

Legal Consequences of Possession of Explosive Materials without a Permit

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Abstract

The aims of this research are: 1) to determine the material offense of possessing explosives (detonators) without a permit (study of decision Number 1676/Pid.Sus/2019/PN Mks); 2) to find out the judge's considerations in decision Number 1676/Pid.Sus/2019/PN Mks. This type of research is empirical legal research carried out to look for legal problems or issues and existing legal problems. The result of this legal research is to provide a prescription regarding what should be regarding the legal issue being raised. The results of this research are: 1) The material offense of possession of explosives or detonators without a permit (study decision Number 1676/Pid.Sus/2019/PN.Mks) is Article 1 paragraph (1) of the Emergency Law of the Republic of Indonesia Number 12 of 1951 Because this law is still in force, the public prosecutor used this provision to charge Risal Wali who was legally proven to have committed a criminal offense without a permit for possessing explosives. 2) The judge's considerations in handing down decision Number 1676/Pid.Sus/2019/PN.Mks against the Defendant of a crime without permission to possess explosives/detonators were: a) There was an indictment from the Public Prosecutor; b) Evidence-based on evidence; and c) There are aggravating and mitigating reasons. Judges at the Makassar District Court regarding the factors that form the basis of the judge's consideration in imposing a crime consist of a) the Criminal Code is the basis for the judge's consideration; b) The Defendant is the basis for the judge's consideration; c) Community demands are taken into consideration by the judge.

Keywords: Crime, Without Permit, and Explosives.

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BACKGROUND

God Almighty has blessed Indonesia for its abundant ocean and land wealth. This natural resource wealth becomes the country's significant capital in developing national development. However, the wealth of natural resources already owned by the nation and state must be safeguarded, maintained, preserved, and optimized to provide the greatest possible prosperity for the lives of the Indonesian people and government. Utilizing natural resources is a substantial effort to build harmony, conformity, and balance between humans and their gods and humans and their environment. Therefore, it is essential to protect resource management for the sake of sustainable national development in the future to advance the welfare of the general public as envisioned by the 1945 Constitution of the Republic of Indonesia, one of which is through the development of conservation of biological natural resources and their ecosystems.

The ocean is one of the natural resources that play a significant role in human life because the sea holds

natural wealth that will never run out; as a source of energy, the ocean, the fish, and the ecosystem need serious attention to maintain its sustainability. The utilization and preservation of marine ecosystems must be prioritized as a form of gratitude for the natural riches that God Almighty has given to humans free of charge, especially as Indonesia is a country mainly consisting of islands; of course, the oceans are the basic foundation for the survival of society. In Indonesia, it is the primary source of fulfilling life's needs. However, on the other hand, excessive use and exploitation of natural resources is one of the factors causing natural disasters.

The fact is that various other parties often see fishermen as destroying the environment, especially coral reefs. Some types of technology they use to catch fish are not environmentally friendly or damage the environment (unfriendly technology), for example, fish bombs, potassium cyanide, and others. The fishing community generally does not realize that fish bombing will harm them long term. They don't understand that coral is a place for fish to live; if it is destroyed, the fish

will disappear. They only know that using explosives produces more results [1].

A phenomenon that has attracted the attention of many parties is fishermen using fish bombs for two reasons. First, the level of damage caused by this technology to coral reefs is very significant, and second is the increase in the number of fishermen using fish bombs at the same time as Indonesia's economic crisis. This is where the synthesis will be seen: environmental problems will arise from the interaction between human economic activity and natural resources [2].

On the other hand, manufactured fish bombs are often found to be used illegally. Access to buying and selling fish bombs, both homemade and imported, has become widespread among the fishing community. The use of explosives is also used to obtain significant fish catches. Still, regardless of the impact it has on the marine ecosystem, this is an activity that, without realizing it, will be detrimental to society and the country in the long run.

In this regard, in essence, the existing laws and regulations exist to protect interests for mutual progress. The construction of Indonesia as a state of law, as clearly stated in Article 3 of the 1945 Constitution of the Republic of Indonesia, where this article reads "The State of Indonesia is a State of Law", juridically strictly regulates the permissible aspects regarding the rights of ownership, use, and storing objects deemed necessary to have authority in their use. Regulations regarding several of these matters have an orientation and output towards state protection in community activities, where this aims to provide limitations and prohibitions to the community according to applicable law. The use of explosives in Indonesia is only divided into two types of explosives, namely military explosives and commercial explosives. Possession of explosives is a criminal offense where the act is illegal because it is owned without the authorities' permission.

There are two types of explosives, namely commercial and military. For military explosives, the construction and control are regulated explicitly by the Ministry of Defense; the characteristics or specifications of military explosives must meet several requirements, including [3].

1. Must have tremendous destructive power (very brissant).
2. Insensitive to blows or impacts.
3. Not flammable.
4. It can be stored stably.
5. Does not absorb water.

