

JURIDICAL REVIEW OF SMARTPHONE USE WHILE DRIVING IN INDONESIA

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Abstract

The aim of this research is to identify the elements of criminal acts and sanction threats associated with using smartphones while driving, as well as the underlying reasons. This study uses a case approach, which is a normative legal research method that builds legal arguments based on concrete cases. The research is a bibliographic study with a normative juridical qualitative method that refers to legal norms in statutory regulations. Using smartphones while driving violates Law No. 22 of 2009 concerning Road Traffic and Transportation, with a maximum fine of Rp. 750,000.00, which may be reduced in court. The main reasons are urgent calls from family or work and the need for GPS navigation. It is expected that the government will establish clearer guidelines for using GPS on smartphones to ensure driver safety and support jobs like online motorcycle taxis. Law enforcers should educate drivers about the penalties for violations.

Keywords: Concentration; Smartphone; GPS.

Abstrak

Tujuan penelitian ini adalah untuk mengetahui unsur-unsur tindak pidana dan ancaman sanksi bagi pengguna smartphone saat berkendara, serta faktor penyebabnya. Penelitian ini menggunakan pendekatan kasus, yaitu metode penelitian hukum normatif dengan membangun argumentasi hukum berdasarkan kasus konkret. Penelitian ini termasuk studi kepustakaan dengan metode yuridis normatif kualitatif yang mengacu pada norma hukum dalam peraturan perundang-undangan. Penggunaan smartphone saat berkendara melanggar Pasal 106 ayat 1 Undang-Undang Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan, dengan sanksi denda maksimal Rp750.000,00 yang dapat dikurangi jika melalui sidang. Alasan utama penggunaan smartphone adalah adanya panggilan penting dari keluarga atau pekerjaan serta kebutuhan menggunakan GPS sebagai penunjuk arah. Diharapkan pemerintah membuat aturan lebih jelas terkait penggunaan GPS di smartphone demi keselamatan pengendara dan mendukung pekerjaan seperti ojek online. Penegak hukum juga diharapkan memberikan edukasi terkait sanksi pelanggaran.

Kata Kunci: Konsentrasi; Smartphone; GPS.

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INTRODUCTION

In 2009, the government issued a new regulation, namely Law Number 22 of 2009 concerning Road Traffic and Transportation, which replaced Law Number 14 of 1992 on Road Traffic and Transportation. This law was adopted on May 26, 2009, during a General Session of the House of Representatives of the Republic of Indonesia (DPR RI). After Law Number 22 of 2009 on Road Traffic and Transportation was promulgated by the Minister of Law and Human Rights, it was published in the State Gazette of the Republic of Indonesia Number 96 of 2009, and the Elucidation of Law Number 22 was included in the Supplement to the State Gazette of the Republic of Indonesia Number 5025 on June 22, 2009, in Jakarta (“UU 22 tahun 2009 tentang Lalu Lintas dan Angkutan Jalan” 2019).

The government has enacted Law Number 22 of 2009 concerning Road Traffic and Transportation with the aim of advancing and implementing safe, comfortable, orderly, and smooth road traffic and transportation in order to foster moral and cultured public behavior. Road traffic and transportation play a strategic role in supporting development and national integration as part of efforts to promote the general welfare as mandated by the 1945 Constitution of the Republic of Indonesia (Kurniawan et al. 2013, 2). The government has enacted Law Number 22 of 2009 concerning Road Traffic and Transportation with the aim of advancing and implementing safe, comfortable, orderly, and smooth road traffic and transportation in order to foster moral and cultured public behavior. Road traffic and transportation play a strategic role in supporting development and national integration as part of efforts to promote the general welfare as mandated by the 1945 Constitution of the Republic of Indonesia.

In Indonesia, the number of traffic accidents recorded by the National Police in 2021 reached around 70,000 cases, with 18,371 people among them losing their lives. Meanwhile, from January until September 13, 2022, there were 94,617 recorded traffic accident cases, with 19,054 fatalities. This data covers accidents involving both car and motorcycle users in general. Based on these figures, it can be concluded that there was an increase in traffic accident cases by 34.6% from 2021 to September 13, 2022. In addition, the number of traffic accident fatalities increased by 683 people during this period (Sutriyanto 2022).

