

Juridical Review of Criminal Acts in the Ownership of Firearms and Ammunition

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Abstract. Criminalization is one aspect of criminal law that is often the subject of discussion in the community. There are times when the conviction is felt very light or very heavy when compared with the perpetrators. In fact, in criminal offenses, many things are taken into consideration, both in juridical and sociological aspects. The purpose of this study was to determine the application of criminal law for criminal acts of possession of firearms and ammunition in the decision No.102/Pid.Sus/2018/PN-Bau and to determine the legal considerations of judges in criminal acts of ownership of firearms and ammunition in the decision No.102 /Pid.Sus/2018/PN-Bau. This research is a qualitative normative law research that is more concerned with understanding the existing legal material rather than the quantity or amount of data. In normative legal research, researchers simply need to collect secondary legal materials and construct them in a series of research results. The nature of the research to be carried out is analytical descriptive. The results showed that the indictment was charged by the public prosecutor using a single indictment, namely Article 1 paragraph (1) of Law Number 12 of 1951 concerning firearms and explosives. Then the demands of the public prosecutor namely Dropping the criminal on Defendant Masrudin S Alias Fajrin Bin La Isa with 7 (seven) months imprisonment were reduced as long as the defendant was in custody with an order that the defendant remain detained in Baubau Detention Center, and the panel of judges sentenced the criminal to the defendant Masrudin S Alias Fajrin Bin La Isa, therefore was sentenced to five (5) months in prison. Judge's Legal Considerations in Criminal Acts of Ownership of Firearms and Ammunition in Decision Number 102/Pid.Sus/2018/PN-Bau. Based on the evidence, namely the witness' statement and the defendant's statement accompanied by evidence. the judge must consider all aspects including juridical, philosophical, and sociological aspects.

Keywords: Firearms, Legislation, Judge's Decision, Criminalization.

1. Introduction

The purpose of the Republic of Indonesia is clearly set out in the 1945 Constitution of the Unitary State of the Republic of Indonesia that the country aims to protect the entire nation of Indonesia and all of Indonesia's blood, promote public welfare, educate the life of the nation, participate in world peace efforts based on independence, eternal peace and social justice. In this connection, it is fitting for the Indonesian people to get protection in aspects of their lives.

Criminalization is one aspect of criminal law that is often the subject of discussion in the community. There are times when the conviction is felt very light or very heavy when compared with the perpetrators. In fact, in criminal offenses, many things are taken into consideration, both in juridical and sociological aspects.

According to Law Number 48 of 2009 concerning Judicial Power, the judge's consideration is the thoughts or opinions of the judge in passing the verdict by looking at things that can alleviate or burden the offender. Every judge must submit a written opinion or opinion on the case being examined and become an inseparable part of the decision.

Based on Article 1 of the Criminal Code, that as a rule of law, the judicial system in Indonesia adheres to the principle of legality, namely that an act can be criminalized except for the strength of criminal rules in existing legislation. In the case of possession of firearms and ammunition, all criminal provisions have been regulated in Emergency Law Number 12 of 1951.

Every perpetrator of the crime of possession of firearms and ammunition should be punished with a maximum sentence, so as to provide a deterrent effect to the offender and as a lesson for other parties, in fact the judges impose the criminal under the minimum threat to the offender. As we know the crime of possession of firearms and explosives is regulated in Article 1 paragraph (1) of the Emergency Law No. 12 of 1951 which states: "anyone without the right to enter Indonesia, make, receive, try, obtain, deliver, or try to surrender, control, carry, possess, stock up on him or own in his possession, store, transport, conceal, use or release from Indonesia any firearms, ammunition or explosives, punishable by death or life imprisonment or sentence a temporary prison of a maximum of twenty years".

The phenomenon behind this research is the rule of law is not always used as a reference for the application of criminal sanctions by judges, for example criminal cases of ownership of firearms and ammunition Case Number 102/Pid.Sus/2018/PN-Bau with the defendant Masrudin S alias. Fajrin Bin La Isa together with the Landiki People Search List (PSL) of the authorities, was legally and convincingly proven to have committed a crime without the right to control firearms and ammunition. However, in the decision of Case Number 102/Pid.Sus/2018/PN-Bau, the panel of judges sentenced the defendant to imprisonment for 5 (five) months.

Normatively, the court is a place for justice. This is borne out by the name "court" and from the verdicts of the Judges who are the goal. According to the irama, in completing the case the Judge does not work "for the sake of law" or "for the sake of the law", but "For the sake of Justice based on the Godhead [1].

The phrase "Based on Godhead" becomes a symbol that the Judge works on behalf of God Almighty. The phrase is also a guarantee that the judge in completing the case will work honestly, cleanly, and fairly because he is in the name of God.

Because if this is not the case, then a judge who does not act honestly, cleanly, and fairly, later in the "final judgment" he must be held accountable for his actions and behavior before God the Just.

A court decision is a judge's statement which is pronounced at a court hearing which is open to the public in completing or ending a case. The verdict can be handed down after the hearing of the case is over and by the parties to the litigation there is nothing else to say. The court's ruling is something that is highly expected by the parties who litigate, because with the court's decision the litigants expect legal certainty in the case they face.

The growth and development of society always brings growth and development in all their needs, including all aspects and arrangements in life. New discoveries in the field of science and technology will bring a direct influence on the outlook on human life, which can ultimately change the way of human life. These changes always with the emergence of new interests for survival require protection against disturbances that may come from fellow human beings. This protection is given by the state in the form of issuance of all legal regulations.

