

# Factors Affecting Traffic Legal Enforcement Efforts through E-Tilang Programs In South Sulawesi

*by Abd. Asis*

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## Factors Affecting Traffic Legal Enforcement Efforts through E-Tilang Programs In South Sulawesi

Irwan\*, Muhadar\*\*, Abd. Asis\*\*\*

\*Graduate School, Faculty of Law, Hasanuddin University, Indonesia

\*\*Professor, Faculty of Law, Hasanuddin University, Indonesia

\*\*\*Senior Lecturer, Faculty of Law, Hasanuddin University, Indonesia

### Abstract

In the era of rapid technology like today, the existence of a motorbike is very supportive of human life in carrying out daily activities. Although it carries a number of advantages, the presence of a motorbike also has other consequences, including providing adequate roads, regulating vehicle movements, and accident problems. In developing countries like Indonesia, orderly awareness on the highway is still very low, so to find violations by road users, especially motorists and motorbikes, is quite easy. The problems surrounding the enforcement of traffic law are a new classic problem that becomes a national issue after the form of the Presidential Regulation of the Republic of Indonesia Number 87 Year 2016 concerning the Task Force for Combating Illegal Charges (Satuan Tugas Sapu Bersih Pungutan Liar). In the regulation, the philosophical basis for the establishment of this Presidential Regulation is based on the fact that the practice of illegal charges has damaged the joints of life in the community, nation and state so that it needs an explicit, integrated, effective, efficient, and capable of deterrent effects and an effort to eradicate illegal fees. It is necessary to establish a task force for handling illegal charges. Traffic law enforcement has been considered as one of the sectors indicated by rampant illegal charges. Therefore, as a follow up to the issuance of the Presidential Regulation on illegal charges, the Indonesian National Police reforms the enforcement of traffic discipline violations through the e-tilang program. Factors influencing traffic law enforcement efforts through the e-tilang program in the South Sulawesi Legal Area include legal factors, law enforcement factors, facility factors, community factors, and cultural factors.

**Keywords:** factor, influence, law enforcement, traffic, e-tilang.

### I. Introduction

In the current era of globalization, the need for the use of technology plays an important role in human life. Likewise with traffic as a means of supporting human life which is the impact of the use of technology. In the era of rapid technology like today, the existence of a motorbike is very supportive of human life in carrying out daily activities. Although it carries a number of advantages, the presence of a motorbike also has other consequences, including providing adequate roads, regulating vehicle movements, and accident problems. In developing countries like Indonesia, orderly awareness on the highway is still very low, so to find violations by road users, especially motorists and motorbikes, is quite easy. Like motorcyclists walking in opposite directions, not using helmets. The car broke through the red light, until the public transportation that stopped was out of place. Every violation of law that occurs must be acted on by law enforcement officials in a professional manner and upholds the human rights of every citizen. The role of the legal apparatus is to determine the process of law enforcement in a country, because no matter how good the legal rules are made, if the quality of law enforcement is not good it will affect the implementation of the law enforcement. Therefore, law enforcement in traffic can not only be realized from the aspect of legal rules that are adequate, but also must pay attention to the seriousness of the law enforcement officers and the culture of the community.

The problems surrounding the enforcement of traffic law are a new classic problem that becomes a national issue after the form of the Presidential Regulation of the Republic of Indonesia Number 87 Year 2016 concerning the Task Force for Combating Illegal Charges (Satuan Tugas Sapu Bersih Pungutan Liar). In the regulation, the philosophical basis for the establishment of this Presidential Regulation is based on the fact that the practice of illegal charges has damaged the joints of life in the community, nation and state so that it needs an explicit, integrated, effective, efficient, and capable of deterrent effects and an effort to eradicate illegal fees. It is necessary to establish a task force for handling illegal charges. Traffic law enforcement has been considered as one of the sectors indicated by rampant illegal charges. Therefore, as a follow up to the issuance of the Presidential Regulation on illegal charges, the Indonesian National Police reforms the enforcement of traffic discipline violations through the e-tilang program.

