms circulating, it can be in the form of misused firearms from the apparatus or homemade firearms. The circulation of illegal firearms is very dangerous because illegal firearms are basically made, traded, and used for criminal acts. The circulation of firearms in the community, both legal and illegal, must receive special supervision and be disciplined as early as possible by the relevant parties, such as the Regional Police before misuse occurs which will cause even more victims.

As we all know when the shooting incident by an individual member of the Mobile Brigade of the South Sulawesi Police against an employee of the Makassar City Transportation Service occurred at around 10.00pm on Jalan Danau Tanjung Bunga, Sunday (April 3, 2022), after controlling traffic on Jalan Metro Tanjung Flower. Before it was known as a murder case, the police stated it was a single traffic accident case due to a heart attack. Likewise when taken to the nearest hospital. However, when the body arrived at his home and was about to be bathed, the family found a hole like a gunshot mark in the left armpit until the body was finally taken to Bhayangkara Hospital for an autopsy. Two hours after the autopsy, a team of police doctors at Bhayangkara Hospital managed to remove the projectile lodged in the victim's lungs which was also the cause of death due to a leaky lung due to being hit by a bullet.² Based on the autopsy results, the victim was not a victim of a traffic accident but died due to gunshot wounds.

Cases of gun abuse also occurred, namely, threats using firearms by an entrepreneur in Makassar with the initials Hasan Basri or familiarly called Bang Hasan (73 years) and was arrested at Sultan Hasanuddin International Airport, Makassar, Sunday (26 May 2019) night. Based on the information from the police, he was arrested and taken to Port Police related to the alleged threat to a man named Henri (38 years) using a firearm.

The data on crimes that are mostly carried out using guns above raises questions about the law, especially the law related to guns. According to Satjipto Rahardjo, since the law is based on the community (humans), it is from within the common life that the materials for building a legal system are taken.³ Law becomes an authentic or natural institution, because it departs from the reality of society and humans. A good law is a law drawn from the material of common life itself. Then the question is whether the law related to guns has been based on the reality of society and humans so that it can be said that it is a good law.

The crime rate in Indonesia is growing day by day. Criminals no longer use conventional ways of

¹ Amir Ilyas, *Asas-Asas Hukum Pidana*, Rangkang Education Yogyakarta & PuKAP-Indonesia, Yogyakarta, 2012, p. 18-19.

² Republika online

³ Satjipto Rahardjo, *Hukum dan Perilaku; Hidup Baik adalah Dasar Hukum yang Baik*, Jakarta: Kompas, 2009, p. 5-6

acting. Not a few criminals use tools to facilitate their actions. Homemade firearms also became one of the means they chose to carry out their crimes. Many criminals use homemade firearms. Not a few vital objects were blown up by criminals. Meanwhile, firearms are used not only to scare the public, but also as a tool to fight against law enforcement officers. This of course disturbs the security and order in society.⁴

One of the crimes that disturbs the community is the crime of using firearms. There are many kinds of these crimes, such as murder, serious mistreatment, theft by weight, threats, kidnapping, and so on. All of these types of crimes are regulated in the Indonesian Criminal Code.

Indonesia is a legal state where the State according to Logemann is "a social organization that aims with its power to regulate and organize a society".⁵ Meanwhile, according to Achmad Ali, law is "a set of rules or measures that are arranged in a system to determine what humans can and cannot do as citizens in their social life".⁶ Soehino emphasized that the State is a forum for a nation to achieve its ideals or goals of its nation.⁷

Formulation policy is a step taken by the state to formulate any actions that are deemed despicable, then use criminal law as an effort to overcome acts that are considered despicable, so that people stay away from them or do not commit these acts. As for the use of criminal law by issuing laws and regulations which explicitly contain criminal sanctions. This is in line with what Barda Nawawi Arief said on another occasion, legislative policy is a policy in determining and formulating something in legislation. Legislative policies are often referred to as "formulating policies".⁸

