

Al-Balad: Journal of Constitutional Law

Volume 1 Nomor 2 2019

Program Studi Hukum Tata Negara (Siyasah)

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Available at: <http://urj.uin-malang.ac.id/index.php/albalad>

The Effectiveness Ministry of Transportation Regulation No. 82 of 2018 Concerning Tool Control and Road Users Safety in Merjosari Village of *Maslahah Mursalah* Perspective

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Abstrak

Speed limiting device in the form of speed bump is often found on the streets, especially the environmental road. Speed bump specifications that have been regulated in the Minister of Transportation Regulation regarding height, width, slope, and combination lines are yellow, white and black. These rules are made to bring order to the people who make speed bumps that are not according to standards and can harm road users and damage the function of road facilities. The focus of this research is to describe: Effectiveness of making speed bumps in Merjosari Village, and overview of problems in making speed bumps in Merjosari Village. This research uses empirical juridical research type, with sociological juridical approach. Data sources are primary in the form of interviews, secondary in the form of books, laws. This research uses the method of observation, interview or interview, and study of literature or documents. Then processing data using descriptive analysis. The results of this study First, the Effectiveness of the Regulation of the Minister of Transportation No. 82 Year 2018 Concerning Tool Control and Road Users Safety is deemed ineffective. Second, the installation of speed bump tool limiting devices only slightly gives problems and more on harms and dangers. Then the need for public knowledge and counseling provided by the government or related transportation department. And awareness of problems or mutual comfort in the community and road users.

Alat pembatas kecepatan berupa *speed bump* sering kali ditemui di jalan-jalan, terutama jalan lingkungan. Spesifikasi *speed bump* yang telah diatur dalam Peraturan Menteri Perhubungan mengenai ketinggian, lebar, kelandaian, serta garis kombinasi berwarna kuning, putih dan hitam. Aturan tersebut dibuat guna menertibkan masyarakat yang membuat *speed bump* yang tidak sesuai standar dan dapat merugikan pengguna jalan maupun merusak fungsi fasilitas jalan. Fokus penelitian ini yaitu mendeskripsikan: Efektivitas pembuatan *speed bump* di Kelurahan Merjosari. dan tinjauan

masalah mursalah dalam pembuatan *speed bump* di Kelurahan Merjosari. Penelitian ini menggunakan jenis penelitian yuridis empiris, dengan pendekatan yuridis sosiologis. Sumber data yaitu primer berupa wawancara, sekunder berupa buku-buku, undang-undang. Penelitian ini menggunakan metode observasi, interview atau wawancara, dan telaah pustaka atau dokumen. Kemudian pengolahan data menggunakan diskriptif analisis. Hasil penelitian ini **Pertama**, Efektivitas Peraturan Menteri Perhubungan Nomor 82 Tahun 2018 Tentang Alat Pengendali dan Pengaman Pengguna Jalan dinilai belum efektif. **Kedua**, Pembuatan pemasangan alat pembatas kecepatan “*speed bump*” hanya sedikit memberikan *masalah* serta lebih banyak pada *mudharat* dan bahayanya. Maka perlunya pengetahuan masyarakat dan penyuluhan yang diberikan oleh pemerintah ataupun dinas perhubungan yang terkait. Serta kesadaran akan *masalah* atau kenyamanan bersama dalam masyarakat maupun pengguna jalan.

Keywords: Legal Effectiveness; *Maslahah Mursalah*; Speed Bump.

Introduction

It is important for the people, rules that aim to bring order to the social life problems for the realization of comfort and prosperity. Like the rules of traffic which can not be separated from our daily lives, especially for road users. As a road users, one of the things that we often encounter (found) is speed bump or traffic calming devices that use vertical deflection to slow motor-vehicle traffic in order to improve safety conditions. We often encounter these tools on highway and narrow streets with various sizes. For this reason, its urgency cannot be ignored in the establishment of rules related to speed bumps which have become an important part of our daily lives.