Basically, the existence of this e-tilang program does not guarantee a decline in illegal extortion rates in Indonesia. If you pay attention to the flow of e-tilang, there is one step that can be a weakness. The weakness is found in the initial step of the e-tilang path. If a driver is caught violating, the Police officer is the only one who has the authority to provide an interpretation regarding the alleged violation. If the police officer cheats, he may

decide not to record violations in the e-tilang application. Especially if there was already a "bargain" with the driver. This possibility can occur considering the maximum fine to be paid. In addition, the condition of community finances also needs to be considered in the implementation of this e-tilang program. In the conventional tilang system, violators will be invited to take part in a trial at the court no later than two weeks after being declared a traffic violator. This method provides benefits for those who do not have money to prepare fines that will be imposed on him. But this is not the case with e-tilang, because this program requires the offender to make payments with the maximum amount of fine. In the event that the offender does not have funds, this e-tilang program cannot be done.

Related to the payment of the amount of this fine, it is still a matter of controversy in the level of application of the law. Although it is said that the funds submitted are only left to the Bank, however the imposition of sanctions is contrary to the principle of the Presumption of Innocence. The Presumption of Innocence is one of the elements of the "Rule of Law" as contained in Article 66 of the Criminal Procedure Code (KUHAP), and in the Explanation of Article 66 it is also stated that this provision is the incarnation of the principle of presumption of innocence. This was added by Article 158 of the Criminal Procedure Code. Expectations to realize clean governance, especially in the field of traffic law enforcement, it is necessary to pay attention to various aspects related to the above. Soerjono Soekanto said that there were five factors that could influence the law enforcement, namely: (1) the legal factor itself (limited by law only); (2) Law enforcers, namely those who form or expect law; (3) Factors of facilities or facilities that support law enforcement; (4) Community factors, namely the environment in which the law applies or is applied; and (5) cultural factors, namely as a result of work, creativity and a sense based on human intentions in the relationship of life.<sup>2</sup> Based on this explanation, the issues that will be discussed in this paper are what factors influence traffic law enforcement efforts through the e-tilang program in the South Sulawesi Legal Area?

## II. Research Method

The type of research in this paper is an empirical legal study, using the statute and conceptual approach<sup>3</sup> with added theoretical analysis. Data collection techniques were through the interview and documentation. All data collected then analyzed qualitatively later in descriptive<sup>4</sup> by explaining, and describing the problems that will be studied and the solution related to the implementation of E-tilang (tilang elektronik) in the Regional Police Law Area of South Sulawesi.

## III. Result and Discussion

### A. Traffic Violation and Importance of Sanctions

Criminal acts or often referred to as criminal acts (*strafbaar feit*) divided into two forms, namely in the form of violations (*overtredingen*) and in the form of crime ( *misdrijven*). Theoretically it is difficult to distinguish between crime and offense. An act can be called a violation if the act which is against the law can only be known after the law (*wet*) who determines that. The new community realizes that this is a criminal act because the act is stated in the law, the term is called *wetsdelict* (delik undang-undang).<sup>5</sup> Traffic violations or often referred to as tilang are actions or actions of a person that are contrary to the provisions of traffic laws. The aforementioned violation is as stipulated in article 106 of the Law of the Republic of Indonesia Number 22 Year 2009 on Traffic and Road Transport (LLAJ) which regulates that: everyone who uses the road must: (a) behave in an orderly manner; and/or (b) Prevent things that can hinder, endanger the security and safety of traffic and road transport, or can cause road damage.

According to Bambang Poernomo, the violation was *politisch-on recht* and crime is *crimineel-on recht*. *Politisch-on recht* it is an act that does not obey the prohibition or obligation determined by the ruler of the State. *Crimineel-on recht* it is an act that is contrary to the law.<sup>6</sup> To elaborate on the meaning of violations, the opinions of Law graduates are needed. According to Wirjono Prodjodikoro, the definition of violation is "overtredingen" or violation means an act that violates something and is related to the law, means nothing more than an act against the law.<sup>7</sup> It can be concluded that the elements of the violation are as follows: (a) There are acts that are contrary to the law; and (b) Legal consequences. So, it must be accountable for the act.