6. Not reactive to metal.
7. It can be made quickly.

Supervision and control of commercial explosives requires a guideline for the guidance and management of commercial explosives to be developed by the Police of the Republic of Indonesia and the Department of Industry and Trade. The characteristics or specifications of commercial explosives must meet several requirements, including [4].

1. Sensitive to a reaction: heat, vibration, friction or impact.
2. Has a certain detonation speed (high and low explosive).
3. Has limited water resistance.
4. It can be stored stably.
5. Produces explosive gases, namely gas in the form of more stable molecules.
6. Requires stemming/blockage in use.

The legal basis relating to explosives has been explained in Presidential Decree (Kepres) no. 125 of 1999. Article 1 explains the limitations of explosives as follows:

- 1) In this Presidential Decree, what is meant by explosives are materials or substances in the form of solid, liquid, gas, or a mixture thereof, which, when subjected to action in the form of heat, impact or friction, will change chemically into other substances, most or all of which are gas. These changes take place in a very short time, accompanied by very high effects and pressure.
- 2) Explosives, as intended in paragraph (1), consist of military and industrial (commercial) explosives.

Meanwhile, Articles 2 to 6 explain the licensing of possessing explosives. In Article 2 it is stated:

- 1) Business entities produce, procure, store and distribute explosives after obtaining permission from the Minister of Defense and Security.
- 2) Suppose the business entity, as intended in paragraph (1), carries out export and import activities of explosives and their components. In that case, a permit is granted by the minister responsible for trade after receiving a recommendation from the Minister of Defense and Security.

Furthermore, the regulations regarding the criminal act of possession of explosives have been described in statutory provisions, where the terminology regarding possession of explosives is defined in Article

¹ Elisa Priskilia A. Hasugian, "Criminal Acts of Fishing with Explosives in Indonesian Maritime Areas," *Lex Crimen VIII*, no. 1, 2018, p. 108.

² Jamila, *The Crime of Possession of Explosives from the Perspective of Islamic Criminal Law*, *Journal of Islamic*

Legal Thought and Reform Vol. 23, no. 1, Al-Qānūn, Surabaya, 2020, p.172.

³Department of Defense R&D

⁴Department of Defense R&D

1 paragraph (1) of the Emergency Law of the Republic of Indonesia number 12 of 1951, which states [5].

"Any person who, without the right to enter Indonesia, makes, receives, tries to obtain, hands over or attempts to hand over, controls, carries, has supplies to him or has in his possession, stores, transports, hides, uses or takes out of Indonesia a firearm, ammunition or explosives, shall be punished by the death penalty or life imprisonment or a maximum temporary imprisonment of twenty years."

Meanwhile, Article 1, paragraph (3) states [6].

"What is meant by the definition of explosive materials includes all items that can explode, as intended in the Ordonnantie of 18 September 1893 (Stbl. 234), which was later amended by the Ordonnantie of 9 May 1931 (Stbl. No. 168), all types of machines, bombs, incendiary bombs, mines (mijnen), grenades, hand grenades and in general all explosives, whether they are single chemical discharges (enkelvoudige chemischeverbindingen) or mixtures of explosives (explosievemengsels) or materials. Implosive explosives (inleidende explosive), which are used to detonate other explosives, are not included in the definition of ammunition."

Explosives are hazardous materials that must be monitored from procurement, transportation, storage, and use to destruction. Therefore, the guidance and supervision system must be precise and strict, so that the possibility of misuse by irresponsible people can be minimized. As a dual munition agent, on the one hand, explosives are helpful in supporting the smooth implementation of national development, but they will be very dangerous if misused, especially for terrorism. In accordance with Law No. 3 of 2002 concerning defense, supervision, and control over the management of explosives is carried out in integrated coordination between agencies and coordination by the Ministry of Defense (Dephan) [7].

Casuistically, the arrangements and realities in the field regarding the ownership of explosives are in line with the case phenomenon that is of concern to the author, where in decision Number 1676/Pid.Sus/2019/PN Mks, the judge decided:

- 1) Declaring that the Defendant RISAL WALI Bin H. WALI was legally and convincingly proven guilty of committing a criminal act "without the right to enter Indonesia, make, receive, try to obtain, hand over, or try to hand over, control, carry, have stock in him or have in his possession, storing, transporting, hiding, using

or removing from Indonesia any firearms, ammunition or explosives";

- 2) Sentencing the Defendant to imprisonment for 1 (one) year and 2 (two) months;
- 3) Determining that the period of arrest and detention that the Defendant has served shall be deducted entirely from the sentence imposed;
- 4) Order that the Defendant remains in custody;
- 5) Determining the evidence in the form of:- 3 (three) boxes containing 300 (three hundred) Detonators / Explosives, all of which were confiscated for destruction;
- 6) Charged the Defendant with court costs of Rp. 5,000,- (five thousand rupiah);

