



The Implementation of Presumption of Innocent in E-Tilang (Electronic Fine for Traffic Rules Violation)in Padang Panjang District Court

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Abstract

The objectives of this present research are: 1) to Know the Implementation of Presumption of Innocent in Law Enforcement towards Traffic Rules Violation before Using Electroning Fine System; 2) to Know the Implementation of Presumption of Innocent in Law Enforcement towards Traffic Rules Violation by Using Electroning Fine System. The approach method used in this research is sociological judicial method. The research results show that: 1. Law enforcement towards traffic rules violation before the prevailing of E-Tilang (Eletronic Fine for Traffic Rules Violation) which refers to Decree of Supreme Court on Traffic Rules prioritizes more on giving protection and guaranteeing the presumption of innocent for traffic rules violators. The regulation and the practice of such law enforcement provide easiness and protection for the traffic rules violators. 2. Law enforcement towards traffic rules violation by using E-Tilang (Eletronic Fine for Traffic Rules Violation) which refers to Decree of Supreme Court on Traffic Rules is weak or not able to accommodate the presumption of innocent as a form of protection to the traffic rules violators. This is caused by the law enforcement by using E-Tilang (Eletronic Fine for Traffic Rules Violation) referring to Decree of Supreme Court on Traffic Rules does not provide space for the traffic rules violators as Justitiabelen because the session for traffic rules violation cannot be conducted. For the betterment of law enforcement in the future, it is better to have review and revision towards Decree of Supreme Court on Traffic Rules.

Keywords: Traffic; Fine; Law Enforcement; Presumption of Innocent

Introduction

Transportation is a vital and a strategic medium in smoothing the economy flow, strengthening the nation's unity and brotherhood, and influencing the life aspect of nation and country.¹ It is reflected from the increasing needs on transportation services for everyone's mobility and or goods from all over Indonesia, even from and to other countries. Therefore, traffic and transportation have strategic in

¹ Abbas Salim, 2006, *Transportation Management*, Jakarta: Raja Grafindo, p. 2.

supporting national development and national integrity as the effort to accelerate public welfare as in line with Preamble of the 1945 Constitution of the Republic of Indonesia (UUD 1945).²

Traffic and transportation is a system consisting of traffic, transportation, traffic and transportation network, traffic and transportation infrastructure, vehicle, driver, street user, and its management.³ For the sake of making traffic and transportation good, safe, fast, smooth, order, comfortable, and efficient, it needs guidance and pacification in all aspects related to traffic including regulation, control, and supervision of the traffic. Thus, it is expected that safety, security, and smoothness of traffic are always paid attention. However, the more rapid development of transportation contradicts with the discipline in traffic which causes the more increasing number of violation on traffic like violating traffic signs or driving the vehicle beyond the maximum speed limit allowed, not using driving safety kit and so forth.

The advancement of knowledge and technology motivates the law enforcement towards traffic rules violation to develop too. One of the development forms that is discussed nowadays regarding law enforcement towards traffic rules violation or that is more known as *tilang* (fine for traffic rules violation) that uses electronic instrument called *E-Tilang* (Eletronic Fine for Traffic Rules Violation) followed by the issuance of Decree of Supreme Court Number 12 of 2016 regarding Resolution Procedure on Traffic Rules Violation Case (then it is called Decree of Supreme Court on Traffic Rules Violation). Both become a unity that cannot be separated from the implementation of *E-Tilang* (Eletronic Fine for Traffic Rules Violation) for traffic rules violators.

Regarding to *E-Tilang* (Eletronic Fine for Traffic Rules Violation), the presence of this *E-Tilang* (Eletronic Fine for Traffic Rules Violation) is in fact accommodated in Article 272 sub-section 1 Law on Traffic and Transportation which mentions that to support violation investigation on traffic and transportation, electronic device can be used. Then, the regulation regarding *E-Tilang* (Eletronic Fine for Traffic Rules Violation) is further set in Article 23 of Government Regulation Number 80 of 2012 regarding Investigation Procedure of Vehicle on Road and Violation Investigation of Traffic and Transportation which mentions that the violation investigation on traffic and transportation is based on: a. Findings in the investigation process of vehicle on road; b. Report and/or; c. Electronic violation record.

However, the issuance of this Decree of Supreme Court on Traffic Rules Violation leads to legal consequence which is different from the provision that has been underlined in Article 267 on Traffic and Transportation and Provision of Article 214 on Law of Criminal Procedure. This is caused by the Decree of Supreme Court on Traffic Rules Violation makes the legal protection granted is through lost. It is because there are several differences regarding the provision set in the Decree of Supreme Court on Traffic Rules Violation, as the provision of Article 7 sub-section 1 in Decree of Supreme Court on Traffic Rules Violation which indicates that the violator is not able to attend the session. It can be seen from the formulation of Article 7 Sub-section 1 in Decree of Supreme Court on Traffic Rules Violation stating that “The chosen judge begins the session and makes decisions on cases without the presence of the violator”.⁴

The provision is different from what is regulated in Article 267 Sub-section 2 stating that “Quick investigation procedure as mentioned in sub-section 1 can be conducted without the presence of the violator” and it is also contradicting with the provision of Article 214 Sub-section 1 and 2 in Law of Criminal Procedure stating that if the Accused or the representative does not attend the session, the case investigation is continued and when the decision is made in such condition, the decision is as soon as possible delivered to the accused.