Article 3 paragraph (2) Regulation of the Minister of Transportation (Permenhub) No. 82 of 2018 explains that the speed limiting device includes: speed bump, speed hump, and speed table. That has been mentioned understanding and specifications of each. However, there are still many people who do not know that in the production of speed bumps there are regulations governing height, width, slope, and the color of the lines on speed bumps and permits in making them, because the authority is in the government.

According to Imam Al-Ghozali stated, basically in a language or *urf*, the word *al-mashlahah* refers to the notion of gaining benefits or avoiding harm. There are also those who argue that the problem of *mursalah* is good the benefit which is not mentioned by the *shara`* clearly to do or leave it, whereas if done will bring benefits or avoid damage or ugliness, such as someone punishing something that has not been stipulated by religion. In short is to gain benefits and avoiding *mudharat* The existence of these regulations is to prevent accidents that can harm road users and for the safety and comfort of driving, it brings benefits to the community and avoids *mafsadat* / danger.

Based on the description above, the writer conducts a research activity entitled The Effectiveness Ministry of Transportation Regulation No. 82 of 2018

Concerning Tool Control and Road Users Safety in Merjosari Village of *Maslahah Mursalah* Perspective.

Research Methods

This research used empirical juridical research type, with sociological juridical approach.¹ Data sources are primary in the form of interviews, secondary in the form of books, laws. This research uses the method of observation, interview or interview, and study of literature or documents.² Then processing data using descriptive analysis.³

Research Result And Discussion

The Effectiveness of Making Speed Bumps in Merjosari Village Based on the Minister of Transportation Regulation No. 82 of 2018 Concerning Tool Control and Road Users Safety

Talking about the effectiveness of a statutory regulation, it must be related to the study of legal effectiveness, which is an activity that shows a general problem formulation strategy, namely the comparison of legal reality with the legal ideal. specifically seen the level between law in action and law in theory.⁴ According to Lawrence M. Friedman, law enforcement or legal effectiveness can be known from the existence of three factors. These factors are: 1) Legal substance, 2) Legal structure, 3) Legal culture. These three factors are interrelated. These factors are a measure of the success of law enforcement.

According to Mr. Aziz, Department of Transportation Malang City. Transportation Minister Regulation No. 82 of 2018 has been effective. But the obstacles when in the field are not in accordance with these regulations. One obstacle is the lack of supervision from the Department of Transportation because usually the speed bumps that are on the road environment or settlements are owned by community self-help. Unless it's on the main road, then that is the authority of the Transportation Office.

Malang City Transportation Department has no right to dismantle or eliminate speed bumps that do not comply with the correct specifications. Because the main tasks and functions of the Department of Transportation are as regulators. Just explain and straighten out about making a speed bump that is in accordance with the Regulation of the Minister of Transportation No. 82 of 2018 article 3. If it is about to be dismantled or not, the Transportation Service requests assistance from

¹Soejono Soekanto. *Pengantar Penelitian Hukum*, (Jakarta: Penerbit Universitas Indonesia Press, 1986), 51.

²Amiruddin, *Pengantar Metode Penelitian Hukum*, (Jakarta: PT Raja Grafindo Persada: 2006), 30.

³Endang Poerwanti, *Dimensi-Dimensi Riset Ilmiah*, (Malang: UMM Pers, 1998), 26.

⁴Donal Black, *Batas-batas Sosiologi Hukum*, dalam Mulyana W. kusumah dan Paul S. baut (ed). *Hukum, Politik dan Perubahan Sosial*, Lembaga Bantuan Hukum Indonesia, (Jakarta: 1988), 27.

the village which bridges the community with related agencies. Because what is directly related to the community is the village.

Making speed bump in the Merjosari Village, precisely on Jl. Joyo Tambak Sari RT. 05 RW.01 is on deliberations conducted by residents of Merjosari and Dinoyo. Because this road enters the border area between Village Merjosari and Village Dinoyo. This speed bump was made from 2015, running 4 years to date. On the basis of community consultation and agreement, the distance made by the speed bump from one another is 75/100 m, maximum height of 10 cm, and width between 30-40 cm. for the color of the combination used white. Roads are all parts of the road, including auxiliary buildings and equipment intended for public traffic, which are on the surface of the land, above the surface of the land, below the surface of the land and / or water, and above the water surface, except railroads and cable roads .