The problem of ownership to the misuse of firearms is a very dangerous and high risk. Things where firearms can result in the loss of a person's life or a large number of people. Although firearms are very useful and necessary in terms of national defense and security, in general, if they are misused or their use is not in accordance with applicable laws, it will have a very detrimental effect on individuals and communities, and can even create greater danger for life and cultural values of the nation. Increased criminality as a result of possession of firearms will cause great harm to the interests of society, namely the loss of balance, peace and order in people's lives. Based on the description in the background above, the authors formulated the problem as follows: (1) How is the application of criminal law for criminal acts of ownership of firearms and ammunition in Decision No. 102/Pid.Sus/2018/PN-Bau?; (2) What is the judge's legal consideration in the crime of possession of firearms and ammunition in Decision Number 102/Pid.Sus/2018/PN-Bau?

2. Literature Review

Moelyatno translated the term strafbaar feit by criminal act. In his opinion the term "Criminal Acts" refers to the meaning of a human behavior that causes certain consequences that are prohibited by the law where the perpetrators may be subject to criminal sanctions. Can be interpreted this way because the word "Acts" is not possible in the form of natural behavior, because the person who can do it and the result is called the act is only human [2].

The words of punishment are synonymous with the words of punishment. About this he said: "the punishment was derived from the word legal basis, so it can be interpreted as establishing the law for deciding about the law (berechten) [3]".

The term verdict comes from the word base breaking up, which means separate or no longer related because it is cut off. The word break up also means finished, finished, finished or also certain, it is fixed, has finished the case, has agreed and so forth. Deciding means making or causing a break or means ending, completing, or deciding, or making a decision, imposing a sentence. The decision

means the end, the end, something that has been determined or as a conclusion, so also means the consideration of the judge or the results of the exam, and so on. Decision means what items have been broken up or also means provisions or provisions [4].

According to the Implementation Directive Number: JUKLAK/04/VI/2010 Regarding the Implementation of Maintenance of Ammunition in the Environment of the Ministry of Defense and the Indonesian National Army, Ammunition is an object that contains explosives/chemicals/biological substances/radioactive materials, which are packaged in certain containers with form, nature and ballistics and composition of certain number and type, so that it is safe to be stored, transported, thrown, dropped, fired, detonated, controlled or in other ways, with the aim to destroy or damage the target [5].

Van Hamel shows three definitions of action (feit), namely; (1) Act (feit) = the occurrence of crime (offense). This understanding is very broad, for example in an event some people are persecuted, and if in a persecution a theft is also carried out, amak it is not possible to prosecute one of these acts then from another; (2) Deeds (feits) = acts that are indicted. This is too narrow. Example: a person is required to commit an act of persecution causing death, then it turns out he deliberately committed murder, then it means that prosecution can still be carried out on the basis of "intentionally committing murder" because this is different from the persecution resulting in death ". The vase does not accept the notion of action (feith) in the second sense; (3) Act (feit) = material action, so that action is detached from element of error and is independent of consequences. With this understanding, then impropriety is in the two previous notions can be avoided [6].

Criminal in essence is only a tool to achieve the goal, then the first concept formulates the goal of punishment. In identifying the purpose of punishment, the concept of departure and the balance of two main objectives, namely the protection of the community and the protection/coaching of individual criminal offenders [7].

Furthermore, starting from the balance of the two main objectives, then the terms of punishment according to the concept also depart and the main the thought of a monocultural balance between interests society and individual interests, between objective factors and subjective factor. Therefore, the terms of punishment also depart from and two very fundamental pillars in criminal law, namely "principle legality "(social principle) and" the principle of culpability/error "(principle humanity). After determining what the problem is doing should be used as a crime, then the next step is determining the proper criminal system used or imposed on people who commit acts criminal [8].

The rise of the spread of firearms among civilians is a phenomenal global. There is no control over ownership firearms, both legally owned by the general public, officials the police and the Indonesian National Armed Forces (NAF), is one of the causes of crime in the misuse of firearms in Indonesia. While the victims who died as a result of this crime were mostly civilians in Indonesia, exact figures on the trade in legal and illegal firearms are difficult to obtain, although their circulation in civil society is certain to increase sharply. Because of administrative reasons firearms ownership is lacking in order and oversight, the police do not know

exactly how many firearms are circulating in the community, so possession of weapons is very difficult to trace [9].

3. Methods

This research is a qualitative normative legal research. Qualitative research is a problem-solving process that is investigated by describing the object of research clearly and in more detail (Confidence), and to draw generalizations that explain the variables that cause a symptom or social reality. The research method in this paper is normative juridical, which views the law as a binding regulation, refers to legal norms as outlined in-laws and regulations, legal principles, legal history, and jurisprudence. The approach in the normative juridical method uses a statutory approach, a case approach, and a historical approach. Normative legal research aims to produce arguments, theories or concepts as prescriptions for solving problems [10]. Sources of data in this study are primary data obtained directly from research in the field and secondary data collected from library materials and documents that support this research. Data collection techniques are by observation, interviews and documentation. Data analysis using qualitative descriptive analysis, namely data obtained through research activities, identified and grouped according to the characteristics of the research objectives, then analyzed qualitatively descriptive. The use of this qualitative analysis technique includes all research data both primary legal data and secondary legal data [11]. Legal material obtained by the author, analyzed with qualitative analysis then presented descriptively, namely by explaining, describing, and describing problems and their solutions related to the formulation of the problem made.