² General Explanation of Law Number 22 of 2009 regarding Traffic and Transportation.

³ See Article 1 sub-section 1 Law Number 22 of 2009 regarding Traffic and Transportation.

⁴ See Article 7 sub-section 1 Decree of Supreme Court Number 12 of 2016 regarding Resolution Procedure of Traffic Violation Case.

If we do interpretation grammatically towards that norm aforementioned, it can be seen the different legal consequences. The Decree of Supreme Court on Traffic Rules Violation above indicates that the violators cannot attend the session of traffic rules violation. While, in the provision of article in Law of Traffic and Transportation and Law of Criminal Procedure above, the violator is able to choose whether he will follow the session or not follow the session.⁵

Besides, what is more interesting from this Decree of Supreme Court on Traffic Rules Violation is related to the inability of the traffic rules violator to file opposition except on the decision of freedom expropriation.⁶ Therefore, it more closes possibility for the innocent violator to maintain his rights in the session of traffic rules violation.

The provision regarding the implementation of *E-Tilang* (Eletronic Fine for Traffic Rules Violation) followed by this Decree of Supreme Court on Traffic Rules Violation shows that shift and violation towards criminal law principles have occurred namely Presumption of Innocent. This principle is strongly related to the criminal judiciary process especially for the law enforcers who treat the accused or the defendant like innocent person.⁷ The shift can be seen from the position of the violator which is previously based on Law of Traffic and Transportation in which his information of protection can be heard through session of traffic rules violation so that the rights of the violator can be fulfilled. However, by the issuance of this Decree of Supreme Court on Traffic Rules Violation, it is like the violator is proven wrong in doing traffic rules violation and furthermore the violator only can file an opposition if and if only the decision⁸ is related to decision of freedom expropriation.

The acknowledgment towards presumption of innocent in law of criminal procedure prevailing in our country has two intentions. First, it is to provide protection and guarantee towards a human that has been accused of committing a crime in the case investigation process in order that his right is not violated. Second, it is provide guidance for the officers in order to limit their actions in doing investigation because who is being investigated is a human who has equal dignity and prestige to those who investigate.⁹ It can be stated that when someone is considered having committing a violation but for him no chance is given to maintain his rights in the session, then it is also a form of violation of this presumption of innocent. Therefore, presumption of innocent is related to criminal judiciary system started from catching, arresting, prosecuting, and investigation before the court to obtain decision and ended with criminal realization in prison.¹⁰

Empirically, the implementation of this *E-Tilang* (Eletronic Fine for Traffic Rules Violation) mechanism causes problems to be conducted especially in form of implementing Decree of Supreme Court on Traffic Rules Violation. In District Court of Padang Panjang itself, the community does not know about the mechanism of this fine resolution. There is also who complains that he is innocent but he

⁵ Provision can be seen in Article 267 sub-section 1 in Law of Traffic and Transportation provides opportunity and easiness for the violator to attend or to not attend the session.

⁶ Such provision is actually applied by Article 214 sub-section 4 in Law of Criminal Procedure which states that the decision out of the presence of the accused in which the opposition can be addressed if the decision in form of freedom expropriation. See Article 7 sub-section in Decree of Supreme Court on Traffic Rules Violation.

⁷ Hebert L. Packer, 1983, *Obligatory Material for Criminal Judiciary System Subject*, p, 176, as cited by Iksan Mardji Ekoputro, 1985, *Presumption of Innocent and Human Rights in Law of Criminal Procedure*, Thesis, Jakarta: Graduate School of Law Faculty of University of Indonesia, p,7

⁸ In the provision of Decree of Supreme Court on Traffic Rules Violation there is a doubt in determining court legal product that will be punished to the accused or the violator of traffic provision in writing the word "Decision/Determination", this provision is different from the legal product set in the Law of Criminal Procedure that strictly states that legal product issued by the judge in the traffic violation is "Decision". Check Article 7 in Decree of Supreme Court on Traffic Rules Violation and compare with Article 214 in Law of Criminal Procedure.