Whereas based on the facts revealed at the trial obtained from the statements of witnesses, which basically explained that it was confirmed that on Monday, 23 September 2019, at around 21.00, WITA, located on Jalan Barukang Utara Kel. Cambayya District. Ujung Tanah Makassar City Prop. South Sulawesi, the Defendant was found to be in possession of, in possession of or in his possession, storing, and hiding explosives/detonators which the Defendant kept at the Defendant's house in a cupboard and the Defendant showed or displayed 3 (three) boxes containing 300 (three hundred) detonator sticks. Which the police found when examining Defendant, all of which belonged to the Defendant, and the Defendant did not have a valid permit from the authorized party to own, store, or carry out buying and selling activities for the detonator.⁸ Based on the description above, it is interesting for the author to conduct research by examining the material offense of possessing explosives (detonators) without a permit (study of decision Number 1676/Pid.Sus/2019/PN Mks and the judge's considerations in decision Number 1676/Pid.Sus/2019/PN Mks?

LITERATURE REVIEW

Criminal Act

Criminal acts are human behavior formulated in law, is against the law, is worthy of punishment, and is committed with error. A person who commits a criminal act will be held criminally responsible if he makes a mistake [9].

A criminal act is an act of doing or not doing something with an element of error as an act that is prohibited and punishable by crime, where the imposition of a crime against the perpetrator is for the sake of maintaining legal order and guaranteeing the public interest [10].

- a. Types of criminal acts are differentiated on the following grounds: According to the Criminal

⁵article 1 paragraph (1) of the Emergency Law of the Republic of Indonesia number 12 of 1951

⁶article 1 paragraph (3) of the Emergency Law of the Republic of Indonesia number 12 of 1951

⁷DoD R&D, "DoD Bulletin," tt

⁸Decision Number 1676/Pid.Sus/2019/PN Mks

⁹ Hamza, Andi. *Anthology of Criminal Law and Criminal Procedure*. Ghalia Indonesia Jakarta. 2001. p. 22

¹⁰ Lamintang, PAF *Basics of Indonesian Criminal Law*. PT. Image of Aditya Bakti. Bandung. 1996. p. 16.

Code (KUHP), crimes contained in Book II and offenses contained in Book III are distinguished. The division of criminal acts into "crimes" and "violations" is not only the basis for dividing our Criminal Code into Book II and Book III but is also the basis for the entire criminal law system in the legislation as a whole.

- b. According to the way it is formulated, it is differentiated into formal criminal acts (*formeel delicten*) and material criminal acts (*Materiil Delicten*). A formal criminal offense is a criminal offense that is formulated in the form of a prohibition against carrying out certain actions. For example, Article 362 of the Criminal Code is about theft. The core of a prohibited material crime is to cause prohibited consequences, therefore whoever causes prohibited consequences is responsible and punished.
- c. According to the form of error, criminal acts are divided into intentional (*dolus delicten*) and unintentional (*culpose delicten*). Examples of intentional criminal acts (*dolus*) regulated in the Criminal Code include the following: Article 338 of the Criminal Code (murder), namely intentionally causing the loss of another person's life; article 354 of the Criminal Code which intentionally injures another person. In the offense of negligence (*culpa*) people can also be punished if there is an error, for example, Article 359 of the Criminal Code which causes the death of a person, other examples are as regulated in Article 188 of the Criminal Code and regulated in Article 360 of the Criminal Code.
- d. According to the type of action, an active (positive) criminal act, also called a material act, is an act to carry it out indicated by the body movements of the person committing the act, for example, Theft (Article 362 of the Criminal Code) and Fraud (Article 378 of the Criminal Code). Passive crimes are divided into pure and impure crimes. Pure criminal acts, namely criminal acts that are formulated formally or criminal acts whose elements are passive acts, for example regulated in Articles 224,304 and 552 of the Criminal Code. Impure criminal acts are criminal acts that are basically positive criminal acts but can be committed inactively or a criminal act that contains prohibited elements

but is carried out without action, for example, as regulated in Article 338 of the Criminal Code, the mother does not breastfeed her baby so the child dies [11].

Based on the definitions above, it can be seen that a criminal act is an act of doing or not doing something that has an element of error as an act that is prohibited and punishable by criminal law, where the imposition of a crime on the perpetrator is for the sake of maintaining legal order and ensuring the public interest. Meanwhile, Hazewinkel Suriga defines criminal acts as any behavior or action that is prohibited and punishable by crime [12]. The perpetrator of a criminal act is someone who commits the criminal act in question, in the sense of a person who, with intention or unintentional action as required by law, has caused consequences that are not prohibited or actions that are required by law. The perpetrator of a criminal act is a person who fulfills all the elements of an offense as specified in the law, whether these are subjective elements or objective elements in a criminal act.

Apart from the need for uniformity in the use of terms translated from *strafbaar feit*, experts define *strafbaar feit* with different editorial choices. Still, in essence *strafbaar feit* is an act that is prohibited by legal provisions. Simons, who defines *strafbaar feit* as a criminal act, describes it as behavior that is punishable by crime, is unlawful and relates to mistakes committed by people who are capable of being responsible [13]. EY. Kanter and SR. Sianturi provides a similar definition of a criminal act, namely an action at a particular place, time and circumstances that is prohibited (or required) and is punishable by law, unlawful and wrongly committed by someone capable of being responsible [14].