The road belongs to the government and does not belong to any particular person or community. may not make fast bumps on arterial, collector, local or environmental roads without permission from the authorized government. Because that road is not a private road. This means that when the road environment is not allowed for it. The primary safety and security interests of road users. if someone builds a speed bump that is not according to the established rules and there are reports of complaints or collisions in the related speed bump environment, then the RT can be reported and receive criminal sanctions.

Permits regarding the manufacture or establishment of speed bumps are regulated in article 26 of Law No. 22 of 2009 Concerning Traffic and Road Transportation (UULLAJ). That the provision of road equipment is carried out by the government for national roads, provincial governments for provincial roads, district / city governments for regency / city and village roads, and toll road business entities for toll roads. Reinforced by the Regional Regulation (PERDA) of Malang City No. 2 of 2012 Concerning Public Order and the Environment, the contents of which without the permission of the authorized official, every person or entity is prohibited from making or installing road embankments.

Provisions regarding the grouping of roads in accordance with Law No. 38 of 2004 Concerning Road, namely roads consist of public roads and special roads. Public roads are classified according to system, function, status, and class. While special roads are not intended for general traffic in terms of distribution of goods and services. Classification of roads based on their function: (a) arterial path, (b) road collector, (c) local road, (d) road environment and classification of roads based on their status is: (a) national road, (b) provincial road, (c) district street, (d) city road, (e) village road. This regulation is regulated further in the Government Regulation of the Republic of Indonesia No. 34 of 2006, explained about the road classification according to system, classification according function, classification according to status and classification according to class based on the specification of infrastructure provision.

The point speed bump must be made according to the technicality of the distance between speed bumps, height, and others. The road users are mostly speeding or reckless driving. In Malang, there is a community of road transport forums whose job is to help solve problems related to congestion and so on. Many

do not know about the correct speed bump regulation. Because Malang City Regulation No. 2 of 2012 that made it was Public Order Enforcers (Satpol PP). The regulation was not wrong, in fact, the regulation was similar to Minister of Transportation Regulation No. 82 of 2018 Concerning Road User Control and Safety Equipment. But the Department of Transportation here handles Road Traffic and Transportation (UULLAJ) related to the safety and security of road users, not the safety of the citizens. That is very different.

Sanctions given by the Malang City Transportation Department to people who damage or disrupt the function of the road if they build or make a speed bump not according to the standards in the Minister of Transportation Regulation No. 82 of 2018 do not yet exist, but seen from Articles 273 to 275 of Law No. 22 of 2009 About Road Traffic and Transportation (UULLAJ). Damaging can be fined, let alone cause an accident. Sanctions in Malang City Regulation also do not yet exist, it is still planned for next year, namely the making of Malang City Regional Regulation on Traffic and Road Transportation, which can later accommodate traffic, transportation, parking, and related to speed bump. Malang City Regional Regulation only regulates making or installing speed bumps or road embankments without the permission of the authorized official and acts that can result in damaging part or all of the road body and endangering traffic, in article 33 Malang City Regulation No. 2 of 2012 threatened with imprisonment a maximum of 3 months/ a maximum fine of Rp. 10,000,000.00 (ten million rupiah).

Regarding the efforts made by the Transportation Office in the form of socialization so far it has rarely been done. But the effort to provide information from social media in the form of instagram and website has been explained regarding the speed bump that is in accordance with Transportation Minister Regulation No. 82 of 2018. Because so far there have been no reports of speed bumps or speed bumps. The Department of Transportation itself has only been 2 or 3 months aware of reports of speed bumps that do not comply with regulations that could endanger or harm road users. When there were reports and evidence in the form of photos of accident victims, at that time the Transportation Office immediately went down to check and notify about the speed bump that was in accordance with the standards and specifications according to Minister of Transportation Regulation No. 82 of 2018.