⁹ Abdurrahman, 1999, *Variety of Legal Cases in the Development in Indonesia*, Bandung: Alumni, p, 158,

¹⁰ Yesmil Anwar and Adang, 2011, *Criminal Judiciary System: Concept, Component, and Its Implementation in the Law Enforcement in Indonesia*, Bandung: Widya Padjadjaran, p,33.

is still processed by the police in the field and the police suggests that if he has any objection, he is asked to come to the court to obtain information about session schedule.

Based on the recapitulation data of traffic rules violation cases in District Court of Padang Panjang, in 2016, the number of traffic rules violation cases were about 4244 cases; while in 2017, the number of traffic rules violation cases were about 4500 cases.¹¹ In one session, the District Court of Padang Panjang investigates and makes decision on traffic rules violation cases about 80-150 cases.

After Decree of Supreme Court on Traffic Rules Violation is implemented and realized in the Legal Area of District Court of Padang Panjang, all traffic rules violation cases is always determined without the presence of the accused (*Verstek*) and the judge making decision on a case is only based on the collected traffic tickets. While, before this Decree of Supreme Court on Traffic Rules Violation is issued, at least there is 20-30% (twenty until thirty percents) of traffic rules violation cases determined with the presence of the accused. Among the number of the cases, at least there is 5% (five percents) of cases in which the judge decides to free the person from any kind of lawsuits (*Onslag*).¹²

This shows indication that the provision and the mechanism of this *E-Tilang* (Eletronic Fine for Traffic Rules Violation) cannot protect the violator's right as the accused. The accused shall be placed in the human position who has dignity and prestige. He shall be valued as a subject, not an object of investigation. The crime that he commits is the object of investigation and where the investigation is addressed. The accused shall be considered innocent until obtaining a powerful court decision. Thus, there is a potency that the presumption of innocent is not implemented to the accused during judiciary process.¹³

Research Method

The problem approach method used in this research is sociological judicial approach which is the research that discusses the prevailing laws and related to the facts found in the research. If the law is social in which its nature is empirical, it is discussed as independent variable which gives effect and consequence in some aspects of social life. The discussion is called socio-legal research.¹⁴

This research is descriptive meaning that the research which provides a very detailed data regarding human, condition, and other social indications growing in the middle of community.¹⁵ It is expected that it can obtain holistic, complete, and systematical description regarding the object that will be researched.

The population in this research is the judge in the District Court of Padang Panjang and the Violator of Traffic Rules with *E-Tilang* (Eletronic Fine for Traffic Rules Violation) system after the issuance of Decree of Supreme Court on Traffic Rules Violation. Furtherore, the sampling technique in this research is done by using *purposive sampling* method. The determination on the number of sample is under the reason that the sample is considered being able to represent all object that is researched. Besides, the data collection techniques used in this research are library research and interview.

¹¹ Recapitulation of traffic violation cases list in 2016 and 2017 in the District Court of Padang Panjang.

¹² *Ibid.*,

¹³ Yahya Harahap, 2014, *Discussion of Problems and Implementation of Law of Criminal Procedure in Investigation and Accussation*, Jakarta: Sinar Grafika, p, 40

¹⁴ Amiruddin & Zainal Asikin, 2004, *Introduction of Legal Research Method*, Jakarta: Raja Grafindo Persada, p 133.

¹⁵ Soerjono Soekanto, 2006, *Introduction of Legal Research*, Jakarta: UI Press, p, 10.

The data processing is arranged systematically through editing process which means that processing the data back by selecting appropriate data as in line with the needs and the objectives of the research so that it obtains final conclusion generally that later will be able to be reliable in accordance with the fact.

After obtaining primary data and secondary data, data analysis is then conducted in which the data are obtained from revealing facts in form of sentences towards the data obtained from the research result. Besides, qualitative analysis method is used meaning that the description of data collected by not using numbers but based on laws, experts' opinions, and the researchers' opinions themselves. dan pendapat peneliti sendiri. In making conclusion, deductive thinking method is used which is making conclusion from general things to specific things.

Results and Discussion

The Implementation of Presumption of Innocent in Law Enforcement towards Traffic Rules Violation before Using E-Tilang (Eletronic Fine for Traffic Rules Violation) System

Traffic violation is a social phenomenon and legal case that demands effective and efficient management in order to achieve discipline in traffic and legal awareness in the implementation of Law Number 22 of 2009 regarding Traffic and Transportation.¹⁶ The handling procedure of traffic rules violation in Indonesia in the meantime is regulated by referring to Law Number 22 of 2009 regarding Traffic and Transportation which is the substitute of Law Number 14 of 1992 regarding Traffic and Transportation and Law Number 8 of 1981 regarding Law of Criminal Procedure.

