
Policy On The Formulation of Criminal Law On Illegal Firearm Ownership In Criminal Law Reform In Indonesia

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ABSTRACT

The misuse of firearms, particularly illegal ownership, continues to pose a global challenge, threatening public safety and social order. In Indonesia, the prevalence of illegal firearms highlights significant gaps in existing legislation, which struggles to comprehensively address the complexities of firearm-related crimes, including those involving corporate entities. This study aims to evaluate the formulation policies of criminal law concerning illegal firearm ownership within the context of Indonesia's broader criminal law reform. Utilizing a normative juridical research method, which involves analyzing relevant laws, doctrines, and legal principles, the study identifies key weaknesses in current policies, including the lack of clear juridical qualifications for crimes and inadequate mechanisms for corporate accountability. The findings reveal that the current legislative framework lacks synchronization with international legal standards and fails to provide adequate deterrence. The discussion emphasizes the need for rational and systematic policy reforms, incorporating comparative studies from other jurisdictions. The study concludes by recommending comprehensive updates to the legal framework, ensuring clarity, consistency, and effectiveness in addressing illegal firearm ownership, ultimately enhancing public safety and reinforcing the rule of law.

INTRODUCTION

The use of firearms by civil society can actually be reduced if there is a guarantee of security and this is a joint task between the authorities and the community. Regarding illegal firearms in circulation, it can be in the form of misused firearms or assembled firearms (Aling, 2021). 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 be supervised and ordered as early as possible by related parties, such as the Police, before misuse occurs that will cause more victims (Sasela, 2023).

The formulation policy in criminal law is a criminal law enforcement policy, it is said that because the criminal law enforcement policy is a series of processes consisting of: (Barda, 2005)

1. Legislative/formulative policy stage;
2. Judicial/applicative policy stage; and
3. Executive/administrative policy stage. (Jasril, 2022)

The Formulation Policy is a step taken by the state to formulate what acts are considered reprehensible, then use the criminal law as one of the efforts to overcome acts that are considered reprehensible, so that the public avoids them or does not commit these acts (Windyastuti et al., 2024). The use of criminal law is by issuing laws and regulations which expressly 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 also often referred to as "formulative policies" (Arief, 2011).

The use of criminal law as one of the domains to overcome crime should be planned properly and correctly at the formulation stage, because the purpose of criminal law itself is ultimately to achieve community welfare (Termature et al., 2024). The welfare of the community here is the welfare of the community at large, not just to send the perpetrator into prison and cause a new problem, namely a full prison (Syafiqri, 2023).

The use of legal remedies, including criminal law, as one of the efforts to overcome social problems, including in the field of law enforcement policy. In addition, because the goal is to achieve the welfare of the community in general, this law enforcement policy is also included in the field of social policy, which is a rational effort to achieve community welfare (Nurmiono, 2018).

This means that, in terms of policy making at the policy formulation stage, the criminal law sanctions used to overcome crime should be chosen rationally both in determining the type of criminal sanction, the duration of the criminal sanction and the method of criminal implementation. Policy making that is not rational will actually cause its own problems, namely the emergence of criminal factors (Marianus, 2023).

Legislative policies or formulation policies in the field of criminal law enforcement do not mean that they must be outlined in one book of laws (Pratama, 2023). It could be stated in various laws like today (there is a material criminal law inside and outside the Criminal Code; there is a criminal procedure law inside and outside the Criminal Code; and there is a criminal implementation law) (Purba, 2007).

One significant aspect highlighted in this research is the necessity to strengthen corporate accountability within Indonesia's legal framework on illegal firearm ownership. Corporate entities, whether directly or indirectly involved in the circulation and misuse of firearms, often escape accountability due to legislative loopholes. To address this, the inclusion of specific provisions that define corporate liability, criteria for accountability, and penalties for violations is imperative. Drawing from international legal practices, Indonesia can adopt a hybrid approach that combines punitive and restorative measures to hold corporations accountable while promoting compliance and ethical business practices.

Another critical recommendation is the integration of advanced technologies in monitoring and enforcing firearm regulations. The use of digital tracking systems, databases for firearm ownership, and surveillance technologies can significantly enhance the capability of law enforcement agencies to detect and prevent illegal activities. Additionally, artificial intelligence and machine learning can be leveraged to analyze patterns in firearm-related crimes, enabling predictive policing and more efficient resource allocation. By adopting these technological advancements, Indonesia can modernize its law enforcement strategies and better respond to the challenges posed by illegal firearms.

Lastly, addressing the issue of illegal firearms requires a collaborative effort involving government agencies, law enforcement, civil society, and international organizations. Public awareness campaigns to educate citizens about the dangers of illegal firearm ownership and stricter cross-border collaboration to prevent smuggling are essential. Furthermore, fostering partnerships with international organizations can provide access to best practices and resources, ensuring that Indonesia's legal framework aligns with global standards. Through such

collaborative initiatives, the country can build a robust and sustainable strategy to combat the proliferation of illegal firearms and enhance public safety effectively.