Based on the above meanings, then what is meant by a traffic violation is an act or action of someone that is contrary to the provisions of traffic laws and road transportation or other legislation.

<sup>2</sup> Soerjono Soekanto, *Faktor-faktor Yang Mempengaruhi Penegakan Hukum*, PT. Raja Grafindo Persada, 2004, p. 8

<sup>3</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, 2010, p. 96

<sup>4</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI-Press, 2012, p. 9

<sup>5</sup> C.S.T. Kansil and Christine Kansil, *Memahami Pembentukan Peraturan Perundang-Undangan (UU No 10 tahun 2004)*, Jakarta: Pradya Paramita, 2007, p. 38

<sup>6</sup> Bambang Poernomo, *Azas-Azas Hukum Pidana*, Bandung: Citra Aditya, 2002, p. 48

<sup>7</sup> Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana*. Bandung: Refika Aditama, 2003, p. 33

As for when we see effectiveness in the field of law, Achmad Ali<sup>8</sup> argues that when we want to know the extent of the effectiveness of the law, we must first be able to measure "the extent to which the rule of law is obeyed or not adhered to". Furthermore, Achmad Ali also stated that in general the factors that influence the effectiveness of a law are professional and optimal implementation of the role, authority and function of law enforcers, both in explaining the duties imposed on themselves and in enforcing these laws. According to Soerjono Soekanto<sup>9</sup> measure of effectiveness is:

1. Existing regulations concerning certain areas of life are systematic enough.
2. Existing regulations concerning certain areas of life are quite synchronous, hierarchically and horizontally there is no contradiction.
3. Qualitatively and quantitatively the regulations governing certain areas of life are sufficient.
4. Issuance of certain regulations is in accordance with existing juridical requirements.

The most important part of a criminal system is to set sanctions, its existence will provide direction and consideration regarding what should be sanctioned in a criminal act to enforce the norm.<sup>10</sup> In a law and regulation, the regulation of sanctions or criminal penalties is very important because in the criminal law we can know which actions are not permitted, prohibited, and must be carried out with a threat of sanction in the form of a particular criminal for those who violate these provisions.<sup>11</sup> Like the law in general, Law of the Republic of Indonesia Number 22 Year 2009 concerning road traffic and transportation also has criminal sanctions. Criminal sanctions in this law are formulated using the alternative formulation system, from aspects of understanding and substance, alternative formulation system is a system where imprisonment is formulated alternative with other types of criminal sanctions, based on the types of criminal sanctions from the heaviest to the lightest. Thus, the judge is given the opportunity to choose one of the types of crimes listed in the article concerned.<sup>12</sup> Recognizing the high level of crime, directly or indirectly also encourages the development of giving a reaction to the crime and the perpetrator of the crime is essentially related to the intent and purpose of the crime prevention efforts. According to Hoefnagels, efforts to overcome crime can be taken in a way:<sup>13</sup>

- a) *Criminal application.* For example: the application of Article 354 of the Criminal Code with a maximum sentence of 8 years both in the case and in the decision.
- b) *Preventif without punishment.* For example: by applying maximum punishment to perpetrators, indirectly providing prevention to the public even though he is not subject to punishment or shock therapy to the public.
- c) *Influencing views of society on crime and punishment.* For example: socializing a law by giving an idea of how the offense was and the threat of punishment.

The legal effectiveness theory proposed by Soerjono Soekanto is relevant to the theory put forward by Romli Atmasasmita<sup>14</sup> namely that the factors that hinder the effectiveness of law enforcement lies not only in the mental attitude of law enforcement officers (judges, prosecutors, police and legal counsel) but also lies in the factor of legal socialization that is often overlooked. According to Soerjono Soekanto<sup>15</sup> effective is the extent to which a group can achieve its objectives. The law can be said to be effective if there is a positive legal impact, at that time the law achieves its goals in guiding or changing human behavior so that it becomes legal behavior.

