

**IMPLEMENTATION OF LAW NUMBER 22 YEAR 2009
CONCERNING TRAFFIC AND ROAD TRANSPORT ON SUPERVISION
OF PROSPECTIVE DRIVERS WHILE LEARNING TO DRIVE**

(Study at Batu City Traffic Police)

UNDERGRADUATE THESIS

BY:

ADELIA RACHMADIANI

STUDENT NUMBER : 17230083



CONSTITUTIONAL LAW PROGRAMME

FACULTY OF SHARIA

ISLAMIC UNIVERSITY STATE MAULANA MALIK IBRAHIM

MALANG

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MALANG**

2020

PERNYATAAN KEASLIAN SKRIPSI

Demi Allah,

Dengan Kesadaran dan rasa tanggung jawab pengembangan keilmuan,
Penulis Menyatakan Bahwa Skripsi dengan Judul:

**IMPLEMENTATION OF LAW NUMBER 22 YEAR 2009
CONCERNING TRAFFIC AND ROAD TRANSPORT ON
SUPERVISION OF PROSPECTIVE DRIVERS WHILE LEARNING
TO DRIVE (STUDY AT BATU CITY TRAFFIC POLICE)**

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Malang, 2 Desember 2020

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**IMPLEMENTATION OF LAW NUMBER 22 YEAR 2009
RELATED TO REGULATIONS OF PROSPECTIVE DRIVERS
WHILE LEARNING DRIVING
(Study at Batu City Traffic Police)**

the supervisor stated that this thesis has met the scientific requirements to
be proposed and to be examined on the Assembly Board of Examiners.

Malang, 2 December 2020

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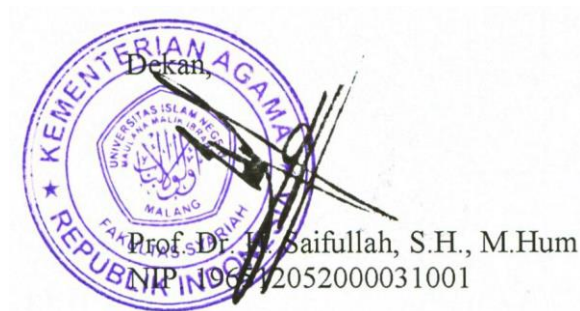
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Malang, 05 Maret 2021



MOTTO

وَابْتَغِ فِيمَا آتَاكَ اللَّهُ الدَّارَ الْآخِرَةَ ۖ وَلَا تَنْسَ نَصِيبَكَ مِنَ الدُّنْيَا ۗ
وَأَحْسِنْ كَمَا أَحْسَنَ اللَّهُ إِلَيْكَ ۖ وَلَا تَبْغِ الْفُسَادَ فِي الْأَرْضِ ۗ إِنَّ اللَّهَ لَا
يُحِبُّ الْمُفْسِدِينَ

“Dan carilah pada apa yang telah dianugerahkan Allah kepadamu (kebahagiaan) negeri akhirat, dan janganlah kamu melupakan bahagianmu dari (kenikmatan) duniawi dan berbuat baiklah (kepada orang lain) sebagaimana Allah telah berbuat baik, kepadamu, dan janganlah kamu berbuat kerusakan di (muka) bumi. Sesungguhnya Allah tidak menyukai orang-orang yang berbuat kerusakan”
(Q.S Al-Qasas: 77).

FOREWORD

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Alhamdulillahirabbil'alamin, for Providing Grace and Assistance in Writing a Thesis entitled: " IMPLEMENTATION OF LAW NUMBER 22 YEAR 2009 CONCERNING TRAFFIC AND ROAD TRANSPORT ON SUPERVISION OF PROSPECTIVE DRIVERS WHILE LEARNING TO DRIVE (Study at Batu City Traffic Police)" we can finish it well. Salawat and greetings we give to the Prophet Muhammad SAW who has given us watun hasanah to us in living this life in syar'i. By following him, may we be classified as believers and will receive intercession on the last day of the Last Hour. Amen.

With all the teaching, guidance / direction, and service assistance that has been provided, then with all humility the author would like to express his peerless thanks to:

1. Prof. Dr. Abdul Haris, M.ag, as the Rector of Maulana Malik Ibrahim State Islamic University Malang.
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8. Both Parents who has supported and helped wholeheartedly as well as the author in completing this thesis.

9. All parties there are my best friend Widya Anggriani and Risky Ramadhani. And other my beloved friends who cannot be mentioned one by one but have helped the author during the process to finish this.

With the completion of this thesis report, it is hoped that the knowledge we gain during college can benefit the charities of life in this world and the hereafter. As a human being who has never escaped mistakes and mistakes, the author really hopes that the door of forgiveness and criticism and suggestions from all parties for the sake of improvement efforts in the future.

Malang, February 2nd 2021

Author

A square image containing a handwritten signature in black ink on a light-colored background. The signature is stylized and appears to be 'Adelia Rachmadiani'. There is a small, faint watermark or text at the bottom right of the signature area.

(Adelia Rachmadiani)

TRANSLITERATION GUIDANCE

A. General

The transliteration guide which is used by the Syariah Faculty of State Islamic University Maulana Malik Ibrahim of Malang is the EYD plus. This is used based on the Consensus Directive from the Religion Ministry, Education and Culture Ministry of The State of Republic Indonesia, dated January 22 1998 No. 158/1987 and 0543.b/U/1987, which is also stated in The Arabic Transliteration Guide Book, INIS Felow 1992.

Consonant

Arab	Latin	Arab	Latin
ا	A	ط	Th
ب	B	ظ	Zh
ت	T	ع	‘
ث	Ts	غ	Gh
ج	J	ف	F
ح	H	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	Sy	ء	‘
ص	Sh	ي	Y

ض	DI		
---	----	--	--

The Hamzah which is usually represented by an alif, when it is at the beginning of the word, hence forth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a coma facing upwards (‘), as oppose to a comma (,) which replaces the ‘ain “ع”.

B. Vocal, Long Pronounce, and Diphthong

In every written Arabic text in the Latin form, its vowels fathah is written with “a”, kasrah with “i”, and dlommah with “u, whereas elongated vowels are written such as:

Elongated (a) vowel = â for example قال becomes qâla

Elongated (i) vowel = î for example نزل becomes qîla

Elongated (u) vowel = û for example دون becomes dûna

Especially for the pronouncing of *ya' nisbat* (in association), it cannot be represented by "i", unless it is written as "iy" to represent the *ya' nisbat* at the end. The same goes for sound of a diphthong, *wawu*, and *ya'* after fathah it is written as "aw" da "ay". Study the following examples:

Diftong (aw) = و for example قول becomes qawlun Diftong

(ay) = ي for example خير becomes khayrun

C. Ta' Marbûthah (ة)

Ta' marbûthah is transliterated as “t” if it is in the middle of the word, but if it is *Ta' marbûthah* at the end of the word, then it is transliterated as “h”. For example, الرسالة للمدرسة will be *al-risalat li al-mudarrisah*, or if it happens to be in

the middle of a phrase which constitutes *mudlaf and mudlaf ilayh*, then the transliteration will be using “t” which is joined with the previous word.

D. Auxiliary Verb and Lafadh Al-Jalalah

Auxiliary verb “al” (اَلْ) written with lower case form, except if it located at the beginning of word, while “al” in lafadh jalâlah which located in the middle of two words or being or become *idhafah*, it removes from writing. Study the following:

1. Al-Imâm al-Bukhâriy said ...
2. Al-Bukhâriy explains, in the prologue of his book ...
3. *Masyâ" Allah kânâ wa mâlam yasyâ lam yakun*
4. *Billâh, azza wa jalla*

ABSTRAK

Adelia Rachmadiani, 17230083, **Implementasi Undang-Undang Nomor 22 Tahun 2009 Tentang Lalu Lintas Dan Angkutan Jalan Terhadap Pengawasan Kepada Calon Pengemudi Saat Belajar Mengemudi**. Skripsi, Jurusan Hukum Tata Negara, Fakultas Syariah, Universitas Islam Negari Maulana Malik Ibrahim Malang, Pembimbing: Nur Jannani, S.HI., M.H

Kata Kunci: Belajar Mengemudi; Calon Pengemudi; Implementasi Undang-Undang; Maqashid Syariah

Dalam ketentuan Undang-undang Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan terdapat persyaratan menjadi calon pengemudi untuk mendapatkan Surat Ijin Mengemudi terdapat dalam pasal 77 ayat (3) dan pada pasal 79 Ayat (1) . Frasa “belajar sendiri” dalam pasal 77 ayat (3) dan frasa “wajib didampingi instruktur/penguji” pasal 79 ayat (1) terlihat bertentangan. Tidak hanya pertentangan antar frasa pada pasal diatas yang ditemukan oleh peneliti, tetapi frasa “belajar sendiri” bermakna kabur karena belajar sendiri disini banyak penafsirannya. Maka, penulis ingin mengetahui implementasi pasal 77 ayat (3) dan pasal 79 ayat (1) Undang-Undang Nomor 22 Tahun 2009 terkait calon pengemudi pada saat belajar mengemudi.

Rumusan Masalahnya ialah:1) Upaya apa yang dilakukan Satlantas Kota Batu untuk mengawasi para calon pengemudi pada saat belajar mengemudi di jalan sesuai dalam pasal 77 ayat (3) dan pasal 79 ayat (1) ?. 2)Bagaimana pandangan *Maqashid Al-Syariah* mengenai implementasi pasal 77 ayat (3) dan pasal 79 ayat (1)?

Jenis Penelitian ini adalah Yuridis Empiris. Metode pengambilan data yang digunakan yaitu. berupa wawancara dan dokumentasi serta berupa buku ilmiah, skripsi, laporan penelitian dan jurnal.

Hasil Penelitian ini menunjukkan bahwa pasal 77 ayat (3) dan pasal 79 ayat (1) tidak bertentangan atau berkelanjutan, terkait frasa “belajar sendiri” yang kabur, pihak Satlantas menerapkan diskresi dengan diberinya kebebasan calon pengemudi untuk belajar mengemudi dan upaya yang dilakukan oleh pihak Satlantas Kota Batu mengenai pengawasan kepada calon pengemudi sepenuhnya diserahkan kepada calon mengemudi atau dengan kata lain pihak satlantas tidak mengawasi, karena pihak kepolisian tidak memiliki kewajiban dalam pengawasan, dan secara hukumpun tidak dijelaskan atau tidak ada kewajiban Mengenai

perspektif *Maqashid Syariah* terkait implementasi pasal 77 ayat (3) dan pasal 79 Ayat (1) tidak bertentangan atau sesuai. Karena penerapan diskresi dari Pihak Satlantas Kota Batu mengenai pasal 77 ayat (3) dan pasal 79 ayat (1) merupakan salah satu cara untuk memberikan pelayanan publik yang tidak lain adalah untuk menciptakan keselamatan dan keamanan untuk banyak orang.

ABSTRACT

Adelia Rachmadiani, 17230083, *Implementation of Law Number 22 Year 2009 Regarding Regulations for Driver Candidates When Learning to Drive (Study at Batu City Traffic Police)*. Thesis, Department of Constitutional Law, Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim Malang, Advisor: Nur Jannani, S.HI., MH
Keywords: Learn to drive; Prospective Drivers; Implementation of Law; Maqashid Sharia

In the provisions of Law Number 22 of 2009 concerning Road Traffic and Transportation, there are requirements to become a prospective driver to obtain a driving license as contained in article 77 paragraph (3) and article 79 paragraph (1). The phrase “self-study” in Article 77 paragraph (3) and the phrase “must be accompanied by an instructor / examiner” Article 79 paragraph (1) seems contradictory. Not only were the contradictions between the phrases in the above chapter found by the researcher, but the phrase "self-study" has a vague meaning because studying alone here has many interpretations. So, the author wants to know the implementation of article 77 paragraph (3) and article 79 paragraph (1) of Law Number 22 Year 2009 regarding prospective drivers while learning to drive.

The formulation of the problem is: 1) What efforts did the Batu City Traffic Police make to supervise prospective drivers while learning to drive on the road in accordance with article 77 paragraph (3) and article 79 paragraph (1)? 2) What is the view of Maqashid Al-Sharia regarding the implementation of Article 77 paragraph (3) and Article 79 paragraph (1)?

This type of research is juridical empirical. The data collection method used is in the form of interviews and documentation as well as in the form of scientific books, theses, research reports and journals.