Van Hamel, as quoted by I Made Widnyana, explained that *strafbaar feit* is a person's behavior that is formulated in law, is against the law, deserves to be punished, and is done wrongly [15]. What is meant by wrongdoing in this sense is that the action is done with the desire or intention of causing the consequences that occur. A person can be said to have made a mistake if he commits a criminal act, it can cause harm, and the show, which is detrimental to society is carried out with the knowledge of the perpetrator, so from the perspective of society he should avoid this act [16].

¹¹Andi Hamza. *Anthology of Criminal Law and Criminal Procedure*. Ghalia Indonesia Jakarta. 2001. p. 25-27

¹²Eddy OS Hiarij, *Principles of Criminal Law*, (Yogyakarta: Cahya Atma Pustaka, 2014), p. 93.

¹³Chairul Huda, *From No Crime Without Fault To No Accountability Without Fault, Critical Review of the*

Theory of Separation of Crime and Criminal Liability, (Jakarta: Kencana Prenada Media, 2006), p. 25-26.

¹⁴Erdianto Effendi, *Indonesian Criminal Law*, (Bandung: PT Refika Aditama, 2011), p. 99.

¹⁵I Made Widnyana, *Principles of Criminal Law: Student Handbook*, (Jakarta: Fiakahati Aneska, 2010), p. 35.

¹⁶Mahrus Ali, *Basics of Criminal Law*, (Jakarta: Sinar Grafa, 2011), p. 157.

Prevention of Crime or Crime

Criminal Policy, which in foreign literature is often known by various terms, including *penal policy*, *criminal policy*, or *strafrechtspolitik*, is an effort to tackle crime through enforcing criminal law, which is rational, namely fulfilling a sense of justice and effectiveness. To tackle corruption, various means of reaction can be given to perpetrators of crime in the form of criminal and non-criminal legal standards, which can be integrated. Suppose criminal means are called upon to tackle crime. In that case, it means that criminal law politics will be implemented, namely holding elections to achieve results in criminal legislation that are appropriate to the circumstances and situations at one time and for the future [17].

Penal) and non-criminal (*nonpenal*) means, which can be integrated with one another. Suppose criminal means are called upon to tackle crime. In that case, it means that criminal law politics will be implemented, namely holding elections to achieve results in criminal legislation that are appropriate to the circumstances and situations at one time and for the future. The use of criminal law is to overcome a symptom and not a solution by eliminating the causes, in other words, criminal law sanctions are not causative treatment but only symptomatic treatment.

Apart from that, criminal policy is also an integral part of social policy. Social policy can be interpreted as a rational effort to achieve community welfare (*social welfare policy*) and at the same time, includes community protection (*social defense policy*). So, in short, it can be said that the ultimate goal or main objective of criminal policy is the "protection of society to achieve prosperity". Rational efforts to control or overcome crime (criminal politics) use two means, namely:

- a. Criminal Policy with Penal Means Penal means are the handling of crime using criminal law in which there are two central problems, namely:
- b. (1) what actions should be made into criminal acts. (2) What sanctions should be used or imposed on violators?
- c. Criminal Policy with Non-Penal Means Crime prevention policy with non-penal means only includes the use of social norms to improve certain social conditions but indirectly influences efforts to prevent crime [18].

The thing that underlies criminal prevention is the understanding that God Almighty blesses every human being with reason and conscience, which gives him the ability to distinguish between good and bad, which will guide and direct his attitudes and behavior in living his life. With reason and conscience, humans have the freedom to decide their behavior or actions. In

addition to balancing this freedom, humans can be responsible for all actions they take before mutually recognized law.

RESEARCH METHODS

The type of research in this research is included in normative legal analysis as one of the research for future legal needs. Normative legal research, or library legal research, is a method or method used in legal research with existing library materials. The approaches in this research are the statutory regulations approach (*statute approach*) and the case approach.

RESEARCH RESULTS AND DISCUSSION

Position of Case Decision Number 1676/Pid.Sus/2019/PN.Mks

To be able to elaborate and provide explanations in discussions related to legal writing that the author has written, the author first conducted a study of decision Number 1676/Pid.Sus/2019/PN.Mks. The position of the case in the decision is that on September 23 2019 at around 21.00 WITA at Jaan Barukang Utara Kel. Cambayya District. Land Edge Makassar City Prov. South Sulawesi, Defendant Risal Wali Bin H. concealed, used or removed from Indonesia a firearm, ammunition or explosive material, which was carried out by the Defendant in the following way:

1. Defendant Risal Wali bought five doses of explosives/detonators from Jamal for Rp. 20,000,000 (twenty million rupiah), but the Defendant has not paid it because payment will be made after all the explosives are sold;
2. The Defendant has been carrying out his actions since September 2019, the explosives will be sold to anyone who comes to the Defendant to buy explosives.
3. The police arrested the Defendant on 23 September 2019 at Jalan Barukang Utara Kel.Cabayya Kec. Ujung Tanah, Makassar City and during the investigation of the Defendant, the police did not find anything, but the Defendant indicated the place where he had hidden the explosives, namely in a cupboard, precisely in the Defendant's own house. Three (3) boxes were found containing 300 (three hundred) explosives.
4. The explosives that the Defendant was going to sell were usually used by fishermen as fish bombs, and the Defendant had sold the explosives to A. Baso twice in September 2019 for 4,200,000.00 (four million two hundred thousand rupiah) / dos.
5. Based on the minutes of the Criminalistics Laboratory's examination of Detonator evidence at the Forensic Laboratory of the

¹⁷ Sudarto. *Capita Selecta Criminal Law*. Alumni.Bandung. 1986. p. 22-23

¹⁸Badra Nawawi Arief. *Op. Cit* . p. 77-78

Makassar Police Branch No. Lab 3916/BHF/IX/2019 dated 2 October 2019, which was made and signed by KOMBES POL Drs.Samir SSt.Mk.MAP as Head of the Makassar Branch Forensic Laboratory which explains that the evidence is in the form of:

- a. 1 (one) brown package that meets the requirements and seals evidence containing 2 pieces of manufactured explosives. Length 40.97 ± 0.058 mm and diameter 6.48 ± 0.058 mm. The chemical examination results were Positive for Nitrate and the ion scan examination results were Positive for PETN (Penta Erythritol Tetranitrate). Explosives that use PETN as the explosive filling in them.
- b. Explosives, combined with a fire fuse and ANFO (Ammonium Nitrate Fuel Oil), are bombs that can be used to catch fish in the sea and can cause damage to the marine ecosystem.
6. The Defendant's actions are as regulated and punishable by crime in Article 1 paragraph (1) of the Emergency Law No. 12 of 1951 in State Gazette No. 78 of 1951^[19].

Material Offense of Possession of Explosives (Detonators) Without a Permit (Study Decision Number 1676/Pid.Sus/2019/PN.Mks)

Currently, developments in the era are increasing rapidly, so this also influences developments in the form of criminal acts various types of criminal acts in Indonesia, both crimes that use traditional and modern tools. One of the crimes that is increasingly common in Indonesia is the possession of explosives or detonators among civilians without a permit because this will raise concerns that these explosives can be used as a tool to commit criminal acts.

The crime of not having the right to own explosives is not a new case that has occurred in Indonesia, there have been many cases in several regions in Indonesia, one of which is the case that occurred in Makassar City, where there was a person named Risal Wali Bin Wali who kept explosives to sell and buy to anyone. Only those who came to buy explosives from him had no ownership permit from the authorities. This criminal act, namely the crime of possessing explosives without a permit in Indonesia, is contained in the provisions of the Emergency Law of the Republic of Indonesia Number 12 of 1951 (hereinafter referred to as Law Drt No. 12/1951).

There has been no revocation or new legislation that regulates the same issue regarding Drt Law No. 12/1951 so it is still in effect today. Drt Law no. 12/1951

was issued without approval from the People's Representative Council (DPR) because the law was issued in temporary form only for urgent conditions, but is still in effect.

Emergency laws are almost the same as Government Regulations in Lieu of Law. Maria Farida, in her book, states that ²⁰"*in the event of a compelling emergency, the President can issue a Government Regulation in Lieu of Law, which is a statutory regulation that has the status of a law.*"

Emergency laws are not included in the hierarchy of statutory regulations, where the provisions of Law Number 10 of 2004 concerning the Formation of Legislative Regulations only contain 5 statutory regulations, namely the 1945 Constitution of the Republic of Indonesia, the Law / Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, and Regional Regulations. However, in practice, Law Drt No. 12/1951 is still used to prosecute criminal possession of explosives without a permit.

Drt Law No. 12/1951 is a regulation that has been around for quite a long time, even now the articles contained in the law are still the basis for criminal acts related to firearms, ammunition or explosives, because they are still considered appropriate in accordance with the conditions of society Currently, legal issues related to explosives are still used in Law Drt No.12/1951.

Possession of explosives, namely owning, storing, controlling, carrying, explosive materials, including all items that can explode, all types of gunpowder, bombs, incendiary bombs, mines (mijnen), hand grenades, basically all explosive materials, whether it is a single chemical melt or a mixture of explosives or explosives used to detonate ^[21].

The process of illegally buying and selling explosives is one of the ways people use to own explosives without having a permit from the authorities. The ingenuity of individuals in the process of illegal buying and selling of explosives has resulted in the widespread distribution of possession of explosives among the public. Apart from this, the lack of supervision from the authorities in supervision is still not strict enough, resulting in the process of illegal buying and selling of explosives being easily realized. As a result of this, the illegal circulation of explosives is still found to be a crime of possession of explosives without a permit.