The investigation of traffic rules violation is regulated in Chapter XIX regarding Investigation and Conduct of Traffic and Transportation. In this Chapter, the investigation process of violation that involves court is done through quick investigation procedure. However, in the regulation collection, there is no clear provision regarding handling procedure of traffic rules cases in the court. In the regulation part, it is more related to fine sanction, fine depositing, and the amount of fine deposited. Regarding to session, the provision in the part is only related to quick investigation and investigation without the presence of the violator.¹⁷

The violation on traffic rules in Law of Criminal Procedure is grouped together with the light criminal action to follow quick investigation procedure. This regulation is placed in CHAPTER XVI in the sixth part, the second paragraph regarding Investigation Procedure of Traffic Rules Violation. The violation of traffic rules in Law of Criminal Procedure is in line with what is mentioned in the stipulation of Article 211.

The law enforcement towards traffic rules violation before the issuance of Decree of Supreme Court Number 12 of 2016 regarding Resolution Procedure of Traffic Rules Violation referring to Law on Traffic and Transportation and the regulation under as the implementing regulation of Law on Traffic and Transportation like Government Regulation Number 80 of 2012 regarding Investigation Procedure of

¹⁶ Dr. Aritidjo Alostari, in the greeting at Seminar on Alternative Research of Traffic Violation Management, Jakarta, 17 Juni 2014. Furthermore it can be read in pro-session at Seminar on Alternative Research of Traffic Violation Management, Jakarta, June 17, 2014.

¹⁷ Article 267 sub-section (1) and (2) Law Number 22 of 2009 in Law of Traffic and Transportation.

Vehicle on Road and Investigation of Traffic and Transportation. Law on Traffic and Transportation naturally has given obligation for the court to investigate and decide the traffic rules violation case. It is proven by Article 267 sub-section (1) in Law on Traffic and Transportation stating that every violation in traffic and transportation is investigated according to quick investigation procedure and can be fined based on the court judgment.

Law on Traffic and Transportation also provides two mechanisms of solving traffic rules violation cases. First, the violator can attend in the session to be heard his protection. Second, the violator that cannot attend can accept the decision and pay the fine or the violator deposits the fine to the bank chosen by the government. In the condition that the violator attends the session, in line with Article 267 Sub-section (1) of Law on Traffic and Transportation, the investigation is then conducted based on quick investigation.

On the other hand, if then the violator does not attend in the session, then the fine can be deposited to the bank chosen by the government. However, it does not mean that the obligation of the court on the traffic rules violation cases becomes lost. The reason is based on Article 268 sub-section (1) of Law on Traffic and Transportation accommodates the obligation of the court in terms of court judgment containing fine that has less value than the fine deposited by the violator, so that the difference of the fine shall be informed to the violator to be re-taken.¹⁸

In the process of law enforcement towards this traffic rule violation, all sub-system in the law enforcement conducts rights and obligations as in line with the prevailing laws.¹⁹ It is explained further by the informant, in handling traffic rule case, the law enforcement refers to the laws like²⁰ Government Regulation Number 80 of 2012 regarding Investigation Procedure of Vehicle on Road and Investigation of Traffic and Transportation Case regulates on the third part regarding judiciary and violation fine payment. However, it is also explained that this regulation does not set more on session implementation. Approximately, there are only three provisions that are directly related to the session implementation procedures namely:

- The submission of traffic ticket and evidence that must be done maximum 14 days of violation occurrence (Article 29 sub-section (1));
- The session implementation is in line with session day mentioned in traffic ticket (Article 29 sub-section (3)); and
- The session can be conducted with or without the presence of violator or his attorney (Article 29 sub-section (4)).

Regarding to this, furthermore, the informant explains that the law enforcement towards traffic rules violation in the District Court of Padang Panjang always follows the law procedure like the submission of traffic ticket and evidence which is always punctual and it can be proven in the registration book of traffic rules violation cases in the District Court of Padang Panjang. Moreover, regarding to the session day implementation, based on the explanation of Mr. Handika, the District Court of Padang Panjang conducts a session on traffic rules violation every Fridays.²¹ Mr. Handika also explains that

¹⁸ Interview with Mr. Handika Rahmawan, S.H., as the Judge in the District Court of Padang Panjang dated August 18, 2018 at 10 a.m.

¹⁹ Interview with Traffic Violation Public Prosecutor of the District Court of Padang Panjang namely Mrs. Bertha Ningsih, S.H., dated August 1, 2018 at 11.00 Western Indonesian Time in the District Court of Padang Panjang.

²⁰ Interview with Traffic Violation Public Prosecutor of the District Court of Padang Panjang namely Mrs. Bertha Ningsih, S.H., dated August 1, 2018 at 11.00 Western Indonesian Time in the District Court of Padang Panjang.

²¹ Interview with Mr. Handika Rahmawan, S.H., as the Judge in the District Court of Padang Panjang dated August 18, 2018 at 10.00 Western Indonesian Time.

session on traffic rules violation is conducted at 09.00 Western Indonesian Time after the judge of traffic rules violation or the officer of traffic rules violation and the violators are present in the session room. The session is begun and calling for the violators one by one to come to the court to be adjudicated. After giving punishment, the violators can directly pay the fine and the case cost to the executing judge of traffic rules violation in which after paying the fine, the violators can directly get the evidence taken.

