



## Settlement of Traffic Offences: A Shift in the Presumption of Innocence and the Impact on Legal Justice

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### Abstract

Traffic offences are a serious issue in Indonesia, creating complex challenges for the justice system and social costs. Although Law No. 22/2009 has defined the rules, the high number of accidents and offences indicates the ineffectiveness of law enforcement. This study aims to investigate the impact of traffic offences on legal justice, the effectiveness of sanctions, and the shifting presumption of innocence in Indonesia. The research methodology included both quantitative and qualitative approaches, involving analyses of accident data and interviews with authorities. The results showed a high number of offences, a lack of effectiveness of Law No. 22 of 2009, and the phenomenon of "peace in place." The implementation of ETLE cameras became an alternative, despite internet access constraints. Perma No. 12/2016 changed the judicial process, moving from a presumption of innocence to a presumption of guilt. This shift provides uniform sanctions without considering individual circumstances. The limitation of violators' rights in ticket hearings violates the principle of justice. The implementation of e-ticket technology shows advantages, but the dependence on the internet and the potential for misuse are obstacles. The shift to the presumption of innocence in the Perma raises doubts about the fairness of the justice system. Improving fairness requires a re-evaluation of the application of sanctions, technological improvements, and a deeper understanding of the rights of offenders. These recommendations are expected to improve the justice system related to traffic offences in Indonesia.

## Introduction

One of the offences that occur in the jurisdiction of Indonesia is traffic offences. The term traffic refers to activities carried out by people on the road, which is one of the important elements in people's lives and their interactions both with the environment and with other communities (Marsaid et al., 2013).

Problems involving road disruption due to an increase in the number of vehicles are generally caused by human behaviour that violates the rules set by the government. Examples include exceeding the maximum speed limit, ignoring traffic signs, violating vehicle licence regulations, driving unfit vehicles, and so on. To maintain traffic discipline and safety, a strong and effective application of the rule of law is required, in addition to strict enforcement, it must also encourage efforts to prevent violations. The high number of traffic accidents and violations in Indonesia according to the Korlantas Polri revealed that the death toll due to traffic accidents in 2021 reached 25,266 people, and in 2022 the death toll was 26,100. This data does not include victims of serious injuries and minor injuries. Then for the types of vehicles involved in the accident cases, namely motorbikes as much as 73%, and involving 12% freight transport. (Bureau of Communication and Public Information, 2023).

As a state of law, Indonesia has Law No. 22 Year 2009 on Road Traffic and Transport that regulates the obligations of public behaviour on public roads. However, these legal measures have not been fully successful in preventing offences and accidents. (Sunaryo et al., 2020).. The application of sanctions as a form of countermeasure is also ineffective without awareness from road users. Therefore, the cooperation of all parties in traffic behaviour is needed.

The sanction for traffic violators is known as a "ticket," which is proof of the offence and an invitation to attend a hearing at the District Court (Hidayat et al., 2022; Sabadina, 2020). The phenomenon of "peace in place" shows that there are individuals who abuse their authority in ticketing, where not all cases of violations end up in court and are not in accordance with applicable legal provisions.

Traffic offence enforcement procedures may involve the use of ETL (Electronic Traffic Law Enforcement) cameras. In electronic ticketing, offenders are presumed guilty until proven innocent, with evidence in the form of camera footage considered sufficient to prove the offender's guilt (Amin et al., 2020; Armala & Yasir, 2022; Gazali, 2022; Pardede et al., 2022).

The resolution of traffic offence cases is a crucial part of the justice system, aimed at enforcing rules and ensuring road safety. One of the main focuses is maintaining the legal principle of the presumption of innocence. This principle, which states that a person is presumed innocent until proven otherwise through a fair and transparent legal process, is a fundamental human right in the modern legal system. However, shifts in the presumption of innocence sometimes occur in the resolution of traffic offence cases, potentially impacting legal justice.

The purpose of this research is to investigate and analyse the problem of traffic violations in Indonesian jurisdictions with a focus on the impact on legal justice, the effectiveness of sanctions, and the shifting presumption of innocence. The research will explore the factors leading to an increase in the number of violations, evaluate the effectiveness of Law No. 22/2009 on Road Traffic and Transport in preventing violations, and analyse the role of technology, such as ETL cameras, in the enforcement of violations. In addition, this research also aims to understand the phenomenon of "peace in place" and its implications for legal justice. Thus, this research is expected to contribute to a deeper understanding of the law enforcement system related to traffic offences in Indonesia as well as provide recommendations for improvement and policy development to increase the fairness and effectiveness of handling traffic offences.