¹⁹ Makassar District Court Decision Number 1676/Pid.Sus/2019/PN.Mks page 2-4

²⁰ Maria Farida Indarti., Legislative Science (Types, Functions and Content), Kanisius, Yogyakarta, 2007, p. 215

²¹Jamila., Op.Cit., p. 176

One of the cases that occurred in Makassar City regarding possession of explosives without a permit was the Risal Wali case in 2019. Risal Wali possessed explosives which were stored in his house without a permit. Risal Wali was arrested by Police officers who were on patrol.

The Public Prosecutor charged the actions committed by Risal Wali with a single charge, namely committing a criminal act as regulated and punishable by crime in Article 1 paragraph (1) of the Emergency Law of the Republic of Indonesia Number 12 of 1951, which reads in the article, namely "*Whoever without the right to enter Indonesia, make, receive, attempt to obtain, hand over or try to hand over, control, carry, have supplies of or have in his possession, store, transport, hide, use or remove from Indonesia a firearm, ammunition or explosives, shall be punished with the death penalty or life imprisonment or a maximum temporary imprisonment of twenty years.*" Criminal liability based on the principle of "*Geen straf zonder schuld*" also applies to the criminal act of storing explosives [22].

As for the elements of not being criminal in the provisions of the article above, the author will explain them as follows:

1. The "whoever" element

In the provisions of the Criminal Code, the subject of criminal law is humans or natural persons. The whosoever element in a criminal case refers to the legal subject, namely the person or perpetrator of a criminal act, and the person is then held responsible for the criminal act committed.

Barda Nawawi, in his book, states that when it comes to perpetrators of criminal acts, in general, they only recognize the person as the perpetrator, whereas in relation to criminal responsibility, the principle of guilt is adhered to, which means that in order to impose a crime on the perpetrator of a criminal act, apart from having to fulfill the elements of the offense, there must also be guilt and the ability to take responsibility. Answer [23].

Thus, what is meant by the element "whoever" in case decision Number 1676/Pid.Sus/2019/PN.Mks is that the Defendant, Risal Wali, can be held responsible for his criminal acts.

1. The element "without the right to enter into Indonesia makes, receives, tries to, obtains, hands over or tries to hand over, controls, carries, has supplies to him or has in his

possession, keeps, transports, hides, uses or takes out from Indonesia firearms, ammunition or something explosives".

In the formulation of this second offense there are several elements, the prohibited acts are alternative, which means that the perpetrator's actions do not have to fulfill all the prohibited acts, but only one or more of the prohibited acts are fulfilled, then all the elements contained in the second element have been fulfilled by Defendant.

The actions taken by the Risal Guardian are subject to elements without rights. In the Emergency Law, regulations without rights means not having the authority without permission from the official who has the authority to permit the import firearms, ammunition and explosives into Indonesia or not being based on the favorable legal regulations in force in Indonesia.

In formulating this second offense, items owned and stored by Risal Wali include explosives. Ownership of explosives does not require a permit from the authorities, where explosives are not goods that are freely traded so not everyone can own them. The criminal acts committed by Risal Wali were charged with the elements of not having the right to own his property and storing explosives.

According to the author, the accusation of the element without rights in the provisions of DRI Law No. 12/1951 Article 1 paragraph (1) is appropriate because the criminal act was committed without rights or without permission to possess explosives.

According to Makassar District Court Judge, Harto Pancono, said that in decision number 1676/Pid.Sus/2019/PN.Mks, the judge who had the authority to decide the case against the Defendant Risal Wali used Article 1 paragraph (1) of DRI Law No.12/1951 is in accordance with the criminal act committed by the Defendant, because the Defendant's actions have fulfilled the elements contained in the formulation of Article 1 paragraph (1) of DRI Law No.12/1951 [24].

So it is related to the material offense in decision Number 1676/Pid.Sus/2019/PN. Mks namely Article 1 paragraph (1) DRI Law No.12/1951. Because the judge's decision against the Defendant, Risal Wali, was in accordance with the criminal act that had been committed. In applying the article charged, it is in accordance with Article 1 paragraph (1) of the DRI Law No. 12/1951 which relates to criminal acts without the

²² Fadel Robby Syahputra, M., Diane Zaini, Z., & Alfiyan, A. (2022). Criminal Responsibility for Perpetrators of the Crime of Possession of Ampo Powder as an Explosive Material (Study Decision Number: 488/Pid.Sus/2021/PN Tjk). PAMPAS: Journal of Criminal Law; Vol. 3 No. 2 (2022); 202-211

²³Barda Nawawi Arif., An Anthology of Criminal Law, PT. Citra Aditya Bakti, Bandung, p 85

²⁴ Interview with Mr. Harto Pancono., SH., MH as Makassar District Court Judge.

right to own explosives. The panel of judges imposed a prison sentence of 1 (one) year and 2 (two) months, based on the considerations made by the judge in the judge's deliberation [25].