In the handling of case, the law enforcers, in accordance with the command of Criminal Code and Law of Traffic and Transportation, uses quick procedure session set in the Law of Criminal Procedure.²² The case of traffic rules violation intended in the figure is the traffic rules violation case as stipulated in Article 316 sub-section (1) and not included into violation in Article 274 sub-section (1), Article 309, and Article 313 Law of Traffic and Transportation.

The case of traffic rules violation occurring is then included into the session process in which the Investigator (Police Officer) submits the documents of traffic rules violation case on the power of Prosecuting Officer to the Court. After that, it will be continued by the session process in order to get judge's decision regarding to the violation done by the violator.²³ In the session process, the violator will get through some processes namely registration process done by the violator by submitting red traffic ticket through registration counter or to the officer in the session room. Then, the officer will prepare the session documents. The violator will get queue number or directly come to the queue of session participants. The registration officer will submit the session documents to the registrar/junior registrar for registration which is then submitted to the judge.

Afterwards, the violator will be called to come to the judge. The judge will conduct a session. The judge can decide the violator to pay fine with amount of money and the case cost towards the decision, the violator will do fine payment to the officer. After that, the violator submits the receipt to public prosecutor to execute and the public prosecutor to return the evidence at that time to the violator. Then, the fine will be given to the special treasurer to receive the fine to be then stored to the country cash supply.²⁴ In here, the role of judge and public prosecutor is seen in the court in which the judge is able to adjudicate and make decision towards the traffic violator who attends the session and as soon as possible is executed by the public prosecutor.

From the aspect of presumption of innocent, it can be seen that the law enforcement process done through traffic rules violation session before the prevailing of Decree of Supreme Court on Traffic Rules Violation is more supporting and more respecting the presumption of innocent as the part of human rights. It is like what has been discussed previously that the recognition towards presumption of innocent has strong relation with human rights which are naturally respected by every parties. Therefore, consequently, the accused has equal position in the judiciary process.²⁵ Furthermore, Law of Criminal Procedure has provided a set of rights that must be respected and protected by the law enforcers like right of the accused to immediately get investigation and the right to get protection like giving free information both in the prosecution and in the investigation in the court.

Regarding with this, according to Riza Ardiansyah as the Sectional Head of Public Crime in the District Court of Padang Panjang, Mr. Handika Rahmawan, it is explained that the opportunity giving for the traffic violator to attend or to not attend the session will give protection and easiness for the violator in

²² Interview with Traffic Violation Public Prosecutor of the District Court of Padang Panjang namely Mrs. Bertha Ningsih, S.H., dated August 1, 2018 at 11.00 Western Indonesian Time in the District Court of Padang Panjang.

²³ *Ibid.*,

²⁴ *Ibid.*,

²⁵ Amelda Yunita, *Op. Cit.*,

the process of traffic rules violation case investigation in the Court.²⁶ In terms of protection side, the violator is able to maintain his right towards the actions or the things considered and possible to be proven by the violator not against the law, or in other words, if the violator thinks that he does not violate traffic rules, he can address his witness in the court. On the other hand, the easiness is that the violator is not obliged to attend the court if the violator thinks and considers that he shall not be there, the violator has a chance for that. Therefore, since the right to attend or to not attend the session of traffic violation is in the violator's hand, the presumption of innocent itself can be guaranteed to the violator. The other easiness is from the submission and the withdrawal of evidence in which the violator can directly pay the fine to the public prosecutor attending the court after the decision is made to the violator without coming to the bank only for paying the fine and coming to the district court office only for taking the evidence.²⁷ In Table 1 (one), it is explained number of violators who attend the traffic rules violation session in the legal region of the District Court of Padang Panjang in 2014, 2015, and 2016.

Table 1 The number of violators attending the session and determined to be free by the judge of the District Court of Padang Panjang in 2014, 2015, and 2016.²⁸

No	Year	Number of Traffic Violation (Year)	Number of Violators Attending the Session (year)	Determined to be Free (year)
1.	2014	4075	952	347
2.	2015	4501	887	379
3.	2016	4447	859	367

From the table above, it can be known that the number of violators attending the traffic session is about one fourth times from the number of traffic cases adjudicated by the Judge in the District Court of Padang Panjang. If we divide it in weekly count, the traffic case occurring every week is about 80 until 100 cases and the number of cases in a month is about 300 until 400 cases. Besides, the number of violators attending every week is about 20 until 30 people. From 20 to 30 people who attend the session, then at least there are 8 – 15 people who are proven innocent by the judge in committing traffic violation.