The use of criminal law as one of the domains for tackling crime should at the formulation stage be planned properly and correctly because the purpose of criminal law itself is ultimately to achieve public welfare. The welfare of the community here is the welfare of the community at large, not just to send the perpetrators to prison and cause new problems, namely full prisons. The use of legal remedies, including criminal law, as an effort to overcome social problems, including in the field of law enforcement policies. In addition, because the goal is to achieve the welfare of society in general, this law enforcement policy is also included in the field of social policy, namely a rational effort to achieve public welfare.⁹ This means that, in terms of policy making at the policy formulation stage, criminal law sanctions used to tackle crime should be chosen rationally both in determining the type of criminal sanction, the duration of the criminal sanction, and the method of implementation of the crime. Policy-making that is not rational, will actually cause its own problems, namely the emergence of criminogenic factors. Legislative policies or formulation policies in the field of criminal law enforcement do not mean that they must be written in one law book. It could be stated in various laws as it is today (there is a material criminal law inside and outside the Criminal Code; there is a criminal procedure law inside and outside the Criminal Procedure Code, and there is a criminal implementation law).¹⁰ Based on the description above, the problems that will be discussed in this paper are as follows how is the effectiveness of Law Number 12 Year 1951 in preventing the misuse of firearms in Makassar from the perspective of the sociology of law?

METHOD

This research is sociological legal research.¹¹ Sources of data in this study are direct interviews with respondents as the primary data source and literature study as a secondary data source.¹² The collected data was then analyzed qualitatively.¹³

⁴ Wahyu Wibowo, *Pengkajian Hukum tentang Penggunaan Senjata Api dan Bahan Peledak untuk Kepentingan Militer dan Sipil*, Final Report at the Ministry of Law and Human Rights of the Republic of Indonesia, 2011, p. 1

⁵ M. Solly Lubis, *Ilmu Negara*, Bandung: Mandar Maju, 2002, p. 1

⁶ Achmad Ali, *Menguak Tabir Hukum*, Lembaga Percetakan 2002, p. 30

⁷ Soehino, *Ilmu Negara*, Yogyakarta: Liberty, 2005, p. 148

⁸ Barda Nawawi Arief and Muladi, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*, Jakarta: Kencana Prenada Media Group, 2011, p. 213

⁹ Barda Nawawi Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*, Yogyakarta: Genta Publishing, 2010, p. 17

¹⁰ Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Bandung: Citra Aditya Bakti, 2005, p. 31

¹¹ Irwansyah, *Penelitian Hukum "Pilihan Metode dan Praktik Penulisan Artikel"*. Yogyakarta: Mirra Buana Media, 2020, p. 93

¹² Kadarudin, *Mengenal Riset dalam Bidang Ilmu Hukum: Tipologi, Metodologi, dan Kerangka*, Ponorogo: Uwais Inspirasi Indonesia, 2020, p. 117

¹³ Kadarudin, *Penelitian di Bidang Ilmu Hukum (Sebuah Pemahaman Awal)*, Semarang: Formaci Press, 2021, p. 203

DISCUSSION

The Effectiveness of the Law Number 12 Year 1951 in the Prevention of the Misuse of Firearms in Makassar in the Sociology of Law Perspective

1. Licensing Procedure

In accordance with the Instruction of the President of the Republic of Indonesia Number 9 of 1976, what is meant by firearms is one of the tools to carry out the main tasks of the armed forces in the field of defense and security. For the Indonesian National Army (Tentara Nasional Indonesia/TNI) it is only allowed to use firearms if it is in the task of securing the state, for example in vulnerable areas and is not allowed to be owned in daily tasks, for example, brought home. For the Police it is allowed to own and use firearms, but in this case, it is still in the procedure in accordance with existing regulations." In relation to the ownership and use of firearms, it is further stated that the use of firearms for civilians must have a permit in accordance with the Regulation of the National Police Chief Number 18 of 2015, In this regulation, there are several categories of citizens who can own firearms with live ammunition, including the owners of civil servants/employees. State-owned employees' class IV-A/equivalent to Police/TNI with a minimum rank of commissioner/major Legislative/State High Institution/Head of Professional Region who obtain permission from the competent authority.