Crime prevention efforts can mean creating certain conditions so that crime does not occur. Kaiser provides limits on the prevention of crime as an effort that includes all actions that have a specific purpose to minimize the space for all actions that have a specific purpose to minimize the scope of violence from an offense either through reduction or through efforts to influence people potential potential violators and the general public. Crime prevention can be interpreted broadly and narrowly. In a broad sense, the government and the community play a role. For the government is the overall policy carried out through legislation and official bodies that aim to uphold the central norms of society.

<sup>8</sup> Achmad Ali, *Menguak Teori Hukum dan Teori Peradilan Vol.1*, Jakarta: Kencana, 2010, p. 375

<sup>9</sup> Soerjono Soekanto, *Penegakan Hukum*, Bandung: Bina Cipta, 1983, p. 80

<sup>10</sup> Teguh Prasetyo and Abdul Halim Barkatullah, *Politik Hukum Pidana Kajian Kebijakan Kriminalisasi dan Dekriminalisasi*, Yogyakarta: Pustaka Pelajar, 2005, p. 82

<sup>11</sup> Djoki Prakoso, *Pembaharuan Hukum Pidana di Indonesia*, Yogyakarta: Liberty, 1987, p. 19

<sup>12</sup> Mulyadi, *Kapita Selekta Hukum Pidana Kriminologi dan Victimologi*, Jakarta: Djambatan, 2004, p. 19

<sup>13</sup> Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Penegakan Penanggulangan Kejahatan*, Jakarta: Kencana, 2007, p. 2

<sup>14</sup> Romli Atmasasmita, *Reformasi Hukum, Hak Asasi Manusia & Penegakan Hukum*, Bandung: Mandar Maju, 2001, p. 55

<sup>15</sup> Soerjono Soekanto, *Efektivitas Hukum dan Penerapan Sanksi*, Bandung: CV. Ramadja Karya, 1988, p. 80

The role of the government is so broad, the key and strategic in tackling crime include social inequality, national discrimination, a low standard of living, unemployment and ignorance among the large population. That the effort to eliminate the cause of the conditions of causing crime must be a basic crime prevention strategy.<sup>16</sup>

### **B. Factors Affecting Traffic Law Enforcement Efforts Through the E-Tilang Program in the South Sulawesi Legal Area**

In general, law enforcement can be interpreted as the process of carrying out efforts to uphold or function the legal norms in real terms as guidelines for perpetrators in traffic or legal relations in the life of society and state. In terms of the subject, law enforcement can be carried out by a broad subject and can also be interpreted as law enforcement efforts that involve all legal subjects in every legal relationship. Anyone who carries out normative rules or does something or does not do something based on the norms of the rule of law, means that he is implementing or enforcing the rule of law. In a narrow sense, in terms of the subject matter, law enforcement is only interpreted as an attempt to enforce certain law enforcement agencies to guarantee and ensure the enforcement of the law. If necessary, law enforcement officials are allowed to use force.

Understanding law enforcement can also be viewed from the point of view of the object, namely in terms of law. In this case the understanding includes broad and narrow meanings. In a broad sense, law enforcement includes the values of justice contained in the sound or formal as well as the values of justice that live in society. But in a narrow sense, law enforcement only concerns the enforcement of formal and written regulations. The e-tilang instrument is one of the efforts carried out by the Indonesian National Police in enforcing traffic laws in Indonesia. Various obstacles that have been faced, are expected to be minimized by the presence of an e-tilang system. However, carrying out an innovation in law enforcement especially those that are associated with technological information (IT) sophistication is certainly not as easy as turning the palm of the hand. Various obstacles are also faced in the effort to implement a new innovation in law enforcement.