Referring to Law (UU) Number 1 of 2023 concerning the Criminal Code, possession of explosives without a permit carries lighter criminal sanctions compared to DRI Law No. 12/1951, in the provisions of Article 306 it is regulated that Every person who without right enters the territory of the Unitary State of the Republic of Indonesia, makes, receives, attempts to obtain, hands over or tries to hand over, controls, carries, has supplies of, owns, keeps, transports, hides, uses or removes from the territory of the Unitary State of the Republic of Indonesia firearms, ammunition, explosives or other dangerous materials, tear gas or rubber bullets, shall be punished with a maximum imprisonment of 15 (fifteen) years.

Judge's Considerations in Decision Number 1676/Pid.Sus/2019/PN Max

The act of possessing explosives is an offense in which the act is illegal because it is owned without the permission of the authorities. A person will be punished after fulfilling two conditions which form one condition, namely: firstly, the act is unlawful (as part of a criminal act). Both acts committed can be accounted for (as a joint error). 10 The decision to impose a crime must determine the existence of a criminal act and the existence of a mistake, which is proven by evidence and by the judge's confidence in a defendant who is charged before the Court [26].

In Indonesia, the trial process is implemented, a judge is not allowed to decide a verdict against a defendant in a case if the Defendant has not gone through the evidentiary process at trial. The evidentiary process at trial is very important for the Defendant to undergo in order to obtain legal facts regarding criminal acts that will be revealed during the trial.

The judge will have a basis for consideration in making decisions based on the discovery of legal facts in the trial. The judge's considerations can be taken from within the Criminal Code or outside the Criminal Code or other legal regulations relating to the indictment of the accused who committed a criminal act.

The judge's decision in deciding a case is the end of a case that is presented in court in order to provide a decision regarding the criminal act that has been committed by the Defendant. When making a decision, judges consider many things because the judge's decision will be in the spotlight in society and sometimes even result in controversy among society.

²⁵ *Ibid.*,

²⁶ Jamila, J. (2020). The Crime of Possession of Explosives from the Perspective of Islamic Criminal

Regarding decision no. 1676/Pid.Sus/2019/PN.Mks regarding the criminal case of unauthorized possession of explosives (detonators), the author will outline several things that the Makassar District Court Judge used in deciding the case, as follows:

1. There was an indictment by the Public Prosecutor with a single indictment with charges as stated in Law Drt No.12/1951 LN No.78/1951, the elements of which include:

- a. Whose Elements

The meaning of who is any person or legal subject who commits a criminal act and can be held responsible for his or her actions. Based on the facts revealed in the trial obtained from the statements of sworn witnesses and the Defendant's own statement which confirmed his identity in the Public Prosecutor's indictment, the Defendant in this trial is Risal Wali Bin H. Wali, as a person who can be held responsible for his actions. So the element of whoever has been proven legally and convincingly according to the law.

- b. Elements without the right to enter into Indonesia, make, receive, try to obtain, hand over, or try to hand over, control, carry, have supplies of or have in his possession, store, transport, hide, use or remove from Indonesia a firearm, ammunition or something explosives.

Based on the facts revealed in the trial from the testimony of witnesses which basically stated that the Defendant was found without the right to control, have possession of it or have it in his possession, kept, hid explosives which the Defendant kept in his cupboard at home, of which there were 3 (dos) which contained 300 (three queens) explosives, all of which belonged to the Defendant, who did not have a valid permit from the authorities, to store or carry out activities to buy and sell the detonators, which were discovered by the police during the arrest and examination of the Defendant.

Based on the evidence presented before the court in the form of Minutes of Criminalistic Laboratory Examination of Explosive Evidence at the National Police Forensic Laboratory Center, Makasar Branch No. Mk.MAP as Head of the Makassar Branch Forensic Laboratory, who basically explained that the evidence was in the form of 1 (one) brown package which met the requirements and the seal of the evidence contained 2 (two) Factory Detonators 40.97 + 0.058 mm long and 6,058 mm in diameter. 48 ± 0.058 mm, the chemical examination results were positive for Nitrate, and the non-Ion Scan examination results were positive for PETN. Based on these facts, this element has been proven legally and convincingly according to the law.

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2. Whereas in this case the Defendant has been subject to lawful arrest and detention, it is necessary to determine that the Defendant remains in detention and the period of arrest and detention must be deducted in full from the sentence imposed.
3. To impose a crime against a defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant, namely:
 - a. An aggravating circumstance is that the Defendant's actions were disturbing;
 - b. Mitigating circumstances are that the Defendant behaved politely during the trial and admitted his actions and promised not to repeat his actions.