4. Results and Discussion

4.1. Application of Criminal Law for Criminal Acts of Ownership of Firearms and Ammunition in Decision No. 102/Pid.Sus/2018/PN-Bau

Before discussing the application of Criminal Law in decision No. 102/Pid.Sus/2018/PN-Bau. first the author will explain the summary of the position of the case. Based on the analysis of the defendant's confession, witness testimony, and the results of the examination at the stage of the investigation, prosecution and trial are as follows:

4.1.1 Case Position

That the defendant Masrudin S Alias. Fajrin Bin La Isa together with the Landiki man register our plan of the authorities, on a day and date and time that could not be ascertained with certainty in April 2018 took place at the defendant's boarding house on Waode Walanda Street, Lanto Village, Batupoaro District, Baubau City, or at least in another place which is still within the jurisdiction of the Baubau District Court, without the right to receive, try to obtain, surrender or try to surrender, control, carry, have inventory on it, or have in its possession, keep, hide, any firearm, ammunition, carried out by the defendant in the following ways and conditions:

Whereas at the time and place as mentioned above, initially around April 2018 the defendant was sitting around with his girlfriend namely witness Nur Siartin in

the defendant's post located on Jalan Waode Walanda Lanto Village, Batupoaro District, Baubau City, suddenly a Landiki register our plan man arrived the authorities and conveyed to the defendant "first give me your money Rp. 1.500.000 (one million and five hundred thousand rupiah) and conveyed to the defendant that the guarantee of money was a gun-made firearm "then the defendant told the Landiki man" when you want to come take "and Landiki conveyed to the defendant" at least 2 weeks " then the defendant conveyed back to the Landiki man "isn't this dangerous?" and the Landiki man replied "don't you fear this harmless" and then the defendant immediately took the money and gave the Landiki man Rp. 1.500.000 (one million and five hundred thousand rupiahs) after that the Landiki man immediately left the defendant and subsequently a handgun assembled firearm with 4 (four) rounds of ammunition bullets kept it in the drawer of the defendant's dormitory for approximately one month.

That on Saturday, May 19, 2018 around 19:00 Wita the defendant contacted witness Nur Siartin by telephone asking for help to leave the gun-type homemade firearm and then the witness Nur Siartin came to the defendant's house and then took the gun-type firearm from the drawer of the dorm room the defendant, the next witness Nur Siartin who was scared and confused where to store the homemade gun type firearms, then witness Nur Siartin met witness Bores and after witness Nur Siartin met with witness Bores then conveyed to witness Bores to ask for help where to store firearms assembled the type of pistol owned by the defendant, after that witness Bores conveyed to witness Nur Siartin that there was a friend who had his address at Kelurahan Katobengke, Betoambari District, Baubau City, namely La Ungi's witness.

Whereas on Saturday, May 19, 2018 around 21:30 Wita witness Bores and witness Nur Siartin came to see La Ungi's witness at his home to entrust a pistol-type homemade firearm wrapped in a red plastic bag after that La Ungi's witness without checking the contents of the plastic bag store directly on top of the cupboard.

Whereas on Saturday, May 19, 2018 around 21:30 Wita witness Bores and witness Nur siartin came to see witness La ungi at his house to entrust a pistol-type homemade firearm wrapped in a red plastic bag after that witness La Ungi without checking the contents of the plastic bag directly store above the cupboard.

Whereas when Kaharuddin Nur and La Baya witnesses, each member of the Baubau District Police, received information from the public who said that someone had a gun-type firearm and then immediately checked the truth of the information, then Kaharuddin Nur and La Baya witnesses immediately secured the witness Nur Siartin and after being interrogated then witness Nur Siartin explained that the gun type assemblies were indeed there and belonged to the defendant, because witness Nur Siartin was afraid so he asked witness Bores to secure the gun type assembled firearms, then witness Kaharuddin Nur along with witness La Baya immediately sought witness Bores after finding witness Bores immediately interrogated and Bores said that the gun-made firearms belonged to the defendant and had left the witness La Ungi with his address at Katobengke Village, Betoambari Sub-District, Baubau City and then witness Kaharu dдин Nur and witness La Baya went straight

to the house of witness La Ungi and immediately secured the type of homemade firearms to the Baubau District Police Station.

The defendant's actions as regulated and threatened by criminal in Article 1 Paragraph (1) of Law no. 12 / DRT / 1951 / LN No. 78 of 1951;

4.1.2 Indictment of Public Prosecutors

In trying a criminal case the indictment is the legal basis of the criminal procedure because it is based on that the examination at the trial is carried out, the indictment in addition to containing the identity of the defendant also contains a description of the criminal act charged with mentioning the time and place of the incident it is set out in Article 143 of the Law Code Civil Procedure.

The formulation of the indictment was based on the results of the preliminary examination which were compiled singly, cumulatively, alternatively, or subsidair.

Based on the description of the case position above, the public prosecutor charged the defendant with a single indictment with a case register number PDM49 /Rp-9/07/2018 as follows:

That the defendant Masrudin S Alias. Fajrin Bin La Isa together with the Landiki man register our plan of the authorities, on a day and date and time that could not be ascertained with certainty in April 2018 took place at the defendant's boarding house on Waode Walanda Street, Lanto Village, Batupoaro District, Baubau City, or at least in another place which is still within the jurisdiction of the Baubau District Court, without the right to receive, try to obtain, surrender or try to surrender, control, carry, have inventory on it, or have in its possession, keep, hide, any firearm, ammunition, carried out by the defendant in the following ways and conditions:

Whereas at the time and place mentioned above, initially around April 2018 the defendant was sitting around with his girlfriend namely witness Nur Siartin at the defendant's boarding house located on Jalan Waode Walanda Lanto Village Batupoaro District Baubau City, suddenly a Landiki man register our plan the authorities and conveyed to the defendant "first give me your money Rp. 1.500.000 (one million and five hundred thousand rupiah) and conveyed to the defendant that the guarantee of money was a gun-made firearm "then the defendant told the Landiki man" when you want to come take "and Landiki conveyed to the defendant" at least 2 weeks " then the defendant conveyed back to the Landiki man "isn't this dangerous?" and the Landiki man replied "don't you fear this harmless" and then the defendant immediately took the money and gave the Landiki man Rp. 1.500.000 (one million and five hundred thousand rupiahs) after that the Landiki man immediately left the defendant and subsequently a handgun assembled firearm with 4 (four) rounds of ammunition bullets kept it in the drawer of the defendant's dormitory for approximately one month.