The results of research that have been obtained, based on the theory of law effectiveness from Lawrence M. Friedman regarding the benchmarks of the effectiveness of law enforcement it can be described as follows: (1) Legal Substance. The legal regulation in question is Minister of Transportation Regulation No. 82 Year 2018 Concerning Tool Control and Road Users Safety. According to Mr. Aziz as a member in the field of Traffic of the City of Malang Transportation Department, Regulation of the Minister of Transportation No. 82 of 2018 has been effective and quite complete, but there still needs to be an improvement in the contents of the regulation. Because there are some important things that have not been regulated, such as speed bump distance or speed bumps, (2) Legal Structure. The law enforcer in this case is the Office of Transportation of Malang City. Namely the party from the Traffic field who receives and implements Regulation of the Minister of Transportation No. 82 Year 2018 Regarding Road User Control

and Safety Devices. The Malang City Transportation Department has carried out its duties to the maximum in accordance with its main duties and functions as a regulator if there is a violation, (3) Legal culture, is the overall attitude of the citizens and the value system that exists in society, which will determine how the law should apply in the society concerned. Seen from the people of Merjosari village, there is still a lack of knowledge about making the correct speed bump according to the Minister of Transportation Regulation No. 82 of 2018. So far, to determine the height, width, and slope of the speed bump is only by mutual consultation.

Damage by speed bumps will be discussed by residents. Because it is a public road. However, the speed bump made by the residents of Merjosari Urban Village has not met the standards according to the Minister of Transportation's Regulation No. 82 of 2018. The rules based on the Minister of Transportation's Regulation No. 82 of 2018 are: maximum high: 15 cm, minimum top width: 30 cm, maximum slop: 15 %, The combination of yellow or white is 20 centimeters while black is 30 centimeters. While the speed bump that is usually made by the Merjosari village community is: maximum high: 17 cm, minimum top width: 30-40 cm, maximum slop: approximate, the color combination is only white.

Based on Lawrence M. Friedman's legal effectiveness theory above, it can be said that the implementation of the appropriate speed bump specifications in the Merjosari village has not been effective in implementing the Minister of Transportation Regulation No. 82 of 2018 Concerning Road User Control and Safety Equipment because it has not met the elements elements of a legal effectiveness benchmark according to Lawrence M. Friedman.

Maslahah Mursalah Review of Making Speed Bump in Merjosari Village

The word *maslahah* means the word benefit, which is a form of *masdar* which means good and contains benefits. *Maslahah* is a form of *mufrod* (singular) whose jamak (plural) is *mashalih*. From this linguistic meaning it is understood that *maslahah* encompasses everything that brings benefits, either through taking and doing an action or by refusing to avoid all forms that cause harm and difficulties.⁵

Al mursalaat is *isim ma'ful* (object) of *fi'il madhi* (basic word) in the form of *tsulasi* (three letter base word), namely *رسل*, with the addition of the letter "alif" on the base, so that it becomes *ارسل*, etymologically (language)) means detached, or in the sense of *مطلقلة* (free). The word detached and free here when connected with the word *maslahah* means to be free or free from information that indicates whether or not it should be done.⁶ The same word or almost the same meaning with the word *al-maslahah* is the word *al-khair* (goodness), *al-nafu* (benefit) and the word *al-hasanah* (kindness). While the same word or almost the same meaning with

⁵Said, Ramadhan al-Buthi, *Dhawabit al-Maslahah fi al-Syari`ah al-Islamiyah*, (Beirut: Muassah al-Risalah, 1997), Cet. Ke-3, 2.

⁶Amir Syarifuddin, *Ushul Fiqh Jilid 2*, (Jakarta: Kencana, 2010), 377.

the word *al-mafsadah* is the word *ash-syarr* (ugliness), *adh-dharr* (danger), and *as-sayyi`ah* (ugliness).