## Methods

Research methods that can be used to investigate traffic offences in Indonesia can involve both quantitative and qualitative approaches. Quantitative approaches can involve statistical analyses of traffic accident data, including the number of casualties, types of vehicles involved, and contributing factors. Data can be obtained from official sources such as the Korlantas Polri. Meanwhile, a qualitative approach could involve interviews with authorities, such as traffic police, and road users. The focus of the interviews could include perceptions of the effectiveness of penalties and sanctions, experiences with handling "peace-in-place" cases, and views on the application of the presumption of innocence. The combination of quantitative and qualitative methods can provide a holistic understanding of the problem of traffic offences, providing a basis for policy improvements and more effective law enforcement.

## Results and Discussion

Laws in the form of regulations or statutes are drafted and made with the aim of providing protection and security for the general public. The formation of laws and regulations involves a long and extensive process, involving juridical, sociological, and philosophical analyses of

society (Kurniati et al., 2023). This process ultimately provides substance to the legislation, which aims to provide answers and certainty regarding the protection of the rights and obligations of the community.

Laws that apply to crimes and offences against the public interest fall within the realm of criminal law, where such acts are punishable by punishment as a form of suffering. Criminal law includes regulations that determine what acts are considered criminal offences and what penalties can be imposed on the perpetrators. The politics of criminal law, according to Mahmud Mulyadi, is an attempt to direct the enforcement of Indonesian criminal law in the future, by looking at its current enforcement (Mulyadi, 2008).

The operationalisation of criminal law policy through penal means can be done through the process of formulation, application, and execution. In the perspective of criminal law, the formulation policy must achieve synchronisation between the internal environment and the generally applicable criminal law rules. Policy formulation is a strategic stage that determines the formulation of punishable acts, criminal liability, and sanctions that can be imposed (John Kenedi, 2017). Therefore, crime prevention is not only the responsibility of law enforcement officials, but also the responsibility of legislative officials, including in the context of traffic and road transport that has the potential to cause violations and disrupt traffic order.

Traffic order refers to a situation where people use the road in an orderly and smooth manner, free from traffic accidents. Therefore, it is necessary to have legal rules governing traffic to achieve such order. The hope is that the existing regulations can serve as a guide to anticipate traffic problems and accidents that can cause material losses and casualties (Sundari, 2005).

During the period from January 2022 to 13 September 2022, the Indonesian Police Traffic Corps (Korlantas Polri) recorded 94,617 cases of traffic accidents in the Republic of Indonesia, showing a 34.6% increase from the previous year which recorded 70,000 cases. According to the Korlantas Polri report, most accidents are caused by human error (61%), such as driving incompetence or inattentive, lazy, careless and reckless driver behaviour, while vehicle and infrastructure and environmental factors also contribute (9% and 30%). Transport experts state that traffic violations are the main trigger of accidents, with research from UGM's Centre for Transportation and Logistics Studies (PUSTRAL) showing four main factors causing traffic accidents, namely driver, vehicle, road environment, and weather. The survey by the capital's media also revealed three main causes of traffic accidents, including red light violations, driving against the flow and dangerous road behaviour, and violation of traffic signs. Traffic accidents, which caused 26,100 deaths in 2022, mainly involved motorised vehicles, especially motorbikes.

According to the Criminal Procedure Code (KUHAP), there are three types of hearings in traffic accident cases: ordinary examination proceedings (regulated in Articles 152 to 182), summary examination proceedings (regulated in Articles 203 to 204), and speedy examination proceedings, which include minor criminal proceedings (regulated in Articles 205 to 210) and road traffic offence proceedings (regulated in Articles 211 to 216). The determination of the type of examination is important to determine the legal procedure that is appropriate to the nature and level of importance of the case at hand (Wahyuni et al., 2020). There is no case file or minutes of examination, then the defendant can appoint by letter to represent him. Examination in road traffic offence cases can be conducted without the presence of the offender or his/her proxy. In the event that the verdict is in the form of deprivation of liberty, the offender may file an opposition to the original District Court, and if the verdict in the opposition hearing remains a deprivation of liberty, the defendant may file an appeal. In addition, the return of confiscated objects is not subject to conditions, but this applies if the offender has implemented

the contents of the verdict. Thus, based on the provisions of the Criminal Procedure Code, road traffic offence cases are included in the speedy trial procedure.