That on Saturday, May 19, 2018 around 19:00 Wita the defendant contacted witness Nur Siartin by telephone asking for help to leave the gun-type homemade firearm and then the witness Nur Siartin came to the defendant's house and then took the gun-type firearm from the drawer of the dorm room the defendant, the next witness Nur Siartin who felt scared and confused where to store the homemade gun type firearms, then witness Nur Siartin met witness Bores and after witness Nur

Siartin met with witness Bores then conveyed to witness Bores to ask for help where to store firearms assembled the type of pistol owned by the defendant, after that witness Bores conveyed to witness Nur Siartin that there was a friend who had his address at Kelurahan Katobengke, Betoambari District, Baubau City, namely La Ungi's witness.

Whereas on Saturday, May 19, 2018 around 21:30 Wita witness Bores and witness Nur Siartin came to see La Ungi's witness at his home to entrust a pistol-type homemade firearm wrapped in a red plastic bag after that La Ungi's witness without checking the contents of the plastic bag directly keep on top of the cupboard.

Whereas when witness Kaharuddin Nur and witness La Baya each member of the Baubau District Police received information from the public who said that someone had a gun-type firearm and then immediately checked the truth of the information, then witness Kaharuddin Nur and witness La Baya immediately secured witness Nur Siartin and after being interrogated, witness Nur Siartin explained that the assembled firearm was indeed there and belonged to the defendant, because witness Nur Siartin was afraid so he asked the witness Bores to secure the gun type assembled firearm, then witness Kaharuddin Nur along with witness La Baya immediately looked for witnesses Bores after finding witnesses Bores immediately interrogated and Bores said that the gun-made firearms belonged to the defendant and had left the witness La Ungi with his address at Katobengke Village, Betoambari Sub-District, Baubau City and then witness Kaharuddin Nur and witness La Baya went straight to the house of witness La Ungi and immediately secured the type of homemade firearms to the Baubau District Police Station.

The Defendant's actions as regulated and threatened with criminal offense in Article 1 Paragraph (1) of Law no. 12/DRT/1951/LN No. 78 of 1951;

4.1.3 Prosecutors' Demands

The Public Prosecutor demands that the panel of judges decide as follows:

- a. Stating Defendant Masrudin S Alias Fajrin Bin La Isa was proven legally and convincingly according to the law guilty of committing a crime "without the right to receive, try to obtain, surrender or try to surrender, control, carry, have inventory on him, or have in his possession, keep, hide, a firearm, ammunition", as stipulated in Article 1 paragraph (1) of the Law. No. 12/Drt/1951;
- b. Sentencing the Defendant Masrudin S Alias Fajrin Bin La Isa with 7 (seven) months imprisonment reduced as long as the defendant is in custody with orders that the defendant remain detained in the Baubau Detention Center;
- c. Stating evidence in the form of:
 1. 1 (one) gun-type gun;
 2. 4 (four) rounds of ammunition Caliber 3.8;
Seized to be destroyed;
- d. Determine that the defendant be charged a case fee of Rp. 2,000, - (two thousand rupiah).

4.1.4 Amar Decision

In case No. 102 / Pid.Sus / 2018 / PN Bau judge decides:

PUNISH

1. State the Defendant Masrudin S Alias Fajrin Bin La Isa has been proven legally and convincingly guilty of committing a crime "Without the Right to Control Firearms and Ammunition";
2. Drop the sentence on Defendant Masrudin S Alias Fajrin Bin La Isa, therefore, with a 5 (five) month imprisonment;
3. Determine that the period of arrest and detention that has been served by the defendant is deducted entirely from the length of the sentence imposed;
4. Determine that the defendant remains in custody;
5. Establish evidence in the form of:
 - a. 1 (one) type of pistol-type firearm;
 - b. 4 (four) Caliber ammunition items 3,8;
Seized to be destroyed;
6. Charge the Defendant to pay the court fee of Rp. 2.000, - (two thousand rupiah);

4.1.5 Author Analysis

The author's analysis of the application of the law in this case is criminal acts and criminal elements "Criminal Acts" refers to the meaning of a human behavior that causes certain consequences that are prohibited by law where the perpetrators may be subject to criminal sanctions. It can be interpreted this way because the word "Act" cannot be in the form of natural behavior, because the person who can do it and the result is called the act is only human. Whereas the elements of Criminal Action consist of objective and subjective elements.

In connection with this case in accordance with the description in the position of the case above, the defendant has legally committed a criminal offense, namely the defendant's actions as regulated and threatened with crime in article 1 Paragraph (1) of Law Number 12/DRT/1951/LN No. 78 of 1981.

According to the author's analysis the application of criminal law in this case is appropriate, what was decided by the panel of judges. Judging from the condition, the defendant is in a healthy state of body and conscious in committing the crime and there is an element of intent. The defendant clearly owned, kept, and hid, something firearms, the ammunition the defendant consciously did. For this author it is appropriate to be convicted in accordance with Law Number 12/DRT/1951.

When viewed from a material standpoint, the authors analyze that a criminal act is an unlawful act that has been done intentionally or unintentionally by a law which is prohibited and threatened with crime, where the definition of the act here other than an act which is active (committing something that is actually prohibited by law) also acts that are passive (not doing something that is actually required by law). The case that the author discusses is the crime of possession of a firearm carried out by Masrudin S bin La Isa.

The Public Prosecutor who handled this case charged the defendant with a case of possession of a firearm, the Public Prosecutor charged the defendant with a single indictment namely: violating as governed and threatened with crime in article 1 paragraph (1) of Law R.I NO.12/DRT/1951. By using this indictment, the Public Prosecutor believes that the elements contained in the articles charged above can be clearly proven before the trial.