On the other hand, approximately every violator attending the session gets lower fine than those who do not attend the session. Towards the same case with the same violation, the judge will make same decision for the violators who do not attend the session of traffic violation.²⁹

Viewed from the justice theory side, the law enforcement towards traffic violation before the issuance of Decree of Supreme Court on Traffic Rules Violation is correct if related to the view of justice theory stated by John Rawls stating that in order that the human can find right justice principles, the human shall be return to their original position. This Original Position is the position in which human is faced with other humans as human.³⁰ Furthermore, it is stated if the human can place himself in that

²⁶ Interview with Mr. Riza Ardiansyah and Mr. Handika Rahmawan as the Sectional Head of Public Criminal Action in the District Court of Padang Panjang and the Judge in the District Court of Padang Panjang dated August 13, 2018, at 13.00 Western Indonesian Time.

²⁷ Interview with Mr. Riza Ardiansyah and Mr. Handika Rahmawan as the Sectional Head of Public Criminal Action in the District Court of Padang Panjang and the Judge in the District Court of Padang Panjang dated August 3, 2018, at 13.00 Western Indonesian Time.

²⁸ Calculation result of traffic violation registration recapitulation in the District Court of Padang Panjang dated August 3, 2018 at 14.00 Western Indonesian Time.

²⁹ Interview with Mr. Handika Rahmawan, S.H., as the Judge in the District Court of Padang Panjang dated August 18, 2018 at 10.00 Western Indonesian Time.

³⁰ Theo Huijbers, *Op. Cit.*, p. 197.

original position, the human will be on two fundamental justice principles namely:³¹ first, equality principle or equal freedom principle as much as possible and second, inequality principle.

Inequality principle states that in the difference situation (social economy), the justice must be attempted by giving such regulations so that the low-level community will get the most advantageous. It can be seen from the interview results that have been explained aforementioned that it is possible for the traffic violator to not or to be able to attend the session, providing justice space namely with the protection and easiness for the traffic violator. Thus, the right of the violator as the law subject can be maintained before the court.

Besides, if viewed from the law enforcement theory, the realization of law enforcement naturally cannot be separated from the factors that influence the law enforcement itself. If there is a factor not appropriate, it will influence its law enforcement.

Viewed from the law enforcement theory as explained by Soerjono Soekanto, in the implementation of presumption of innocent towards law enforcement in the traffic violation in the legal region of the District Court of Padang Panjang, the factor that becomes the determinant of the law enforcement in order to run fair and objectively is the factor from the law enforcement itself. The reason is the empirical fact in the field shows that there are still many mischievous law enforcers who use their power to squeeze community. On the other hand, many communities in terms of traffic violation become the victims of the mischievous behavior of the law enforcers who investigate without clear legal standing. Hence, the opportunity to attend or to not attend the session of traffic violation is the form and the attempt of the fair law enforcement through efforts in achieving objective and transparent law enforcement.

If viewed from the other law enforcement factor, it can be seen that naturally the other factors of law enforcement are powerful enough and synergic in the effort of law enforcement towards the traffic violator. As explained in the description above, the success of law enforcers in attempting law enforcement towards traffic violation is influenced by the community participation and the community law culture who gives significant contribution on the success of law enforcement besides infrastructure factor that has been owned by the law enforcers. Therefore, to support the effort of better law enforcement in the future, as stated by Soerjono Soekanto, better synergy is needed by the factors that influence the law enforcement.

From the law objective itself, if using priority theory as in line with the opinion of Gustav Radburch, the legal regulations before the law enforcement towards traffic rules violation using *E-Tilang* (Eletronic Fine for Traffic Rules Violation) system has given legal certainty both for the law enforcers in enforcing legal regulations and for the violator in seeking for justice by the presence of session in the court that can be attended by the violator, in which the judge is able to make decision by paying attention on justice, certainty, and to give advantages for the violator in form of deterrent effects as in accordance with the purpose of criminal code.

The Implementation of Presumption of Innocent in the Law Enforcement towards Traffic Rules Violation by Using E-Tilang (Eletronic Fine for Traffic Rules Violation)

The law enforcement towards traffic rules violation is referred to the Law of Traffic and Transportation and legal regulations under it as the executing regulation of Law of Traffic and Transportation like Government Regulation Number 80 of 2012 regarding Investigation Procedure of

³¹ Theo Huijbers, 1982, *Law Philosophy in History Record*: Kanisius, *Op Cit.*, p. 200. Compare with Darji Darmodiharjo and Shidarta, 2006, *Principles of Law Philosophy (what and how the law philosophy in Indonesia)*, *Op. Cit.*, p. 165.

Vehicle on Road and the Violation Investigation of Traffic and Transportation. Law of Traffic and Transportation naturally has given obligation for the court to investigate and make decision on the traffic violation case. It is proven by Article 267 sub-section (1) in Law of Traffic and Transportation stating that every violation in traffic and transportation is investigated according to quick investigation procedure and can be fined based on the court judgment.

