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# *Criminal Liability Of Illegal Firearm Possession Perpetrators Resulting In Death Due To Negligence*

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***Abstract***

***The illegal possession of firearms by civilians, accompanied by careless use resulting in the death of another person, constitutes a criminal law issue demanding precision in the construction of criminal fault. This study examines the criminal liability of a perpetrator whose negligence caused death alongside illegal firearm possession, while also evaluating the application of law and judicial considerations in the Decision of the Gunung Sugih District Court Number 349/Pid.B/2024/PN.Gns and the Decision of the Tanjung Karang High Court Number 13/PID/2025/PT TJK. The novelty of this research lies in its critical analysis of the criminal fault construction employed by the judges, particularly in determining whether the perpetrator's conduct is more appropriately qualified as gross negligence (culpa lata) or conditional intent (dolus eventualis). This study employs a normative juridical method incorporating a statutory approach, a conceptual approach, and a case approach, with a prescriptive-interpretive analytical technique applied to judicial considerations. The findings reveal that the perpetrator's awareness of the illegal and dangerous nature of the firearm used places his mental attitude beyond mere ordinary negligence, thereby conceptually opening the possibility of dolus eventualis qualification. Furthermore, an inconsistency was identified between the legal facts and the fault qualification assigned by both the prosecutor and the judges, as the perpetrator's risk awareness was not fully internalized within the construction of the charges or the decisions. The divergence in sentencing between the two court levels also reflects a paradigmatic disparity in assessing the purposes of punishment. This study recommends reforming firearm regulations to incorporate a more structured gradation of criminal liability, strengthening an integrated firearm ownership oversight system, and developing prescriptive prosecution and sentencing guidelines for similar cases to enhance consistency in law enforcement and the protection of public safety.***

***Keywords: criminal liability; negligence; dolus eventualis; illegal firearms.***

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## A. Introduction

Criminal law essentially serves to protect the most basic legal interests, one of which is the right to life.[1] The protection of human life is the main interest guaranteed by the state through regulation of prohibited acts and the threat of criminal sanctions for any violation that causes serious harm to individuals and society.

In the criminal law system, the principle of "*geen straf zonder schuld*" or no crime without fault is an important foundation that limits the imposition of criminal sanctions only to those who have moral responsibility for their actions.[2] Errors in the Indonesian state criminal law are manifested in two main forms that are fundamentally different, namely intentionality and forgetfulness which must more or less meet 3 elements, namely being able to be responsible; having intentionality or forgetfulness; and the absence of a forgiving reason.[3] Intentionality presupposes the existence of will and knowledge
the perpetrator of the act and the consequences it causes, where the perpetrator consciously directs his actions to the occurrence of a criminal act.[4]

Forgetfulness in the criminal law cannot be seen as a form of mere minor offense. The doctrine of criminal law emphasizes that forgetfulness is a form of error born from non-compliance with the duty of care that should be carried out by a person in certain situations.[5] This becomes even more relevant when the object used is a dangerous object, such as a firearm, which inherently has high destructive power and has the potential to cause death.[6]

In criminal justice practice, cases that combine the criminal act of forgetfulness causing death with illegal possession of firearms requires the prudence of judges in applying the law. The judge is not only required to prove the fulfillment of the elements of delicacy, but also must assess the level of guilt of the perpetrator, the causal relationship between the act and the consequences, and the purpose of the punishment to be achieved.[7] A firearm itself is a tool that is partially or entirely made of metal that has mechanical components or tools such as barrels, beaters or triggers, triggers, springs, and bullet chambers that can throw bullets or gas through the barrel with the help of explosives.[8] Firearms are tools whose use in Indonesia is very strictly regulated.

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[1] T. Santoso, *Criminal Law: An Introduction* (Depok: Rajawali Pers, 2020), 5

[2] "The Principle of No Crime Without Guilt (Geen Straf Zonder Schuld)," *Hukumonline*, accessed January 14, 2026, https://www.hukumonline.com/klinik/a/asas-tiada-pidana-tanpa-kesalahan-geen-straf-zonder-schuld-lt664c9ff651e23/.

[3] M. Utoyo, K. Afriani, R. Rusmini, and H. Husnaini, "Intentional and Unintentional in Indonesian Criminal Law," *Lex Librum* 7, no. 1 (2020): 82.

[4] A. Mutaqqin, "An Examination of the Principle of Geen Straf Zonder Schuld on Criminal Responsibility for Fraud through the Mode of Mystical Ritual," *Journal of Legal Civilization* 2, no. 2 (2024): 47.

[5] Hiariej, E. O. S, *Principles of Criminal Law* (Yogyakarta: Cahaya Atma Pustaka, 2022), 190.

[6] Sweat. (2021). *Law and criminal law*. Bandung: Alumni. p. 74.

[7] Muladi, *Kapita Selekta of the Criminal Justice System* (Semarang: Badan Publishing, Diponegoro University, 1995), 98.

[8] See article 1 paragraph (3) of the National Police Regulation of the Republic of Indonesia Number 1 of 2022 concerning the Licensing, Supervision and Control of Standard Firearms of the National Police of the Republic of Indonesia, Non-Organic Firearms of the National Police of the Republic of Indonesia/Indonesian National Army, and Security Equipment Classified as Firearms.

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This arrangement is reflected in the Emergency Law Number 12 of 1951 which prohibits everyone from possessing, carrying, storing, or using firearms and ammunition without the right to possess, carry, store, or use firearms and ammunition. This prohibition is a form of criminal law protection against public security and safety.[9] Therefore, every possession of a firearm without a permit has basically met the elements of a criminal act, regardless of whether or not there are further consequences. However, when the possession of such illegal firearms is accompanied by careless use and leads to the death of others, the complexity of criminal liability becomes even higher.

