



IMPLEMENTATION OF ARTICLE 6C OF THE MINISTER OF TRANSPORTATION REGULATION NUMBER 12 OF 2019 CONCERNING PROTECTION OF THE SAFETY OF MOTORCYCLE USERS AGAINST MOTORISTS WHO SMOKING IN EAST BANJARMASIN DISTRICT

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ABSTRACT

Smoking is a way of life for some people, from parents, teenagers, men, women and even children. Smoking is now an activity that is often found in various places, even on the highway, drivers and drivers are very often found smoking while driving. Minister of Transportation Regulation No. 12 of 2019, which contains Article 6C which prohibits motorists from smoking while driving, is issued to maintain public safety and minimize the impact of smoking drivers. However, in its implementation there are still many encountered from both the service, police and the community, lack of communication and lack of coordination and public awareness. The purpose of this research is to find out how the implementation of Permenhub No. 12 of 2019 concerning the protection of the safety of motorbike users who are used for the benefit of society. And to identify obstacles in the implementation. This research is an empirical legal research with a sociological legal approach, researchers conducted observations and interviews with 2 agencies, namely the Banjarmasin City Transportation Service and the Banjarmasin Police Traffic Unit as well as 20 driver informants who were in research locations in East Banjarmasin District. This study found that the implementation of the Minister of Transportation Regulations had not been fully implemented properly, as seen from the number of motorists who smoke while driving which is the object of the author's research. And there are 5 obstacles in the implementation of this regulation, namely communication, resources, disposition, public awareness about the law and no strict sanctions from the police against violators.

Keywords: Implementation, Motorists, Smoking, Banjarmasin

ABSTRAK

Merokok merupakan gaya hidup bagi sebagian orang, mulai dari orang tua, remaja, pria, wanita

bahkan anak-anak. Merokok kini menjadi kegiatan yang sering dijumpai di berbagai tempat, bahkan di jalan raya pun sangat sering dijumpai pengemudi dan pengendara yang merokok sambil berkendara. Peraturan Menteri Perhubungan No. 12 Tahun 2019 yang memuat Pasal 6C yang melarang pengendara kendaraan bermotor untuk merokok saat berkendara dikeluarkan untuk menjaga keselamatan masyarakat dan meminimalisir dampak dari pengemudi yang merokok. Namun dalam pelaksanaannya masih banyak ditemui baik dari pihak dinas, kepolisian maupun masyarakat, kurangnya komunikasi dan kurangnya koordinasi serta kesadaran masyarakat. Tujuan dari penelitian ini adalah untuk mengetahui bagaimana implementasi Permenhub No. 12 Tahun 2019 tentang perlindungan keselamatan pengguna sepeda motor yang digunakan untuk kepentingan masyarakat. Serta untuk mengetahui hambatan-hambatan dalam pelaksanaannya. Penelitian ini merupakan penelitian hukum empiris dengan pendekatan hukum sosiologis, peneliti melakukan observasi dan wawancara kepada 2 instansi yaitu Dinas Perhubungan Kota Banjarmasin dan Satlantas Polresta Banjarmasin serta 20 orang informan pengemudi yang berada di lokasi penelitian di Kecamatan Banjarmasin Timur. Penelitian ini menemukan bahwa implementasi Peraturan Menteri Perhubungan belum sepenuhnya terlaksana dengan baik, terlihat dari masih banyaknya pengendara yang merokok sambil berkendara yang menjadi objek penelitian penulis. Dan terdapat 5 hambatan dalam implementasi peraturan ini yaitu komunikasi, sumber daya, disposisi, kesadaran masyarakat tentang hukum dan tidak adanya sanksi yang tegas dari pihak kepolisian terhadap para pelanggar.

Kata kunci: Implementasi, Pengendara Kendaraan Bermotor, Merokok, Banjarmasin

1. INTRODUCTION

Law is the provision and order in society, where order is practicing what is prohibited and ordered by law. So, all laws and regulations refer to the provisions above them and are arranged hierarchically. Based on Article 7 of Law Number 12 of 2011 in conjunction with Law Number 15 of 2019 concerning the Formation of Legislation. The types and order of laws and regulations of the Republic of Indonesia are as follows:

1. The 1945 Constitution of the Republic of Indonesia.
2. Decree of the People's Consultative Assembly (TAP MPR),
3. Law / Government Regulation in Lieu of Law,
4. PP (Government Regulation),
5. Presidential Decree (Keppres),
6. Regional Regulation (Perda), and
7. Regency/City Regional Regulations. Regency/City Regulations.