These five categories are not necessarily allowed to have firearms. All of them have to go through several tests, such as administrative tests, shooting skills tests, and interviews with the Intelligence and Security Agency of the Police. Not only that, prospective firearm owners must first undergo physical and mental health tests to avoid the misuse of firearms. In addition to regulating firearms owners, the above regulations also regulate what weapons are allowed. Because, not all types of weapons can be owned and used for self-defense.

Firearms Ownership in Indonesia the regulation states that there are 3 types of firearms that may be owned, namely:

1. Live ammunition;
2. Rubber bullet firearms;
3. and Firearms with gas bullets.

The number of weapons owned is also limited, namely a maximum of two weapons with a maximum ammunition of 50 bullets per weapon. The three types of weapons are further limited in their specifications as follows:

1. Sharp Bullet Firearms Firearms that use live bullets are classified as deadly weapons. This weapon will be dangerous if fired directly at the vital organs. The National Police also limits the types of live ammunition that can be owned, namely rifles and pistols. For this type of rifle, only 12 GA caliber weapons are allowed to be owned. In the second type, only pistols with calibers 22, 25, and 32 are allowed to be owned and used.
2. Rubber Bullet Firearms and Gas Bullets These two types of weapons are not lethal, but still dangerous. The police limit the possession of this type of weapon to weapons with 9mm caliber bullets. Weapons of more than that caliber will be said to be illegal and must be handed over to the police. These weapons must be registered with the National Police in order to be owned and used. To anticipate the circulation of illegal weapons, the National Police will first screen the registered weapons. Requirements to Have Firearms.

The following is the procedure for registering/submitting a permit to own and use weapons for self-defense.

1. Submit an application to the Director of Intelligence and Security of the Regional Police, by bringing the following documents:
 - a. Photocopy of import/purchase/grant permit which is the origin of firearms
 - b. The identity of the registered firearms. Photo with a red base, size 2 X 3 and 4 x 6, each 4 (four) pieces
 - c. Curriculum Vitae, SKCK Photocopy of KTP/KTA
 - d. Birth certificate
 - e. Health certificate from the police doctor
 - f. Certificate from the Polri psychologist. Class III shooting certificate from the National Police
 - g. Make a statement of ability not to abuse firearms
 - h. Photocopy of SIUP (for entrepreneurs), photocopy of position SKEP (for government officials, BUMN, Legislative, and TNI/Polri).
2. Upon application for a permit for ownership and use, the Dirintelkam Polda instructs the Head

of the Resort Police to:

- a. Checking the applicant's identity, type of firearm
 - b. Researching the truth of the applicant's reasons
 - c. Make written suggestions to the Kapolda based on the results of field checks
3. Based on the recommendation of the Chief of Police, the Kapolda issues a recommendation to be submitted to the Kabaintelkam Polri
 4. The Kapolda through the Kabaintelkam issues a firearms license.

All these requirements must be met by citizens to be able to own and use firearms. In addition, permits that have been issued must be renewed every year.

According to Rayhana S.,¹⁴ the ownership of this firearm itself is regulated on a limited basis. Within the police and TNI, there are regulations regarding ownership procedures and certain conditions for owning firearms. In civil society, there are certain procedures for legally owning firearms. The procedure is regulated in Law No. 8 Year 1948 concerning Registration and Granting of Permits to Use Firearms. Article 5 paragraph (1) of Law No. 8 Year 1948 requires that every firearm in the hands of a person who is not a member of the Army or Police must be registered by the Chief of the Residency Police. According to article 9 of Law No. 8 Year 1948, every person or civilian who owns and uses firearms must have a license to use firearms according to the sample set by the Head of the State Police. This permit for the use of firearms is issued by the Chief of the Residency Police or the person appointed by him.

The provisions regarding officials who are given the authority to issue firearms permits were amended by Regulation in Lieu of Law No. 20/1960 to adjust the designation. Article 1 Regulation in Lieu of Law No. 20 Year 1960 stipulates that the authority to issue and/or refuse a permit application is granted to the Minister/Head of the State Police or the official authorized by him for that purpose. So, the mention is not by the Chief of the Resident Police as in Law No. 8 Year 1948. Furthermore, the application for a permit to own non-organic firearms by the public, which is commonly referred to as a Special Firearms License (IKSHA), is carried out in accordance with the Decree of the Chief of the Indonesian National Police No. Pol: Skep/82/II/2004.