In the event of a negligence that causes death accompanied by illegal possession of firearms, the author examines the decision of the court of first instance number 349/Pid.B/2024/PN.Gns and the appeal decision number 13/PID/2025/PT TJK decision on behalf of Muhammad Saleh Mukadam bin Darwis. In this case, the defendant, who is a member of the Central Lampung City DPRD who is a traditional leader, used firearms for symbolic purposes in the Begawi ceremony on Saturday, July 6, 2024. However, in its execution, the weapon erupted and caused the death of a person named Alm. Ahmad Karnadi Dana Sanjaya alias Salam bin Karim. Muhammad Saleh Mukadam bin Darwis was then charged with two alternative charges, namely Article 359 of the Criminal Code and Article 1 paragraph (1) of the Emergency Law No. 12 of 1951.

In the chronology of the case, the firearm in the possession of Muhammad Saleh Mukadam bin Darwis then erupted and hit the victim, resulting in the victim's death. The panel of judges of the first instance considered that the incident was not preceded by the intention or intention to take the victim's life. However, the perpetrator was considered negligent because he used illegal firearms carelessly, causing irreparable consequences, namely the loss of a person's life. The causal relationship between the perpetrator's actions and the consequences that arose was declared legally and convincingly proven based on the evidence submitted at the trial.

The case decided in the Gunung Sugih District Court Decision Number 349/Pid.B/2024/PN.Gns and the Tanjung Karang High Court Decision Number 13/PID/2025/PT TJK show this complexity. In this case, Muhammad Saleh Mukadam bin Darwis was proven to possess and use firearms without a valid permit, and because of his negligence resulted in the death of another person in a customary event called the tradition of begawi cakak pepadun. Begawi Cakak Pepadun, as one of the traditional processions that is still carried out to this day, is a traditional wedding ceremony loaded with symbolic, spiritual, and sociological values. This tradition is the process of inaugurating someone as a traditional leader or giving an honorary title (juluk-adok) in the social order of the people of Lampung Pepadun. The term "Begawi" in Lampung means "party" or "big event", while

[9] Arief, B. N, *Bunga Rampai Criminal Law Policy: The Development of the Drafting of the New Criminal Code* Concept (Jakarta: Kencana, 2011), 256.

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"Cakak Pepadun" refers to a person's rise to the level of Pepadun, which is the highest level in the traditional structure of Lampung.[10]

The procession often involves a variety of traditional equipment, such as traditional clothing, stretchers, and other symbolic devices including weapons as a marker of honor, power, and courage. According to Arizo Fasha or Kiay Suttan Pesirah Abung as a traditional leader who usually carries out the tradition, the presence of weapons in the Begawi ceremony is not a form of threat, but a symbol of honor and protection for the bride's family.[11] Although there is no element of intentionality to take the victim's life, the consequences are fatal and inseparable from the use of illegal firearms in public spaces. This fact puts the actions of Muhammad Saleh Mukadam bin Darwis in the category of gross negligence that deserves serious attention from the perspective of criminal law.[12]

On the basis of these facts, the Gunung Sugih District Court stated that Muhammad Saleh Mukadam bin Darwis had been legally and convincingly proven to have committed a criminal act due to negligence causing death as stipulated in the Criminal Code of 1946 as well as the crime of possession of a firearm without rights as stipulated in Emergency Law Number 12 of 1951 concerning "amending" *the ordonnantie tijdelijke bijzondere strafbepalingen*" (stbl. 1948 no.17) and the former R.I. law number 8 of 1948". In handing down the verdict, the judge of first instance considered that the perpetrator's actions were carried out due to negligence, not intentionality, and took into account the subjective condition of the perpetrator, including the cooperative attitude and remorse shown during the trial.

The decision of the court of first instance was filed on appeal and examined by the Tanjung Karang High Court. In Decision Number 13/PID/2025/PT TJK, the appellate court did not reject or change the legal facts that had been determined by the district court. The Court of Appeal still held that the element of forgetfulness that caused death and the element of illegal possession of firearms had been proven. However, the appeals court gave a different assessment of the weight of the error and the social implications of Muhammad Saleh Mukadam bin Darwis's actions, especially emphasizing that the use of illegal firearms is a factor that significantly increases the level of danger and risk to public safety.

Several previous studies have examined the problem of criminal offences in the spectrum of forgetfulness and intentionality, but with a different focus and object than this study. Shidiq, Samuji, and Haniyah in their 2025 research on the juridical review of the act of taking the life of another person analyzed the boundary between the elements of intentionality (*dolus*) and forgetfulness (*culpa*) in Decision Number 454/Pid.B/2024/PN. Sby, and concluded that the unclear operational criteria of the two elements contributed to the disparity in verdicts and weak legal protection for victims.

[10] Cathrin, S., Wikandaru, R., Indah, A. V., & Bursan, R, "The Philosophical Values of the Begawi Cakak Pepadun Lampung Tradition," *Patra Widya* 22, no. 2 (2021): 214.

[11] "Getting to Know the Begawi Traditional Tradition of Lampung," *Suara.com*, accessed August 6, 2025, https://www.suara.com/lifestyle/2024/07/08/164606/mengenal-begawi-tradisi-adat-lampung-yang-disertai-tembakan-atau-ledakan

[12] Gunung Sugih District Court Decision Number 349/Pid.B/2024/PN.Gns, 87–90.

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Meanwhile, Utoyo, Afriani, Rusmini, and Husnaini in their 2020 study on intentional and unintentional in Indonesian criminal law doctrinally explained that intentionality (*opzet*) requires the existence of the will (*willens*) and knowledge (*wetens*) of the perpetrator of the act and its consequences, while forgetfulness (*culpa*) is born out of a breach of the duty of care without the will to cause a prohibited effect.

Asharyadi and Heniarti in 2025 also examine the application of the doctrine of *dolus eventualis* in cases of persecution that result in death in the same verdict, and emphasized that *dolus eventualis* can be proven if there is awareness of risk and acceptance of risk by the perpetrator even though death is not the main purpose of his actions. The three studies are important references in building a framework of thinking and analysis of criminal errors in this study, especially in assessing the construction of *culpa* and *dolus eventualis* in cases of illegal firearms possession that result in death.