Based on the description above, several study formulations can be formulated in this paper in the article:

1. What is the current policy of criminal law formulation in illegal firearm ownership?

How is the formulation of the criminal law on illegal firearm ownership in the reform of the criminal law?

The proliferation of illegal firearms undermines national security and public safety, necessitating immediate and effective legal interventions. In Indonesia, outdated legislative frameworks fail to comprehensively address the evolving dynamics of firearm-related crimes, including the involvement of corporate entities. This legal inadequacy not only hampers enforcement but also exacerbates public vulnerabilities to crime. Addressing these issues is critical to restoring trust in the legal system and ensuring a robust framework to deter and penalize violations effectively.

Despite numerous studies examining firearm misuse, there is limited scholarly focus on the specific legislative gaps related to illegal firearm ownership in Indonesia. Existing policies often neglect the role of corporate liability and fail to synchronize with international legal standards. This research bridges this gap by critically evaluating the current formulation policies and proposing actionable reforms that align with contemporary legal principles and global best practices.

This study contributes novel insights by focusing on the intersection of criminal law reform and corporate liability in the context of illegal firearm ownership. Unlike previous research, it advocates for a holistic legislative approach that integrates clear juridical qualifications, enhanced accountability mechanisms, and a comparative analysis of international legal frameworks. These innovative perspectives aim to create a comprehensive and adaptable legal structure for combating firearm-related crimes.

The primary objective of this research is to analyze and propose reforms to Indonesia's criminal law policies on illegal firearm ownership. By identifying legislative gaps and recommending solutions, this study aims to enhance legal clarity, enforcement efficiency, and public safety. The findings will benefit policymakers, legal practitioners, and law enforcement agencies by providing actionable insights to strengthen the legal framework, thereby contributing to societal welfare and crime reduction.

RESEARCH METHOD

Research method is a stage in carrying out a research activity as it can later carry out the function of research, where the function of research is to obtain a truth. A truth must come from science, that is, where the source of knowledge is obtained, whether the source of knowledge is reliable or not. Thus, without a research method, the researcher will never get the sources of knowledge in his research so that the truth sought as well as the function of the research itself will never get the truth.

That in legal research there are two types of approach models, namely the empirical legal research approach and normative legal research. This study uses normative juridical law research where this research has a descriptive nature, which means an approach based on laws and regulations and laws that are closely related to the problem to be researched which is sourced from actual facts in society and literature materials or secondary data. The approach that the author makes is based on laws and regulations and theories, legal principles, legal doctrines, literature/law books in Indonesia.

RESULTS AND DISCUSSION

The current policy of criminal law formulation in illegal firearm ownership.

The Criminal Code divides criminal acts into two types, namely Crime and Violation. The delicacies that are included in the crime are contained in Book II and those that are included in the offense are contained in Book III. However, the Criminal Code does not mention what criteria are used to distinguish the two types of offenses. The difference between violation and crime is the difference between the offense of the Law and the offense of the law.

Crime is a legal offense while a violation is a violation of the law, so a crime of an act because it is contrary to law order while a violation is an act that is labeled by the law as an act that is contrary to public order (Wahid, 2004).

According to Sudarto (1981), the criteria for distinguishing the two types of delic mentioned above are based on the following opinion: that between the two types of delik there is a qualitative difference. The two types of offenses referred to as crimes or "Recht delicten" are acts that are contrary to justice, regardless of whether the act is criminally threatened in a law or not. While the second type of offense, namely violation or "wetsdelicten" is an act that is only realized by the general public as a criminal act because the law calls it a delicacy, so because the law threatens it with a crime.

Van Bemmelen stated that the difference between crime and violation is not a qualitative difference, but quantitatively, namely crimes in general are threatened with heavier punishment compared to violations. In the Criminal Code, there is a clear distinction between crime and violation (Prodjodikoro, 2003). Crimes are contained in Book I of the Criminal Code while violations are contained in Book II of the Criminal Code. The articles related to Book II of the Criminal Code regarding crime in detail are as follows:

The Indonesia Criminal Code adheres to the monistic school, where in the monistic school there is no difference between criminal acts and criminal liability, but in its development and in the world of practice there is a firm difference between criminal acts and criminal liability, as emphasized by Sudarto about the monistic view. "The monistic view is a view that sees that all the conditions for the existence of a crime are all the nature of the act".

This view provides the principles of understanding, that in the definition of criminal acts/acts, prohibited acts (criminal acts) and criminal liability/mistakes (criminal response) are included.