Ministerial Regulations are not included in the hierarchy of laws and regulations as mentioned above, however Ministerial Regulations are included in Article 8 paragraph (1). Ministerial Regulations do not have a position in the hierarchy but rather as part of laws and regulations that have binding legal force.

Along with the increase in population that is currently happening in Indonesia, transportation facilities are inseparable from life and become a basic need for people in carrying out their activities. The need for transportation, especially in Banjarmasin, continues to increase every year. The increase in the number of motorized vehicles does not seem to be proportional to the number of roads in Banjarmasin City. This can cause

various kinds of problems in traffic such as congestion and accidents. In addition, traffic violations also occur among motorcycle users, especially those who smoke while riding.

Smoking while riding is considered an activity that can eliminate concentration, which can endanger themselves. Apart from being harmful to itself, cigarette ash exposed in the air can hit the face of the rider behind it, can obstruct vision and cause injury. Smoking while driving is another common type of offense that has been banned in many countries. Smoking is reported as a risk factor for traffic fatalities.

On March 13, 2019, the Minister of Transportation of the Republic of Indonesia issued a regulation prohibiting smoking while riding a motorcycle in Permenhub Number 12 of 2019 concerning Protection of Safety of Motorcycle Users Used for the Benefit of the Public. Regulation C Article 6 reads: "Motorcyclists are prohibited from smoking and carrying out other activities that interfere with concentration while riding a motorcycle" Although this regulation prohibits motorcyclists, it refers to Article 106 paragraph (1) of Law Number 22 of 2009 concerning Road Traffic and Transportation, which states that every person who drives a motor vehicle on the road must drive the vehicle properly and properly and with full concentration.

Article 106 paragraph (1) does not explicitly prohibit smoking while driving and only states that the driver must operate the vehicle properly and with full concentration. And Article 6c of Minister of Transportation Regulation No. 12/2019 clearly and specifically explains that smoking is prohibited while driving. Both rules play a role in traffic control and their main purpose is to create peace of mind for road users.

Smoking can be said to be harmful to oneself and others. This can be seen from the many impacts that smoking while driving has on the drivers behind them. Residual ash from cigarettes causes visual impairment and has the potential to cause serious injury to the eyes. And smoking for riders and drivers can endanger themselves due to lack of concentration which can lead to accidents.

Regulation of the Minister of Transportation No. 12 of 2019 concerning Protection of the Safety of Motorcycle Users Used for the Benefit of the Public which contains a statement that the smoking ban has been regulated and is a law that must be obeyed as an aspired thing. However, what has been aspired to or expected in law (*das sollen*) does not always match the reality that occurs in society (*das sein*), in fact the government implements regulations to maintain order in traffic with the aim of creating comfort for the community. And the reality in the field what is expected is not going well, there are still many regulations that do not work as they should because there are still many violations that are still committed by the community.

2. LITERATURE REVIEW

Implementation in the Big Indonesian Dictionary (KBBI) is the application or implementation. This implementation is generally related to policies implemented by a particular institution or agency to achieve predetermined goals. Implementation is a step

in the process of making public policy. Implementation generally occurs after a strategy is formulated with clear objectives. Several actions are taken to communicate the policy to the public so that the policy can produce the desired results.

Policy implementation is basically how a policy achieves its goals, nothing more and nothing less. There are two steps to implement public policy, either directly through programs or by creating policy resources or regulations from the policy. Wahab said that policy implementation is simply the process of implementing policy decisions, whether in the form of laws, government regulations, judicial decisions, decisions of government officials, or presidential orders.

Nugroho states in Aini Jannah, that policy implementation is a way of how a policy can be implemented properly to achieve its goals. In implementing a public policy, there are two options for action, namely by implementing it directly in the form of a policy program or by formulating derivative policies from the policy.