What distinguishes this study from other articles is that the author considers that there is an irregularity in the decision number 349/PID. B/2024/PN. GNS and the appeal decision number 13/PID/2025/PT TJK which already have permanent legal force. The misperception between the legal facts and the qualification of error in this case lies in the considerable distance between the objective conditions of Muhammad Saleh Mukadam bin Darwis' actions in the prosecution process to the object of the court's decision and the subjective assessment of the error attached by the judge. The legal facts revealed at the trial show that the act was committed using illegal firearms, in a public situation, and with full awareness of the dangerous nature of the device. Nevertheless, these facts are not fully reflected in the construction of the error that is ultimately qualified as oblivion. This inconsistency raises juridical issues regarding the consistency of judges' legal reasoning in connecting facts and norms.

Normatively, the qualification of error should be the result of a thorough assessment process of all relevant facts, not solely determined by the existence or absence of an intention to cause consequences. In this case, the judge and prosecutor appear to place the absence of intent to kill as the dominant factor, while other aspects that objectively aggravate the quality of the offense such as illegal possession of firearms and their active use are not adequately integrated into the error analysis. As a result, there is a reduction in the meaning of the mistake which has the potential to obscure the level of seriousness of the act.

The fact that the firearm used is an illegal weapon should have direct implications for the judgment of the fault. Firearms are not ordinary tools, but objects of high destructive power whose use is legally strictly restricted.[13] The possession and use of illegal firearms reflects a conscious violation of preventive legal norms, so there is a strong basis to judge that the quality of the perpetrator's mistakes goes beyond ordinary negligence. These

[13] ALFI, M. A. S, "Legal Certainty of Firearms Ownership for Civil Society in the Context of the State of Law (Rechtsstaat)," *Scientia Journal* 6, no. 5 (2024): 130.

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differences reflect the existence of discretion of judges in sentencing that can produce decisions with different justice orientations.[14]

## B. Research Methods

This research is a normative legal research that focuses on the study of positive legal norms and their application in criminal justice practice. The normative juridical method was chosen because the problems studied were related to criminal liability, the application of legal provisions, and the judge's consideration in deciding cases of criminal acts of negligence that caused death and possession of illegal firearms. The approaches used in this study include a legislative approach and a case approach.

The source of legal materials in this study consists of primary legal materials and secondary legal materials. Primary legal materials include relevant laws and regulations and court decisions, namely the Gunung Sugih District Court Decision Number 349/Pid.B/2024/PN.Gns and the Tanjung Karang High Court Decision Number 13/PID/2025/PT TJK which were analyzed. Secondary legal materials consist of criminal law books and scientific journal articles that are relevant to the research topic in order to maintain the actuality of the study.[15] The data collection technique in this study is *library research*. The analysis technique of legal material that has been obtained by the author is carried out qualitatively by focusing on interpretation or interpretive analysis of the relevant legal norms to decision number 349/PID. B/2024/PN. GNS and appeal decision number 13/PID/2025/PT TJK that are being investigated.

## C. Results and Discussion

### 1. Criminal liability of the perpetrator due to negligence that caused death and possession of illegal firearms in decision number 349/PID. B/2024/PN. GNS and appeal decision number 13/PID/2025/PT TJK?

Criminal liability is a fundamental concept in criminal law that determines whether a person can be held accountable for an act prohibited by law. Criminal liability is not only related to the fulfillment of the elements of criminal acts, but also related to the existence of mistakes and the ability to be responsible of the perpetrator. In the doctrine of criminal law, criminal liability requires a close relationship between the act, the inner attitude of the perpetrator, and the consequences caused, so that punishment is not carried out arbitrarily.[16]

Criminal liability in the Indonesian legal system cannot be separated from the principle *of geen straf zonder schuld* or known as "no crime without fault".[17] This principle states that a person can only be convicted if there is an error in his actions that can be accounted for inwardly and juridically, not solely because of the occurrence of adverse

[14] Tanjung Karang High Court Decision Number 13/PID/2025/PT TJK, 12–15.
[15] Soekanto, S, *Normative Law Research: A Brief Review* (Jakarta: RajaGrafindo Persada, 2007), 24.
[16] Hiariej, E. O. S. (2022). Op. Cit. Hlm 115.
[17] Kurdi, K., Ardhan, A., & Dadek, T. A, "The Relevance of the Principle of No Criminal Punishment Without Fault (Geen Straf Zonder Schuld) in Corporate Criminal Liability in Indonesia," *Jurnal Mercatoria* 18, no. 2 (2025): 214.

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consequences.[18] This principle emphasizes that the element *of mens rea* (mental attitude or subjective error) is an absolute condition that must be met before criminal sanctions can be imposed.

Mistakes as the main element of criminal liability can be intentional or forgetful.[19] Guilt (*schuld*) can be understood as a normative judgment regulated in law on the behavior of the perpetrator in relation to the legal obligation to act carefully. Especially in the case of forgetfulness (*culpa*), the measure of fault does not depend on the will to cause the consequences, but on the existence or absence of a violation of the objective standard of prudence that a person should adhere to under the same circumstances.[20]

Criminal law distinguishes forgetfulness in several levels, ranging from mild forgetfulness (*culpa levissima*) to severe forgetfulness (*culpa lata*).[21] Gross negligence occurs when the perpetrator clearly ignores risks that are very easy to predict and have the potential to cause serious consequences, especially if the act is carried out using means that are inherently dangerous.