The settlement of traffic offence cases is the settlement of offences committed by the district court which includes the stages before, during, and after the trial process, as stipulated in Article 1 point 1 of Supreme Court Regulation Number 12 of 2016 concerning Procedures for Settlement of Traffic Offence Cases. Certain offences against road traffic laws and regulations are examined through a speedy trial. The specific offences referred to in Supreme Court Regulation No. 12/2016 Article 316 paragraph (1) do not include offences under Article 274 paragraph (1) and (2), Article 275 paragraph (1), Article 309, and Article 313 of Law No. 22/2009 on Road Traffic and Transport.

The policy formulation relating to traffic regulations embodied in Perma No. 12/2016 differs in its legal consequences from the provisions contained in Article 267 of the UULLAJ as well as Article 214 of KUHAP. Perma No. 12/2016 is considered a legal breakthrough in the handling of traffic offences, but it also illustrates that the provision for legal protection under the UULLAJ has been lost, as the Perma differs in several provisions, such as offenders not being able to attend the hearing and the appointed judge being able to decide all cases in the absence of the offender, while the UULLAJ also states that offenders are given the option and possibility that they can choose to attend the hearing or not. While this provision embodies the offender's right to a speedy trial, it also removes the offender's right to give testimony as they wish.

In addition, another right of offenders that is not accommodated by Perma No. 12/2016 is that offenders cannot file a defence unless there has been a decision or ruling on detention. Thus, the rights of offenders to provide testimony and file legal remedies to fight for and defend their rights are also increasingly closed in the trial process of traffic offence cases.

Such conditions ultimately also indicate a shift from the principle of criminal law, namely the presumption of *innocence*, because offenders are treated directly as if they are guilty and even an offender only has the right to challenge decisions or verdicts related to deprivation of liberty. However, if we look from the perspective of the principles of criminal law, when a person is deemed to have broken the law but is not given the opportunity to defend himself in court, it is a violation of the presumption of innocence.

The presumption of innocence, which is one of the main principles in the justice system, aims to protect and guarantee the rights of individuals suspected of committing a criminal offence during the investigation and trial process (Arfiani et al., 2022). In addition, this principle also serves as a reference for law enforcement officers to limit their actions when investigating offenders. This is done before there is a court decision that proves the guilt of the offender and provides applicable legal sanctions.

Traffic offences are situations related to social aspects and legal issues that require efficient and effective action to achieve traffic order and increase understanding of the law among road users. In dealing with these offences, it is also important to keep in mind the rights of the suspect, so that the main objective of the law, which is the creation of justice, can be fulfilled.

The process of resolving criminal cases based on the applicable law in Indonesia is currently carried out in a criminal *justice system*. *Criminal Justice System* is a system in a society to tackle the problem of crime (Hamzah, 2005). With regard to the term criminal justice system, it is inseparable from the term system described by Davies et al. (1995) as "*the word system conveys an impression of a complex to end*" meaning that the word system shows an impression of other complex objects and runs from beginning to end, therefore in realising the objectives

of the system there are four agencies involved, namely the police, prosecutors, courts and correctional institutions.

The four components must work together in an integrated manner (*Integrated Criminal Justice Administration*). An integrated process means that the four sub-systems work together in relation to each other even though each stands alone. The police as investigators conduct investigations including investigations, arrests, detentions, searches, seizures and examination of letters. Prosecutors as public prosecutors conduct prosecutions based on the results of investigations submitted by investigators. The judge, based on the indictment of the public prosecutor, conducts an examination in a court session (Davies et al., 1995).

Prior to the issuance of Perma No. 12/2016, law enforcement against traffic offences, according to the author, was in accordance with John Rawls' theory of justice. This theory argues that in order to find the correct principles of justice, humans need to return themselves to their true position. In this context, the true position refers to a situation where individuals interact with other individuals as human beings without external influence. In this way, two fundamental principles of justice can be achieved, namely the principle of equality or the principle of granting equal freedom to all individuals as far as possible, and the principle of allowing inequality as long as this benefits the most vulnerable.

The principle of inequality states that in conditions of existing socio-economic differences, justice should be pursued through the creation of rules that disadvantage the economically weak. In other words, creating rules that not only protect the rights of vulnerable individuals in the social and economic context, but also provide mechanisms that make it easier for them to get justice for their rights in court.

Justice is a condition of morally ideal truth about something, whether it concerns objects or people. In upholding justice in traffic offence cases, the *in-absentia* trial system stipulated in Perma No. 12/2016 is an absolute or absolute *in absentia* trial system, and can be said to contain no sense of justice and only pursue legal certainty. The consequence of *in absentia* is that offenders are found guilty without first hearing the reasons of the offenders, and judges who hand down verdicts in traffic offences use the theory of negative evidence which shows injustice. This is also because judges seem to be forced to believe that every offender must be guilty, the truth achieved is the formal truth as adopted in civil law and not the material truth or the real truth.