Furthermore, Makassar City was chosen as the research location for studying the level of traffic violations because it is one of the largest metropolitan cities in Eastern Indonesia, with complex traffic dynamics. As a center of economic, educational, and governmental activities, Makassar serves as a hub for vehicle movement from various regions in South Sulawesi as well as other eastern areas, resulting in relatively high traffic volume. The high intensity of vehicle traffic is directly proportional to the risk of traffic violations, as evidenced by data from the 2022 “Operasi Patuh” (Operation Obedience), which recorded 3,219 violations within just 13 days. This figure indicates that Makassar has a significant level of violations that is relevant to be studied academically, particularly regarding driver behavior patterns, the effectiveness of law enforcement, and the level of public legal awareness.

Compared to other cities in Indonesia, Makassar has unique characteristics, such as traffic density influenced by rapid urbanization, diverse road conditions, and the varied social and cultural backgrounds of road users. These factors distinguish it from other major cities like Jakarta or Surabaya, which have more integrated public transportation systems, more advanced traffic monitoring technology, and relatively better law enforcement resources.

In Makassar City, traffic order efforts have been made through the implementation of Operasi Patuh for 13 days, from June 13 to June 26, 2022, during which 3,219 vehicles were recorded committing traffic violations. Of these, 2,753 were motorcycle riders and 286 were car drivers, with various types of violations such as not wearing or using proper head protection (helmets), not wearing helmets that comply with Indonesian National Standards (SNI) totaling 2,152 violations not wearing seat belts (87 violations), license plate issues (275 violations), using non-standard exhaust pipes (157 violations), carrying more than one passenger on a motorcycle (343 violations), driving against the flow of traffic (116 violations), and failing to carry a driver's license (SIM) or vehicle registration certificate (STNK) totaling 1,571 violations (Cipto 2022).

As the capital city of South Sulawesi Province, Makassar—also known as a metropolitan city—has experienced rapid development in various fields and aspects of life, including advancements in technology and information. One of the most dominant forms of technological development is the use of smartphones, which are handheld communication devices with extensive functions. Smartphones are not only used for phone calls or SMS (short message service) but also allow users to access the internet and install various applications with advanced features as desired, as well as obtain information from all over the world in a very short time, even within seconds (Daeng et al. 2017, 2).

Technological developments have brought many rapid impacts or changes to Indonesian society, especially in Makassar City, including both negative and positive effects. One negative impact is that smartphones have become a cause of traffic accidents and can even claim lives (Muhardi 2018). One case that occurred in Makassar City, precisely on Perintis Kemerdekaan KM 14 on October 25, 2022, involved a two-wheeled motorcyclist named Amrianto who died after crashing into a parked pickup truck. It is suspected that this happened because the rider was using a smartphone while driving, causing him to lose concentration (Ramadhan 2022).

Using a smartphone while driving not only endangers the driver but can also pose a danger to pedestrians. One example of such a case occurred in Tangerang City on Sunday, March 29, 2020, when a Brio car driver lost control while trying to turn on a slightly curved road to the right. The driver was replying to a message on his phone/smartphone, which caused him to lose concentration while driving and ultimately hit a pedestrian, resulting in the pedestrian's death.

METHOD

This study employs a qualitative method with an empirical-juridical approach, which combines normative legal analysis and field research. The juridical-normative aspect analyzes statutory regulations, legal principles, norms, and doctrines related to traffic violations, while the empirical aspect involves field data collection through observation of driver behavior, in-depth interviews with relevant stakeholders such as traffic police officers, road users, and related institutions, as well as documentation of traffic enforcement practices. Data collection techniques include both primary sources—such as interviews, observations, and documentation—and secondary sources, including legal literature, statutory regulations, and other relevant legal materials. The collected data is analyzed using qualitative methods, involving classification, reduction, and interpretation based on the research theme, aiming to connect existing legal norms with empirical findings, assess the effectiveness of current regulations, and interpret public behavior regarding compliance with traffic laws. This analysis is expected to yield comprehensive legal arguments and recommendations for improving traffic law enforcement in the future (Muhammad 2004, 134).