According to Ilham as the Head of the Sinjai Police Station when the author interviewed on May 23, 2018, it was stated that:

The implementation of e-tilang, especially those carried out in the area of the South Sulawesi Police, is still being hit by a problem. Internal constraints, for example, different internet connection problems in each region have resulted in the implementation of e-tilang being completely unable to be implemented in all regions with potential violations. In addition, the absence of a cellphone that is used specifically for repression is also a thing that inhibits the use of e-tilang.

In addition to internal factors, there are also external factors, namely from the offenders. Many violators are not willing to give their cellphone numbers because they feel that this is privacy. Using the e-tilang application must include a cellphone number, while there are still many people who object. Responding to the aforementioned opinions, the author argues that indeed in some regions in South Sulawesi, good internet signals are not yet affordable, especially for areas far from the capital city, Internet signals are only available in urban areas. While traffic violations can occur anywhere. Furthermore, the writer conducted an interview with Jaka Santoso as Head of the Bantaeng Police Station, arguing that:

The community currently still considers the e-tilang mechanism to be convoluted, but actually it is not because of complicated problems but there are still some groups of people who are less literate about IT so they think that this program is complicated. In addition there are also some communities that are still apathetic about e-tilang applications. The e-tilang application is currently operating for one year. Even though the e-tilang program is the answer to the public's anxiety about the rampant extortion that often travels.

The author argues that the community should welcome enthusiastic about this e-tilang program. This is because the e-tilang program is one form of innovation in order to reduce the number of corruption in traffic law enforcement. With the existence of this e-tilang program, of course the public's anxiety about the rampant extortion and extortion committed against violators can be overcome. Then the writer conducted an interview with Edianto as a member of the Traffic Unit of the Bone Police Station on May 21, 2018, stating that:

The constraints faced today are the number of vehicle ownership in Makassar that is problematic, for example, the number of vehicle units that are not in accordance with the ownership letter, about the inaccurate address of the owner of the vehicle to the matter of buying and selling cars. Many vehicles are not their own, making it difficult to collect data, such as the address of the offender. Another obstacle is that many used purchase vehicles are not immediately behind the name.

Furthermore, the writer conducted an interview with Saiful Asri as a member of the Traffic Unit of the Bone Police Station on May 24, 2018, essentially stating that:

<sup>16</sup> *Ibid.*

There are still a number of police officers in the field who do E-tilang to the drivers but do not enter the tilang register number into the application. So that this is certainly difficult when processing the Certificate of Vehicle Number/Driving License that has been delegated to the prosecutor's office. Because of the limitations of the facilities, not all officers who take action on the field have Android phones. It is still manual, the application is also not fully loaded, as the registration number is not included.

Based on some of the interview results mentioned above, the authors put forward the inhibiting factors in traffic law enforcement in the South Sulawesi legal area as follows:

### 1. Legal Factors

In Article 272 of Law of the Republic of Indonesia Number 22 Year 2009 on Traffic and Road Transport (LLAJ), it is stated that in order to support enforcement activities in the field of Road Traffic and Transportation, electronic equipment can be used. The results of the use of electronic equipment can be used as evidence in court. What is meant by "electronic equipment" is an event recording device for storing information.

Regarding what is written in Article 272 of the LLAJ, it is further regulated in Article 23 of the Government Regulation of the Republic of Indonesia 80 Year 2012, which stipulates that the enforcement of Road Traffic and Transport Violations is based on results:

- a. findings in the process of inspecting motor vehicles on the road;
- b. report; and/or
- c. recording of electronic equipment.

The Head of the Indonesian National Police Traffic Coordinator (Inspector General of Police Agung Budi Maryoto) the technical training on the use of the e-Tilang application on October 25, 2016 which was followed by the Head of the National Police from a number of police stations throughout Indonesia, said that at this time, the police held a meeting with the Prosecutor's Office, the Court and the Supreme Court (MA) to change the e-Tilang system. Higher legal rules are needed to implement the system. But until now the author has not found any legal rules in question. On this occasion he stated that:

"Tilang already has a legal basis. In changing this system, it is necessary to have a legal level or higher, the police are meeting with the Prosecutor's Office, the Court and the Supreme Court. He added that President Jokowi would issue a Presidential Regulation (Perpres) regarding the e-Tilang application. The reason is, now the tilang is required to go to court. So that with the existence of this e-Tilang system, the Head of the Traffic Unit will coordinate with the Criminal Justice System (CSJ) or the local criminal justice system in relation to the sanction decisions that will be given by the court to traffic violators. In the future, it is not optimally deposited, but fine according to the result of the joint decision, just pay, enter, pay for the ATM, the receipt can take the confiscated evidence.