- a. The Element "Whoever"

The element of every person here refers to the perpetrators of criminal acts who are legal subjects as capable rights and obligations holders who are able to take responsibility for their actions before the law. In this case the Public Prosecutor has brought the defendant to the front of the trial based on the testimonies of the witnesses and the defendant's own statement it can be concluded that the person presented in this trial was really the Defendant Masrudin S Alias Fajrin Bin La Isa, the person referred to by the Public Prosecutor according to his identity stated in the trial indictment, so there is no error in person, and the defendant is in a healthy condition so that it does not meet the provisions of Article 44 of the Criminal Code, the defendant can be held responsible for his actions;

- b. Element "Without the right to receive, try to obtain, surrender or try to surrender, control, carry, have supplies to him, or have in his possession, keep, hide, something firearms, ammunition"

That this element is alternative so that the elements of the actions of the elements of the article above if one of them is fulfilled, the other elements of the action need not be elaborated further.

That based on legal facts obtained from witness statements, evidence, and the defendant's statement it has been revealed that on Saturday, May 19, 2018 around 23.50 West Indonesian Time, the police had conducted a search at La Umi's brother's home in Katobengke Sub-District. Betoambari City of Baubau and in the search had found a pistol-type firearm assembled along with 4 (four) 3.8-caliber bullets wrapped in red plastic. This was also reinforced by the evidence presented before the trial.

According to the author, decision No. 102/Pid.Sus/2018/PN-Bau has included matters that must be contained in a court decision as stipulated in article 197 jo Article 199 of the Criminal Procedure Code. The matters referred to are: the head of the decision, full name, place of birth, age or date of birth, gender, nationality, place of residence, religion or occupation of the defendant, an indictment of consideration that is compiled in a concise manner regarding the facts and circumstances along with the evidence obtained from the hearing in the trial which is the basis for determining the defendant's mistake, criminal charges, articles of legislation which form the basis of criminal conviction accompanied by circumstances that incriminate and alleviate the defendant, the day and date of the deliberation of the panel of judges, the provisions to whom the cost of the case is charged by stating the exact amount and provisions regarding evidence, orders for the accused to be detained or remain in detention or released, the day and date of the decision, the name of the public prosecutor, the name of the judge who decides and the name of the court clerk.

When viewed in terms of indictment requirements. Decision No. 102/Pid.Sus /2018/PN-Bau complies with the provisions stipulated in Article 143 of the Criminal Procedure Code, which in an indictment must contain the date, the identity of the defendant in full, signed by the Public Prosecutor, and the indictment must contain carefully, clearly and complete regarding the criminal act carried out, by stating the time (*tempus delicti*) and the place where the crime was committed (*locus delicti*).

In addition, the ruling No. 102/Pid.Sus/2018/PN-Bau has been supported by two valid evidences as stipulated in article 183 in conjunction with Article 185 of the Criminal Procedure Code. In convicting a criminal, the judge must be supported by at least two valid evidences plus the judge's conviction.

The application of criminal provisions in decision No. 102/Pid.Sus/2018/PN. Bau, in accordance with the provisions of the applicable law.

4.2. Judge's Legal Considerations in Criminal Acts of Ownership of Firearms and Ammunition in Decision Number 102/Pid.Sus/2018/PN-Bau

4.2.1 Judge Considerations

After the judge knows the facts revealed in the trial process, the judge's consideration is:

Considering, that in order to prove their indictment the Public Prosecutor has submitted witnesses, all of whom gave testimony under oath in trial, which witnesses in principle explained as follows:

a. Witness La Baya Bin La Simudi

1. That the witness does not know the Defendant;
2. That the Witness understands that this trial was presented, that is, in connection with the crime of possession of a handgun made by a pistol made by the Defendant;
3. That the incident occurred on Saturday, May 19, 2018 around 23.50 West Indonesian Time, at the home of Saudara La Ungi in Katobengke Sub-District, Betoambari Sub-District, Baubau City;
4. That the Witness is a Member of the Baubau Regional Police who arrested the Defendant;
5. Whereas initially, on May 19, 2018, we received information from the public that someone had a gun-type firearm on Jalan Wa Ode Walanda, then the Witness together with other Baubau District Police members immediately checked the information and conducted a search and interrogation of Sister Siartini. , and sister Nur Siartin explained that the assembled firearms of this type of gun do exist and the homemade firearms were in the hands of the defendant, because they were deposited by Landiki as collateral for Landiki's debt to the Defendant;
6. That because Nur Siartin was afraid of being told by the Defendant to store the firearm, he asked Bores to help with the homemade firearm, then the Witness and other members, together with Nur Siartini, sought out Bores' brother and after we met with Bores, we immediately interrogated Bores' brother and said that if the firearm had been entrusted to La Ungi, which is located in Kelurahan Katobengke, Baubau City, after that the Witness together with Nur Siartin and Bores and members of the Baubau Police Station went straight to La Ungi's house and there we found a homemade firearm type the gun, then sister. We secure Nur Siartin, Bores and La Ungi to the Baubau Regional Police;
7. That we found the firearm above the cupboard in a plastic bag along with the bullet;

8. That when the Defendant's search was at his home, however, evidence of homemade firearms was not found at the defendant's boarding house;
9. That according to the data in the Police the Defendant had only stored firearms for the first time;
10. That said firearm if used can cause death;
11. That the Defendant does not have a permit to control the firearm;
12. That the witness confirmed the evidence submitted at the hearing;

Based on the statement of the Witness, the Defendant stated that he confirmed it completely.