The judge's considerations regarding the Defendant will become a negotiation in the judge's deliberations to decide the case in which the suspect is charged. The results of the deliberations of the panel of judges at the Makassar District Court determined decision No. 1676/Pid.Sus/2019/PN.Mks, taking into account Article 1 paragraph (1) of the Emergency Law of the Republic of Indonesia and Law Number 8 of 1981 concerning Criminal Procedure Law and other Legislative Regulations, the verdict reads:

According to Judge Hartono Pancono, he stated that the factors taken into consideration by the judge in imposing a crime on the Defendant for a crime without a permit for possessing explosives in case Number 190/Pid.Sus/2019/PN.Mks, consisted of:

1. Criminal law as the basis for the judge's consideration

As a country of law, the judiciary in Indonesia adheres to the principle of legality, as stated in the provisions of Article 1 paragraph of the Criminal Code which states that " no act can be punished except on the strength of the rules in *existing legislation* ". Not only that, in the Indonesian legal system, it is regulated that judges make decisions not only based on formal evidence but also based on the judge's beliefs. So these are the two main elements in decision-making in court [27].

2. The Defendant is the basis for the judge's consideration

Regarding considerations of aggravating and mitigating crimes against the Defendant, Makassar District Court Judge Harto Pancono was of the opinion that unauthorized possession of explosives was an aggravating factor because the Defendant's actions disturbed the public. The Defendant's polite behavior during the trial and admitting his actions and promising not to repeat his actions is a mitigating factor for the Defendant [28].

3. Community demands as the basis for the judge's consideration

It should be noted that apart from the judge having his own considerations in imposing a sentence on the Defendant for the crime of possessing explosives without a permit, the judge also takes into account the demands of the community. The public demands that the decisions handed down by judges against defendants be based on considerations that are as fair as possible for the sake of upholding law and justice.

Makassar District Court Judge's decision in the case of possession without permission of explosives case no. 1676/Pid.Sus/2019/PN.Mks with the Defendant Risal Wali is 1 year 2 months. Sentences handed down by judges are sometimes controversial, especially legal observers who are trapped in assessing the numbers of the judge's decisions. In fact, the number and types of judge's decisions are born from a relatively long period of time, namely starting from when the judge receives the case, examines it, tries it, until delivering the decision. Often, people provide comments based solely on normative value measures [29].

The decision handed down by the Makassar District Court Judge to the Defendant Risal Wali in the criminal case of possession without a permit of explosives has met the basic legal values which consist of:

1. Justice

The judge at the Makassar District Court, in determining the decision on the criminal offense of unauthorized possession of explosives, reflected justice because before passing judgment on the Defendant, the judge previously considered the legal facts revealed in the trial, including the indictment, demand letter, evidence, and aggravating and mitigating factors for the Defendant. In every decision that will be handed down, the judge will pay attention to the sense of justice so that the decision handed down will provide justice for the Defendant.

The concept of justice is reflected in Decision Number 1676/Pid.Sus/2019/PN.Mks, anyone who commits an act that violates the applicable laws and regulations will receive sanctions. It is hoped that this decision, apart from reflecting justice, will also create harmony, harmony, and tranquility in society so that these criminal acts do not happen again which could disturb society.

2. Utility

Decision Number 1676/Pid.Sus/2019/PN.Mks, this decision shows the public that every criminal act will be punished and can provide an example so that the public avoids and does not commit violations and

²⁷ *Ibid* .,

²⁸ *Ibid* .,

²⁹ *Ibid* .,

provides information that possessing explosives without a permit is a criminal offense will be subject to strict sanctions.

3. Legal certainty

Makassar District Court Judge's Decision in Decision Number 1676/Pid.Sus/2019/PN. Mks has demonstrated that there is legal certainty, namely by imposing a prison sentence of 1 year and 2 months on the Defendant who violated Article 1 paragraph (1) of the Emergency Law of the Republic of Indonesia and based on the provisions of the applicable legislation which is in accordance with the principle of legality, resulting in a violation of These laws and regulations will be strictly enforced. The value of legal certainty in decision Number 1676/Pid.Sus/2019/PN. Mks guarantees that the law is a regulation that must be obeyed.

From the description above of decision Number 1676/Pid.Sus/2019/PN.Mks, which was handed down by the Makassar District Court to the Defendant Rizal Wali, there are values of justice, usefulness, and legal certainty. This decision was handed down as fairly as possible to the Defendant in order to obtain justice and benefit by providing a deterrent effect so that the same violation would not be repeated in the future and could also serve as a warning to the public to avoid and not commit violations that are against the applicable legal rules, and the decision also shows that there is legal certainty in imposing sanctions on any violators of the rule of law.

CONCLUSION

The material offense of possession of explosives or detonators without a permit (study decision Number 1676/Pid.Sus/2019/PN.Mks) is Article 1 paragraph (1) of the Emergency Law of the Republic of Indonesia Number 12 of 1951 which is formulated as the element Whose and Elements without the right to enter into Indonesia, make, receive, attempt to obtain, hand over, or try to hand over, control, carry, have supplies of or have in his possession, store, transport, hide, use or remove from Indonesia any firearms, ammunition or other materials, explosives. Because this law is still in force, this provision was used by the public prosecutor to indict Rizal Wali who was legally proven to have committed a criminal offense without a permit to possess

explosives. The judge's considerations in handing down decision Number 1676/Pid.Sus/2019/PN. Mks is the existence of aggravating and mitigating reasons

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