The use of *E-Tilang* (Eletronic Fine for Traffic Rules Violation) is then supported by the issuance of Decree of Supreme Court on Traffic Rules Violation by the Supreme Court as the part of the Supreme Court's response in order to clarify the procedure or the process phase of law enforcement for the traffic rules violator. The decree contains how the process phase of law enforcement towards traffic violation started from the phase before the session and the phase of session.

In the phase of session, the provision regulated by Decree of Supreme Court on Traffic Rules Violation has legal consequences which are different from the provision underlined by the Law of Traffic and Transportation. The phase of session is explained in Article 267 in Law of Traffic and Transportation stating that:

1. Every violation in traffic and transportation investigated according to quick investigation process can be fined based on the court judgment.
2. Quick investigation procedure as intended in sub-section (1) can be conducted without the presence of the violator.
3. The violator that cannot attend as mentioned in sub-section (2) can deposit the fine to the bank chosen by the government.
4. The amount of fine deposited to the bank as mentioned in sub-section (3) is as much as the maximum fine applied to every traffic and transportation violation.
5. The evidence of fine deposit shall be attached in the violation evidence.

Besides, based on the provision stipulated in Article 7 of Decree of Supreme Court on Traffic Rules Violation, it is stated that:

1. The chosen judge begins the session and makes decision on all cases without the presence of the violator.
2. The judge issues decision containing the amount of fine stated on the session day determined at 08.00 local time.
3. The decision of fine is announced through official page and announcement board of the court at that time.
4. Those who have any objection regarding to the presence of freedom expropriation decision can address opposition at that day.

The above articles formulation is the reference of *E-Tilang* (Eletronic Fine for Traffic Rules Violation) implementation like maximum fine deposit to bank chosen by the government and the investigation mechanism of traffic rules violation in the court. If the formula of Article 7 in Decree of Supreme Court on Traffic Rules Violation with the Article 267 in Law of Traffic and Transportation is noted, it can be seen that there is a conflicting article formulation and it brings legal consequences which are different in the implementation of *E-Tilang* (Eletronic Fine for Traffic Rules Violation) in the community. Article 267 sub-section (2) in Law of Traffic and Transportation and Article 7 sub-section (1) in Decree of Supreme Court on Traffic Rules Violation bring different legal consequences and naturally the Decree of Supreme Court on Traffic Rules Violation has deviated the provision underlined in the

Article 267 sub-section (2) in Law of Traffic and Transportation. The formula of word “can” in the Article 267 sub-section (2) in Law of Traffic and Transportation naturally provides space for the violator to attend or to not attend the session of traffic violation. While, the word “Without” stipulated in the Article 7 sub-section (1) in Decree of Supreme Court on Traffic Rules Violation removes the possibility of the violator to protect himself through attending the session of traffic violation.

The difference makes the practice of law enforcement towards traffic rules violation become changed in the implementation of *E-Tilang* (Eletronic Fine for Traffic Rules Violation) after the issuance of this Decree of Supreme Court on Traffic Rules Violation. The innocent violator who is willing to address his information before the court becomes not having space to be able to maintain his rights. Regarding with this, based on the interview with the informant, it can be known that naturally the judge in the District Court of Padang Panjang recognizes the presence of different legal consequences that harms the traffic violator as the justice seeker in the implementation of *E-Tilang* (Eletronic Fine for Traffic Rules Violation) after the issuance of Decree of Supreme Court on Traffic Rules Violation.³² However, the judge shall also obey the laws including Decree of Supreme Court on Traffic Rules Violation as a norm prevailing nowadays. In the beginning of the issuance of Decree of Supreme Court on Traffic Rules Violation, the judge is actually confused about the law enforcement towards the traffic rules violation in the future.³³

If related to the presumption of innocent in the context of *E-Tilang* (Eletronic Fine for Traffic Rules Violation) implementation after the issuance of Decree of Supreme Court on Traffic Rules Violation, the informant explains that in such context, there is no indeed recognition towards the protection of the presumption of innocent.³⁴ It can be stated as it because it can be seen the judge’s decision after prevailing *E-Tilang* (Eletronic Fine for Traffic Rules Violation) by referring to Decree of Supreme Court on Traffic Rules Violation in which the judge in the District Court of Padang Panjang towards the similar violation case done by the violator is always ended with the same amount of fine. While, before the issuance of this Decree of Supreme Court on Traffic Rules Violation, the violator who attends the session of traffic violation can always get different decision.

Then, based on the information from Mr. Handika that after prevailing *E-Tilang* (Eletronic Fine for Traffic Rules Violation) based on the Decree of Supreme Court Number 12 of 2016, the session is begun and ended without the presence of the accused so that the judge, in making decisions on traffic rules violation with *E-Tilang* (Eletronic Fine for Traffic Rules Violation) system, only sees from the investigator’s record without considering the things that become the objection and the protection of the violator as the accused.