The process of taking action against traffic offences is still carried out manually, although in some areas an e-ticket system has been implemented. This manual system is prone to various irregularities that can harm the objectives of law enforcement, both in administrative, operational and accountability aspects. From the research results, there are 12 irregularities in the current manual enforcement system. Among others, data manipulation, misuse of incentives, and coercion of fine payments by ticketing officers. The trial process is also often slow and not transparent, as well as the emergence of brokers during the trial. Manual enforcement does not provide a deterrent effect, so traffic remains disorganised. In contrast, the e-ticket system provides several advantages, such as minimising unauthorised transactions, facilitating the payment of fines by violators, and increasing transparency control over the use of traffic violation fines.

Among these advantages, of course, there are disadvantages, one of which is depending on the internet network. Although it has become a necessity, not all people have open access to the internet. This will again open up opportunities for both individuals and violators to commit irregularities.

The phenomenon of irregularities in the implementation of law enforcement in the form of enforcement of traffic violations certainly affects people's perceptions of law enforcement itself. Based on the value of justice, it can be studied through interactional justice which asserts that humans as part of society are very concerned about signs or symbols that reflect their position in the group. Thus, humans will try to understand, maintain and strive for good social relations in their environment.

Equitable law enforcement in traffic offences can be realised in the opportunity to attend or not attend a ticket hearing. This is related to the empirical fact that there are still law enforcement officers who use their power to blackmail the public, where the public becomes victims by being subjected to actions without clear legal reasons. By attending the trial, the public will be able to exercise their right to provide information and then it will be considered by the judge.

After the enactment of Perma No. 12/2016, the author considers that the value of justice is not fully achieved because every judge's decision that refers to the Perma is always decided with the same amount of fine, while before the Perma was enacted, violators who attended traffic offence hearings received different and more just decisions because the judge would decide based on his beliefs supported by the evidence presented, even though Article 183 of the Criminal Procedure Code is the highest standard of evidence applied. When juxtaposed with the theory of criminal law and punishment, judges in making decisions related to traffic offences only refer to the actions of offenders documented by law enforcement in traffic offence case files.

Therefore, it can be concluded that judges are more inclined to use a retributive approach that bases the punishment on the offender's actions. Thus, the decision or sanction given to similar traffic offences that do not attend the hearing will be uniform. This situation suggests that judges have little room to assess and adjudicate cases on an individual basis, as decisions are based on records from the police or traffic offence enforcement officers. Furthermore, it also means that judges may overlook the rights of offenders, as they place more emphasis on legal certainty by following the prevailing legal norms, thus the values of justice are sometimes marginalised.

In the 1945 Constitution of the Republic of Indonesia, hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia, article 27 paragraph 1 states: "All citizens shall be equal before the law and government, and shall uphold the law and government with no exception". The basic law as *grundgezets* or basic norms has a paragraph content which is a collection of principles that are still abstract in nature. Including the above article implies a principle of equality in law or known as Equality before the law. Similarly, after the second amendment of the 1945 Constitution, this is emphasised in Article 28D paragraph (1) and paragraph (2). The settlement of traffic offence cases refers to Law No. 8 of 1981 on Criminal Procedure Code, especially Article 211, Article 212, Article 213 and Article 214, which basically regulates *in absentia*, where traffic offenders can appear in person at the trial or appoint a representative or even if the defendant is not present at the trial, the verdict will still be rendered in the form of a *verstek* verdict (without the presence of the defendant). If the verdict is in the form of deprivation of liberty, the defendant can file an opposition.

With many traffic offences scheduled for trial, the Supreme Court then considered that this was not in accordance with the principles of simple, fast and low cost trials. Therefore, the Supreme Court issued Supreme Court Regulation No. 12/2016 on the Procedure for Settlement of Traffic Violation Cases, which stipulates that traffic violation cases decided by the court can be conducted without the presence of the violator before the court, and the trial is conducted with the judge directly issuing a determination or decision containing the amount of the fine which

is then announced through the official website and court board on the same day. If an offender objects to the judge's decision, the offender can file an appeal on the same day. Then for violators who accept the decision, the violator must make payment to the account provided by the prosecutor's office.

The enactment of the new regulation means that in practice, all offenders are found guilty and sentenced to a criminal fine. The basis for such sanctions is that judges use the *presumption of guilt* as they decide on the amount of fines to be imposed on offenders based solely on the offence files sent by Traffic Police investigators to the District Court.