The results of this study indicate that article 77 paragraph (3) and article 79 paragraph (1) are not contradictory or sustainable, related to the vague phrase “self-study”, Satlantas applies discretion by giving prospective drivers the freedom to learn to drive and the efforts made by the parties. Satlantas Kota Batu regarding the supervision of prospective drivers is fully left to the candidate for driving or in other words, the traffic police do not supervise, because the police have no obligation to supervise, and legally it is not explained or there are no obligations regarding The perspective of Maqashid Sharia regarding the implementation of Article 77 Paragraph (3) and Article 79 Paragraph (1) is

not contradictory or appropriate. Because the implementation of discretion from the Batu City Traffic Police regarding article 77 paragraph (3) and article 79 paragraph (1) is one way to provide public services which is none other than to create safety and security for many people.

نبذة مختصرة

أديليا رشمادياني 17230083 ، تنفيذ القانون رقم 22 لسنة 2009 بشأن اللوائح الخاصة بالسائقين المرشحين عند تعلم القيادة (الدراسة في شرطة مرور مدينة باتو) ، أطروحة ، قسم القانون الدستوري ، كلية الشريعة ، جامعة مولانا الإسلامية الحكومية ، مالك إبراهيم مالانج ، المستشار: نور جناني S.HI، MH

الكلمات المفتاحية: دستور؛ السائقون المحتملون تعلم بمفردتي، قسم القانون الدستوري ، كلية الشريعة ، جامعة الدولة الإسلامية مولانا مالك إبراهيم مالانج ، المستشار: نور جناني ، الكلمات الدالة: د تعلم القيادة؛ السائقون المحتملون تنفيذ القانون ؛ المقاصد الشريعة

في أحكام القانون رقم 22 لسنة 2009 بشأن المرور على الطرق والنقل ، هناك متطلبات لتصبح سائقاً محتملاً للحصول على رخصة قيادة على النحو الوارد في المادة 77 فقرة (3) والمادة 79 فقرة (1). تبدو عبارة "الدراسة الذاتية" في المادة 77 الفقرة (3) وعبارة "يجب أن يكون مصحوباً بمدرس / فاحص" المادة 79 الفقرة (1) متناقضة. لم يكتشف الباحث التناقضات بين العبارات في الفصل أعلاه فحسب ، بل إن عبارة "الدراسة الذاتية" لها معنى غامض لأن الدراسة وحدها هنا لها العديد من التفسيرات. لذلك ، يريد المؤلف معرفة تنفيذ المادة 77 الفقرة (3) والمادة 79 فقرة (1) من القانون رقم 22 لسنة 2009 بشأن السائقين المحتملين أثناء تعلم القيادة.

صياغة المشكلة هي (1: ما هي الجهود التي تبذلها شرطة مرور مدينة باتو للإشراف على السائقين المحتملين أثناء تعلم القيادة على الطريق وفقاً للمادة 77 فقرة (3) والمادة 79 فقرة (1)؟ (2) ما هو رأي مقشد الشريعة في تطبيق المادة 77 فقرة (3) والمادة 79 فقرة (1)؟

هذا النوع من البحث تجريبي قانوني. طريقة جمع البيانات المستخدمة هي في شكل مقابلات وتوثيق وكذلك في شكل كتب وأطروحات وتقارير بحثية ومجلات علمية.

تشير نتائج هذه الدراسة إلى أن الفقرة (3) من المادة 77 والفقرة (1) من المادة 79 ليستا متناقضتين أو مستدامتين ، فيما يتعلق بالعبارة الغامضة "الدراسة الذاتية" ، يطبق ساتلاناس حرية التصرف من خلال منح السائقين المحتملين حرية تعلم القيادة والجهود التي تبذلها الأطراف . Satlantas Kota Batu فيما يتعلق بالإشراف على السائقين المحتملين متروك تماماً للمرشح للقيادة أو بعبارة أخرى ، لا تشرف شرطة المرور ، لأن الشرطة ليست ملزمة بالإشراف ، ومن الناحية القانونية لا يتم شرح ذلك أو لا توجد التزامات بخصوص إن منظور مقاصد الشريعة فيما يتعلق بتنفيذ المادة 77 فقرة (3) والمادة 79 فقرة (1) ليس متناقضاً أو مناسباً. لأن تنفيذ السلطة التقديرية من شرطة مرور مدينة باتو فيما يتعلق بالمادة 77 فقرة (3) والمادة 79 فقرة (1) هي إحدى طرق تقديم الخدمات العامة التي لا تتعدى توفير السلامة والأمن لكثير من الناس.

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TABLE

Table 4.1 Unit Structure in Batu City Traffic Police

Table 4.2 Organizational Structure at Batu City Traffic Police

BAB I

INTRODUCTION

A. Research Background

The complexity of everyday human life cannot be separated from the means of transportation. Transportation is a very important and strategic means in accelerating the economy, strengthening national unity and unity and influencing aspects of the life of the nation and state.¹ The Republic of Indonesia is a unitary state which is an independent and sovereign state in which all the countries in power are only one (central) government that regulates all regions, cities, villages and even roads and traffic.²

A road (highway) is a land transportation structure in any form, covering all parts of the road including complementary buildings and accessories intended for traffic. Furthermore, roads have an important role in the fields of economy, politics, social, culture, defense and security and law and are used for the greatest prosperity of the people. Thus, the road is a system unit of road network that binds and connects regional growth centers that are in the influence of its service in a hierarchical relationship of citizens, the community members use roads for their interests, both primary, secondary and tertiary.³

Sociologically-juridically, there is a relatively rapid development of urban areas in Indonesia. This development was marked by regional development. improvement of quality of life, addition of physical facilities, the purpose of these physical facilities is the large number of vehicles and public transportation in big cities. The rapid population growth in the city must be accompanied by a harmonious urban

¹Rahayu Hartini, Transportation Law in Indonesia, Citra Mentari, Malang, p. 53

² Kamsil CST Indonesian Government System. Aksara Baru, Jakarta.1985, p. 4

³Soejono Soekanto Police And Then Linlas (Analyst according to Sociology of Law), MandarMaju, Jakarta, 1990, p. 1

infrastructure development. This infrastructure includes roads, communication tools and public transportation.

The increasing population and increasingly developing economies in developing countries like Indonesia require people to have high mobility in order to meet their daily needs. To be able to have high mobility, people certainly need a means or means of transportation, besides that currently the means of transportation are widely used by community is land transportation, namely private or public transportation. The purpose of land transportation development is to improve transportation services in an efficient, reliable, quality, safe, affordable price capable of providing services and benefits to the wider community.⁴

Transportation is a common thing in many places. All regions in Indonesia have a means of transportation that connects one place to another. The importance of transportation for the people of Indonesia is caused by several factors, among others, the geographical condition of Indonesia which consists of thousands of small and large islands, waters consisting of a large part of the sea, rivers and lakes which allow transportation to be carried out by land, water and air to reach the entire territory. Indonesia.⁵

Transportation is a tool that has the essence of facilitating community activities in reaching their destination. The progress of the times requires humans to be deft and have totality in their activities. Transportation has become a primary need inherent in all human activities. This is because the closeness of humans to their activities seems limitless.⁶

In accordance with the location of research conducted by researchers at Satlantas Kota Batu, East Java. Batu City is one of the cities in East Java, which has an area of 197,078 km². Located approximately 30 kilometers west of Malang City.⁷ Batu City is known as a tourist city,

⁴Soejono Soekanto Police And Then Linlas (Analyst according to Sociology of Law), Mandar Maju, Jakarta, 1990, p. 36

⁵ Muhammad Abdulkadir, Commercial Transportation Law (Bandung: Citra Aditya Bakti, 1998), p. 7.

⁶Fidel Miro, Introduction to Transportation Systems (Jakarta: Erlangga, 2012), p. 9.

⁷ Accessed on https://id.wikipedia.org/wiki/Kota_Batu on 5 November 2020 at 4.20 WIB

because it is seen from its alluring natural beauty, therefore Batu City has progressed very rapidly in the field of tourism in particular. With the increasing number of domestic and foreign tourists visiting Batu City, the intensity of the movement of traffic flows will also increase in line with the increasing population growth and the increasing level of welfare which encourages increased activity and the need to travel. This is what causes the need for transportation from time to time continues to increase. Along with the increase in population mobility, it is demanded the availability of city transportation facilities that meet the requirements of smoothness, comfort and safety. And transportation drivers are expected to be competent in driving in order to create safety and comfort in traffic. According to data in the field at the Batu City Traffic Police, at least 40 percent of the drivers who understand good and correct driving ethics are about 40 percent of 100 percent. Therefore, supervision of prospective drivers is needed in order to create a good and correct driving order.

For the sake of creating smooth and safe traffic, every road user, especially motorized vehicle drivers, is certainly expected to be able to master good and correct driving procedures. The state is of course demanded to be able to accommodate this, one of which is by implementing driving regulations and establishing law enforcement officers in traffic.

In the context of statehood the police are organs that are formed to carry out the function of increasing public legal awareness and developing law in addition to its main authority in the field of investigation and investigation. The function of the police is one of the functions of the State government in the field of maintaining security and public order, law enforcement, protection, protection and services to the community. The police have the duty to maintain order, one of which is to keep road traffic running safely and orderly, so that traffic violations do not occur.⁸

⁸Hamzah Baharuddin and Masaluddin, 2010, Police constructivism (theory, principles and paradigms). Makassar: Reflection Library, p. 117

Based on the foregoing, the government has also ratified Law Number 22 of 2009 concerning Road Traffic and Transportation which regulates all matters relating to traffic continuity replacing Law Number 14 of 1992. In these statutory regulations, one of them is regulate the driving requirements for every citizen who needs it.

This law aims to foster and administer Road Traffic and Transportation that is safe, secure, orderly and smooth through:

- a. Activities to move vehicles, people, and / or goods on the road.
- b. Activities that use road traffic and transportation supporting facilities, infrastructure and facilities; and
- c. Activities related to registration and identification of motorized vehicles and drivers, education on traffic management and traffic engineering and law enforcement of traffic and road transport.⁹

From the description above, in order to create traffic safety and comfort, a driver must have a driving license (SIM) as a valid sign that a driver has passed a good and correct driving test from Satlantas. A driving license is proof of competence for someone who has passed an examination of the knowledge, ability and skills to drive on the road according to the requirements determined under the Road Traffic and Transportation Law.¹⁰

In the provisions of Law Number 22 of 2009 concerning Road Traffic and Transportation, there are requirements to become a prospective driver to obtain a driving license contained in article 77 paragraph (3) which reads "To obtain a driving license, prospective drivers must have acquired driving competence. through education and training or self-study". It has been explained in article 77 paragraph (3) that a prospective driver must have the driving competence obtained through education and training or self-study to be able to drive a vehicle on the road. This means that

⁹ Law Number 22 of 2009 concerning Traffic and Road Transportation (State Gazette of the Republic of Indonesia of 2009 Number 96, Supplement to the State Gazette of the Republic of Indonesia Number 5025) Article 4

¹⁰ Subdit Dikmas Ditlantas Polri, Driving License, 2016, page 9

Article 77 paragraph (3) provides options or options for prospective vehicle drivers through education or self-study.

Furthermore, in Article 79 Paragraph (1) which reads "Every prospective driver while learning to drive / taking practical driving tests on the road must be accompanied by instructions / examiners". Article 79 Paragraph (1) explains that every candidate while learning to drive on the road must be accompanied by instructions / examiners.

According to researchers here, in article 77 paragraph (3) which explains that a prospective driver to become a competent driver (already has a driver's license) can go through education and training or self-study and in article 79 Paragraph (1) it is explained that each candidate while studying driving on the road must be accompanied by instructions / examiners. The self-study phrases in Article 77 paragraph (3) and phrases that must be accompanied by an instructor / examiner of Article 79 paragraph (1) appear contradictory.

Not only were the contradictions between the phrases in the article above discovered by the researchers, but the phrase "self-study" means vague because studying alone here has many interpretations, especially if learning on your own while driving can endanger the safety of others. Because of the vagueness of the phrases in the article above, the researchers also wanted to know about the supervision of prospective drivers when learning to drive directly in the field carried out by the Batu City Traffic Police.

The description on the background above shows weaknesses or problems in written law (laws and regulations) such as unclear norms and conflicting norms (conflict of norms). The description of the problem of norms for regional laws and regulations shows the classification of regulations that have the potential to violate human rights (obscure norms and conflicting norms).

In this study, the researchers gave restrictions related to Law Number 22 of 2009 article 77 paragraph (3) and article 79 paragraph (1)

concerning Road Traffic and Transportation related to prospective drivers while learning to drive on the study highway at Satlantas Kota Batu.