b. Witness Nur Siartin alias Nur binti La Sana

1. That the Witness knows the Defendant, but there is no family or work relationship;
2. That the Witness understands that this trial was presented, that is, in connection with the crime of possession of a handgun made by a pistol made by the Defendant;
3. That the incident occurred on Saturday, May 19, 2018 around 23.50 West Indonesian Time, housed in the brother's house of La Ungi in Katobengke Village, Betoambari District, Baubau City;
4. Whereas initially on Saturday, May 19, 2018 around 19:00 West Indonesian Time, when the Defendant was in Wanci, the Defendant contacted the Witness via his cellphone and requested that a gun-type firearm in the drawer of his boarding room closet be taken by the witness and then secured;
5. That after that the witness immediately entered the Defendant's boarding room and took the item which was in a drawer and wrapped in a plastic bag;
6. That after the firearm was in the hands of the Witness, the Witness was afraid and then the Witness saw that in the boarding house there was a brother of Bores, because the Witness was afraid then the Witness asked Bores for help to keep the items stored, whereupon Bores said there were his friend named La Ungi then I went with Bores to his house La Ungi and arrived at his house La Ungi, Bores gave the firearm to La Ungi for temporary safekeeping;
7. That the assembled pistol owned by Landiki was used as collateral because Landiki had borrowed money from the Defendant in the amount of Rp. 1,500,000 (one million five hundred thousand rupiah);
8. That the Witness knew because when Landiki came to the defendant's boarding house, the Witness was in front of the boarding terrace, at that time Landiki wanted to borrow money from the defendant with the guarantee of the firearm and Landiki said the item was not dangerous;
9. That at that time the Defendant gave a loan to Landiki in the amount of Rp. 1,500,000 (one million five hundred thousand rupiah), because at that time the Defendant borrowed money from me in the amount of Rp. 1,500,000 (one million five hundred thousand rupiah));
10. That the Defendant often lent money to his friends with collateral, sometimes a cellphone;
11. That the witness confirmed the evidence submitted at the hearing;

Based on the statement of the Witness, the Defendant stated that he confirmed it completely.

c. Witness Kaharuddin Nur alias Kahar Bin Muhammad Nur

That the Witness did not know the Defendant;

1. That the Witness understands that this trial was presented, namely in relation to the criminal possession of a handgun made by a gun made by the Defendant;
2. That the incident occurred on Saturday, May 19, 2018 around 23.50 West Indonesian Time, housed in the brother's house of La Ungi in Katobengke Village, Betoambari District, Baubau City;
3. That the Witness is a Member of the Baubau Regional Police who arrested the Defendant;
4. Whereas initially, on May 19, 2018, we received information from the public that someone had a gun-type firearm on Waode Walanda Street, then the Witness together with other Baubau District Police members immediately checked the information and conducted a search and interrogation with sister Nur Siartini, and sister Nur Siartin explained that these homemade pistols do exist and the homemade firearms are in the hands of the defendant, because they are deposited by Landiki as collateral for Landiki's debt to the Defendant.
5. That because Nur Siartin was afraid of being told by the Defendant to keep the firearm, he then asked Bores for help to store the homemade firearms, then the Witness and other members, together with Nur Siartini searched for Bores and after we met with Bores, we immediately interrogated Bores said that if the firearm had been entrusted to La Ungi, which is located in Kelurahan Katobengke, Baubau City, after that the Witness together with Nur Siartin and Bores and members of the Baubau Police Station went straight to La Ungi's house and there we found the homemade firearm, then mister. We secure Nur Siartin, Bores and La Ungi to the Baubau Regional Police;
6. That we found the firearm above the cupboard in a red plastic bag along with 4 (four) bullets;
7. That during the search the Defendant was at his home but evidence of homemade firearms was not found at the Defendant's boarding house;
8. That said firearm if used can cause death;
9. That the witness confirmed the evidence submitted at the hearing;

Based on the statement of the Witness, the Defendant stated that he confirmed it completely.

d. Witness La Ungi bin La Ria

1. That initially on Saturday, May 19, 2018 around 21.30 Wita brother Boris along with a woman whose name I did not know came to my house and left me 1 (one) red plastic bag which was filled in my bag don't know it;
2. That after that brother Boris told me that 'tomorrow afternoon I will come to take it, I immediately took the item and put the item above my cupboard, after that I went straight out of the house to my friend's house to discuss work matters;
3. That for 30 minutes Brother Boris called me and said to me "You go home first, I want to take the item earlier", I went straight to my house, when I

arrived at my house, I saw brother Boris along with several members of the Baubau police station and brother Boris conveyed to me "where is my safekeeping" I also went straight into the house with members of the Baubau Regional Police to pick up Boris safekeeping items, namely 1 (one) red plastic bag and I was immediately secured by Baubau Regional Police members to the Baubau Regional Police Office;

4. It was only when I arrived at the Baubau Regional Police Station that I learned that the contents of the red plastic bag entrusted by Boris were 1 (one) gun-type gun and 4 (four) bullets.

Based on the witness' statement, the Defendant stated that he did not know it; Considering, that the Defendant at trial has also explained in principle as follows:
Defendant: Masrudin S Alias Fajrin bin La Isa