The Drafters of the Criminal Code (W.v.S) agreed that legal entities cannot commit criminal acts and that those who can commit criminal acts are only natural humans (natuurlijke persoon), while legal humans (rechts persoon) cannot commit criminal acts, but in its development it turns out that natural humans join each other to form a business field in the form of an organization. The development of science and technology has also led to progress in the economic field so that business actors have emerged who are not only individuals but already in the form of cooperation in the form of associations of people or wealth in the form of corporations. This corporation in carrying out its activities is certainly profit-oriented. Therefore, it is also possible to do deeds that can harm others in achieving their goals (Jaya & Serikat, 2018).

In Indonesia, the recognition of corporations as subjects of criminal law, currently the regulation can only be found in criminal law legislation outside the Criminal Code or administrative legislation with criminal sanctions. However, there is still a lack of inadequacy of lawmakers (formulation policies) in formulating corporations as legal subjects that can be criminalized. The incompleteness is about when a corporation is considered to be responsible, or how to be accountable.

The juridical consequences of not regulating corporations as the subject of criminal acts in Book I of the Criminal Code (as a general provision of criminal law), namely their regulation in legal provisions outside the Criminal Code, are very diverse. For example, Emergency Law

No. 12 of 1951 concerning the possession of firearms, ammunition, explosives, and other weapons, only asks for criminal liability to its management, as stipulated in Article 4 paragraph (1) which reads:

- Where an act punishable under this Emergency Law is committed by or on the authority of a legal entity, prosecution may be carried out and punishment may be imposed on the local management or its representative.

The Criminal Code is a material criminal law master system that does not recognize/do not recognize that corporations can be held criminally accountable will cause juridical problems as is known Special laws that contain criminal provisions outside the Criminal Code which is a sub-system of material crime in its development recognize that corporations are legal subjects and can be criminally held accountable, but it is very unfortunate that special laws that contain criminal provisions Many of these do not include guidelines and criminalization of corporations, including:

1. Affirmation of corporations as legal subjects of criminal acts
2. Determination of criminal sanctions/actions for corporations
3. Determination of who can be held accountable
4. Determination of when corporations can be held accountable
5. Determination of when the management can be held accountable
6. Determination of justification and excuse reasons for corporations
7. Determination of criminal rules/guidelines for corporations

This can cause juridical problems because the Criminal Code, which is the parent system of material criminal law as explained above, does not recognize criminal liability for corporations. The Emergency Law No. 12 of 1951 on firearms, also does not regulate liability for corporations.

The first and second problems (Criminal Acts and Mistakes) on various occasions have been the topic of discussion but the third problem, namely crime and punishment, seems to be a stepchild in the discussion of criminal law, even though this punishment plays an important role in achieving the goal of criminal law.

The Penal System is essentially a system of authority/power to impose criminal penalties. It is noteworthy that the meaning of "criminal" is not only seen in a narrow/formal sense, but can also be seen in a broad/material sense. In a narrow/formal sense, the penal system means the authority to impose / impose criminal sanctions according to the law by the authorized officials (judges), in a broad / material sense, the penal system is a chain of legal action processes from authorized officials, starting from the investigation process, prosecution, to criminal verdicts handed down by the court and carried out by the implementing apparatus.

From the definition of the criminal system above, it can be said that all laws and regulations in the Criminal Code and those outside the Criminal Code that are special in nature are all criminal systems. The Penal System, which is formulated in the Law, is essentially a system of authority to impose criminal penalties.

There are 2 (two) types of punishment, namely criminal guidelines and criminal rules. The difference between criminal guidelines and criminal rules is that criminal guidelines are not in the Criminal Code while criminal rules are in the Criminal Code article 53 the trial of crime is reduced by 1/3 (one-third), although the general conceptual construction is not in the Criminal Code, but all of it is in legal lessons/science. However, because it is not explicitly stated in the Criminal Code, often the common conceptual construction is forgotten, even "forbidden" in practice or court decisions.

As for the issue of criminal objectives and guidelines that may be forgotten, ignored, or prohibited just because they are not explicitly formulated in the Criminal Code. Even though from the perspective of the system, the position of "goal" is very central and fundamental. This goal is the soul/spirit/spirit of the penal system.

Based on the provisions of Emergency Law No. 12 of 1951 concerning the possession of firearms, ammunition, explosives, and other weapons, the criminal rules (death penalty, imprisonment, fines and imprisonment), apply the same as the criminal rules in the Criminal Code, except if it is separately specified in Emergency Law No. 12 of 1951 concerning the possession of firearms, ammunition, explosives, and other weapons. Therefore, the penal rules are specially enforced (*lex specialis derogat legi generalis*).