Based on the description above, so that it becomes the reason for conducting a thesis research with the title Implementation Of Law Number 22 Year 2009 Concerning Traffic And Road Transport On Supervision Of Prospective Drivers While Learning To Drive (Study At Batu City Traffic Police)

B. Formulation of the problem

From the above background, several problems can be formulated as follows:

1. What efforts did the Batu City Traffic Police make to supervise prospective drivers while learning to drive on the road in accordance with article 77 paragraph (3) and article 79 paragraph (1) of Law Number 22 Year 2009 concerning Road Traffic and Transportation?
2. What is the view of the Maqashid Sharia regarding the implementation of article 77 paragraph (3) and article 79 paragraph (1) of Law Number 22 Year 2009 concerning Road Traffic and Transportation at the Batu City Traffic Police?

C. Research purposes

- This study aims to analyze and find out the efforts made by the Batu City Traffic Police, to supervise prospective drivers while learning to drive in Law No.22 of 2009 concerning Road Traffic and Transportation.
- Conduct analysis and findings on how Maqashid Sharia views the implementation of obscure and contradictory articles.

D. Benefits of research.

This research has several benefits, both practical benefits and theoretical benefits.

1. Theoretical Benefits

- a) The results of this study are expected to be used as reference material for the Batu City Traffic Police in order to better

understand the regulations of prospective drivers when on the highway in accordance with Law Number 22 of 2009 concerning Road Traffic and Transportation, especially Article 77 paragraph (3) and 79 paragraph (1).).

- b) With this research, it is hoped that the people of Batu City can understand the procedures for prospective drivers when driving on the highway in accordance with Law Number 22 of 2009 concerning Road Traffic and Transportation, especially Article 77 paragraph (3) and 79 paragraph (1).

2. Practical Benefits

Apart from the theoretical benefits that have been stated above, this research also has practical benefits, namely This research can be a reference material, provide information, as well as scientific development materials of Constitutional Law Faculty of Sharia UIN Malang.

E. Operational definition.

Operational definition is a definition of a variable that is formulated based on the characteristics of the observed variable. In order to avoid misunderstanding in interpreting the title of this thesis, it is necessary to explain the operational definition of the title as follows:¹¹

1. Implementation of Law Number 22 Year 2009 concerning Road Traffic and Transportation is the implementation of policies in Law Number 22 Year 2009 concerning Road Traffic and Transportation which have been formulated and of course have targets to be achieved.
2. A prospective driver is someone who will run motorized vehicles such as motorbikes, cars and others
3. *Maqasid Syari'ah* is the aim of Allah and His Messenger in formulating Islamic laws.

¹¹ Dellyana, Shant. 1988, The Concept of Law Enforcement. Yogyakarta: Liberty p. 32

F. Systematics of the Discussion

The systematics of this overall discussion consists of 3 parts, namely:

First, the formality section which consists of: title page, thesis approval page, endorsement page, motto page, dedication page, preface, table of contents, and table list.

Second, this part of 5 chapters, namely chapter I on the Introduction. This chapter consists of several sub-chapters, namely the background of the problem, the formulation of the problem, the limitations of the problem, the objectives, the benefits of the research, and the systematic discussion.

Chapter II contains a literature review in which this section contains previous research and theoretical frameworks / theoretical foundations. Previous research contains information about research that has been carried out by previous research. In this previous study, there were 3 which were related to research problems in order to avoid duplication and then it was shown the originality of this study and its differences with previous research. Furthermore, it contains a theoretical framework / theoretical basis containing theories or juridical concepts as a theoretical basis for the study and analysis of problems. Here, the theory of the concept of regional autonomy, the concept of village government and village community institutions is used.

Chapter III contains research methods in which empirical research methods are placed in chapter III. It consists of several sub-types, namely the type of research, the research approach, the location of the research, the sampling method, the types and sources of data, the data collection methods and the data processing methods.

Chapter IV contains the results of research and discussion, namely "The Election of Members of Village Community Institutions based on Law No. 6 of 2014 concerning villages." This section analyzes data from

both primary and secondary data to answer the formulation of a predetermined problem.

Chapter V is the final chapter which contains conclusions and suggestions. The conclusions in this chapter are not a summary of the research conducted, but rather a brief answer to the formulation of the problems that have been determined. The number of points in the conclusion must match the number of formulations of the problem. Suggestions are suggestions or suggestions to related parties or parties having more authority over the theme being researched for the good of the community, and proposals or suggestions for further research in the future. The contents of the suggestions can be related to the benefits of the research that has been written in chapter I.

BAB II

LITERATURE REVIEW

A. Previous Review

Previous research is information that contains what previous researchers have done, in the form of journals and articles that have been published or in the form of a dissertation, a thesis that has not been published, and also has a relationship with research problems in order to avoid duplication and explain the originality of the research and show differences. previous research.¹²

In previous research, it can help researchers in positioning the research and show the originality of the research. In this section the researcher lists some of the results of previous research, both from the title of Thesis and Research titles related to research that has been published or not yet published (Thesis, thesis, dissertation and others). The research used as a guide in this study are as follows:

1. This researcher is named **Arzen Aprillia** a researcher who is a student of the Andalas University Faculty of Law 2019 year.¹³
2. This researcher is named this researcher named Yasri Ahmad, a student of the Faculty of Law, Hassanudin University in 2016.¹⁴

¹² Drafting Team, Guidelines for Scientific Work, (Malag: Faculty of Sharia, 2015), p. 27

¹³ Thesis entitled "The Role of the Police in Handling Traffic Violations by Children as Motorcyclists (Study at the Traffic Police of Fifty Cities District Police" This researcher formulates the first problem is how the role of the police in overcoming traffic violations by children as motorbike riders. What are the obstacles faced by the police in overcoming traffic violations committed by children as traffic police motorbike riders in improving traffic order and security in the District of Lima Puluh Kota. This research uses the type of empirical research by taking data in the field.

¹⁴Thesis entitled "The Role of Police Patrols in Overcoming Traffic Violations (Study at the Majene Police, West Sulawesi)". This researcher formulates the first problem, how is the implementation of the Police Patrol in Majene Regency in handling traffic violations. Second, what are the factors that hindered the Police in Majene Regency in overcoming traffic violations. This research uses empirical research by taking field data directly.

3. This researcher is named **Tommy Kristian**, researcher, a research student, a student of the Faculty of Social and Political Sciences, Riau University, Bina Campus in 2015.¹⁵

No.	Researcher Name	Title	Equality	Difference
1.	This researcher is named Arzen Aprillia a researcher who is a student of the Faculty of Law, Andalas University 2019 year	The Role of the Police in Handling Traffic Violations by Children as Motorcyclists (Study at the Traffic Police of Fifty Cities District Police)	What these two researchers have in common is that they both research the role of the Traffic Police for improving traffic order and security.	From the research conducted by Arzen Aprillia with the research conducted by the author, only the study was different in the research location.
2.	This researcher named Yasri Ahmad, a student of the Faculty of Law, Hassanudin University in 2016	The Role of Police Patrols in Handling Traffic Violations (Study at Polres Majene, West Sulawesi)	Both researchers are both researching problems in the traffic environment. And both researchers use this type of empirical research.	Researchers conducted by Yasri Ahmad and research conducted by the authors differ only in the study location studies.
3.	This researcher is named Rima Wirdia Ningsih, researcher someone student the researcher is a student of the Faculty of Sharia and Law, Sultan Syarif Kasim Riau-Pekabara Islamic State University 2019.	The Performance of the Bagan Sinembah Police Unit in the Rokan Hilir District Traffic and Road Traffic Management Perspective of Law Number 22 of 2009 concerning Road Traffic and Transportation	Both researchers use this type of empirical research. And the two researchers discussed Saltantas' performance in monitoring traffic order in the perspective of Law Number 22 Year 2009 concerning Road Traffic and Transportation.	Researchers discuss more about Rima Wirdia Ningsih traffic monitoring (in terms of performance). While the research conducted by the author discusses the rules of prospective drivers.

¹⁵Thesis entitled "The Performance of the Polantas Police Unit in the Chart Sinembah Sector of Rokan Hilir Regency Against Traffic and Road Transportation Regulations Perspective of Law Number 22 Year 2009 concerning Road Traffic and Transportation" rokan downstream regency towards traffic regulation, the perspective of law number 22 of 2009 concerning road traffic and transportation and secondly, what are the obstacles that affect the performance of the traffic control unit in the sector of sinembah, rokan downstream district towards traffic regulation in the perspective of law number 22 2009 concerning road traffic and transportation. This research uses empirical research by taking field data directly.

B. Literature review.

1. Overview of Supervision Theory

a. Definition of Supervision

Supervision can be defined as a process to ensure that organizational and management goals can be achieved. This is concerned with ways of making activities as planned. This definition indicates a very close relationship between planning and supervision.¹⁶

Control or supervising is a function in functional management that must be carried out by each leader of all units / work units for the implementation of work or employees who carry out their respective main tasks. Thus, supervision by the leader, especially in the form of built in control, is a managerial activity carried out with the intention of avoiding irregularities in carrying out work. A deviation or error occurs or not during the course of work depending on the ability and skill level of the employee. Employees who always receive direction or guidance from their superiors tend to make fewer mistakes or deviations than employees who do not receive guidance.¹⁷

The definition of supervision is quite diverse, below are examples of the diversity of these meanings:

1) According to Sondang P. Siagian, supervision is the process of observing the implementation of all organizational activities to ensure that all work being carried out goes according to a predetermined plan.

2) Robert J. Mockler argues that management supervision is a systematic effort to establish implementation standards with planning goals, design information systems, feedback, compare real activities with predetermined standards, determine and

¹⁶Yohannes Yahya, Introduction to Management (Yogyakarta: Graha Ilmu, 2006), p. 133.

¹⁷M. Kadarisman, Human Resource Development Management (Jakarta: Rajawali: 2013), p. 172.

measure deviations and take corrective actions necessary to ensure that all company resources are used effectively and efficiently in achieving company goals.¹⁸

3) Supervision according to Fahmi, quoted by Erlis Milta Rin Sondole et al, that supervision is generally defined as a way for an organization to achieve effective and efficient performance, and to further support the realization of the organization's vision and mission.¹⁹

4) Mc. Farland provides the following definition of control. "Control is the process by which an executive gets the performance of his subordinate to correspond as closely as possible to chosen plans, orders objective, or policies". (Supervision is a process in which the leader wants to know whether the results of the implementation of the work carried out by his subordinates are in accordance with predetermined plans, objectives, policies).

Obviously, supervision must be guided by the following matters:²⁰

- a. Plan (Planning) that has been determined
- b. Orders (Orders) for the execution of work (Performance)
- c. Destination
- d. Pre-determined policies

From some of the definitions above, it can be concluded that supervision is a process to keep activities directed towards achieving goals as planned and if deviations are found, corrective action is taken.

¹⁸Zamani, Management (Jakarta: IPWI, 1998), p. 132.

¹⁹Erlis Milta Rin Sondole et al, The Influence of Work Discipline, Motivation and Supervision on Employee Performance at PT. Pertamina (Persero) Marketing Unit VII Pertamina BBM Bitung, Journal of EMBA, 2015, Vol. 3, pg. 652.

²⁰Maringan Masry Simbolon, Basics of Administration and Management (Jakarta: Ghalia Indonesia: 2004), p. 61

B. Kinds of Supervision

1) Supervision from within the organization (Internal Control)

Internal supervision, means supervision carried out by the apparatus / unit of supervision formed within the organization itself. This supervisory apparatus / unit acts on behalf of the leadership of the organization. This supervisory apparatus / unit is in charge of collecting all data and information required by the organization. Progress and setbacks data in the implementation of work. The results of this supervision can also be used in the value of leadership policies. For this reason, sometimes the leadership needs to review the policies / decisions that have been issued. Conversely, the leadership can also take corrective actions on the implementation of work carried out by internal control subordinates.²¹

2) Supervision from outside the organization (external control)

External control means supervision carried out by the supervisory apparatus / unit from outside the organization. The supervisory apparatus / unit from outside the organization is the supervisor acting on behalf of the superior leadership of the organization, or acting on behalf of the head of the organization at his request, for example supervision carried out by the Directorate General of State Financial Supervision. For a department, this supervisory apparatus acts on behalf of the government / president through the minister of finance. Meanwhile, the supervision carried out by the Supreme Audit Agency is the inspection / supervision acting on behalf of the Republic of Indonesia. In addition to the supervisory apparatus who is carried out on behalf of the superior of the head of the organization, the leadership of the organization may also ask for help from parties outside the organization. Requests for inspection / supervision assistance from parties outside the organization, for example consulting firms, private

²¹Maringan Masry Simbolon, *Basics of Administration and Management* (Jakarta: Ghalia Indonesia: 2004), p. 62

accountants, and so on. Requests for inspection / supervision assistance from outside parties are usually made to a company with specific purposes, for example to determine the efficiency of its work, to find out the amount of profit, to find out the amount of tax to be paid, and so on.