So, it can be seen that the ownership of firearms by civil society clearly requires certain permit application procedures that include skill and psychological requirements. This is regulated in several laws and regulations above. In fact, the permit must be extended for a certain period of time. Therefore, possession of firearms by civil society is not an arbitrary matter. In fact, possession without the right to firearms can be subject to criminal sanctions up to the death penalty. This is related to the huge potential for the misuse of illegal firearms which can even threaten the security and stability of the country. The police are the party that must take firm action against the possession of firearms by civil society. The Indonesian National Police is a state instrument that plays a role in maintaining public security and order (Article 5 of Law No. 2 Year 2002). Old and incompatible legal instruments should also be updated (the 1951 statutory instruments should be subject to amendments). In addition, preventive measures such as firearms raids must also continue to be pursued. Supervision of the circulation of illegal firearms must be handled seriously so that there is no misuse of firearms that endangers the community.

2. Firearms Control

The effectiveness of the application of criminal sanctions, as explained in the literature review chapter, is strongly influenced by various factors. Likewise, only law enforcement related to the prevention of the misuse of firearms and the application of the criminal witness of Law Number 12 Year 1951. Before discussing further regarding its effectiveness, as has been explained in the background, the elements contained in the regulation of this law are still a lot of debate among practitioners. If you look at the arrangements in the law, it can be seen that the law is still far from perfect as an ideal legislation. This is understandable, given the age of this law which is indeed very old, however, some laws are quite old, and there are still some that can be said to be worthy of law, for example, Law Number 1 of 1946 concerning Legal Regulations. Criminal Law (commonly known as the Criminal Code/KUHP). This indicates that the age of the law or in this case the time period for making the law, cannot be used as a reason to measure whether the law is ideal or not.

If you look at Law Number 12/DRT/1951, in essence, its content only contains 6 articles as follows:

Article 1

¹⁴ Rayhana S., *Pembatasan Kepemilikan Senjata Api oleh Masyarakat Sipil dalam Perspektif Hukum dan Sanksi Pidana atas Penyalahgunaannya*, see <https://lk2fhui.law.ui.ac.id/pembatasan-kepemilikan-senjata-api-oleh-masyarakat-sipil-dalam-perspektif-hukum-dan-sanksi-pidana-atas-penyalahgunaannya/>

- (1) Any person who, without the right to import into Indonesia, manufactures, receives, tries to obtain, surrenders, or tries to deliver, controls, carries, has stuck with him or has in his possession, keeps, transports, hides, uses, or removes from Indonesia any firearm, munitions or any explosive material, is punishable by death or life imprisonment, or temporary imprisonment of a maximum of twenty years.
- (2) What is meant by the definition of firearms and munitions includes all goods as described in Article 1 paragraph (1) of the Firearms Regulations (*vuurwapenregeling: in, uit, door, voer en lossing*) 1936 (Stbl. 1937 No. 170), which has been amended by Ordonnantie dated May 30, 1939 (Stbl. No. 278), but does not include weapons that clearly have the purpose of being ancient or magical items (*merkwaardigheid*), and are not weapons that are remains unusable or is constructed in such a way that it cannot be used.
- (3) What is meant by the definition of explosives includes all items that can explode, as referred to in the Ordonnantie dated May 9, 1931 (Stbl. No.168), all types of munitions, incendiary bombs, mines (*mijnem*), hand grenades and in general all explosives, whether they are single chemical yields (*enkelvoudige chemische verbindingen*) or which are a mixture of explosives (*explosieven mengsels*) or injecting explosives (*inleidende explosieven*), which are used to detonate others explosives, just not included in the definition of munitions.