The provisions of the Perma show that there has been a shift and violation of the principle of criminal law, namely the *presumption of innocence* to the *presumption of guilty*, which is closely related to the judicial process, especially for law enforcement officials to treat suspects or defendants like *innocent* people. This shift can be seen in the position of offenders who previously under the LLAJ Law could be heard through a ticket trial, which indicates the fulfilment of the rights of offenders.

Meanwhile, the recognition of the presumption of innocence in Indonesian criminal procedure law aims to provide protection and guarantees to humans who have been accused of committing a criminal offence in the process of examining cases so that their human rights are not violated. In addition, it is also to provide guidance to officers so that their actions are limited in conducting examinations because the accused human being has the same dignity as the officer. (Abdurrahman, 1979).

The main purpose of the principle of *equality before the law* is to uphold justice by promoting *equality* before the law, which means that the law as an entity does not distinguish anyone who asks for justice, there is no discrimination in the rule of law in Indonesia. In relation to the fines imposed on traffic violators, where the violators tend not to have the right to convey the reasons for the violations they commit, and even the right to submit a request for leniency is no longer available.

This is related to the abuse of the rights of a person who is considered to have committed an offence but is not given the opportunity to defend his rights in court, so it can be said that the principle applied is the principle of *presumption of guilt*. Suspects should be considered as subjects, not objects to be examined, so they must be presumed innocent, until a court decision is obtained that has permanent force, and there is the potential for the presumption of innocence not to be applied to the defendant during the judicial process (Harahap, 2014).

The application of the *presumption of guilt* in traffic offence policy may cause several problems, including: (1) Violation of human rights, such as the right to a fair trial and the right to be released before being proven guilty; (2) Increase in the number of mistakes. This is because a person who is presumed guilty before proven guilty can be punished, even if they are eventually proven innocent; (3) Increased discrimination against certain groups, such as minority groups or poor groups.

The relationship between *presumption of guilt* and *equality before the law* is complex. *Presumption of guilt*, which views a person as guilty until proven innocent, clearly contradicts the principle of *equality before the law*, which emphasises *equality* before the law. *Presumption of guilt* reverses the burden of proof, so that a person must prove themselves innocent, whereas according to *equality before the law*, it is the state that must prove a person's guilt. *Presumption of guilt* can lead to biased and discriminatory legal decisions. People from minority or underprivileged groups can be more easily suspected and found guilty without strong evidence. The application of the presumption of guilt in policies, such as electronic ticketing, can lead to people being punished without the right to a fair defence.

The mechanism of e-enforcement of traffic offences is still guided by criminal law, because criminal law is a countermeasure to a symptom and not a solution by eliminating its causes. Thus, the preventive effect of criminal law is more directed at preventing people from committing crimes rather than preventing crimes from occurring.

With the implementation of e-enforcement of traffic violations, a sense of justice for the community can be achieved, because the action is applied to people who violate, the imposition of fines for violators has also been adjusted to the ability of the community. In terms of effectiveness, if after being prosecuted there is another violation, the public will still be prosecuted again so that the effect must be returned to the public's own awareness in traffic. The convenience offered by the mechanism of e-enforcement of traffic violations is manifested in public participation in the process of resolving traffic violation cases based on information technology. However, once again it should be noted that these facilities must be enjoyed by all levels of society, not only for those who can afford it, but for those who do not or do not have access must also be facilitated properly, so that a sense of justice can be felt by the entire community.

## Conclusion

Based on the above research, the author concludes that First, the formulation policy of traffic offence case settlement related to Perma No. 12/2016 has different legal consequences from several provisions in the Road Traffic and Transport Law, namely the offender does not have the possibility to attend the hearing and the appointed judge can decide all cases without the presence of the offender. The offender is also unable to submit a defence unless there has been a decision or ruling relating to detention, which means that the offender's right to provide testimony and submit legal remedies to defend their rights in court is also increasingly closed. Second, the implementation policy of traffic offence case settlement after the enactment of Perma No. 12/2016, the author considers that the value of justice is not fully achieved because every judge's decision that refers to the Perma is always decided with the same amount of fine, while before the Perma was enacted, violators who attended the traffic offence trial received a different and more just decision because the judge would decide based on his/her belief supported by the evidence presented, even though the basic reference for proving traffic offences is simpler and different compared to Article 183 of KUHAP. Third, the settlement of traffic offence cases if based on the principle of equality before the law, it is necessary to pay attention to justice, legal certainty and benefits for violators and law enforcement, and this has not been fully implemented. The justice in question is in the judicial process where with the new provisions based on Perma No. 12/2016 violators are not given the opportunity to convey their reasons that can be taken into consideration by the judge in giving a decision, then they cannot file a resistance except for the decision on deprivation of freedom.

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