3) Preventive supervision

The meaning of preventive supervision is supervision carried out before the plan is implemented. The purpose of this preventive supervision is to prevent mistakes / errors in implementation. In this preventive supervision budget inspection system is called pre-audit. As for this preventive supervision, the following things can be done:

- a) Determine the rules relating to the system of procedures, relationships and work procedures
- b) Creating guidelines / manuals in accordance with predetermined regulations
- c) Determine the position, duties, authorities and responsibilities
- d) Organizing all kinds of activities, placement of employees and division of work
- e) Determine a system of coordination, reporting and inspection
- f) Determining sanctions against officials who deviate from the stipulated regulations.

4) Repressive Monitoring

The meaning of repressive supervision is supervision that is carried out after the implementation of work. The purpose of holding repressive supervision is to ensure the continuity of the implementation of the work so that the results are in accordance with the predetermined plan. In a budget inspection system, this repressive oversight is called an audit post.²²

²²Maringan Masry Simbolon, Basics of Administration and Management (Jakarta: Ghalia Indonesia: 2004), p. 69

C. Supervision Method

a. Direct Monitoring

Direct Supervision is when the supervisory apparatus / organizational leadership conducts a direct inspection of the place where the work is carried out, either by means of an inspective, verification or investigative system. This method is intended so that corrective actions and improvements can be taken immediately in the implementation of work. Meanwhile, the direct supervisory system by his superiors is called built in control.²³

b. Supervision Indirect Supervision

Indirect is if the supervisory apparatus / organizational leadership checks the implementation of work only through reports that come to him. These reports can be in the form of worded descriptions of a series of numbers or statistics which contain an overview of the progress that has been achieved in accordance with the planned expenditures / budgets. The weakness of this indirect supervision is not being able to immediately find out the mistakes in its implementation, so that it can cause more losses.

c. Formal Oversight

Formal Supervision is supervision that is formally carried out by the supervisory unit / apparatus acting on behalf of the leader of the organization or the superior of the leadership of the organization. In this supervision usually have determined procedures, relationships, and work procedures.

²³Maringan Masry Simbolon, Basics of Administration and Management (Jakarta: Ghalia Indonesia: 2004), p. 70

d. Informal Supervision

Informal oversight is supervision that does not go through formal channels or predetermined procedures. This informal oversight is usually carried out by top officials through unofficial (personal) visits, or incognito. This is intended to avoid rigidity in the relationship between superiors and subordinates. In this way, the leadership wants openness in obtaining information and at the same time suggestions / suggestions for improvements and enhancements from their subordinates. For problems faced by subordinates that are impossible to solve alone, the leadership can provide solutions. Conversely, subordinates also feel proud because they are given the opportunity to express their opinions directly to their leaders. It is clear that informal supervision brings closer to personal relationships that are informal in nature.

e. Administrative Supervision

Administrative Supervision is supervision covering the financial, personnel, and material sectors. Financial supervision concerns budget items (budget plans), budget execution which includes administrative management and treasurer management. This concerns the procedure for receiving and spending money. Staffing supervision concerns matters relating to personnel administration as well as regarding their rights that must be fulfilled (salary, promotion, and other facilities). Material control is to find out whether the goods provided (purchased) are in accordance with the procurement plan.²⁴

2. Overview of Implemetasi

a. Definition of Implementation

Implementation is an action or implementation of a plan that has been prepared carefully and in detail. Implementation is

²⁴Maringan Masry Simbolon, Basics of Administration and Management (Jakarta: Ghalia Indonesia: 2004), p. 61.

usually done after planning is considered perfect. The following is an understanding of the implementation according to experts.

According to Hanifah (Harsono, 2002: 67) in his book entitled *Implementation of Policy and Politics*, expresses his opinion. Implementation is a process to carry out activities into policy actions from politics to administration. Development of a policy in order to improve a program.

According to Guntur Setiawan (Setiawan, 2004: 39) in his book entitled *Implementation in the Development Bureaucracy*, expresses his opinion as follows Implementation is the expansion of activities that mutually adjust the process of interaction between goals and actions to achieve them and requires a network of executors, an effective bureaucracy.

From the above meanings it shows that the word implementation boils down to the mechanism of a system. The expression mechanism implies that implementation is not just an activity, but an activity that is planned and carried out in earnest based on the reference to certain norms to achieve the objectives of the activity.

3. Overview of Maqashid Sharia

a. Definition *Maqashid Sharia*

Maqashid al-syari'ah consists of two words, *maqashid* and *shari'ah*. The word *maqashid* is a form of jama 'from *maqshad* which means intent and purpose, while *shari'ah* has the meaning of Allah's laws established for humans to be guided to achieve the happiness of life in the world and in the hereafter. So thus, *maqashid al-syari'ah* means the value content which is the goal of law enforcement.

So thus, *maqashid al-syari'ah* are the goals to be achieved from a legal stipulation (Asafri Jaya, Izzuddin ibn Abd al-Salam, as

quoted by Khairul Umam ²⁵, said that all legal taklifs always aim for the benefit of servants (humans) in the life of the world and the hereafter. Allah does not need someone's worship, because the servant's obedience and immorality does not have any effect on the glory of Allah. So, the target of legal benefits is none other than human interests. According to Satria Efendi, maqashid al-syari'ah contains a general meaning and a special meaning. The general definition refers to what is meant by legal verses or legal hadiths, whether indicated by the meaning of the language or the objectives contained therein. This general definition is identical to the meaning of the term maqashid al-syari '(Allah's intention in bringing down the verse of law, or the intention of the Prophet in issuing legal hadiths).²⁶

Meanwhile, a specific definition is the substance or purpose to be achieved by a legal formula. Meanwhile²⁷ Wahbah al-Zuhaili (1986: 1017) defines the maqashid syari'ah with the meanings and objectives maintained by the syara 'in all of its laws or most of its laws, or the ultimate goal of shari'ah and the secrets laid down by the syara. 'in every law. The study of the theory of maqashid al-syari'ah in Islamic law is very important.

b. Purpose of Maqashid Sharia.

From the above understanding, it can be said that the main discussion in maqashid al-syari'ah is wisdom and illat is stipulated by a law. In the study of ushul fiqh, wisdom is different from illat. Illat is a certain characteristic that is clear and can be known objectively (zahir), and has a standard (mundhabit), and is in accordance with the provisions of law (munasib) whose existence

²⁵ Khairul Umam, *Ushul Fiqih*, Bandung, Pustaka Setia, 2001, p.56

²⁶ Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami*, Beirut: Dar al-Fikr, 1986. JND Anderson, *Law Reform in the Muslim World*, London, University of London Press, 1976. p. 13

²⁷ Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami*, Beirut: Dar al-Fikr, 1986. JND Anderson, *Law Reform in the Muslim World*, London, University of London Press, 1976. p. 36

is what determines the existence of law. While wisdom is something that becomes the goal or purpose of implementing the law in the form of benefit to humans.

Maslahat can generally be achieved in two ways:

1. Creating benefits, kindness and pleasure for humans which is called *jalb al-manafi* '. These benefits can be felt directly immediately or indirectly in the future.
2. Avoid or prevent damage and ugliness which is often termed *dar 'al-mafasid*. As for what is used as a benchmark to determine the pros and cons (benefits and mafsadah) of something that is done is what is a basic need for human life. The demands for human life are graded, namely primary, secondary and tertiary needs.²⁸

Above, it has been explained about *Maqashid Al Sharia* where *maqashid al syari'ah* aims to find out the goals that the formulator is trying to achieve in implementing the law. The purpose of this law is one of the important factors in determining one of the important factors in determining the law produced through *ijtihad*.²⁹

Al syathibi, in his book *al-Muwafaqat* says that the content of *maqashid alsyari'ah* is the benefit of mankind, because essentially all obligations (*taklif*) are made in order to realize the benefit of the servant and reject *kemudaratan*. According to him, none of Allah's laws have the same purpose as *taklif ma. La yuthaq* (imposes something that cannot be implemented). In line with this, *Fathi al-Daraini* said that the law was not made for the law itself, but for another purpose, namely benefit.³⁰

²⁸ Asafri Jaya, *Concept of Maqashid al-Syari'ah According to al-Syathibi*, Jakarta: Raja Grafindo Persada, 1996. p. 90

²⁹ Abdul Aziz Dahlan, *Encyclopedia of Islamic Law*, Jakarta: PT. Ihtiar Baru Van Hoeve, 2001, p. 1008

³⁰ *Fathi al-Daraini*, in Asafri Jaya Bakri, *Concept of Maqashid al-Syari'ah According to Al-Syathibi*, Jakarta: PT. Raja Grafindo Persada, 1996, p. 10

c. **Classification *Maqashid Sharia***

The classical classification of Maqasid Syariah includes 3 (three) levels of necessity: al-adauriyah necessity, al-hajjiyyah (necessity) and al-tahsiniyyah (luxury). Then the scholars divided inevitability into 5 (five): hifz al-din (preservation of religion), hifz annafs (preservation of life), hifz al-mal (preservation of wealth), hifz al-aql (preservation of reason), hifz al-nasl (preservation of offspring). Then there are some scholars adding hifz al-'ird (preservation of honor) to fulfill the five maqashids into six main / primary objectives or inevitability.³¹

Preserving the fifth (or sixth) is a necessity that cannot be absent, that is, if human life is desired to continue and develop. After that, human life faces a very high danger if their minds and hearts are disturbed, thus, Islam strictly prohibits Khamr, drugs and the like. In such a framework, we can clearly understand the prohibition of the Prophet SAW in witnessing humans, animals and plants.³²

Al-Juwaini is the first scholar who gave the concept of Maqashid Syari'ah with the term Maslahah 'Ammah (general benefit). While al-Ghazalî views the Maqasalihi shari'ah as al-mâsalih al-mursalah with three levels, namely: primary / necessities, secondary / needs (hajjiyyah) and tertiary / luxuries (tahsiniyyah). However, the opinion of other scholars argues by al-Thafi and al-Qarafi with different editors but their goals have in common. Therefore, Auda also argued between maqasid syari'ah and maslahah.³³

³¹Jasser Auda, *Maqâsid al-Shariah as Philosophy of Islamic Law a Systems Approach*, (London: International Institute of Islamic Thought, 2007), p. 4-5

³²Jasser Auda, *Maqâsid al-Shariah as Philosophy of Islamic Law a Systems Approach*, (London: International Institute of Islamic Thought, 2007), p. 28

³³Jasser Auda, *Maqâsid al-Shari'ah A Beginner's Guide*, (London: The International Institute of Islamic Thought, 2008), p. 6

Then the maqashid of classical shari'ah is only focused on the individual rather than the family, society, and humans in general. The main subjects of the maqashid shari'ah are individuals, namely: (life, self-respect and individuals). Maqasid classical syari'ah, in this theory uses necessity, not only through basic universal values such as justice, freedom, and so on. Only, maqâshid syari'ah has been deduced from the traditions and thought literatures of several schools of Islamic law, not the text of (the Koran and al Hadith). the concept of maqasid syari'ah with a new perspective.³⁴

First, By paying attention to the law that has been covered by al Maqashid, contemporary scholars divide it into 3 (three) parts, namely as follows:

a. Maqashid syari'ah in general

What needs to be paid attention to is universal Islamic law, namely needs and necessities. Then the scholars added new maqâshid syari'ah as well as universality and convenience.

b. Maqashid shari'ah specifically

What needs to be paid attention to one particular part of Islamic law itself, such as only preventing crime in the part of criminal law and the welfare of children in the part of family law, and preventing usury on the part of muamalah.

c. Maqasid syari'ah partially

What needs to be taken into account is that it includes the parts that are considered to be divine purposes behind certain texts or laws, such as the purpose of revealing truth in determining the number of witnesses in certain cases. The intention of eliminating joy is to allow the sick person not to fast.

Second, that is to breed the deficiencies in the individual orientation of the classical shari'ah maqâshid classification, contemporary scholars have expanded the maqâshid syari'ah to a

³⁴Ahmad ar-Raisuni, *Nazhâriyyat al-Maqâshid* „inda al-Imâm ash-Shâtibi, (Beirut: alMaahad al-Alami li al-Fikr al-Islâmi, 1992), p. 13

wider area such as society, non-human nations in general Ibn 'Asyur, has briefly occupied the maqâshid syari'ah in relation to the nation. (Ummah) at a more fari level in the maqâshid syari'ah which is related to the individual³⁵

The expansion of the range of maqasid syari'ah has provided opportunities for contemporary scholars to respond to challenges globally, and can help turn them into practical plans and reforms. Contemporary scholars have set the maqâshid shari'ah and the systems associated with it, at the center of the public economic debate regarding citizenship, national integration, and rights for Muslim minority communities living in non-Muslim societies.