RESULT AND DISCUSSION

1. Legal Review of Smartphone Use While Driving Based on Article 106 of Law No. 22 of 2009

Article 106 paragraph (1) of Law Number 22 of 2009 states that "Every person who drives a motor vehicle on the road must operate their vehicle reasonably and with full concentration" (Undang-Undang RI No. 22 Tahun 2009). The phrase "full concentration" in the explanatory note of the law refers to a driver's condition that is not disturbed by factors such as illness, fatigue, drowsiness, using a telephone, watching television/video, or consuming alcohol and drugs (Penjelasan Pasal 106 Ayat (1) UU No. 22 Tahun 2009). The researcher expands the definition of "telephone" in this context to "smartphone," since technological advancements have broadened the functions of mobile phones into multifunctional devices used for communication, navigation (GPS), entertainment, and even work.

a. Legal Element Analysis of Article 106 Paragraph (1):

Every person: This refers to legal subjects, whether individuals or legal entities. In a criminal law context, legal capacity is not solely determined by adulthood under civil law but also by the juvenile justice system. Article 330 of the Civil Code states that a person under the age of 21 is not considered an adult unless married. Meanwhile, Article 98 paragraph (1) of the Compilation of Islamic Law also stipulates adulthood based on age and mental condition. However, under criminal law, children over the age of 12 can still be prosecuted according to Law No. 11 of 2012 on the Juvenile Criminal Justice System⁵. This study focuses on adult drivers who possess a driving license (SIM), with a minimum age of 17 years for SIM A, C, and D. Article 281 of Law No. 22 of 2009 emphasizes that driving without a license is considered a minor offense.

Who drives a motor vehicle: According to Article 1 number 8 of Law No. 22 of 2009, a motor vehicle is defined as any vehicle propelled by mechanical equipment other than those operating on rails. This includes cars, motorcycles, trucks, and electric vehicles. Law No. 28 of 2009 further includes heavy equipment with wheels not permanently attached to the ground. **On the road:** The term "road" in this article includes all parts of public roads, whether above, below, or on the surface of land and water, except for railways and cable roads. Thus, using a smartphone while driving on public roads fulfills the *locus delicti* element under this legal norm.

Reasonably and with full concentration: "Reasonably" means driving in a normal manner without endangering safety. "Full concentration" refers to undivided attention. Abu Ahmadi defines concentration as the focusing of attention on a single object. In a neuroscience study by Earl Miller from MIT, it was found that the human brain can maximally focus on only one or two visual objects at a time, and multitasking actually reduces productivity by up to 40% (Miller 2009, 112). Using a smartphone while driving violates this element because it forces the brain to divide focus. Research by Clifford Nass of Stanford University also reveals that habitual multitasking worsens long-term cognitive ability (Nass 2012).

b. Legal Sanction

Article 283 of Law No. 22 of 2009 prescribes sanctions for acts that interfere with driving concentration, including using smartphones, in the form of imprisonment for up to 3 months or a maximum fine of IDR 750,000. Data from ETLE (Electronic Traffic Law Enforcement) at Makassar Police Department recorded 181 violations in 2021, dropping to 73 in 2022 and 65 in 2023. This data

was obtained from an ETLE operator named Kiki Nadya Pratiwi. Despite the decrease, violations still occur significantly and do not include those undetected by the camera system.

2. Analysis of the Causes of Smartphone Use While Driving Based on Field Research

This study also examines the main contributing factors behind smartphone use by drivers, based on interviews with 20 informants categorized by age, occupation, and type of vehicle. The results revealed two dominant factors:

a. Incoming Phone Calls

The majority of respondents stated that smartphone use while driving was due to incoming calls deemed important. For online motorcycle taxi drivers, communication with customers is part of the service. However, this action still constitutes a violation, especially if captured by ETLE (Electronic Traffic Law Enforcement) cameras. The recommended course of action is to pull over before answering a call to avoid legal sanctions and to ensure traffic safety. (Kahneman 2011, 18)

b. GPS Usage

GPS usage is very common, particularly among online motorcycle taxi drivers. Out of the 20 respondents, 17 used the Google Maps application. While GPS is helpful for navigation, using it through a smartphone that is not permanently mounted can still jeopardize concentration. The Constitutional Court in Decision No. 23/PUU-XVI/2018 stated that GPS usage does not automatically constitute a legal violation unless it can be proven to interfere with concentration. Therefore, its application must be assessed on a case-by-case basis, depending on the actual conditions present. (Rosen et al. 2017, 11)

CONCLUSION

The use of smartphones while driving is an unlawful act that fulfills the elements of a criminal offense as stipulated in Article 106 of Law No. 22 of 2009 concerning Road Traffic and Transportation. The sanction commonly implemented in society is the payment of a maximum fine of IDR 750,000.00. However, the fine may be reduced if the offender attends a court hearing. There are two main factors behind smartphone use while driving. The first is incoming phone calls that must be answered immediately, usually from important individuals such as family members or related to work matters. The second is the use of GPS, which is necessary for navigation and helps drivers reach their destination more easily. Both factors can significantly disrupt a driver's concentration on the road.

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