The formulation of criminal sanctions in Emergency Law No. 12 of 1951 concerning the possession of firearms, ammunition, explosives, and other weapons is spread across several articles, including:

Article 1 paragraph (1)

Whoever, without the right to enter into Indonesia, makes, receives, attempts to acquire, hand over or attempts to deliver, possesses, carries, possesses supplies therein or possesses in his possession, stores, transports, conceals, uses, or removes from Indonesia a firearm, ammunition or an explosive, shall be punished with the death penalty or life imprisonment or provisional imprisonment for a maximum of twenty years.

Criminal Law Formulation Policy for Illegal Firearms Ownership in Criminal Law Reform

To determine the upcoming formulation policy, the author uses a comparative study including the Criminal Code and the 2012 Criminal Code Concept

o **Concept of the 2012 Draft Criminal Code concerning the Ownership of Firearms, Ammunition, Explosives, and Other Weapons**

Article 294

Any person who without the right to enter into the territory of the Republic of Indonesia, makes, receives, attempts to obtain, hand over or attempts to deliver, possesses, carries, possesses, stores, transports, conceals, uses, or removes from the territory of the Republic of Indonesia firearms, ammunition, explosives, or other dangerous materials, tear gas, or rubber bullets, shall be sentenced to imprisonment for a minimum of 3 (three) years and at least 3 (three) years and at least 15 (fifteen) years old.

o **Criminal:**

1. Juridical qualification between crime and offense

The 2012 Criminal Code Concept does not include a crime whether it is a violation or a crime which will cause juridical problems in terms of the application of the law in practice and also in the event of an attempt, assistance, concomitant criminal act, etc. In the chapter of Criminal provisions, there must be provisions/affirmations about the juridical qualification of criminal acts as crimes or violations

1. Malicious consensus (*samenspanning*, conspiracy) and recidiverence

The Crime of Malicious Conspiracy in the Criminal Code is regulated in Article 110 paragraphs (1) to (4). Malicious consensus (*samenspanning*) is specifically regulated, namely only for crimes as regulated in Articles 104, 106, 107 and 108 of the Criminal Code. This means that the crime of Malicious Consensus cannot be applied to all criminal acts in the Criminal Code, so it is exceptional, as mentioned in Article 110 of the Criminal Code. The definition of malicious consensus in the Criminal Code can be seen in Article 88 of the Criminal Code which is an authentic interpretation of the malicious consensus. Article 88 states the definition of malicious consensus as follows: "It is said that there is a malicious consensus, if two or more people have agreed to commit a crime"

Even though the criminal act has not been committed, it does not mean that the malicious consensus is the same as the criminal act of probation (*poging*) as regulated in Article 53 of the Criminal Code. In the crime of probation, 3 elements must be met, namely the intention, the beginning of the implementation and the act is not completed against the will of the perpetrator.

If you look at the formulation of the criminal act of malicious consensus, then the intention in the malicious consensus can be punished. Because the act of preparation (voorbereiding) in the evil consensus itself does not exist

In the Concept of the Criminal Code, this special law does not contain criminal provisions on committing criminal acts with malicious conspiracy or in the event of a repetition of a criminal act (recidive), thus causing its own problems because the criminal rules in the Criminal Code are not only aimed at the subject who commits a criminal act but also to those who commit malicious conspiracy and recidive (recidive)

Analysis of the upcoming Criminal Code Concept according to the author:

That in order to make the concept of the upcoming KHUP, the ownership of firearms must contain a juridical qualification between crime and violation that is clear so that it does not cause juridical problems in its application and there must be a malicious consensus (samenspanning, conspiracy) and repetition (recidive) as well as elements that are included in corporate liability because if there is no clarity, it will cause conflicting problems considering that the Emergency Law in force now according to the author is no longer feasible in its application because it only explains universally.

CONCLUSION

The research concludes that the current criminal law formulation policy on illegal firearm ownership exhibits fundamental weaknesses, particularly in its formulation stage (in abstracto), which undermines the effectiveness of its application and execution stages (in concreto). These weaknesses include the lack of clear juridical qualifications for offenses as either "violations" or "crimes" and the absence of definitions or limitations concerning "malicious consensus" and "recidivism." Furthermore, the absence of robust legal provisions for corporate criminal liability, despite the significant societal, economic, and governmental harm caused by corporate crime, highlights the need for a more consistent and solid legislative framework. Addressing these shortcomings requires in-depth academic, professional, and law enforcement engagement to develop a theoretical framework for corporate accountability, alongside enhancing the capabilities of law enforcers to create legal innovations. Future updates to criminal law policy should focus on providing clear juridical definitions of "malicious conspiracy" and "recidivism," ensuring synchronization between criminal liability and crime, and incorporating comparative studies from jurisdictions such as the United Kingdom, India, and Thailand, as well as the 2012 Draft Criminal Code, to establish a more comprehensive and effective legal framework.

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