Third, In the context of revision of the classic maqasid shari'ah by contemporary scholars, they succeeded in proposing a new universal maqasid syari'ah, which was deduced directly from sacred texts, not from the legacy of Islamic jurisprudence. This approach deduces maqasid shari'ah directly from the Koran and al-Hadith), which is to complement the problem of the historicity of the old fiqh doctrines. Apart from that, deducing the main objectives of the Shari'a is to provide an opportunity for the representation of the highest values and principles contained in the holy text, that is, where current practical law must be subject to these values and principles, not subject to the inherited opinion of interpretation.³⁶

Then Auda argued more with the scholars who divided the maqâshid syari'ah into 3 (three) main parts as follows:³⁷

a. Maqâshid syari'ah General (âmmah)

Maqâshid syari'ah is a general objective that exists in all aspects of the Shari'a or most of it, such as the principles of tolerance, convenience, justice, freedom. Therefore, the primary

³⁵Ibn Asyur, Maqâshid ash-Syari'ah al-Islâmiyah wa 'Alaqâtuha bi al-Adillah asy-Syar'îyyah (KSA: Dâr alHijrah li an-Nasyr wa at-Tauzi', 1998), Cet. 1, p. 35

³⁶Al-Ghazali, Al-Mustashfâ min 'Ilm al-Ushûl, (Beirut: Dâr al-Fikr, tth), p. 25.

³⁷Auda, Fiqih Maqâshid asy-Syari'ah, (Jakarta: Pustaka Al-Kautsar, 2007). Thing. 12

maqâshid syari'ah which covers the obligation to protect religion, guard the soul, safeguard property, maintain the lineage, maintain the honor of all of these are included in the general maqasid syari'ah.

b. Maqâshid specific syari'ah (khâssah)

The maqâshid syari'ah in particular is the purpose of the shari'a that is in one part of several about sharia, such as the existence of sanctions / penalties, namely in the jināyah (criminal) section which aims to make a deterrent.

c. Maqasid syari'ah partial (juz'iyah)

It is a law or asrâr (secret) which is meant by the Shari'a directly against a permanent law such as relief (rukhsah), which is not fasting for the poor, namely by eliminating difficulties.

Of the three maqasid syari'ah above, the scholars have made a sequence (hierarchy) starting from primary as first and primary, then secondary and last tertiary. Likewise the hierarchy created by Imam al-Gazâlî and in the following order: guarding religion, guarding the soul, guarding reason, guarding descent and safeguarding the last order of property³⁸

3. Overview of Legal Certainty

1. Definition of Legal Certainty

The law has the task of creating legal certainty because it aims to create order in society. Legal certainty is a feature that cannot be separated from law, especially for written legal numbers. According to Fence M. Wantu, "law without the value of legal certainty will lose its meaning because it can no longer be used as a code of conduct for everyone"³⁹

³⁸Jaser Audah, *Maqâsid al-Shariah as Philoshopy...*, p. 5

³⁹Fence M. Wantu, *Antinomy in Law Enforcement by Judges*, *Mimbar Hukum*, Vol. 19 No.3 October 2007, Yogyakarta: Faculty of Law, Gadjah Mada University, p. 388.

Legal certainty is defined as clarity of norms so that it can be used as a guideline for people who are subject to this regulation⁴⁰. The definition of certainty can be interpreted as that there is clarity and firmness on the application of the law in society. This is so as not to cause a lot of misinterpretation. According to Van Apeldoorn, "legal certainty can also mean things that can be determined by law in concrete things"⁴¹.

Legal certainty is a guarantee that the law is enforced, that those who are entitled according to law can obtain their rights and that decisions can be enforced. Legal certainty is a justisable protection against arbitrary action, which means that someone will be able to get something that is expected in certain circumstances. Grammatically certainty comes from the word for sure which means that it is fixed, must and sure.

In the Big Indonesian dictionary, the definition of certainty is a matter of certain (fixed) conditions, provisions, provisions while the legal definition is a legal instrument of a country that is able to guarantee the rights and obligations of every citizen, so legal certainty is a provision or provision made by a legal instrument of a country that is able to guarantee the rights and obligations of every citizen. Legal certainty refers to a clear, permanent and consistent application of the law where the implementation cannot be influenced by conditions that are subjective in nature.

Quoting the opinion of Lawrence M. Wriedman, a professor at Stanford University, argues that in order to achieve "legal certainty" at least it must be supported by the following elements, namely: legal substance, legal apparatus, and legal

⁴⁰Tata Wijayanta, Principles of Legal Certainty, Justice and Benefit in Relation to the Bankruptcy Decision of the Commercial Court, Faculty of Law, Gadjah Mada University Yogyakarta, Journal of Legal Dynamics Vol. 14 No. May 2, 2014, p. 219

⁴¹ Van Apeldoorn, Introduction to Legal Studies, Jakarta: Pradnya Paramita, Printing Twenty-Four, 1990, pp. 24-25

culture.⁴² Sudikno Mertokusumo stated that legal certainty is one of the conditions that must be fulfilled in law enforcement, which is a variable against arbitrary actions, which means that someone will be able to get something that is expected in certain circumstances.

According to Maria SW Sumardjono, the concept of legal certainty is that "normatively, legal certainty requires the availability of statutory instruments that are operational and support their implementation. Empirically, the existence of these laws and regulations needs to be implemented consistently and consequently by supporting human resources".⁴³ A regulation is made and promulgated with certainty because it regulates clearly and logically. It is clear in the sense that it does not cause doubt (multiple interpretations) and is logical so that it becomes a norm system with other norms that do not clash or create norms conflict. Conflict of norms resulting from uncertainty of rules can take the form of norm presentation, reduction of norms or distortion of norms.

Between justice and legal certainty is a reflection of the quality of law in a country. The higher the law enforcement by applying justice and legal certainty, the better the quality of the law. A country that has good laws is a country that applies a foundation of justice and care in its laws. Justice and legal certainty are useful for the settlement of a case in court. Court officials must apply this basis, besides that law enforcement officials must also apply transparency to the running of the court. If the law enforcement apparatus has implemented an open attitude towards

⁴²Ministry of Education and Culture, Big Indonesian Dictionary, Jakarta: Balai Pustaka, 1997, p. 735

⁴³Maria SW Sumardjono, "Legal Certainty in Land Registration and Its Benefits for Banking and Property Businesses," Paper presented at a seminar on new policies in the field of land, impacts and opportunities for property and banking businesses ", Jakarta, August 6, 1997, p. 1 quoted from Muhammad Insan C. Pratama, Thesis, entitled Legal Certainty in Production Sharing Contract, Faculty of Law, Islamic University of Indonesia, Yogyakarta, 2009, p. 14

the running of the court, then justice and legal certainty can run in a court in Indonesia.

2. Application of Legal Certainty in Indonesia

Legal certainty is very important in law. After legal justice has been achieved, the next thing that must be fulfilled is legal certainty. Without legal certainty, the community never understands whether the action that the community will do is right or wrong and without legal certainty it will cause various problems, namely the emergence of an unrest in the community. With the existence of legal certainty, the community gets protection from arbitrary actions by various law enforcement officials in carrying out their duties in society. Legal certainty is a benchmark in the clarity of their rights and obligations in a law. Legal certainty must be able to put forward proof so that the law can be accounted for.⁴⁴

Examples of implementing legal certainty are enforcing regulations and holding regular outreach on the enforcement of important regulations for the people of Indonesia. So that people know human actions in social life according to the applicable laws and regulations. People get legal certainty about the behavior they do.

The most important thing in justice and legal certainty that is applied in the settlement of a court case. In resolving a court case, it must be done transparently and there are no things that are hidden by law enforcement officers in Indonesia, because if in a court there are things that are hidden, it will cause an irregularity in the running of the law, for example, is an action. corruption or bribery between law enforcement officials and members of the public. If a case is resolved openly and nothing is closed, then the proceedings of a court case trial can proceed in accordance with

⁴⁴Yohanes Suhardin, "The Role of Law in Achieving Community Welfare", Pro Justitia Legal Journal, Vol. 25, No. 3, July 2007, p. 271.

statutory regulations. The public can judge that in the settlement of a case, the principles of justice are applied so that if justice can be achieved, it will create legal certainty that does not harm or benefit either party. In the settlement of a case in a justice court and legal certainty are the most important factors for the welfare of the community. Justice and legal certainty are a reflection of society regarding the success of the law in resolving a legal case.

Upholding of justice and legal certainty is proving that in law still applying pure justice and certainty of every resolution of all problems that will be resolved by law. In upholding justice and legal certainty, law enforcers have the most important role. Because the purity of the course of the legal process in court depends on the functioning of the law enforcement apparatus. In upholding justice and legal certainty, various parties have made efforts to create an accountable legal decision. Legal certainty must be consistent in resolving various problems faced in court, in addition to being consistent legal decisions must be rational in making decisions so that they can be accepted by the wider community. The government has issued various regulations regarding justice and legal certainty in Indonesia. Implementing an integral and systematic policy in preventing a crime in justice and legal certainty. In addition, it is necessary to improve the quality of professional law enforcement officers.⁴⁵

⁴⁵ Dey Ravena and Kristian, 2017, *Criminal Policy*, PT Balebad Dedikasi Prima, Jakarta, p. 211

BAB III

RESEARCH OF RESEARCH

A. Types of Research

Soerjono Soekanto argues that legal research is a scientific activity, which is based on certain methods, systematics and thinking, which aims to study something or certain laws by analyzing them.⁴⁶

This type of research is a type of juridical empirical research, in other words sociological legal research and or what is called field research, which examines the applicable legal provisions and what happens in reality to society.⁴⁷

Empirical juridical research is legal research on the enactment or implementation of normative legal provisions in action at any particular legal event that occurs in society. Empirical juridical research is also called a research conducted on actual conditions or real events that occur in society in which to know and be able to find the facts and data needed.⁴⁸

This research is included in the Empirical Juridical Research because the researcher wants to know how the implementation of article 77 paragraph (3) and article 79 paragraph (1) in Law No. 22 of 2009 concerning Road Traffic and Transportation related to prospective drivers while driving on the highway at the Batu City Traffic Police.

⁴⁶ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 1981), p. 43.

⁴⁷ Suharsimi arikunto, *Procedures for a Practice approach*, (Jakarta, Rineka Cipta, 2012), p. 126

⁴⁸ Bambang Waluyo, *Legal Research in Practice* (Jakarta: Sinar Grafika, 2002), p. 15.

B. Research Approach

Bahder John Nasution argues that the research approach is a problem related to the way a person looks at and approaches the issue in accordance with the discipline of knowledge.⁴⁹

The approach method used in this research is the sociological juridical approach in Soerjono Soekanto's opinion, which is to identify and conceptualize law as a real and functional social institution in a real life system.⁵⁰

This approach is carried out in the community or community environment in order to find facts and the purpose of finding facts (fact-finding), and leading to identification (problem identification) and finally solving the problem (problem-solution).⁵¹

The sociological juridical approach is to emphasize research which has the aim of obtaining empirical legal knowledge by going directly to the place of research. In this study, to find out how the implementation of article 77 paragraph (3) and article 79 paragraph (1) in Law No.22 of 2009 concerning Road Traffic and Transportation related to prospective drivers while driving on the highway at Satlantas Kota Batu.

C. Research sites

Research location is a place or area where some research samples are taken and the research data is collected for the results of the research. The research location chosen by the researcher was the traffic unit in Batu City, East Java. The sampling sites were the Batu City Traffic Police, the Batu City "Natuna" Driving Course Institute and several correspondents who had tested prospective drivers at the Batu City Traffic Lightning Board.

⁴⁹ Bahder John Nasution, *Legal Science Research Methods* (Bandung: Mandar Maju, 2008), p. 130.

⁵⁰ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 1986), p. 51.

⁵¹ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 2007), p. 10.

The reason the researcher chose the place of research was because the researcher found a problem related to obscurity and contradiction between articles in article 77 paragraph (3) and article 79 paragraph (1) of Law Number 22 Year 2009 concerning Road Traffic and Transportation. The existence of the clarity of the articles mentioned above, creates problems related to how the above articles are actually implemented in the field.