The careless use of dangerous tools is often categorized as gross forgetfulness or *culpa lata*, since the risks posed can be clearly estimated by the perpetrator.[22] Therefore, the use of firearms in public spaces without strict safety standards is a form of negligence that cannot be tolerated. In addition to the aspect of forgetfulness, the case that is the object of this research also involves the possession of illegal firearms. The possession of firearms without a license in Indonesia is regulated in Emergency Law Number 12 of 1951 concerning "amending the "*ordonnantie tijdelijke bijzondere strafbepalingen*" (stbl. 1948 no.17) and the former R.I. law no. 8 of 1948", which expressly prohibits everyone from possessing, carrying, storing, or using firearms and ammunition without the right of any person. This prohibition is absolute and does not leave room for justification based on customs, customs, or other non-juridical reasons. Thus, the possession of illegal firearms is a stand-alone criminal act, regardless of whether or not there are further consequences.

In the case decided through the Gunung Sugih District Court Decision Number 349/Pid.B/2024/PN.Gns, the perpetrator was proven to possess and use a firearm without a valid permit and was a pawned item which should have been null and void from the law from the beginning. This fact shows that from the beginning, the perpetrator has had unlawful acts that independently meet the elements of a criminal act. The possession of the illegal firearms then continued to be used carelessly, resulting in the death of others. This series of acts shows the accumulation of errors that aggravate criminal liability in decision number 349/PID. B/2024/PN. GNS and appeal decision number 13/PID/2025/PT TJK Muhammad Saleh Mukadam bin Darwis.[23]

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[18] https://www.hukumonline.com/klinik/a/asas-tiada-pidana-tanpa-kesalahan-geen-straf-zonder-schuld-lt664c9ff651e23/ (Accessed on January 14, 2026 at 16.28 WIB).

[19] Ar, A. M., Wirda, W., Rusbandi, A. S., Zulhendra, M., Bahri, S., & Fajri, D, "The Role of Intent (Mens Rea) in Criminal Accountability in Indonesia," *JIMMI* 1, no. 3 (2024): 247.

[20] Muhaling, A. J, "Negligence That Results in the Death of Persons," *Lex Crimen* 8, no. 3 (2019): 27.

[21] *Ibid*.

[22] Start, Op. Cit. p. 88.

[23] Gunung Sugih District Court Decision Number 349/Pid.B/2024/PN.Gns, 85–92.

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The criminal liability imposed on the perpetrator Muhammad Saleh Mukadam bin Darwis is not only based on the fulfillment of the elements of Article 359 of the 1946 Criminal Code, but also on the fulfillment of the elements of illegal firearms possession as stipulated in Emergency Law Number 12 of 1951. This strengthens the argument of the prosecutor and judge involved in the case process that the mistake of the perpetrator Muhammad Saleh Mukadam bin Darwis is serious and deserves to be held fully criminally responsible in accordance with what is charged in decision number 349/PID. B/2024/PN. GNS and appeal decision number 13/PID/2025/PT TJK.[24]

But in this case, the author has a different view. The qualification of the mistake of the perpetrator Muhammad Saleh Mukadam bin Darwis as intentional in this case can be rationalized by starting from the fact that the perpetrator from the beginning was aware of the prohibited nature of his actions. Possession of firearms without a permit is a criminal offense, so the perpetrator's knowledge of the illegality of the object he controls places his actions in the area of full legal awareness.[25] This awareness is the starting point to assess that the perpetrator is not in a position of ignorance or error, but consciously takes legal and factual risks from his control. If the perpetrator has the ability to estimate the risk, but still ignores it, then his actions can be qualified as negligence that should be criminally accounted for.[26]

The awareness of this illegality is further strengthened by the fact that firearms are obtained through pawn agreements that do not meet the legal requirements of the agreement from the beginning. The object of pawn in the form of a firearm does not have a causa allowed by law, so the agreement is null and void. Thus, from the beginning, there was never a valid civil right on the perpetrator. Knowledge or at least the fact that this circumstance confirms that the perpetrator consciously maintains control over an object that is completely outside the justified legal regime.

In error theory, intentionality does not necessarily require the existence of a primary goal to cause a particular outcome. The doctrine *of dolus eventualis* which may be adapted in decision number 349/PID. B/2024/PN. GNS and appeal decision number 13/PID/2025/PT TJK open the possibility that intentionality also includes circumstances in which the perpetrator is aware of the possibility of arising from the prohibited consequences and continues his actions.[27] The theory that supports *the dolus eventualis* the *In Kauf Nehmen Theory* or the Theory of What Can Be Done.[28] In *in kauf nehmen* or *dolus eventualis,* it may mean that the action taken may have other adverse consequences than the one intended, and although it is not always intended that the other consequences

[24] See the Decision of the Gunung Sugih District Court Number 349/Pid.B/2024/PN.Gns and the Decision of the Tanjung Karang High Court Number 13/PID/2025/PT TJK.

[25] Wartono, N. E, , "Supervision of Legal Firearms Use," *Journal of Dialectical Sociology* 14, no. 1 (2020): 5.

[26] Hiariej, E. O. S, Op. cit. Hlm 156.

[27] "Between Articles 338 and 359 of the Indonesian Criminal Code," *Pahamhukum.id*, accessed January 18, 2026, https://pahamhukum.id/konten/artikel/antara-pasal-338-dan-pasal-359-kitab-undangundang-hukum-pidana-kuhp-indonesia-yang-mana-yang-cocok-untuk-mengadili-tujuh-polisi-penyebab-kematian-affan-kurniawan/66

[28] *Ibid.*

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will actually occur, the perpetrator still carries it out, and is willing to accept the risk even if it is not explained verbally.[29]

The application of *In Kauf Nehmen*'s Theory requires proof from the perpetrator's awareness of the possible adverse consequences and the attitude of the perpetrator who continues to commit the act even though he knows the risk. In decision number 349/PID. B/2024/PN. GNS and appeal decision number 13/PID/2025/PT TJK, Muhammad Saleh Mukadam bin Darwis is not a layman who does not know firearms. The perpetrator was carrying a 5.56 mm caliber long-barreled firearm. Weapons designed for war purposes in the midst of crowds of people at weddings. This fact shows that there is an early awareness of the potential dangers inherent in his actions. He had fired the weapon 4 times with a long barrel and 5 times with a short barrel before the fatal incident occurred. The experience of shooting 9 times should provide a concrete understanding of the explosive power, direction of fire, and risk of errors in the use of weapons.