Afterwards, based on the interview with Riza Ardiansyah, many violators complain about *E-Tilang* (Eletronic Fine for Traffic Rules Violation) system that seems complicated for the community and it does not consider the objection of the violators, for example, there is a violator that once got traffic ticket to the District Court Office and complained to the officer because at the momene of violation catching by the police, the violator was not able to protect himself althout the violator considers innocent. It is due to the reason that the violator is considered violating the Law of Traffic and Transportation in Article 293 sub-section (2) stating that every people riding motorcycle without turning on the headlight on day time will be sent to jail for fifteen (15) days in maximum and IDR 100.000,-00 and the police at that time stated “you can explain it later in the court”, when I argued the accusation. The violator then

³² Interview with Mr. Handika Rahmawan, S.H., ., as the Judge in the District Court of Padang Panjang dated August 18, 2018 at 10.00 Western Indonesian Time.

³³ Interview with Mr. Handika Rahmawan, S.H., ., as the Judge in the District Court of Padang Panjang dated August 18, 2018 at 10.00 Western Indonesian Time.

³⁴ Interview with Mr. Riza Ardiansyah, S.H., as the Sectional Head of Public Criminal Action in the District Court of Padang Panjang dated August 6, 2018 at 10.00 Western Indonesian Time.

came to the court a week later but the violator was not able to protect himself because in fact the judge has made decision in the court without the presence of the violator. The violator also complains about the difficulty of traffic rules violation procedure in which after the violator is caught, he is given red paper or he is asked to follow a session in the court. In the day of session, the violator comes to the court to know the amount of pay that he must pay and writes the bank account number or *Briva* code from the announcement board in the court after the violator obtains information of fine and case cost. Then, the violator shall pay the fine and the case cost to the bank chosen and after obtaining payment receipt, the violator shall go to the district court office to take the evidence.

Afterwards, based on the information from one of violators namely Mr. Mashur whose occupation as online *ojek* (motorcycle used for public transport) rider in Padang Panjang, he states that after *E-Tilang* (Eletronic Fine for Traffic Rules Violation) is valid, he does not feel satisfied towards the judge's decision addressed to him on his mistake because Mr. Masyur is not able to deliver his complaint and objection towards the investigation done by the police in the court. It is because Mr. Mashur is fined when giving a ride for a passenger without helmet whereas Mr. Masyur as the online *ojek* (motorcycle used for public transport) rider has prepared a helmet for the passenger and asks the passenger to wear it, but when giving the passenger a ride, he does not wear it and it is frequently done by the passengers without being known by the online *ojek* (motorcycle used for public transport) rider.³⁵

From the research result above, it can be seen that law enforcers especially the judge in enforcing the law towards the traffic rules violation after Decree of Supreme Court on Traffic Rules Violation prevails are no longer paying attention or deviating the rights of the violator and prioritizing more the legal certainty by running legal norms existing so that the legal justice purpose for the violator is neglected even the judge seems not having flexibility in investigating and adjudicating because making decision is only based on the records from the police and from the advantage side, *E-Tilang* (Eletronic Fine for Traffic Rules Violation) referring to Decree of Supreme Court on Traffic Rules Violation only considers the effectiveness of law enforcement and not pays attention on the deterrent effects and education for the violators as in line with the purpose of criminal code.

Conclusion

1. Law enforcement towards traffic rules violation before the issuance of *E-Tilang* (Eletronic Fine for Traffic Rules Violation) by referring to Decree of Supreme Court on Traffic Rules Violation is more prioritizing on the protection of the traffic violators. It is caued by the Article 267 in Law of Traffic and Transportation provides space for the violator as the justice seeker to attend or to not attend the session of traffic violation. The regulation and the practice of law enforcement provide easiness and protection to the traffic rules violators. Its protection side is the innocent violator can attend the session of traffic rules violation and address his information in the judiciary session. Besides, from its easiness side, the violator who is not willing to attend the session or who is realizing his mistake or in the other word, the violator is able to accept the judge's decision without attending the session.
2. Law enforcement towards traffic rules violation by using *E-Tilang* (Eletronic Fine for Traffic Rules Violation) by referring to Decree of Supreme Court on Traffic Rules Violation is less or is not able to accommodate the presumption of innocent as a form of protection to every people. It is because the Article 7 in Decree of Supreme Court on Traffic Rules Violation does not provide space for the

³⁵ Interview with Mr. Mashur as one of the traffic rules violators dated September 28, 2018 at 10.00 Western Indonesian Time.

violators as *justitibalen* to attend the session and automatically the his information and his protection cannot be heard by the judge to be considered and to be decided fair.

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