Mazmanian and Sabatier further state that implementation is the implementation of basic policy decisions, which usually take the form of laws, but can also take the form of orders or decisions of other judicial bodies. The decision identifies the problem to be addressed, and states clearly the goals and objectives to be achieved in various ways to organize the implementation process.

According to Syukur, there are three important elements in the implementation process including:

- 1) The existence of an implemented policy/program,
- 2) Target Group, which is the target group that is targeted and expected to benefit from this program,
- 3) Implementing parties, both organizations and individuals, who are responsible for carrying out and monitoring the implementation process. The implementation of government programs can be seen from three perspectives, namely the policy initiator/policy maker, the implementing apparatus in the field, and individual actors outside the government agency who are the targets of the program.

It can be concluded that policy implementation cannot begin before goals or objectives are set by those who receive authority. So implementation is a process of activities carried out by various implementors that aim to achieve the expected final results.

Policy implementation has several theories that have been put forward by several experts, one of which is the theory of implementation according to George C. Edward as used by researchers in this study. Edward as used by researchers in this study. Where Edward said that policy implementation is a stage in policy making between policy makers and the consequences of these policies for those affected. According to Edward, there are 4 factors that can affect policy implementation, namely:

- a) Communication, namely the success of policy implementation requires that implementers know about what things can be done, which policy goals and

objectives must be transmitted to the target so as to reduce implementation distortion.

- b) Resources, no matter how clear and consistent the laws and regulations are and how precise the delivery of the laws and regulations themselves are, if the person in charge of implementing the policy does not have the resources to implement the policy effectively, the policy implementation cannot go well.
- c) Disposition, is the behavior and characteristics of policy makers such as commitment, honesty and democratic nature. If loyalists have different views or opinions from lawmakers, the legislative process will not be effective.
- d) Bureaucratic Structure, policy implementation can also be influenced by the bureaucratic structure. Because aspects of organizational structure such as Standard Operating Procedure (SOP) and distribution. An organizational structure that provides feedback that is too slow will cause chaos and bureaucracy which means a complicated bureaucratic process, causing organizational tasks to be inflexible.

3. RESEARCH METHODOLOGY

This research is empirical legal research with a legal sociology approach, this research is field research which is useful for revealing the reality that occurs in society at a time. This research was conducted by going directly to the field where researchers conducted research and examined data related to the problem under study regarding the Implementation of Article 6c of the Minister of Transportation Regulation Number 12 of 2019 concerning Protection of Motorcycle User Safety for Motorcycle Riders Used for the Benefit of the Community in East Banjarmasin District. Researchers conducted observations and interviews with 2 agencies, namely the Banjarmasin City Transportation Agency and the Banjarmasin Police Traffic Unit as well as 20 informant drivers who were at the research location, namely in East Banjarmasin District.

3.1. Research Design

This research uses descriptive research, namely legal research that describes with the aim of obtaining an overview of the prevailing legal situation, regarding existing juridical phenomena, or certain legal events that occur in society. This descriptive research aims to provide a precise description of the characteristics of an individual, situation or group to determine whether there is a relationship between a symptom and another symptom in society.

The object of this research is the Implementation of Article 6c of the Minister of Transportation Regulation Number 12 of 2019 concerning the Protection of Safety for Motorcycle Users Against Smoking Drivers in East Banjarmasin District.

3.2. Participants of the Study

The data used in this research are primary data and secondary data obtained from literature studies, observations, and interviews. Data collection includes the following:

- a. Primary data is data directly obtained from the community through research conducted in the field, such as observations, interviews, and distributing

questionnaires. So this primary data is data that is directly obtained from the community by observation, interview, or distributing questionnaires without intermediaries. The data collected for the purpose of answering questions and solving research problems are:

- 1) Identity of the informant consisting of name, position, age, address, and cellphone number if needed.
 - 2) Implementation of Article 6c of Minister of Transportation Regulation No. 12/2019 on Safety Protection for Smoking Motorcycle Users in East Banjarmasin District and obstacles in its implementation.
- b. Secondary data is data that comes from libraries or legal materials. This secondary data is sometimes referred to as second-hand data because it can be obtained through literature studies and document studies. Which literature studies include books, journals, seminar proceedings, papers, legal dictionaries, legal encyclopedias, legal literature dictionaries or other written legal materials. The data sources of this research are:
- a) Informants, namely people who provide information, the data needed by researchers is limited to what researchers need, as far as they know and researchers cannot direct responses at will. So this informant is a person who can provide information related to the object and subject to be studied. So that researchers have additional information through interviews related to the Implementation of Article 6c of the Minister of Transportation Regulation Number 12 of 2019 Concerning the Safety Protection of Motorcycle Users Against Riders Who Smoke in East Banjarmasin District. The number of informants consisted of 22 people including 11 smokers and 9 non-smokers, as well as 2 related agencies including the Banjarmasin City Transportation Service, and the Banjarmasin Police Traffic Unit.
 - b) Documents, namely the activities of examining, tracing, and collecting documents that can provide information or information needed by researchers. The document in question is photo documentation of activity reports and reports of all data related to research to complement research data.

3.3. Instruments

The selection of research subjects uses purposive sampling techniques, based on characteristics that are considered relevant to the research objectives. Subjects or commonly called informants in research are people who provide information, the data needed by researchers is limited to what is known and researchers cannot direct answers at will. The subjects in this study are:

- a. Banjarmasin City Transportation Department
- b. Head of Banjarmasin Traffic Police
- c. Drivers who smoke.
- d. Other affected drivers.

3.4. Data Analysis Techniques

The data collection techniques used in this study are as follows:

- 1) Interviews, interviews are primary data sources whose implementation can be done by dealing directly with research subjects or informants as research respondents in the field. Regarding the Implementation of Article 6c of the Minister of Transportation Regulation Number 12 of 2019 concerning Safety Protection for Motorcycle Users Against Smoking Drivers in the East Banjarmasin Region.
- 2) Observation according to Syamsudin is the act of collecting research data by directly observing the object of research which is the focus of the research. The observation referred to here is the problem of Implementation of Article 6c of the Minister of Transportation Regulation Number 12 of 2019 concerning Protection of Motorcycle User Safety Against Smoking Drivers in the East Banjarmasin District Area.
- 3) Documentation, which is a data collection method carried out by collecting documents related to the research problem. Regarding Regulation of the Minister of Transportation Number 12 of 2019 concerning Protection of the Safety of Motorcycle Users Against Smoking Drivers in East Banjarmasin District

4. RESULTS AND DISCUSSIONS

4.1 Implementation of Article 6c of the Minister of Transportation Regulation Number 12 of 2019 concerning Protection of the Safety of Motorcycle Users for Riders Who Smoke in East Banjarmasin District

Based on the results of observations and interviews that researchers conducted with implementers or institutions where researchers conducted research, where they have done this, but not maximally. The party implementing this regulation only gives a warning as a warning if a driver is caught smoking and there is no firm action regarding the sanctions that will be obtained if he violates the regulation, let alone endangering others. And other parties who only implement this rule by giving warnings through ATCS at several red lights in Banjarmasin if someone is caught smoking while driving.

In addition, researchers often see drivers who smoke while driving, even though the prohibition of smoking while driving is regulated in the regulation, but it is not implemented properly by law enforcers. They said that this ministerial regulation has no legal sanctions, legal sanctions only exist in the relevant laws. They prefer serious violations such as going against the flow, not using helmets, violating traffic signs and so on. There is no strict action against motorists who smoke, they are only reprimanded.

Based on the researcher's observations, although some drivers know and do not know about the Minister of Transportation's regulation prohibiting smoking while driving, they still do it for various reasons. This shows that the legal awareness of the community itself is very low.

The implementation of the Minister of Transportation Regulation Number 12 of 2019 concerning the Protection of Safety of Motorcycle Users Used for the Benefit of the Public is measured using the implementation theory according to George C. Edward III which states that the success of an implementation can be influenced by communication, resources, disposition, and bureaucratic structure.

a. Communication

The effectiveness of an implementation can occur if decision makers know what will be done. The achievement of a goal is seen from how the communication is conveyed so that it is conveyed properly. In order for the implementation of the ban on smoking while driving in Banjarmasin City, especially in East Banjarmasin District, to obtain effective results. Therefore, there must be communication between community groups and implementers in order to obtain adequate information related to Minister of Transportation Regulation Number 12 of 2019 Article 6c which contains a ban on smoking while driving.