The fact that he did not check the safety of the weapon and did not confirm whether the weapon still contained bullets or was in a safe condition certainly shows the possibility of a "what to do" attitude towards the risks that may arise. The perpetrator chose to continue shooting activities without adequate care, despite being aware that any action involving firearms in the midst of a crowd of people carries a risk of injury or death.

In the negligence analyzed by the author in decision number 349/PID. B/2024/PN. GNS and the appeal decision number 13/PID/2025/PT TJK, the perpetrator should be able to guess the consequences but not really think about it. On the contrary, in dolus eventualis, the perpetrator is clearly aware of the possible adverse consequences but still acts by accepting the risk. The perpetrator who had shot 9 times before, who understood the dangers of firearms, and who was in the middle of a crowd, was unbelievably "not really thinking" about the risks. The concept of "accepting risk" in kauf nehmen does not mean that the perpetrator wants the bad consequences. The perpetrator may wish there were no victims. However, by continuing to fire the weapon without adequate caution in the crowd, he has shown a willingness to accept the worst possible consequences of his actions.

The possession and use of illegal firearms by persons who do not have the competence and rational permits carries the real possibility of serious danger, including loss of human life.[30] In contrast to ordinary tools, firearms have special characteristics as tools with high destructive power and deadly potential. Anyone who masters it consciously, especially without permission, should be assumed to know that even a small mistake can be fatal. Therefore, the perpetrator's awareness cannot be narrowed down to just the aspect of possession, but also includes an understanding of the extreme risks inherent in the use of such weapons.

[29] *Ibid.*
[30] Angelica, A., Fardiansyah, A. I., & Tamza, F. B, , "Juridical Review of Illegal Firearms Ownership," *Bureaucracy* 3, no. 1 (2025): 24.

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If the perpetrator continues to use the firearm in a state of awareness of its illegal and dangerous nature, then there is a basis for stating that he accepts the possibility of the forbidden consequences. This acceptance does not have to be proven through explicit statements, but can be analyzed from the inner attitude of the perpetrator who continues to act even though he knows the potential consequences that can occur.

At this point, the line between gross forgetfulness and intentionality becomes very thin. Classically, the distinction between forgetfulness and intentionality rests on the perpetrator's inner attitude towards consequences.[31] Forgetfulness is characterized by the absence of will and the absence of acceptance of consequences, while intentionality is characterized by the presence of a will or at least acceptance of the possibility of forbidden consequences.[32] The line between gross forgetfulness and intentionality becomes thin when the perpetrator's awareness of the risk is so high that the expectation that the consequences will not occur loses its rationality.[33] At this stage, the distinction between "not being taken seriously" and "accepting risk" is no longer easy to determine empirically, but rather must be assessed normatively based on the quality of the risk known to the perpetrator.[34]

In cases involving objects with extreme destructive power, such as illegal firearms, the standard of distinction becomes increasingly blurred. Firearms are not neutral toolsand their lethal properties are generally known.[35] When a person consciously possesses and uses firearms without rights, his knowledge of the potential fatal consequences is at a much higher level than ordinary acts.[36] At this point, the claim that the perpetrator "did not imagine" or "did not anticipate" the fatal consequences of his feelings becomes difficult to defend rationally.

The intentional argument can also be strengthened through a normative approach to the duty of care. On objects that are legally prohibited and factually dangerous, the standard of care increases significantly. This attitude can be seen as a form of negative will towards the consequences that may arise. In addition, the series of acts of the perpetrator shows that there is a continuity between the unlawful acts and the consequences caused. There is no causal pause that breaks the perpetrator's inner connection with the consequences. The perpetrator not only controls the firearm passively, but also uses it, so that the result is a realization of the risk that he has been aware of since the beginning of his act.

From the perspective of protecting legal interests, particularly the safety of life, the interpretation of intentionality as a possibility can be seen as more responsive to the real

[31] Ar, A. M., Wirda, W., Rusbandi, A. S., Zulhendra, M., Bahri, S., & Fajri, D, Op. Cit. 130
[32] Ibid.
[33] Shidiq, A., Samuji, S., & Haniyah, H, , "A Juridical Review of the Acts of Taking the Lives of Others," *Journal of Education and Development* 13, no. 3 (2025): 805.
[34] Ibid.
[35] ALFI, M. A. S, *Op Cit.* Question 130.
[36] Perdana, N., Thalib, H., & Asriati, A, "Law Enforcement of Illegal Firearms Ownership," *Legal Dialogica* 1, no. 1 (2025): 18.

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dangers posed by the possession of illegal firearms.[37] This interpretation does not aim to expand intentionality arbitrarily, but places the perpetrator's fault proportionately to the level of threat he or she creates himself. However, the construction of intentionality in this case does not have to be understood as a direct intentional attempt to take a life.

Intentionality can be placed at the level of accepting the possibility of fatal consequences as a logical consequence of the act committed.[38] With this framework, the perpetrator's mistakes remain within the limits of the criminal law doctrine that can be scientifically accounted for. Thus, there is theoretically a rational basis to judge that the perpetrator's actions can be qualified as intentional in the sense of *dolus eventualis*. Awareness of the illegality of firearms, the nullification of the basis for civil possession, and the acceptance of the lethal risks of the use of such weapons form an argumentative unity that allows the shift of the qualification of error from gross omission to intentionality as a possibility.

This argument is worth considering as an alternative analysis in academic discussions to enrich the perspective of criminal error assessment because the possession of illegal firearms in this case clearly shows the existence of a form of risk-based criminal responsibility. Firearms are inherently dangerous objects, so their possession demands a higher legal responsibility to prevent harm to others.[39] Therefore, criminal liability must be placed as an instrument to enforce the duty of care and respect for human life.