Section 2

- (1) Any person who without the right to import into Indonesia, manufactures, receives, tries to obtain it, surrenders or tries to surrender, controls, carries, has stuck with him or has in his possession, keeps, transports, hides, uses, or removes from Indonesia any batting weapon, stabbing weapon, or stabbing weapon (*slag, steek of stoot wapen*), is punishable by a maximum imprisonment of ten years.
- (2) In the sense of hitting weapons, stabbing weapons, or stabbing weapons this article, does not include goods that are clearly intended to be used for agriculture, or for household work, or for the purpose of carrying out work legally, or which actually Reality has a purpose as an heirloom or an ancient item or a magical item (*merkwaardigheid*).

Article 3

Acts that can be punished according to this law are considered crimes.

Article 4

- (1) If an act punishable according to this Law is committed by or under the authority of a legal entity, the prosecution may be carried out and the punishment may be imposed on the management or on his local representative.
- (2) The provisions in paragraph (1) above shall also apply to legal entities, which act as administrators or representatives of another legal entity.

Article 5

- (1) Goods or materials with which or against which an act is threatened with punishment in article 1 or 2, maybe confiscated, even if the goods do not belong to the accused.
- (2) Goods or materials confiscated according to the provisions of paragraph (1) must be damaged, except if the goods or goods are given by or from the Ministry of Defense for the interest of the State for another purpose.

Article 6

- (1) Those who are entrusted with administering acts that can be punished under articles 1 and 2 apart from people who have generally been appointed to investigate punishable acts are also people, who by law have been or will be appointed to investigate crimes and related offenses with firearms, munitions, and explosives.
- (2) Investigators and those who follow them are always entitled to enter places, which they deem necessary, for the purpose of carrying out their duties carefully. If they are prevented from entering it, they can if necessary ask for help from the apparatus of power.

Looking at the provisions above, the law does not have general provisions, which are usually in Chapter I related to the general understanding used in the law. Referring to Law Number 12 Year 2011 concerning the Establishment of Legislation, ideally, the body of law should contain the following:

1. General Terms
2. Subject matter Arranged
3. Criminal Provisions (if required)
4. Transitional Provisions (if required)
5. Closing Terms

General provisions are laid out in chapter one. If there is no chapter grouping in the Legislation, the general provisions are placed in an article or several initial articles. General provisions contain:

- a. limitation of understanding or definition;
- b. abbreviations or acronyms as outlined in the definition or definition; and/or
- c. other matters of a general nature that apply to the next article or several articles, including provisions that reflect the principles, purposes, and objectives without being formulated separately in the article or chapter.

This arrangement is not contained in the provisions of the 1951 Drt Law, which is explained only in relation to the meaning of "firearms: and "munitions", "the meaning of explosives". In fact, Article 2 paragraph (1) only emphasizes "the meaning of hitting weapons, stabbing weapons or stabbing weapons in this article, does not include tangible items..." where such a regulation cannot be categorized as an understanding but is an exception.

The deficiency in the law is not explained in relation to the meaning of entering into Indonesia, making, receiving, trying to obtain, surrendering or trying to surrender, controlling, carrying, having inventory with him or having in his possession, storing, transporting, hiding, using or removing from Indonesia. something firearm. Therefore, it is necessary to give limits for each of these arrangements, considering that what is regulated is a formal offense that mentions the "form of action" of a criminal act.

The misuse of firearms in a general sense is the use of firearms that are not in accordance with their use and violate applicable regulations. However, there are differences in the concept of firearms abuse by ordinary civilians and members of the military. The misuse of firearms committed by civilians can be carried out not only when they do not have a permit, even if they have a permit, but these firearms can also be misused. For example, a person may have a firearms license for sport hunting. There are provisions that must be complied with in the use of firearms for hunting. In addition to the permits that hunting athlete's must-have, the number of firearms and caliber is also limited. The use is also only allowed to be fired at hunting locations and match venues determined by Perbakin. If someone who has a firearms license for sport hunting shoots a firearm in a forest that is not a hunting location determined by Perbakin, it also includes firearms abuse. Whereas someone who uses a firearm without a permit is clearly an abuser.