D. Types and Sources of Data

The type of data used in this research is divided into 2 (two), namely primary data and secondary data. Sources of data that will be used in this research are information gathering from the source, the data sources used in this research are:⁵²

1. Primary data

Primary data is data obtained directly from the first source related to the issues to be discussed.⁵³ sourced from research in the field by conducting interviews, observations and reports in the form of unofficial documents which are then processed by the researcher. Sources of data obtained from the field directly by interviewing:

1. 2 Batu City Traffic Police Apparatus, including:
 - Mr. Emha Affandi Situmarang, who served as Bripka, Examiner of the Batu City Traffic Traffic Police (first informant)
 - Mr. Asat Baur, who is the Head of the Batu City Traffic Traffic Traffic Police (second informant)
2. 1 Instructor for the Batu City Driving Course "Natuna", namely Mr. Hermanto (third resource person)
3. 3 people have tested a prospective driver, including:

⁵² Soekanto Sarjono, Normative legal research (Jakarta: Rajawali Pers, 2006), p. 11.

⁵³ Amiruddin, Introduction to Legal Research Methods (Jakarta: PT Raja Grafindo Persada, 2006), p. 30.

- Julian Yusuf, a student from UIN Malang who lives in Batu City (fourth resource person)
- Risky Ramadhani, a student from IKIP Budi Utomo Malang, originally domiciled in Batu City (fifth resource person)
- Yulia Novita Sari, a student from Merdeka University Malang, originally domiciled in Batu City (sixth resource person)

2. Secondary Data

Secondary data is data obtained by other parties, not obtained from the research subject. Secondary data is data that is supporting in research. Secondary data is data obtained by studying the Laws and Regulations, law books, and documents related to the issues discussed. The secondary data source used in this study is Law Number 22 Year 2009 concerning Road Traffic and Transportation.

3. Tertiary Data

Other materials that have relevance to the subject matter provide information, directions and explanations for primary and secondary legal materials.⁵⁴ Tertiary legal materials are not legal materials, but can significantly be used as the language of analysis for the application of legal regulations in the field, such as Indonesian, encyclopedias, bulletin, magazines, articles on the internet and other materials which are scientific papers related to problems will be discussed in this research.

⁵⁴Peter Mahmud Marzuki. 2010. Legal Research...., P. 52

E. Method of collecting data

Data collection in this study uses the following techniques:

a. Live Interview

Namely the data collection technique by answering only between the interviewer (interviewer) who asked the question, and the interviewee who gave the answer to the question.⁵⁵

Interviewing is a role situation between individuals face to face, when someone, namely the interviewer, asks questions that are designed to obtain answers that are relevant to the research problem to the respondent. The interview is a question and answer process in research that takes place orally in which two or more people face to face listening directly to information or statements. Interviews are conducted freely openly by using a tool in the form of a list of questions that have been prepared (as an interview guide) in accordance with the problems to be searched for answers without closing the possibility to add other questions that are spontaneous in connection with the answers given by the respondent.⁵⁶

a) Interviews in this study were conducted by:

1) 2 Batu City Traffic Police Apparatus, including:

- Mr. Emha Affandi Situmarang, who served as Bripka, Examiner of the Batu City Traffic Traffic Police (first informant)
- Mr. Asat Baur, who is the Head of the Batu City Traffic Traffic Traffic Police (second informant)

⁵⁵ Soerjono Soekanto, Normative legal research (Jakarta: Rajawaki pers, 2006), p. 11.

⁵⁶ Amiruddin and Zainal Askin, 2004, Introduction to Legal Research Methods, Jakarta: Raja Grafindo Persada, p. 49.

- 2) 1 Instructor of Batu City “Natuna” Driving Course Institute, namely Mr. Hermanto (third resource person)
- 3) 3 people have tested a prospective driver, including:
 - Julian Yusuf, a student from UIN Malang who lives in Batu City (fourth resource person)
 - Risky Ramadhani, a student from IKIP Budi Utomo Malang, originally domiciled in Batu City (fifth resource person)
 - Yulia Novita Sari, a student from Merdeka University Malang, originally domiciled in Batu City (sixth resource person)

b. Observation

Observation is a technique of collecting data by making observations including the activity of focusing attention on the object using all the sensory organs so that observing can be done by doing the five senses.⁵⁷

Observations in this study were carried out to find out several important things related to the obscurity of Article 77 paragraph (3) and Article 79 paragraph (1) of Law Number 22 Year 2009 concerning Road Traffic and Transportation. Due to the obscurity of the articles mentioned above, it creates problems related to how the aforementioned articles are actually implemented in the field.

⁵⁷Sarjono Soekanto, normative legal research, (Jakarta: Rajawali pers, 2006) h. 13

c. Documentation

Documentation is a technique for obtaining data through books and the like that are relevant to research. Besides that, you can also take data in the field which can be in the form of photos and so on.

F. Data Processing Methods

a. Data processing techniques

The data processing method used by the researcher after obtaining all the data for the study is as follows:⁵⁸

1. Data checking (Editing)

This process is the first process in data processing. Data checking or editing is reviewing the records in the data that have been obtained to find out whether the records are good enough to be prepared for the next process. The data examined by researchers here is by collecting data from field studies, namely the results of interviews and from the documentation process related to themes related to prospective drivers while learning to drive on the highway. Apart from the field, researchers also collected data from collected websites, journals and books.

2. Classifying

Clarification or Classifying is classifying the data that has been collected so that it can be easily analyzed according to the required data. This stage is intended so that the data obtained with the problem can be solved and can limit some of the data that should not be included and not used in this study. Researchers will read again and will explore all the data obtained from both interviews and documentation. At this stage, the researcher

⁵⁸ Peter Mahmud Marzuki, Legal Research ([np]: [n.pub.], 2010), p. 55.

conducted an in-depth classification of the problems with the provisions in article 77 paragraph (3) and article 79 paragraph (1) of Law Number 22 Year 2009 concerning Road Traffic and Transportation.

3. Verification (Verifying)

Verification is a step and activity carried out to review the information back that has been obtained from the field so that it can be known for its truth and clarity. Verification which means double checking, so that the data that the researcher gets is checked again whether the truth and clarity in general can be recognized. This verification is done by meeting the data source (informant) and providing the results of the interview with him to respond to whether the data obtained is in accordance with the information by the informant or not. Researchers conducted research directly to the research location, namely the Satlantas Kota Batu.

4. Data compiler

Systematization of data, namely the arrangement of data regularly so that the data can be analyzed according to the correct and precise arrangement.

b. Data analysis

Data analysis is a process of simplifying data into a form that is even easier to read so that it can make it easier for researchers to carry out analysis activities and draw conclusions from research results. Data and information that has been collected from the research results include interviews with the Batu City Traffic Police, Instructors for the "Natuna" Driving Course, with resource persons who have conducted a driving license test at the Batu City Traffic Police in a descriptive analytical manner, namely a method of data analysis by grouping and selecting the data obtained from research according to

quality and truth, then the data is linked to theories and regulations.

c. Making Conclusions

Making conclusions or concluding is a stage to draw conclusions from the process carried out by researchers in this study which will produce an answer to the researcher's questions contained in the problem formulation. Conclusions come from facts or logical relationships and contain answers to the questions posed in the formulation of the problem. Overall answers focus on the scope of the question and the number of answers is adjusted to the number of problem formulas posed. The conclusion is the final process of data processing, so that the researcher provides a short statement that represents the explanation of the researcher's results regarding obscurity in article 77 paragraph (3) and article 79 paragraph (1) of Law Number 22 Year 2009 concerning Road Traffic and Transportation. Due to the vagueness of the article mentioned above,

BAB IV

DATA ANALYSIS AND DISCUSSION

A. Objective Conditions of Research Location

1.1 Overview of the Batu City Traffic Light

The traffic police is an implementing element in charge of carrying out police duties including guarding, regulating, escorting and patrolling, public education and traffic engineering, registration and identification of drivers or motorized vehicles, traffic accident investigation and law enforcement in the traffic sector in order to maintain security, order and smooth traffic⁵⁹(repository.usu.ac.id, 2013).

The National Police of the Republic of Indonesia as a bureaucracy consisting of several work units are required to have a clear organization and work procedure. This work arrangement is needed to determine the organizational structure, position and function as well as duties and responsibilities of members of the work unit so that the work unit is expected can optimally carry out their duties and responsibilities and be able to maximize the results of their performance. The Batu City Police Traffic Police Unit functions to handle events or incidents that are known either from public reports or those encountered by members of the Traffic Police unit who are carrying out tasks in the field. So to be able to improve performance, professionalism and be able to realize excellent service to the community.

⁵⁹ Accessed journals from repository.usu.ac.id, 2013 on November 13, 2020 at 18:44

1.1.1 Traffic Police Vision and Mission

- **Vision of the Traffic Police**

"Traffic police who are capable of being protective, protecting community services who are close and close together with the community as well as professional and proportional law enforcement officers who always uphold the rule of law and human rights maintain security and order in the smooth traffic."

- **Traffic Police Mission**

- Providing protection, protection, and services for road users so that road users are safe while traveling and safely arrive at their destination.
- Providing guidance to the traffic community through reventive measures that can increase awareness and obedience as well as compliance with traffic regulations
- Enforce traffic regulations in a professional and proportionate manner by upholding the rule of law and human rights
- Maintain security, order and smooth traffic by observing the norms and values of the applicable law.
- Increase the force of consolidation into an effort to equalize the mission of the traffic police.

1.1.2 Traffic Traffic

Satlantas is tasked with carrying out traffic Turjawali, traffic education (Dikmaslantas), registration and identification

services for motorized vehicles and drivers, investigation of traffic accidents and law enforcement in the traffic sector. Satlantas in accordance with Article 59 paragraph (3) of the Regulation of the Head of the State Police of the Republic of Indonesia Number 23 of 2010 concerning the Organizational Structure and Work Procedures at the Resort Police and Police Levels The Police carry out functions, namely:⁶⁰

- a. police traffic guidance;
- b. fostering community participation through cross-sectoral cooperation, Dikmaslantas, and assessing traffic problems;
- c. implementation of traffic police operations in the framework of law enforcement and security, safety, order and smooth traffic (Kamseltibcarlantas);
- d. administrative services for registration and identification of motorized vehicles and drivers;
- e. conducting road patrols and prosecuting violations as well as handling traffic accidents in the framework of law enforcement, as well as guaranteeing traffic safety on the road;
- f. security and rescue of road users; and
- g. care and maintenance of equipment and vehicles.

Based on Article 62 of the Regulation of the Head of the National Police of the Republic of Indonesia Number 23 of 2010 concerning Organizational Structure and Work Procedures at the Resort Police and Satlantas Police in carrying out their duties assisted by: Operational Development Affairs (Urbinsnal),

⁶⁰ Article 59 paragraph (3) of the Regulation of the Head of the National Police of the Republic of Indonesia Number 23 of 2010 concerning the Organizational Structure and Work Procedures at the Resort Police and Polres Police

which is in charge of carrying out traffic guidance, conducting cross-sectoral cooperation, assessing traffic problems, implementing traffic police operations in the context of law enforcement and security, maintenance and maintenance of equipment and vehicles;⁶¹

b. Administration and Administration Affairs (Urmintu), which is in charge of carrying out administrative and administrative activities;

c. The Regulatory, Guard, Escort and Patrol Unit (Unitturjawali), which is in charge of carrying out Turjawali activities and prosecuting traffic violations in the framework of law enforcement;

d. Engineering and Public Education Unit (Unitdikyasa), which is in charge of fostering community participation and Dikmaslantans;

e. Registration and Identification Unit (Unitregident), which is in charge of serving the administration of registration and identification of motorized vehicles and drivers; and

f. Accident Unit (Unitlaka), which is in charge of handling traffic accidents in the context of law enforcement.

1.1.3 Job Description for Batu City Traffic Police

A. In plain view

- In controlling the traffic unit, the implementation of daily tasks is controlled by the wakapolresta who is responsible for the implementation and obligations to the Kapolresta of Batu City.

⁶¹ Article 62 of the Regulation of the Head of the National Police of the Republic of Indonesia Number 23 of 2010 concerning Organizational Structure and Work Procedures at the Resort Police and Satlantans Police

- Carrying out all efforts and activities in order to create security, order and smooth traffic (kamtibcar lantas).
- Controlling and supervising the implementation of the activities of each member so that the target is guaranteed successfully and efficiently.
- Increase knowledge and development of members, especially in the traffic sector.
- Control all the implementation of each element.

B. Wakasat Then

- Helping the visible in controlling the direct and accountable to the visible.
- Submit considerations and suggestions to the visible, especially regarding matters related to their duties.
- Formulate and prepare plans and programs for activities at the Batu City Police
- Leading, coordinating and supervising and directing the implementation of operational activities.
- Maintain and supervise the implementation of work procedures and foster discipline, order and awareness within the Batu City Police.
- Representing in plain view if unable to carry out their duties

C. Kaur Bin Ops

- Helping the visible and then formulating and developing procedures and permanent work

procedures for the implementation of traffic functions as well as supervising, directing and evaluating their implementation.