Al- Quran always uses the word *al-hasanah* to show the meaning of *al-maslahah*, and the word *as-sayyi`ah* to show the understanding of *al-mafsadah*.⁷ The parameters of the *maslahah* are the objectives of syara` or based on shari'a provisions. The essence of benefit set by shar'i is the maintenance of five main things (*Kulliyat al-Khams*). All forms of one's actions which support the maintenance of these five aspects are *maslahah*. Likewise, all efforts in the form of actions to reject kemudharatan on these five things are also called *maslahah*.⁸ As for the opinions about the problematic problems by some scholars of Fiqh, namely:

a. According to Abdul Wahab Kallaf

إِنَّهَا مَصْلَحَةٌ لَمْ يَرِدْ عَنِ الشَّارِعِ دَلِيلٌ لِاعْتِبَارِهَا أَوْ لِالْعَاءِهَا

maslahah mursalah is a maslahat that does not have the proposition of shara' coming to admit it or reject it,

b. According to Imam Al-Ghazali stated

مَا لَمْ يَشْهَدْ لَهُ مِنَ الشَّرْعِ بِالْبُطْلَانِ وَلَا بِالِاعْتِبَارِ نَصٌّ مُعَيَّنٌ

Anything (*maslahah*) for which there is no evidence for him from shara 'in the form of certain texts that cancel it and no one notices it.

c. According to al-Syaukani explained

الْمُنَاسِبُ الَّذِي لَا يَعْلَمُ أَنَّ الشَّارِعَ أَلْعَاهُ أَوْ اعْتَبَرَهُ

Maslahah is unknown whether shar'i rejects it or calculates it.

The strength of *Maslahah* can be seen in terms of the aim of syara 'in establishing the law, which is directly or indirectly related to the five basic principles for human life. Namely religion, soul, reason, descent, and wealth. It can also be seen in terms of the level of need and guidance of human life for these five things.⁹ In terms of its strength as a law in establishing the law, *Maslahah* has three types, namely *maslahah dharuriyah*, *maslahah hajiyyah*, and *maslahah tahsiniyah*. (a) *Maslahah dharuriyah* is benefit whose existence is very much needed by human life, meaning that human life has no meaning whatsoever if even one of the five principles does not exist. All efforts that directly guarantee or lead to the existence of the five principles are good or *Maslahah* in the level of *dharuri*. Therefore, Allah commands mankind to make an effort to fulfill those basic needs all efforts or actions which directly lead to or cause the disappearance or destruction of one of the five main elements are bad, therefore God forbids it. Abandoning and avoiding Allah's prohibition is good or *Maslahah* in the level of *dharuri*. (b) *Maslahah hajiyyah* is benefit which the level of human life needs to not be at the level of *dharuri*. The form of the benefit is not directly for the fulfillment of the five basic needs (*dharuri*), but indirectly headed in that direction as in terms of making it easy

⁷Izzuddin bin Abdul Aziz bin Abdussalam, *Qawa'id al-Ahkam fi Mashalih al-Anam*, juz I, Dar Al-Jail, ttp, tt, 5.

⁸Firdaus, *Ushul Fiqh Metode Mengkaji dan Memahami Hukum Islam Secara Komprehensif*, Cet. Pertama, (Jakarta: Zikrul Hakim, 2004), 81.

⁹Amir Syarifuddin, *Ushul Fiqh Jilid 2*, (Jakarta: Kencana, 2010), 371.

for the fulfillment of the needs of human life. *Maslahah hajiyyah* also if not fulfilled in human life, does not directly cause the destruction of the five main elements, but indirectly can indeed cause destruction. Examples of *Maslahah hajiyyah* are demanding religious knowledge for the upholding of religion, eating for survival, sharpening the brain for survival of reason, making buying and selling to get wealth. (c) *Maslahah tahsiniyah* is *Maslahah* which needs human life to him not to the level of dharuri, nor to the level of Hajj, but these needs need to be met in order to provide the perfection and beauty of human life. The three forms of *Maslahah*, in sequence, describe their level of strength. The strong ones are *Maslahah dharuriyah*, then *Maslahah hajiyyah* and *Maslahah tahsiniyah*.

Islamic law is oriented towards human benefit, this benefit is something that cannot be exchanged for anything so Islamic law to be applied must be assessed from the perspective of mutual benefit. Benefit is not only a characteristic of Islamic law, but it has animated it.¹⁰ Al-Qur'an as the main source of law strongly emphasizes this point, it talks a lot about the benefit of humans even it is certain that the Qur'an is present as a guide for the clear path to benefit.