1. That the Defendant was questioned before a police investigator;
2. That the Defendant understands before the trial, namely in relation to the criminal possession of a handgun made by a pistol made by the Defendant;
3. That the incident occurred on Saturday, May 19, 2018 around 23.50 West Indonesian Time, at the brother's house of La Ungi in Katobengke Sub-district, Kec. Betoambari, Baubau City;
4. That Landiki assembled firearms belonged to Landiki, he only left the pistol with the Defendant, and at that time Landiki borrowed money from the Defendant in the amount of Rp. 1.500.000 (one million five hundred thousand rupiah) and the type of firearm deposited as collateral for the borrowed money;
5. That initially the Defendant did not want to, but Landiki continued to force the Defendant and he said that it was okay, and he said that in two weeks he would return the borrowed money and retrieve the firearms deposited;
6. That when Landiki surrendered the gun type assemblies, the package was opened and the Defendant saw 4 (four) bullets opened from his pistol, but at that time the Defendant thought that there were letters that Landiki brought the firearm;
7. That the Defendant returned to Wanci one week after Landiki left the pistol. And when in Wanci the Defendant had contacted Nur Siartin through his cellphone to ask for help in securing the firearm that the Defendant kept in the Defendant's room because the firearm did not belong to the Defendant and if lost Landiki threatened the Defendant to replace it;
8. That the Defendant indeed often lent money to friends on the Defendant's campus, and sometimes there were guarantees but many did not use guarantees, only when they returned there was always more;
9. That Landiki has borrowed money from the Defendant twice (twice), the first loan was Rp. 1.000.000 (one million rupiah) and returned to the Defendant in the amount of Rp. 1.100.000 (one million one hundred thousand rupiah)) and secondly in this incident;
10. That the Defendant pleaded negligent and guilty for not reporting to the police regarding the homemade firearms;
11. That the Defendant confirmed the evidence presented at the trial;

Considering, that based on the description above, the facts of the trial are obtained, where the statements of witnesses heard under oath between one and the

other are interrelated and are related to the statements of the defendant as well as by submitting evidence at the hearing, the elements the elements contained in the article of the indictment of the public prosecutor have been fulfilled by the defendant's actions as follows:

1. That on Saturday, May 19, 2018 around 23.50 West Indonesian Time, the police conducted a search at the house of brother La Ungi in Katobengke Sub-District, Betoambari Sub-District, Baubau City, and in the search a gun-type firearm was found along with the pistol 4 (four) 3.8 'caliber bullets wrapped in red plastic;
2. Whereas the disclosure of a gun-type firearm began with information from the public that a person had a gun-type firearm on La Ode Walanda Street, then members of the Baubau Regional Police immediately checked the information and conducted a search and interrogation of Witness Nur Siartini, and Witness Nur Siartin explained that the assembled firearms of this type of gun do exist and the homemade firearms were in the hands of the Defendant, because they were deposited by Landiki as collateral for Landiki's debt to the Defendant;
3. That because Witness Nur Siartin was afraid of being told by the Defendant to keep the firearm, he then asked the Bores witness to save the homemade firearm, then members of the Baubau District Police, together with Witness Nur Siartini, sought Witness Bores and after meeting with the Bores Witness, the police immediately interrogated the Bores Witness and said that if the firearm had been entrusted to La Ungi, which was located in Kelurahan Katobengke, Baubau City, after that the Baubau police with Nur Siartin and the Bores Witness went straight to La Ungi's house and there were found homemade firearms the pistol, then Witness Nur Siartin, Witness Bores, and Witness La Ungi were secured to the Baubau Regional Police Station
4. That the homemade firearms belong to Landiki, which is entrusted to the Defendant as collateral for the debt because Landiki has borrowed money from the Defendant in the amount of Rp. 1.500.000 (one million five hundred thousand rupiah);
5. That initially the Defendant did not want to accept the guarantee of the firearms, but Landiki continued to force the Defendant and he said that it was okay, and he said that after two weeks he returned the borrowed money and retrieved the deposited firearm;
6. That when Landiki surrendered the gun type assemblies, the package was opened and the Defendant saw 4 (four) bullets opened from his pistol, but at that time the Defendant thought that there were letters that Landiki brought the firearm;
7. That the Defendant returned to Wanci one week after Landiki left the pistol. And when in Wanci the Defendant had contacted Nur Siartin through his cellphone to ask for help in securing the firearm that the Defendant kept in the Defendant's room because the firearm did not belong to the Defendant and if lost Landiki threatened the Defendant to replace it;
8. That the Defendant indeed often lent money to friends on the Defendant's campus, and sometimes there was a guarantee but many did not use collateral, only when they returned there was always more;

9 Whereas Landiki has borrowed money from the Defendant 2 (two) times, the first loan was Rp.1.000.000 (one million rupiah) and was returned to the Defendant in the amount of Rp.1,100,000 (one million one hundred thousand rupiah) and second in this incident;

10. That the Defendant does not have a license to control the firearm

Considering, that based on the legal facts mentioned above, then in order to prove the Defendant's wrongdoing will be considered, whether the Defendant's actions meet the elements of the article charged by the Public Prosecutor in the aforementioned indictment;

Considering, that the Defendant has been indicted by the Public Prosecutor with an indictment compiled singly, namely: Article 1 Paragraph (1) of Law No. 12 /DRT/1951/LN No. 78 of 1951, the elements of which are as follows:

1. "Whoever" element;
2. The element "Without the right to receive, try to obtain, surrender or try to surrender, control, carry, have supplies to him, or have in his possession, keep, hide, something firearms, ammunition";

Considering, that because the Defendant's mistake has been proven legally and convincingly and in the trial, the Panel of Judges did not see any matters that could eliminate the criminal offense in the Defendant's act in the form of justification or forgiveness, then the Defendant must be sentenced/commensurate in accordance with his mistake .