- Prepare plans and activity programs including plans for the implementation of special operations for traffic functions.
- Manage the administration of administrative support.
- Carrying out operational administration including administration of case investigations, both accidents and traffic violations.
- Regulate the management / handling of prisoners and evidence in cases of traffic violations / accidents.
- Carrying out activities for collecting, processing and presenting data / information relating to aspects of development and implementation of traffic functions.

D. Kanit Laka

- Helping the visible and then in controlling the past in the matter of direct examination.
- In carrying out the inspection task is controlled by wakasat then and is responsible to the visible.
- Conduct examinations of suspects and witnesses in connection with traffic accident cases.
- File a laka case which will then be sent to the district court.
- Register the laka case then it will be sent to the district court.

- Send files, suspects and evidence to the school / court.
- Prepare the results of trial decisions.
- Visiting the scene of a traffic accident / conducting an investigation / investigation.
- Collecting data on the number of cases submitted to district governments / courts (which have been resolved and those that have not been completed).
- Submit a request for raharja service units.
- Ask for a post mortem et refertum to the hospital.

E. Chief Dikyasa

- Help the visible and then in controlling the one then in the affairs of the community service.
- In carrying out their duties, they are controlled by wakasat then and are responsible to the visible.
- Conducting education to:
 - 1) The general public
 - 2) Student / student
 - 3) Public transportation entrepreneurs
 - 4) Oplet / bus / taxi drivers
 - 5) Truck drivers and parking attendants
- Coordinating with the Batu City police bimmas.
- Hold coordination with side agencies regarding the implementation of community education

F. Patrol Chief

- Helping the visible, then in controlling the real then in turjagwali affairs and in carrying out their duties to be accountable to the visible.
- Carry out the arrangements, control the guard team immediately.

- Controlling the implementation of the guard / post then both in the headquarters and in the field, especially in vulnerable areas.
- Oversee the implementation of the handover of guard / attendance of members.
- Supervise the use of tickets that have been handed over to team members.
- Implement safeguards for VIP guests and other crowds.
- Supervise the maintenance of motorized vehicles for the patrol service.

G. Head of Reg Ident

- Helping the visible and then in controlling the current one in SIM matters.
- In carrying out the task, it is responsible to the visible.
- Receive and examine applications from community members for obtaining a SIM.
- Conduct examinations for people who ask for a SIM and make various efforts to ensure that the ident facility, which will be disciplined either directly or through the unit's superior, can be formally and materially responsible.
- Providing a SIM for the requirements of the applicant that meets the requirements, both self-disciplined and from the supervisory unit and supervises, directs, controls, evaluates and reports the implementation of activities as well as the results obtained from the implementation of driver and motor vehicle registration / identification activities.

- Carry out administrative and registration activities / expenditure agenda / identification

H. Bamin

- Help the visible then control the traffic unit in administrative matters and are responsible to the ops bin kaur
- In carrying out their duties, they are responsible to the visible then / kaur bin ops.
- Arrange incoming / outgoing letters by making an expedition.
- Make monthly, semester and annual reports then forward it to the Regional Police of Batu City / Kapolda of Batu City
- Make a certificate of losing the KBM letters for the public who reports it.
- Inventory office equipment / official goods.
- Creating data on incoming / outgoing mail and data on direct accident violations, SIM issuance data if the mix is ready.

I. Banum

- Help the real and then in controlling the ticket business.
- In carrying out ticket duties, controlled by Kaur Bin Ops and accountable to the visible.
- Requesting blank ticket, blank KOL 101 and L 102 to Kota Batu Cq. Dir then Polda Kota Batu
- Register all tickets.
- Registering ticket cases that will be sent to the district court.

- Receiving / requesting the results of the ticket court decision to court.
- Send the ticket case to court.
- Sending ticket reports to Kota Batu Cq. Dir then Batu City
- Sending yellow sheets to Polda Kota Batu Cq. Dir then Polda Kota Batu.
- Applying for cancellation / retest of SIM to the Lantas.
- Data collection on coordination ticket violations with side functions / agencies

1.2 Demographics of Batu City Traffic Police

1.2.1 Location, Boundary and Area of Batu City

A. Location of Batu City Astronomically,

Batu City is located at the position of $122^{\circ} 17' - 122^{\circ} 57'$ East Longitude and $7^{\circ} 44' - 8^{\circ} 26'$ South Latitude, with an area of 19,908.72 Ha or 0.42% of the total area of East Java.

B. Territorial Boundary

The stretch of the area is in the form of hills, mountains, steep ravines and plains with the following boundaries:

- North side: Mojokerto Regency and Pasuruan Regency
- East side: Malang Regency
- South side: Blitar Regency and Malang Regency
- West side: Malang Regency

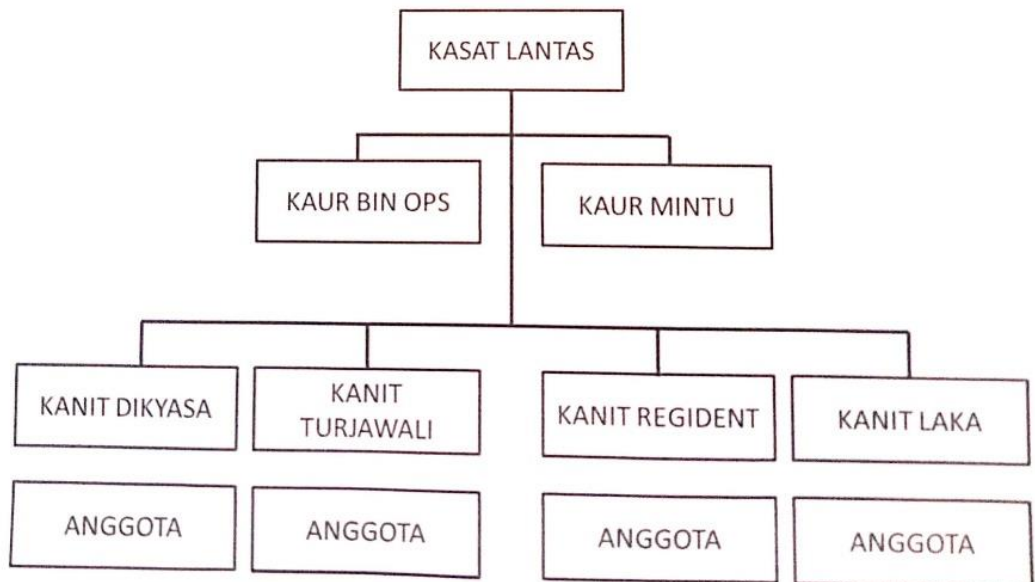
C. Area

Administratively, Batu City is divided into 3 (three) Districts, namely Batu District, Junrejo District and Bumiaji District with details of 20 Villages, 4 Kelurahan, 226 RW and 1,059 RT. From the area of 19,908.72 hectares, it is divided into Batu District with an area of 4,545.81 hectares, Junrejo District with an area of 2,565.02 hectares and Bumiaji District 12,797.89 hectares. The largest area is Bumiaji District with an area of 12,797.89, while the smallest area is Junrejo District. As for the number of Kelurahan and Desa, there are 24, with the number of RW 220 and RT 1017.

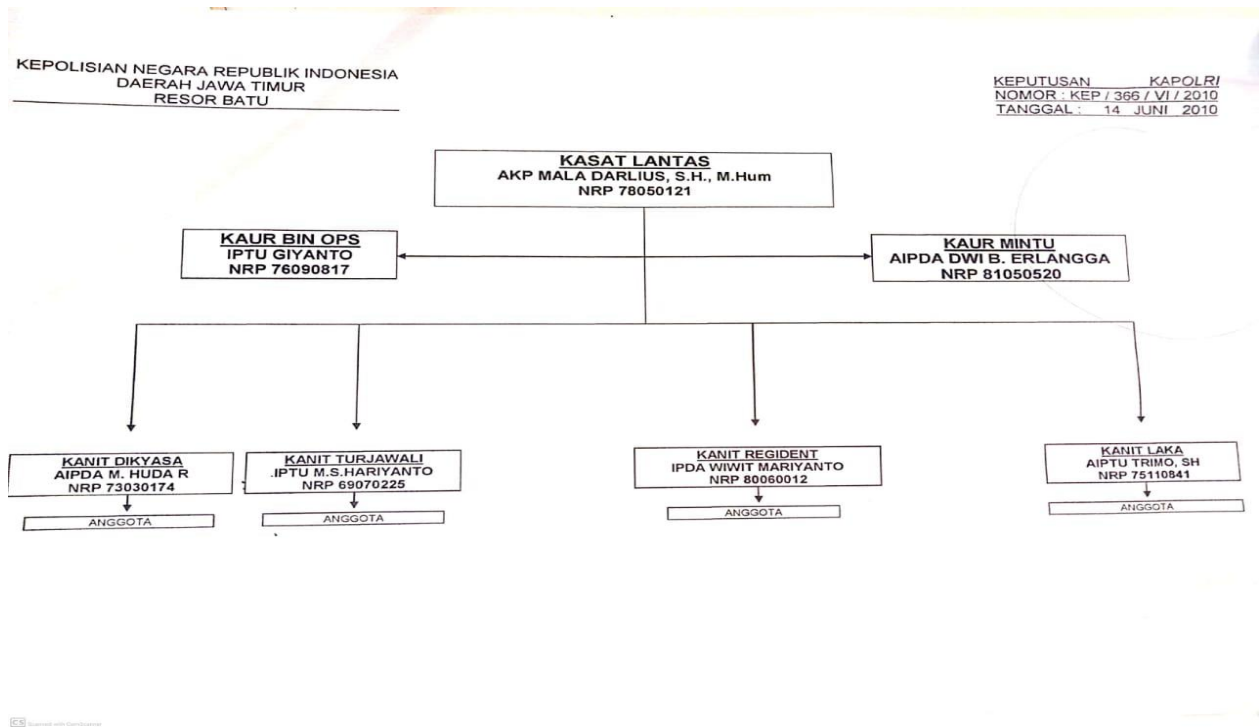
For the complete address Saltalntas Kota Batu is on Jl. Bhayangkara 16 Junrejo Batu City

1.3 Structure of Batu City Traffic Police

4.1 Unit Structure in Batu City Traffic Police



4.2 Organizational Structure at Batu City Traffic Police



2.1 Overview of the Batu City “Natuna” Driving Course Institution

The driving course institute is a participation in society in carrying out the values contained in education which will be delivered in accordance with the objectives of the course institution⁶². Therefore, the community has the right to organize community-based education, by developing and implementing educational curricula and evaluation, as well as its management and funding in accordance with national education standards. This community participation then created a course and training institute sourced from the community for the community. In carrying out their duties as course administrators, non-formal educational

⁶²Ekosiswoyo R, Rachman M. Class Management. Semarang: IKIP Semarang Press. (2000) .h. 45.

institutions or course providers and educators or course instructors are given the freedom to organize as government partners, including "Natuna".

Vision: To become a leading and trusted driving training service company.

Mission: Delivering the correct knowledge of traffic ethics -
Providing good driving training supported by professional experts - Providing the best service for student satisfaction.

B. Analysis and Discussion

1. What efforts does the Batu City Traffic Police make to supervise prospective drivers when they are on the road in accordance with Article 77 paragraph (3) and Pasal 79 paragraph (1)?

Efforts according to the large Indonesian dictionary (KBBI) are defined as activities that direct energy and thoughts to achieve goals. Effort also means effort, reason, effort to achieve a goal, to solve problems to find a way out.⁶³ Effort is also defined as the part played by people or part of the main task that must be carried out.⁶⁴ From this understanding it can be drawn an outline that an effort is something someone does in achieving a certain goal.

Related to the efforts made by the Batu City Traffic Police regarding supervision of prospective drivers, based on the results of interviews⁶⁵ which was conducted with Mr. Emha Affandi Situmarang, namely the first resource person

⁶³Depdikbud, Big Indonesian Dictionary (Jakarta: Balai Pustaka, 2002), p. 1250

⁶⁴Peter Salim and Yeni Salim, Big Indonesian Dictionary, (Jakarta: Modern English Press, 2002), p. 1187

⁶⁵The interview was conducted on August 28, 2020 with the Batu City Traffic Police

Efforts according to the large Indonesian dictionary (KBBI) are defined as activities that direct energy and thoughts to achieve goals. Effort also means effort, reason, effort to achieve a goal, to solve problems to find a way out.⁶⁶ Effort is also defined as the part played by people or part of the main task that must be carried out.⁶⁷ From this understanding, an outline can be drawn that an effort is something someone does in achieving a certain goal.