**2. The application of the law and the judge's consideration of the verdict of the crime of negligence that caused death and possession of illegal firearms in the decision in decision number 349/PID. B/2024/PN. GNS and appeal decision number 13/PID/2025/PT TJK**

The application of criminal law by judges is not only related to proving the fulfillment of the elements of the offense, but also concerns how the judge assesses the level of guilt of the perpetrator and determines a proportionate crime.[40] In the case of forgetfulness that causes death and illegal possession of firearms, the application of the law becomes increasingly complex because it involves two different things in the criminal law, namely the offense of forgetfulness in the Criminal Code and the offense of illegal possession of firearms in Emergency Law Number 12 of 1951.

Decision number 349/Pid.B/2024/PN.Gns shows that the judge of first instance applies the law by first assessing the fulfillment of the elements of Article 359 of the Criminal Code which reads "*Whoever because of his fault (forgetfulness) causes the death of another person, is threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year*".

[37] Ali, S., Berliantari, E. N., Zuliana, A., & Triadi, *The Problem of Licensing of Possession of Munitions for Civilians in a National Positive Legal Perspective.* Democracy: Journal of Legal, Social and Political Science, 1(2), 171-184: 179.
[38] Harefa, B., & Kholiq, A, *Op. Cit*. p. 44.
[39] Sasela, J. P, "Legal Sanctions for Illegal Firearms Ownership," *Lex Administratum* 12, no. 1 (2023): 2.
[40] Setiawan, D., Juna, A. M., Fadillah, M. S., Oktarianda, S., Zulkarnen, Z., Rizal, A., & Satrio, I, "The Principle of Proportionality in Criminality," *JIMMI* 1, no. 3 (2024): 276.

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The panel of judges considered that the perpetrator had committed a negligent act, namely using a firearm without caution, resulting in the death of the victim. The element of forgetfulness is understood as a lack of caution that should be carried out by the perpetrator Muhammad Saleh Mukadam bin Darwis in certain situations, considering that firearms are dangerous tools and have the potential to cause fatal consequences so that it can be considered that the perpetrator has fulfilled all the elements in the article.[41]

In addition, the judge of first instance also applied the provisions of Emergency Law Number 12 of 1951 article 1 paragraph (1) which reads "*Whoever, without the right to enter into Indonesia, makes, receives, tries to acquire, surrender or tries to submit, control, carry, have supplies to him or has in his possession, store, transport, hide, use, or remove from Indonesia a firearm, ammunition or explosives, punishable by the death penalty or life imprisonment or a term of imprisonment not exceeding twenty years*".

The judge of the first instance considered that the perpetrator was proven to meet the elements of possessing and using a firearm without a valid permit. In its legal considerations, the court of first instance affirmed that illegal possession of firearms is a stand-alone criminal offense and cannot be justified for any reason. Nevertheless, from a criminal perspective, courts of first instance tend to conceptually separate forgetfulness causing death and illegal possession of firearms as two interrelated but proportionately assessed acts.[42]

The consideration of the judge of the court of first instance in imposing a crime shows a relatively individualistic orientation. The judge considered mitigating factors, such as the perpetrator's polite attitude at the trial, the admission of guilt, and Muhammad Saleh Mukadam bin Darwis' remorse for his actions. These factors are seen as relevant to assess the level of error of Muhammad Saleh Mukadam bin Darwis subjectively. This approach is in line with the classic view in criminal law that places punishment as a means of retribution proportionate to individual wrongdoing.[43]

However, this approach is later considered not to fully reflect the broader goals of criminalization, especially in terms of community protection. In the appeal decision Number 13/PID/2025/PT TJK, the high court did not have a problem with proving the elements of delicacy, but rather focused on the assessment of legal considerations and criminal imposition.[44] The appellate court unequivocally stated that the application of the law by the court of first instance was basically correct in terms of proving the guilt of Muhammad Saleh Mukadam bin Darwis.

The element of forgetfulness that caused death and the element of illegal possession of firearms is considered to have been fulfilled legally and convincingly. Thus, there is no error in the application of material legal norms. However, the appeals court judged that

[41] Gunung Sugih District Court Decision Number 349/Pid.B/2024/PN.Gns. 86
[42] Hamzah, A, op. cit. 168.
[43] Muksin, M. R. S. "The *Purpose of Criminalization in Indonesian Criminal Law Reform*," *Sapientia et Virtus* 8, no. 1 (2023): 238.
[44] Tanjung Karang High Court Decision Number 13/PID/2025/PT TJK. p. 10.

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the court of first instance did not give adequate weight to the level of risk and social impact of Muhammad Saleh Mukadam bin Darwis's actions.[45]

In its legal considerations, the appeals court placed the use of illegal firearms as a key factor that aggravated Muhammad Saleh Mukadam bin Darwis's guilt. Firearms are seen not just as a means of criminal acts, but as objects that are inherently dangerous and have the potential to pose a serious threat to public safety. Therefore, the forgetfulness committed by Muhammad Saleh Mukadam bin Darwis is qualified as severe forgetfulness or culpa lata.

The difference in the application of the law between the court of first instance and the court of appeal is also seen in the way in which each court understands the purpose of the penalty. The court of first instance tends to place the punishment in a retributive and corrective framework, that is, as a response to the mistakes of Muhammad Saleh Mukadam bin Darwis as well as as a means of coaching.[46] Instead, appellate courts emphasize preventive goals and protection of the public interest.

Criminalization is seen as an instrument to prevent the recurrence of similar acts and to send a strong message to the public about the dangers of illegal firearms use.[47] In addition, customary norms are also felt to have no power to override criminal provisions that are imperative and aim to protect public safety.[48] This view strengthens the principle of the rule of law in the Indonesian criminal law system.