Based on the results of interviews that the author conducted with the Makassar City Police investigator related to the ownership of firearms for Polri personnel and the public, an explanation was obtained that:¹⁵

"Based on the cases we have handled so far regarding the handling of firearms cases, it is indeed necessary to reform that further regulates the mechanism for the use of firearms for both TNI/Polri officers and civilians and how the criminal sanctions, as well as the elements contained in Article -Article of the law. at least there needs to be an explanation of the elements in it so that in carrying out our duties in the field there is no mistake in applying the law against the misuse of firearms".

Based on the results of the interviews above, the authors argue that the misuse of firearms is still very weak in terms of the rules so there is still a lot of abuse. This unclear rule has given rise to many interpretations due to the lack of clarity or lack of explanation of the elements in the rules (articles) in the Emergency Law.

Firearms and explosives are human creations that have continued to develop for thousands of years. The use of firearms and explosives has also developed along with human civilization which continues to follow the times. Initially, firearms were only used for war purposes, but later they were also used for other purposes, for example as one of the main tools or instruments in defense development through the provision of complete weapons facilities for the armed forces of a country, as a means to support the tasks of the apparatus. security in maintaining security, public order, and law enforcement in accordance with the provisions of laws and regulations, as a means of completing the duties of a special security/police unit, as a means for the interests of sports, and for self-defense. Along with the development of the need for use, firearms and explosives are currently one the trade commodities with high prices and have been traded both domestically and between one and/or several countries in very large quantities. Firearms and explosives can be used as very dangerous instruments

¹⁵ Interview with investigators at the Makassar City Police Department on August 15, 2022

if misused by irresponsible parties.¹⁶

The condition can be exacerbated by cases of smuggling and illicit trafficking of firearms that are not handled properly. According to Cappie, the problem of trafficking and smuggling of illegal firearms or better known as arms smuggling has emerged as a serious problem. Not only among countries but also in regional and even international issues. This is because the presence of illegal firearms can have an impact on crime and an unstable situation, both in the country and in the region, including damaging development and endangering human security. This condition needs attention, where the state must exercise control over firearms and explosives, both in terms of determining the technical limits of firearms and explosives as well as in terms of determining the technical control process. Currently, in terms of regulations, the regulation of firearms and explosives at the statutory level is no longer in accordance with the changes that occur due to the times.¹⁷

The latest legislation-level legislation regarding firearms is Government Regulation in Lieu of Law No. 20 Year 1960 concerning Licensing Authorities granted under the Firearms Law. Previously, provisions regarding firearms and explosives had also been regulated by the Firearms Law of 1936; UU No. 8 Year 1948 concerning Registration and Granting of Permits to Use Firearms; Emergency Law of 1951 Regarding Provisional Special Penalty Regulations. Although at the operational level, provisions regarding firearms have been regulated in many other laws and regulations, the existence of this long-standing law cannot provide maximum efficiency for regulating and controlling firearms and explosives. One of the problems that arise is the problem of coordination between institutions or agencies related to the regulation and supervision of firearms and explosives. Coordination between these institutions or agencies is important because the issue of weapons and firearms is not only the authority of one agency, but many institutions.¹⁸

The other laws referred to are among others the said statutory regulations, including Presidential Decree No. 125 Year 1999 concerning Explosives; Regulation of the Minister of Defense of the Republic of Indonesia No. 7 Year 2010 concerning Guidelines for Licensing, Supervision and Control of Military Standard Firearms Outside the Ministry of Defense and the Indonesian National Armed Forces; Regulation of the Minister of Defense of the Republic of Indonesia No. 36 Year 2012 concerning Guidelines and Procedures for Licensing, Guidance, Development, Supervision, and Control of the Explosives Industry; Regulation of the Chief of the Indonesian National Police No. 8 Year 2012 dated February 27, 2012 concerning the Supervision and Control of Firearms for Sporting Purposes; Regulation of the Chief of Police of the Republic of Indonesia No. 2 Year 2008 concerning Supervision, Control and Supervision of Commercial Explosives and Decree of the Head of the Indonesian National Police Number Pol: SKEP/82/II/2004 dated February 16, 2004 concerning Guidelines for the Implementation of Supervision and Control of Non-Organic Firearms of the Indonesian Armed Forces/POLRI.