The author argues that the legal basis of e-tilang which will later be made, not only focuses on the completion of efficient cases but can also be carried out without a conflict between laws and regulations governing the procedures for the settlement of traffic violations. For example, it is related to the inspection mechanism and the determination of decisions, where there are still problems related to the legal substance. Completion of violations if proclaimed crossing has the potential to collide with the Basic Judicial Power Law. The regulation gives the judge full freedom to make the verdict as fair as possible in accordance with the level of error of each violator. Do not let the judge be intervened by the table of fines that have been set.

### 2. Law Enforcement Factors

From the aspect of law enforcement, there are still many police officers who have not been able to operate the e-tilang application. It is understandable that the implementation of an innovation related to information technology is always constrained by the problem of human resource capabilities. Some members of the police in the traffic field, especially those over the age of 40 years, not a few who are very lay with the world of Android-based technology. Of course this is one of the obstacles to the implementation of e-tilang.

### 3. Facility Factors

As explained by several previous sources, one of the main obstacles in the implementation of e-tilang is the unavailability of facilities provided to each member of the traffic police in the form of Android-based cell phones specifically used for e-tilang programs. This is certainly very burdensome to the authorities if the responsibility is given without adequate facilities support. In addition, the e-tilang mechanism that requires the availability of internet network access is also an obstacle. This is because in some areas in the law area of the South Sulawesi Regional Police, the availability of internet-based networks is not evenly distributed as in Java. If there are violators caught on the road who have no internet signal, this e-tilang program cannot be done.

#### 4. Community Factors

As with the constraints faced by the apparatus in terms of operating the e-tilang system, people also basically experience the same thing. Limited ability in the use of information technology and limited supporting facilities such as funds that must be paid instantly, is still a constraint on the implementation of e-tilang.

#### 5. Cultural Factors

The community currently still considers the e-tilang mechanism to be convoluted, but actually it is not because of complicated problems but there are still some groups of people who are less literate about IT so they think that this program is complicated. In addition there are also some communities that are still apathetic about e-tilang applications. Many violators are not willing to give their cellphone numbers because they feel that this is privacy. Using the e-tilang application must include a cellphone number, while there are still many people who object.

#### IV. Conclusion

Factors affecting traffic law enforcement efforts through the e-tilang program in the South Sulawesi Legal Area include: (1) Legal factors, namely that there is no legal basis governing the technical implementation of e-tilang in the form of laws and internal police regulations. In addition there are still problems related to the mechanism for resolving traffic violations that are being carried out with the Law of Basic Judicial Power which gives judges full freedom to make decisions as fair as possible in accordance with the level of error of each violator, while in the implementation of police e-tilang, determine the type and sanction of violations without going through the trial process; (2) Factors of law enforcement, namely that there are still many police officers who have not been able to operate e-tilang applications, especially those who are over 40 years old, who are very ordinary with Android-based technology; (3) Facility factors, namely the unavailability of facilities provided to each member of the traffic police in the form of an android-based cell phone specifically used for e-tilang programs; (4) Community factors, namely that there are still people who have limited capacity in the use of technology information and limited funds for violators that must be paid immediately at the time of the violation; and (5) Cultural factors, namely there are still people who consider the e-tilang mechanism complicated and there are still some groups of people who are less IT literate so they think that this program is difficult. In addition there are also some communities that are still apathetic about e-tilang applications. Many violators are not willing to give their cellphone numbers because they feel that this is privacy. Using the e-tilang application must include a cellphone number, while there are still many people who object.

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