To clarify the construction of criminal liability of perpetrators of crimes due to negligence that caused death and possession of illegal firearms in the cases and decisions that are the object of this study, Table 1 is presented which contains a comparison between the Decision of the Gunung Sugih District Court Number 349/Pid.B/2024/PN.Gns and the Decision of the Tanjung Karang High Court Number 13/PID/2025/PT TJK.

**Table 1. Comparison of Judges' Considerations[49]**

| No. | Analysis Aspect | PN Gunung Sugih No. 349/Pid.B/2024/PN.Gns | PT Tanjung Karang No. 13/PID/2025/PT TJK |
|---|---|---|---|
| 1 | Error Basis | Forgetfulness causing death (Article 359 of the Criminal Code) | Forgetfulness that leads to death with an emphasis on social risk |
| 2 | Qualification of Forgetfulness | Forgetfulness due to lack of caution | Kealpaan berat (culpa lata) |
| 3 | Verdict | 5 years in prison | 8 years in prison |

[45] See the Decision of the Gunung Sugih District Court Number 349/Pid.B/2024/PN.Gns.
[46] Rivanie, S. S., Muchtar, S., Muin, A. M., Prasetya, A. D., & Rizky, A, Op. Cit. 180.
[47] Arief, B. N, op. cit, 190.
[48] Handayani, T. A., & Prabowo, *Analysis of Customary Criminal Law in National Criminal Law*. *Ius Publicum Legal Journal* 5, no. 1 (2024): 97.
[49] Lihat Putusan Pengadilan Negeri Gunung Sugih Nomor 349/Pid.B/2024/PN.Gns dan Putusan Pengadilan Tinggi Tanjung Karang Nomor 13/PID/2025/PT TJK.

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| | | | |
|---|---|---|---|
| 4 | Aggravating reasons | The actions carried out by the defendant Muhammad Saleh Mukadam bin Darwis have had a very serious impact, namely resulting in the death of the deceased Ahmad Karnadi Dana Sanjaya alias Salam bin Karim. In addition, the defendant's actions are also contrary to the government's program that is being intensively implemented to eradicate illegal or unauthorized possession of firearms, so that the defendant's actions not only harm the victim and his family, but also contradict law enforcement efforts and public order. | Heaven |
| 5 | Mitigating reasons | The defendant Muhammad Saleh Mukadam bin Darwis has shown a good attitude during the trial process, where he admitted his actions frankly and was cooperative so as to facilitate the course of the examination. The defendant has also sought peace with the victim's family, namely the family of the late Ahmad Karnadi Dana Sanjaya alias Salam Bin Karim, both inside and outside the trial, and the peace efforts have been well received by the victim's family. Furthermore, the defendant showed deep remorse and had confessed his actions, and it should be considered that the defendant had never served a previous sentence and was not a repeat offender. | Heaven |

Based on the two decisions above, Muhammad Saleh Mukadam bin Darwis has the status of a state official who allows access and possession of firearms without a permit even though the firearms in the case are a guarantee for debts and receivables. The court of first instance emphasizes the fulfillment of the elements of the crime and the subjective condition of the perpetrator, while the court of appeal emphasizes the social meaning of the act and the purpose of the crime. This shift reflects the dynamics of

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criminal law enforcement that is not static, but continues to evolve in accordance with the needs of public protection.[50]

Both courts have consistently held that Muhammad Saleh Mukadam bin Darwis was proven to have committed negligence resulting in the death of another person and possessing and using firearms without a valid permit. Thus, the difference in verdicts does not lie in the aspect of judicial error, but in the aspect of criminal considerations.

In the first instance, the Gunung Sugih District Court placed the forgetfulness of Muhammad Saleh Mukadam bin Darwis as a form of individual negligence. The judge considered that the result of the victim's death was a consequence of the lack of caution of Muhammad Saleh Mukadam bin Darwis, without any malicious intent or intentional to take his life. The approach reflects an orientation of individual justice, where punishment is seen as a proportionate response to the personal faults of the perpetrator.

On the other hand, the Tanjung Karang High Court used a broader perspective by placing the actions of the perpetrator Muhammad Saleh Mukadam bin Darwis in the public interest and social risk. While not denying the existence of an element of forgetfulness, the appellate court qualified such forgetfulness as gross negligence because it was committed using an illegal firearm, which inherently has high destructive power and has the potential to pose a widespread danger. Therefore, the appeals court considered that the verdict of the court of first instance did not fully reflect the weight of the danger and social impact of Muhammad Saleh Mukadam bin Darwis' actions.

Differences in verdicts can be influenced by differences in interpretation of the purpose of the sentence.[51] The court of first instance focused more on the retributive and corrective goals, namely providing punishment commensurate with the mistakes of Muhammad Saleh Mukadam bin Darwis while opening up a space for coaching. Instead, the Court of Appeals emphasized the goal of prevention and protection of the community. Criminalization is seen as a means to prevent the recurrence of similar acts and sends a strong message that the possession and use of illegal firearms cannot be tolerated, especially if it results in the loss of human life.

From the perspective of criminal liability theory, a person can be held accountable if he or she has the ability to be responsible (*toerekeningsvatbaarheid*).[52] Responsible ability is related to the perpetrator's psychological condition which allows him to understand the nature of the act and the consequences caused.[53] In this case, no excuse was found such as mental disorders or certain psychic conditions that eliminated the ability to be responsible Muhammad Saleh Mukadam bin Darwis. Thus, Muhammad Saleh Mukadam bin Darwis was juridically seen as able to account for his actions.[54]

[50] Sudarto, op. cit. 110.
[51] Afiffah, F. N. A. (2023). The Proportionality of Criminality to the Crime of Forgetfulness That Causes Death and Injury to Others (Study of Court Decisions) (Dissertation, Islamic University of Indonesia, 2023), 45.
[52] Harefa, B., & Kholiq, A, Op.Cit, 43.
[53] Hiariej, E. O. S, Op. Cit. 156.
[54] Ibid.