As for the form of firearms control carried out by the police in Makassar City, the South Sulawesi Police Provos carries out surveillance, inspection, and data collection on firearms inventory at the Makassar Polrestabes logistics warehouse on a regular basis. In accordance with the procedure, the examination was led directly by the Head of the Sub-Directorate for the Provos of the South Sulawesi Police along with other provost personnel and accompanied by the Head of the Sarpras Sub-section and the Head of the Makassar Police Provos by conducting inspections of both long-barreled and short-barreled firearms along with their ammunition. It is hoped that the inspection of firearms and ammunition in the warehouse is in accordance with the procedures, data collection, and administration, all of which are in accordance with the existing inventory. The South Sulawesi Police Provos also emphasizes increasing vigilance, when borrowing official rifles members to always remind members to be able to maintain the cleanliness and security of keeping official rifles in top condition and to avoid misuse of firearms.¹⁹

To ensure the condition of special tools and equipment is functioning properly, the Makassar Port Police also regularly checks the weapons of its members. In accordance with the procedure, the firearms inspection activity was led directly by the Head of the Makassar Port Police Logistics Division together with the Provos Propam Head and members of the Facilities and Infrastructure Section (subbagsarpras). Checking the guns is also a control of the feasibility of firearms to support members of the National Police in carrying out their duties in the field. Checking the completeness of self, it can reduce the level of violations committed by personnel because these activities are also included in the activities of coaching and supervising personnel. Meanwhile, the form of firearms control carried out by

¹⁶ Andi Widjayanto, et.al., Naskah Akademik Rancangan Undang-Undang tentang Senjata Api dan Bahan Peledak, Jakarta: BPHN Kementerian Hukum dan HAM RI, 2013, p. 9

¹⁷ *Ibid.*, p. 12

¹⁸ *Ibid.*

¹⁹ Interview with investigators at the Makassar City Police Department on August 15, 2022

the police against civilians is by conducting raids in public places.²⁰

3. Application of Sanctions

In line with the Makassar Police Criminal Investigation Unit²¹ The ownership of firearms among members of the National Police and civilians is very strict because otherwise there will be a lot of abuse of firearms, both from among the members of the Police themselves and with civilians, he continued, saying that but the existing rules are not very meaningful because there are still many misuses of firearms, due to the lack of maximum penalties for owners of Illegal Firearms

Article 1 paragraph (1) of the Law Number 12 Year 1951 concerning Firearms stipulates that whoever without the right to import into Indonesia, makes, receives, tries to obtain, surrenders, or tries to hand over, controls, carries, has supplies to him or has in his possession, keeps, transports, hides, uses or removes from Indonesia any firearm, ammunition or any explosive material, is punishable by death or life imprisonment or a maximum temporary prison sentence of twenty years.

The threat of imprisonment of twenty years to life for owners of illegal firearms has not been able to provide a deterrent effect because in reality the sentences given to perpetrators of illegal possession of firearms are not commensurate with the threats in accordance with existing regulations. So that it does not provide a deterrent effect and makes other illegal firearm owners keep the illegal firearms.²²

Judges in their position as one of the subsystems in the Criminal Justice System are the law enforcers who have greater authority in imposing criminal sanctions. Meanwhile, judges' decisions on cases of possession or distribution of illegal firearms seem less fair and less severe than the potential impacts. In addition, the prosecution against the defendant according to the author's analysis considered to be less serious, as in many cases where the public prosecutor only demands a maximum of one year and six months, and even two other cases are prosecuted for only a matter of months.

CONCLUSION

The effectiveness of Law Number 12 Year 1951 in preventing the misuse of firearms in Makassar from the perspective of the sociology of law is still less effective because seen from the licensing and control procedures for firearms, it is very strict but the application of sanctions is not optimal even in many cases the application of sanctions is less than half of the maximum threat as regulated in the Law Number 12 Year 1951.

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²⁰ *Ibid.*

²¹ Interview with investigators at the Makassar City Police Department on August 15, 2022

²² Interview with the functional prosecutor at the Makassar District Attorney on August 22, 2022

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