Based on the results of research conducted by researchers, the Transportation Agency has indirectly socialized this regulation to motorists in Banjarmasin City through ATCS. Meanwhile, there are no baleho or posters regarding this matter. Meanwhile, researchers conducted research at the Banjarmasin Police Traffic Unit, that they also socialize through social media and also give direct warnings to violators of the regulations. However, further action regarding sanctions has not yet been taken.

b. Human Resources

There are two important aspects of resources in this study, namely the apparatus and facilities owned by the implementing apparatus. If the apparatus responsible for implementing the policy lacks the resources to carry out the policy effectively, the policy implementation will not be effective.

Based on the results of the research that the researchers have done, that some of the drivers who smoke while driving in Banjarmasin receive socialization from the implementor, both directly and indirectly regarding the Regulation of the Minister of Transportation Number 12 of 2019 Concerning Safety Protection for Motorcycle Users that are used for the Public Interest. The Department of Transportation has sufficient human resources to carry out this policy. Several members on duty at the operator section can provide outreach and warnings through the local ATCS. And the police from the Banjarmasin Police SATLANTAS also have sufficient human resources in socializing, reprimanding and taking action against violators. So that the implementation of these regulations has been supported.

c. Disposition

According to Geogre C. Edward that Policy Implementation can succeed effectively and efficiently if implementors not only know what to do, but also must have the will to be able to implement the policy. Sometimes policies cannot be implemented properly because there are often differences in interpretation and personal or organizational interests take precedence over common interests.

Based on the results of research conducted in the field through observations and interviews, researchers found that the characteristics of the implementers in the implementation process of the Minister of Transportation Regulation Number 12 of 2019 concerning Safety Protection for Motorcycle Users Used for the Benefit of the Public tend to focus only on implementation related to serious violations such as going against the flow, not using helmets, running red lights, incomplete correspondence, violating traffic signs and so on. As for smoking

while driving, which can endanger the driver himself and others, it is not a concern of the implementers. Researchers often encounter motorists who smoke, sometimes not even getting a warning.

Researchers conducted interviews with road users in East Banjarmasin Sub-district who were caught smoking while driving, researchers obtained information on the reasons they smoked while driving because they did not know about the regulation, the absence of *baleho* or posters containing the prohibition of smoking while driving along with sanctions and their impact and also for those who know but still do it because they feel they have never been fined and have not been dealt with firmly so they have not been deterred. And also the level of awareness is very lacking.

d. Bureaucratic Structure

Policy implementation has a complex nature that requires cooperation with many parties. When the bureaucratic structure is not conducive to policy implementation, it will lead to ineffectiveness and become an obstacle to policy implementation. Bureaucratic structure is a fundamental factor in assessing public policy implementation.

The bureaucratic structures that implement Permenhub No. 12 of 2019 in Banjarmasin City are the Banjarmasin City Transportation Agency and the Banjarmasin Police Traffic Unit. The results showed that the Transportation Agency has implemented the regulation by reprimanding and informing the prohibition of smoking while driving through ATCS by operators and not in all ATCS in Banjarmasin, operators give a warning if they find a driver who smokes instead of conducting continuous socialization. And from the Banjarmasin Police Traffic Unit officers have given warnings to motorists who are caught smoking while driving, but no firm action has been taken. This shows that the existing bureaucratic structure is effective in implementing regulatory policies.

Based on the author's analysis that the Implementation of Article 6c of the Minister of Transportation Regulation No. 12 of 2019 concerning the prohibition of smoking while driving in Banjarmasin City, especially in East Banjarmasin District, that the regulation is still not running well.

4.2 Obstacles in the Implementation of Article 6c of Ministerial Regulation Number 12 of 2019 concerning Safety Protection for Motorcycle Users Against Riders Who Smoke in East Banjarmasin District

The implementation of this regulation has indeed been carried out but it has not been effective and has not been implemented properly by the Banjarmasin City Transportation Agency and the Banjarmasin Police Traffic Unit. However, currently there are still many obstacles that cause the implementation of the Minister of Transportation's regulation to be ineffective.

a. Communication

Lack of direct interaction from implementing parties such as the Banjarmasin City Transportation Agency and the Banjarmasin Police Traffic Unit with the people in Banjarmasin, especially motorcycle users. And this is due to time constraints and many tasks and many traffic violations in Banjarmasin so that matters regarding the Minister of Transportation Regulation regarding the prohibition of smoking while driving are put aside.