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Criminal liability reflects the principle that everyone is obliged to be responsible for the risks arising from their actions, especially if the act involves dangerous tools and is used illegally.[55] It is also considered to protect the public and prevent the recurrence of similar acts considering that the rampant abuse of illegal firearms can pose a serious threat to public order and security.[56]

After explaining the rationale given by each judge at each level of court, the author feels that the legal facts contained in the judge's consideration show that Muhammad Saleh Mukadam bin Darwis understood the function and dangers of firearms, even actively using them in an event involving many people. However, this awareness is not articulated as part of the perpetrator's inner attitude in the analysis of errors. By ignoring the risk awareness factor, the assessment of error can be reduced only to the aspect of the unintended consequences, not to the overall attitude of the perpetrator towards the possibility of such consequences.

Judges are actually required to assess whether a set of facts shows a serious breach of reasonable care standards.[57] In this case, the use of firearms in public spaces without objectively valid safety standards is a violation of the highest standards of prudence. However, such violations are not followed by a proportionate increase in the qualification of errors, resulting in an imbalance between the level of risk created and the form of error attached.

In addition, the customary, social, and situational context when the crime occurred as described by the prosecutor in the court process also contributed to the inconsistency of the error assessment.[58] The fact that the act is done in a traditional event is often seen as a factor that softens the fault. However, juridically, customary factors do not eliminate the legal obligation to act carefully, especially when the act involves tools prohibited by law.

The author feels that the prosecutor as *a dominus litis* plays a very central role in determining the direction and juridical limits of a criminal case.[59] From the indictment stage, the construction of the error chosen by the prosecutor will form the judge's frame of mind in assessing the facts and applying the law. Interpretation of the concept of forgetfulness in decision number 349/PID. B/2024/PN. GNS and the appeal decision number 13/PID/2025/PT TJK can be problematic if it is associated with the legal facts revealed at the trial. The perpetrator Muhammad Saleh Mukadam bin Darwis consciously possessed and used illegal firearms, which are tools that are generally known to have deadly potential.

[55] S. Ali et al., "The Problem of Firearms Licensing for Civilians," *Democracy* 1, no. 2 (2024): 177.
[56] Rivanie, S. S., Muchtar, S., Muin, A. M., Prasetya, A. D., & Rizky, A, *Development of Theories of Criminal Purposes.* Halu Oleo Law Review, 6(2), 176-188: 184.
[57] Triantono, T., & Marizal, M, *Parameters of judges' confidence in deciding criminal cases.* Justitia et Pax, 37(2): 268.
[58] Gunung Sugih District Court Decision Number 349/Pid.B/2024/PN.Gns, 53.
[59] Sihombing, D. C., Syahrin, A., Ablisar, M., & Mulyadi, M, *Strengthening the Authority of the Prosecutor as a Dominus Litis as an Effort to Optimize Criminal Law Enforcement Oriented to Restorative Justice. Locus* 3, no. 2 (2023): 65–66.

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Awareness of the dangerous nature of firearms is general knowledge and does not require special skills. Therefore, when the prosecutor only frames the act as negligence due to the absence of intent to kill, the aspect of the perpetrator's awareness of the possible fatal consequences becomes marginalized in the construction of the indictment and prosecution.

In the end, the insynchronization between the legal facts and the qualification of this error has implications for the accuracy of the application of the criminal law itself. If the facts that show a high level of danger and awareness of risk are not reflected in the qualification of error, then there is a risk of inconsistency between the objectives of criminal law and the outcome of the verdict. Criminal law that aims to protect the most basic legal interest, namely human life, should provide a commensurate normative response to acts that create extreme risks to those interests.

This mistake is not necessarily seen as a personal mistake of the prosecutor, but rather as a reflection of the prosecution's approach that tends to be cautious and oriented towards the safest evidence. As a result, the criminal law response given is less commensurate with the level of danger of the act committed. It can be said that since the early stages of the prosecution there has been a reduction in the quality of errors that have an impact on the overall construction of the verdict.

Thus, the inconsistency between the legal facts and the qualification of error in this case shows that there is a problematic space in the judge's juridical reasoning. Facts that objectively show the level of risk and awareness of the perpetrator have not been fully internalized in the construction of the fault used as the basis for punishment. This condition is not only relevant for assessing the fairness of the verdict in a concrete case, but also important as an academic reflection on how the qualification of error should be built consistently and proportionately based on the facts that exist during the case process.

## D. Conclusions and Recommendations

Criminal liability for the crime of forgetfulness that causes death and possession of illegal firearms that result in the death of another person that has been committed by the perpetrator Muhammad Saleh Mukadam bin Darwis cannot be seen solely as a mere negligence. The fact that when the perpetrator Muhammad Saleh Mukadam bin Darwis continues to commit acts despite knowing the risk, the perpetrator's inner attitude is no longer just a lack of caution, but closer to acceptance of the possibility of the occurrence of prohibited consequences. In the framework of error theory, this condition opens up rational space to assess that the qualification of the perpetrator's mistake is conceptually more accurately understood as intentionality in the form of risk acceptance (*dolus eventualis*), even though there is no direct will to take the victim's life.

The application of the law and the judge's considerations in both decisions show that there is a difference in orientation in assessing the level of error and the purpose of the penalty. This difference reflects the many possible disparities in the judge's decision in

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linking legal facts to the qualification of error and the purpose of the penalty. On the other hand, the limitation of the construction of errors from the prosecution stage also affects the judge's assessment space in developing the qualification of errors in more depth.

Based on the results of the analysis, this study recommends updating criminal law policies in controlling illegal firearms ownership in Indonesia through three main steps. *First*, it is necessary to update firearms control regulations, especially Emergency Law Number 12 of 1951 which no longer reflects the needs of modern criminal law. The new regulation needs to contain more detailed provisions regarding the gradation of criminal liability based on the level of wrongdoing of the perpetrator, ranging from ordinary negligence, gross negligence, to conditional intentionality, in order to minimize disparity in judges' decisions

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