Considering, that before the Panel of Judges handed down an appropriate crime to the Defendant, the following conditions would be considered incriminating and mitigating the criminal offense for the Defendant as follows:

Incriminating circumstances:

The defendant's actions disturbed the community

Alleviating circumstances:

1. The defendant admitted his actions;
2. The defendant regretted his actions and promised not to repeat his actions in the future;
3. The defendant still wants to continue his studies

Considering, that in the trial process of this case the Defendant has been arrested and detained, the Panel of Judges will apply the provisions of Article 22 paragraph (4) of the Criminal Procedure Code namely the period of arrest and detention that has been lived by the Defendant will be deducted entirely from the length of the criminal dropped;

Considering, that due to the length of the sentence imposed for longer than the period of detention that has been served by the Defendant, there is reason to determine that the Defendant remains in detention as regulated in Article 193 paragraph (2) letter b of the Criminal Procedure Code;

Considering, that the evidence submitted before the trial are:

- a. 1 (one) type of pistol-type firearm;
- b. 4 (four) Caliber ammunition items 3,8;

Will be determined as contained in the ruling below;

Considering, that because the Defendant was found guilty and convicted, according to Article 222 paragraph (1) of the Criminal Procedure Code to the

Defendant, he is also charged to pay the case fee in the amount as contained in the ruling below;

In view of Article 1 Paragraph (1) of Law No. 12/DRT/1951/LN No. 78 of 1951 and the articles in Law No. 8 of 1981 concerning the Criminal Procedure Code, as well as other legal provisions relating to this case;

4.2.2 Author Analysis

In accordance with Article 5 paragraph (1) of Law Number 48 Year 2009 namely "judges and constitutional justices are obliged to explore, follow and understand the legal values and a sense of justice that lives in the community"

The Supreme Court of the Republic of Indonesia as the highest body implementing judicial authority which oversees 4 (four) judicial bodies below, namely the general court, religious court, military court and state administrative court, has determined that the judge's decision must consider all aspects including [1].

1. Juridical considerations Juridical considerations mean that the judge bases his decision on the provisions of statutory regulations formally. Judges are legally prohibited from convicting the crime unless with at least two legal pieces of evidence, so that the judge gains confidence that a crime did actually occur and the defendant is guilty of committing it.

In the case where the author is careful that to prove his indictment the public prosecutor has presented 4 (four) witnesses and presented the defendant to be examined before the trial. Then the Defendant has been indicted by the Public Prosecutor with an indictment compiled singly, namely: Article 1 Paragraph (1) of Law No. 12/DRT/1951/LN No. 78 of 1951, the elements of which are as follows:

- a. The Element "Whoever";
- b. Element "Without the right to receive, try to obtain, surrender or try to surrender, control, carry, have supplies to him, or have in his possession, keep, hide, something firearms, ammunition"

2. Philosophical considerations Philosophical considerations mean that the judge considers that the crime imposed on the defendant is an attempt to improve the defendant's behavior through the process of punishment. This means that the philosophy of punishment is the fostering of the perpetrators of crimes so that after the convicts leave prison, they will be able to improve themselves and not commit crimes again.

Based on the case that the author examined that the Defendant Heard the reading of the Criminal Claims from the Public Prosecutor Number Reg. Perk .: 49 / Rp-9/Euh.2/08/2018 dated September 26, 2018, which in essence demanded that the Baubau District Court Judge who examined and tried this case decide:

1. Declares the Defendant MASRUDIN S Alias FAJRIN BIN LA ISA is proven legally and convincingly according to the law guilty of committing a crime "without the right to receive, try to obtain, surrender, or try to surrender, control, carry, own inventory, or have in his possession, keep, hiding something, firearms, ammunition ", as regulated in Article 1 paragraph (1) of the Law. No. 12/Drt/1951;

2. Sentencing the Defendant Masrudin S Alias Fajrin Bin La Isa with 7 (seven) months imprisonment reduced while the Defendant is in custody with an order that the Defendant remains detained in the Baubau Detention Center;
3. Stating evidence in the form of:
 - 1 (one) gun-type gun;
 - 4 (four) rounds of ammunition Caliber 3.8;
Seized to be destroyed;
4. To determine that the Defendant be charged a case fee of Rp. 2.000, - (two thousand rupiah)

That upon the criminal prosecution of the Public Prosecutor, the Defendant submitted an oral application at the trial which principally requested that the Defendant be sentenced as lightly as possible, because the Defendant felt guilty and the Defendant's parents were ill and the Defendant still wanted to continue his studies. Then the statement from the witnesses and the defendant himself That the gun-made firearms belong to the police Landiki, he only left the pistol with the Defendant, and at that time Landiki borrowed Rp.1.500.000 (one million and five hundred thousand rupiah) and the firearm type of the gun is deposited as collateral for the borrowed money to the Defendant. The defendant pleaded negligent and was guilty of not reporting to the police about the homemade firearms.

3. Sociological considerations Socio-psychological considerations mean that judges impose penalties based on the social background of the accused and pay attention that the penalties handed down have benefits for the community.

Based on the case that the author examined bhawa in accordance with witness statements from the police that according to the data in the police the Defendant was the first time storing a pistol-type firearm, if the firearm is used can cause death, so the actions of the accused disturbed the community.

Based on the description above that the criminal threat is in accordance with Article 1 Paragraph (1) of Law no. 12/DRT/1951/LN No. 78 of 1951 with the threat of a crime that is a death sentence or life imprisonment or a temporary prison sentence of a maximum of 20 years. Then the Prosecutor has sued the Defendant with a Criminal Prison for 7 (seven) months, then on the consideration of the panel of judges has sentenced the Defendant to imprisonment with imprisonment for 5 (five) months.

5. Conclusion

Based on this description, the authors draw the following conclusions: (1) The defendant was indicted by the public prosecutor using a single indictment namely Article 1 paragraph (1) of Law Number 12 of 1951 concerning firearms and explosives. Then the demands of the public prosecutor namely convicting the defendant Masrudin S Alias Fajrin Bin La Isa with 7 (seven) months imprisonment were reduced as long as the defendant was in detention with an order that the defendant remain detained in the Baubau Detention Center. And the panel of judges convicted the defendant Masrudin S Alias Fajrin Bin La Isa, therefore with a 5 (five) month prison sentence; (2) Judge's legal considerations in the crime of possession of firearms and ammunition in decision Number 102/Pid.Sus/2018/ Pn-Bau. Based

on the evidence, namely the witness' statement and the defendant's statement accompanied by evidence. the judge must consider all aspects including juridical, philosophical, and sociological aspects.

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