Islam actually allows the creation of speed bumps, with the note that: (1) Road users do not feel disturbed, (2) Get official permission from the authorized government. In this case stated in Malang City Regulation No. 2 of 2012 Concerning Public Order and the Environment, (3) Obtaining agreement from the local residents, (4) Made according to technical instructions Minister of Transportation Regulation No. 82 of 2018 article 3, namely a maximum height of 15 cm, a minimum width of 30 cm at the top, a maximum slope of 15%, and a combination of yellow or white measuring 20 centimeters while black measuring 30 centimeters.

Maslahah mursalah seen from the positive impact: (a) Installing speed bump can reduce the No. of accidents, (b) Installation of speed bumps so that road users reduce their speed in order to avoid bumping into people passing by on the road, (c) Installation of speed bump as a speed limiting device or a shock mark for sleepy motorists, (d) The installation of speed bumps so that road users are careful when driving because many users walk and so that road users do not race.

Maslahah mursalah seen from the negative impact: (a) Installation of speed bumps can endanger vehicle users. Because with the speed bump, the journey of the vehicle user becomes obstructed to the destination, (b) The installation of speed bumps can damage roads that have been made by local government budget (APBD) members and the government, (c) The installation of speed bumps can make road users uncomfortable or upset, especially vehicle users.

Installation of speed limiting tools "speed bump" according to the problem, more problems bring benefits. But with the note that the making of the speed bump must be in accordance with the regulations that have been made namely Ministerial Regulation No. 82 of 2018 Concerning Road User Control and Safety Equipment. In the regulation discussed the appropriate height, width and slope so as not to endanger road users.

¹⁰Muhyar Fanani, Abdullah Ahmad Na'im. *Paradigma baru hukum Publik Hukum Islam dalam A. Khudari Shaleh (ed):* Pemikiran Ulama Kontemporer, 15.

Speed bumps that are built do not obey the rules, either because the construction is too high or too wide so that it will endanger road users, especially two-wheeled vehicles. Losses can occur at the bottom of the motor that is scratched or broken due to rubbing with a speed bump that is too high. The worst effects can cause accidents. Which is detrimental to life and property, and it contradicts the five main concepts of Islamic law. Namely, *hifdzun ad-din* (Guarding Religion), *hifdzun an-nafs* (Preserving the Soul), *hifdzun aql* (Preserving Intellect), *hifdzun nasl* (Preserving Heredity), *hifdzun maal* (Preserving the Soul). In the history of al-Hakim said that:

مَنْ ضَارَّضَرَّهُ اللَّهُ وَمَنْ شَاقَّ شَقَّ اللَّهُ عَلَيْهِ

Meaning: Whoever puts another person in danger, then Allah will repay danger to him and whoever troubles or complicates others, then Allah will trouble him.

Conclusions

The effectiveness of making speed bumps according to the Regulation of the Minister of Transportation No. 82 Year 2018 Concerning Tool Control and Road Users Safety is deemed ineffective. Judging from the measurement of the effectiveness of law owned by Lawrence M. Friedman, that a law is said to be effective when viewed from the legal substance, legal structure, and legal culture. In making speed bumps in Merjosari Village, judging from the legal substance of the Ministry of Transportation Regulation No. 82 of 2018 it is already quite effective but still needs improvement in the contents of the regulations. Especially the speed bump distance has not been set. Then from the legal structure namely law enforcement. The Transportation Office as a law enforcer has not carried out its duties to the maximum. Lack of public education about the correct speed bump specifications in accordance with the regulations. Finally, the legal culture, the people who take part in the law are carried out. Lack of knowledge and no reference in making speed bumps. So it is very disturbing the comfort of road users.

Review of problems in making speed bumps in Merjosari Village is considered not yet problematic. That benefit does not exist because road users feel uncomfortable, can even endanger lives and harm property because of the speed bump. Although the speed bump was originally intended both to minimize the risk of accidents and prevent motorists from speeding. But when the speed bump is built according to the rules, whether the size is too wide, too high, or too small and too much. That has not become a problem anymore. Many people feel disadvantaged by the speed bump.

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