Socialization and counseling regarding the prohibition of smoking while driving which is regulated in the Minister of Transportation Regulation Article 6c, and supervision is still lacking and not optimal, this can be seen from some motorists who do not know the existence of these regulations because there are no baleho or posters about the prohibition of smoking while driving and some motorists know these regulations and still do it because they feel there are no warnings and sanctions obtained.

b. Human Resources

Implementation of a regulation will not be successful without the support of resources (staff) both in terms of quality and quantity. There is still a lack of policy implementing staff, the competency level of implementers is still low, and the division of tasks is not clear among implementers. Another obstacle is the absence of a supervisory team and the absence of sanctions for violators.

c. Disposition

The commitment and response from policy implementers in terms of implementing the Minister of Transportation Regulation No. 12 of 2019 is still low. Lack of firmness in giving sanctions to violators. Weak awareness of motorists who smoke is also an obstacle in the implementation of Minister of Transportation Regulation No. 12 of 2019 concerning Safety Protection for Motorcycle Users used for the Public Interest regarding the prohibition of smoking while driving in East Banjarmasin District.

d. Public Awareness of Law

Low public awareness of the law is the reason for the ineffective implementation of Minister of Transportation Regulation No. 12/2019 regarding the prohibition of smoking while driving. Researchers also see that there are still many motorists who smoke while driving even though some of them know that it is prohibited in the regulation. They do not want to comply with this regulation fully. This happens because there are no sanctions imposed on violators.

Disobedience to the law that has been made by the government is contrary to the guidance given by the Prophet Muhammad, namely

وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ, إِلَّا شَرْطًا حَرَّمَ حَلًّا لَّا, أَوْ أَحَلَّ حَرَامًا

"Every Muslim must fulfill every rule

that they have agreed upon, except an agreement to legalize the unlawful or forbid the lawful." (Reported by Abu Daud No. 3594, Tarmidhi No. 1352, and authenticated by Al-Albani).

e. Application of Sanctions

One of the efforts so that people can comply with the regulations made by the government is to provide sanctions for violators. In the implementation of Minister of Transportation Regulation No. 12/2019, there is no explanation of sanctions for violators. However, if we look at Law No. 22 of 2009 concerning LLAJ Article 283 which reads: "Every person who drives a motor vehicle on the road unreasonably and carries out other activities or is influenced by a situation that results in impaired concentration in driving on the road as referred to in Article 106 paragraph (1) shall be punished with a maximum imprisonment of 3 (three) months or a maximum fine of Rp. 750,000.00 (seven hundred fifty thousand rupiah)".

With the existence of sanctions for motorists who smoke even though it refers to the law in question, the sanctions have not been applied optimally by the implementers.

5. CONCLUSION

Based on the results of researchers' observations in the field, the implementation of article 6c of the Minister of Transportation Regulation number 12 of 2019 concerning the protection of the safety of motorcycle users against drivers who smoke in East Banjarmasin sub-district has not been maximized and has not been running properly, this can be seen from the frequent occurrence of drivers who smoke while driving on the highway in East Banjarmasin sub-district which is the object of this research. Another thing also proves that Minister of Transportation Regulation No. 12 of 2019 concerning the Protection of Safety of Motorcycle Users Used for the Benefit of the Public has not been running properly, seen from the number of informants who do not know this regulation, this is due to the lack of socialization and strict action by implementers in enforcing this regulation.

The obstacles in implementing article 6c of the Minister of Transportation Regulation number 12 of 2019 concerning the protection of the safety of motorcycle users against smoking drivers in East Banjarmasin District include communication where there is a lack of socialization and outreach from implementers, the availability of resources such as law enforcement officers who do not implement this regulation. In addition, the disposition of the commitment and response of policy implementers in terms of implementing this regulation is still low, coupled with the lack of assertiveness in imposing sanctions on violators, low public awareness is also an obstacle in the implementation of this regulation, and another obstacle is the absence of strict enforcement and sanctions from the police against violators who smoke while driving.

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