Related to the efforts made by the Batu City Traffic Police regarding supervision of prospective drivers, based on the results of interviews⁶⁸ what the researchers did with Mr. Emha Affandi Situmarang was the first resource person

1) Mr. Emha Affandi Situmarang as Bripka Examiner for Batu City Traffic Traffic Police, said that,

"The problem of the supervision efforts carried out by the Batu City Traffic Police to prospective drivers when learning to drive on the road is entirely left to the driving candidates or in other words, the traffic police do not supervise directly, because according to the Traffic Police, someone is said to be someone who can drive a vehicle, and meet the standards in Indonesia (17 years old), the police have no obligation to supervise, and legally it is not explained or there is no obligation on the Satlantas side to carry out supervision. Satlantas completely leaves prospective drivers with the problem of how they can be competent in driving a vehicle on the road, whether they are self-taught or through a driver course agency.."

Furthermore, Mr. Emha Affandi Situmarang explained that *"According to my personal supervision here, many people are already able to drive, but for driving ethics it is still below 50%, in this sense, elementary school children can ride motorbikes, they can certainly walk and not fall on the road. But there is no driving ethics as explained in their theory. Mostly out there, lack of driving etiquette "*

⁶⁶Depdikbud, Big Indonesian Dictionary (Jakarta: Balai Pustaka, 2002), p. 1250

⁶⁷Peter Salim and Yeni Salim, Big Indonesian Dictionary, (Jakarta: Modern English Press, 2002), p. 1187

⁶⁸The interview was conducted with Mr. Emha Affandi Situmarang as Chief Examiner for Driving Permits (SIM) at the Batu City Traffic Police on October 9, 2020 at the Batu City Traffic Police.

The researcher also asked about the supervision of the Batu City Traffic Police to the fourth source, namely Julian Yusuf, a student of UIN Malang from Batu City. Brother Julian Yusuf once did a test to get a driving license (SIM), here are the answers from the resource person above,⁶⁹

"From the Satlantas Kota Batu itself, there is no direct supervision of the prospective driver when driving on the road directly, if the problem of supervision is more to the supervision of a driving license (SIM) test in the field, it is not in the part of the supervision of prospective drivers when learning to drive on the road"

The statement of the resource person above, was emphasized again by the fifth source, namely the sister of Risky Ramadhani, a student at IKIP Budi Utomo Malang, who is doing a SIM test at the Satlantas Kota Batu, the source said that Supervision from the Batu City Traffic Unit directly and formally only during the SIM test in the field that has been provided by the Traffic Traffic Unit. So far as far as I know, while learning to drive either on the road or in the housing complex, whether studying alone or accompanied by a competent person, the Traffic Traffic Police have never directly supervised this matter. The problem of learning to drive, prospective drivers are given their own freedom.⁷⁰

Not only the statements from the fourth and fifth sources, related to traffic control supervision, it was also strengthened by the sixth speaker, namely, sister Yulia Novita Sari, a student from Merdeka University Malang who is a driver's license test participant who has graduated from a driving course institute. The resource person above stated,

⁶⁹ The interview was conducted with Julian Yusuf, a student of UIN Malang originally from Batu City on October 30, 2020

⁷⁰ The interview was conducted with the sister of Risky Ramadhani, a student at IKIP Budi Utomo Malang, who is conducting a SIM test at the Batu City Traffic Police on November 3, 2020

“The supervision for prospective drivers while learning to drive is more intense at the driving course institute, because I once learned to drive through a driving course institute. The party watched me study directly in the field. besides learning to drive I studied in the field, I also learned the theory was in the guidebook. After that, to get my driver's license, I was given the option of being able to test the SIM, either to the Traffic Police itself or with the help of the driving course institute. So if you talk about supervision, supervision from the Traffic Police is only when studying, nothing I feel as someone who has ever learned to drive and take tests, for driving ”⁷¹

From the statement of the sources above, it can be concluded that there is no direct supervision of the Traffic Traffic Unit of prospective drivers on the road. And the supervision of the Satlantas on prospective drivers when learning to drive is very necessary in the field, because learning to be a driver while learning to drive can endanger other drivers, so that supervision should be implemented in the field whose purpose is for the safety and safety of other drivers. Moreover, Article 77 paragraph (3) provides options or options for prospective drivers when studying on their own, namely through a driving course institute or by self-study. Supervision must be guided by the following matters:⁷²

- a. Plan (Planning) that has been determined
- b. Orders (Orders) for the execution of work (Performance)
- c. Destination
- d. Pre-determined policies

If examined more deeply, supervision is a process to ensure that the goals of an institution can be achieved. And if it is related to the supervision of Satlantas for prospective drivers while studying on the road, supervision from within the organization, namely the Satlantas party is very necessary, considering that the

⁷¹The interview was conducted with the sister of Yulia Novita Sari, a student from Merdeka University Malang who is a driver's license test participant who has graduated from a driving course institute. on November 13, 2020

⁷²Maringan Masry Simbolon, Basics of Administration and Management (Jakarta: Ghalia Indonesia: 2004), p. 61

supervision here concerns the benefit of many people and the safety of others while driving.

The supervision referred to by the first resource person, Mr. Emha Affandi Situmarang, is included in the formal supervision method. Formal supervision is supervision that is formally carried out by the supervisory unit / apparatus acting on behalf of the organizational institution. In this supervision, usually have determined procedures, relationships and rules⁷³. Formal supervision is carried out by Satlntas when prospective drivers will take the test to get a driving license (SIM), not when the prospective driver learns to drive on the road. Satlantas does not directly supervise prospective drivers while studying on the road because there is no law stipulating that Satlantas must supervise prospective drivers while learning to drive.

Furthermore, regarding the supervision carried out by the Driving Course Institute "Natuna" to prospective drivers while studying on the road, as stated by the fourth resource person, Julian Yusuf, this supervision is included in direct supervision because when learning to drive on the road the instructors are directly in place to accompany the students. prospective drivers while learning to drive provide directions according to applicable regulations.

Related things implementation of Article 77 paragraph (3) of Law Number 22 Year 2009 concerning Road Traffic and Transportation which reads To get a driving license, a prospective driver must have a driving competency that is obtained through education and training or self-study.

Mr. Emha Affandi Situmarang explained that For problems implementation of Article 77 paragraph (3) of Law Number 22 Year 2009 concerning Road Traffic and Transportation which

⁷³Maringan Masry Simbolon, Basics of Administration and Management (Jakarta: Ghalia Indonesia: 2004). p.61

reads "To get a driving license, prospective drivers must have driving competence obtained through education and training or self-study", indeed there are many driving courses, especially for cars, where prospective drivers are taught from the start to be able to run a vehicle, but for ethics. driving is less applied even though the driving agency has explained the theory, examples of driving ethics such as drivers must look at the right or left rearview mirror to turn at least provide signs for the safety of other drivers, many people out there can drive but not all instill good and correct driving ethics . Driving etiquette is not only instilled but must also be emphasized in prospective drivers .⁷⁴

The researcher continued to ask about this "Is it permissible for a prospective driver to study on his own, in accordance with Article 77 Paragraph (3) which provides an optional choice between self-study or using the services of a driving course institute?"

For the above question, Mr. Emha Affandi Situmarang explained as the Chief Examiner for Driving License (SIM).

"The good thing is, in my opinion, studying on your own is better because the Traffic Police does not provide a field for driving learning practice. Or for example using the services of a driving course agency, the role of a driving course agency here is to make it easier for prospective drivers to learn to drive from scratch. Driver course institutions can be a means for prospective drivers to quickly become competent in driving a vehicle. Satlantas only tests prospective drivers to obtain a driving license (SIM) as a condition of being a valid and verified driver. I will give an example for self-study here, especially in cars. For example, Person A teaches himself in the field accompanied by a family who is competent in driving or already has a driving license (SIM),

Furthermore, according to researchers in Law Number 22 of 2009 concerning Road Traffic and Transportation in article 77 paragraph (3) and Article 79 paragraph (1) is contradictory and

⁷⁴ Interview was conducted with Mr. Emha Affandi Situmarang as Chief Examiner for Driving Permits (SIM) on October 9, 2020 at Satlantas Kota Batu

there is a blurring of norms on the phrase “self-study”. In this case, the resource person first, Mr. Emha Affandi Situmarang as Bripka SIM examiner at Satlantas Kota Batu has said that,

"Indeed, at a glance, if we look at the phrase self-study in Article 77 paragraph (3) and the phrase obliged to be accompanied by an instructor in Article 79 paragraph (1), it is contradictory. However, if we carefully read the sequence from article 77 to article 79 it is indeed continuous, this is in my opinion. Everyone reads the article differently. But so far Satlantas is here implementing the article in a sustainable manner "

From the above statement, it was emphasized again by the second resource person, namely,

2) Mr. Asat Baur as Head of the Driving License (SIM) Section at the Batu City Traffic Police. He stated that,

"Article 77 paragraph (3) and Article 79 paragraph (1) are not contradictory. The phrase "self-study" in article 77 paragraph (3) is clarified by the phrase "it is mandatory to use an instructor or examiner", the article above is interconnected and clarifies the next chapter, not contradicting or contradicting it, especially if there is a phrase in the article above that needs a separate interpretation such as a phrase. "learn on my own"⁷⁵

Furthermore, the researcher asked the problem of norm obscurity that the researcher found in the phrase "self-study". in Article 77 paragraph (3). The phrase self-learning according to the researcher is blurred because the meaning is not clear, self-learning what kind and how, Has there ever been a traffic accident by allowing self-study for prospective drivers while learning to drive.

Mr. Emha Affandi Situmarang, as the Inspector of SIM Examiner at Batu City Traffic Police, answered *"The phrase self-study here, the intended driver is someone who is 17 years old, why is that, when someone has met his age standard he will be able to think and use his logic. This is also the reason why there is a limit to having a driving license must be 17 years old because when we drive on the road, we are faced with emotionally*

⁷⁵ The interview was conducted with Mr. Asat Baur as Head of the Driving License Section at the Batu City Traffic Police, conducted on October 9, 2020.

different people. What is the connection here ?. Suppose Person B is in a happy feeling, here he will drive the vehicle happily. Well, but if someone is not well then he may be driving with an emotional state and can make other drivers uncomfortable, related to the problem of whether a would-be driver who is self-taught to injure others on the highway, I think traffic accidents are not because the driver's license is not competent to drive on the highway, but because of the behavior of the driver on the highway. In fact, the process of owning a SIM through two aspects. The first is theory, the second is practice. But when we talk about accidents, it is not about the driving license aspect, but behavior. This means that it is not a position of competence, but rather the behavior of the driver at that time if the factor is due to human error. Things like this can be said that the Satlantas party has the discretion to interpret the phrase "self-study" for its application.

Discretion (freies ermessen) is a government obligation in a welfare state, where the main task of government in a welfare state is to provide public services or seek welfare for citizens. The discretion that exists in Indonesia comes at the same time as the assignment of the government to implement and realize the goals of the Indonesian state. Discretion is exercised by the state administration in the following matters:⁷⁶

1) The absence of statutory regulations governing in-concreto settlement of a problem requires immediate resolution;

2) The laws and regulations on which government officials act to provide complete freedom. Granting discretion to government officials is a logical consequence of the concept of the welfare state, but within the framework of a rule of law, discretion cannot be used without limitation.

On this basis, discretion has the following elements:

1) As a consequence of the concept of the welfare state;

⁷⁶ Benny Irawan, Discretion as a Corruption Crime: Study of Criminology and Law on the Phenomenon of Authorized Officials, (Mimbar, Vol. XXVII, No.2, 2011) pp. 143-144.

- 2) Is a form of attitude from government interference or state administration officials;
- 3) Intended to resolve problems that arise suddenly or have not been included in the provisions of law;
- 4) Taken based on the government's own initiative;
- 5) Aims to provide public services;
- 6) Intended to fill in the lack of statutory regulations;
- 7) Does not conflict with the legal system or basic norms.

Discretion is free authority, so discretion is attached to position. Something that is inherent in the position, then the use of discretion is basically in order to exercise the authority of the office. The actions of an office holder only bind the position if he or she takes an act of office (*ambtshandeling*), that is, an action that is taken in quality as an official. In order to distinguish it from personal action (*prive handeling*), formal instruments such as name of position, job stamp, position paper, job cover, signature of the chairman and secretary are used, and so on.⁷⁷

The discretion from the Batu City Traffic Police regarding the vagueness of the norm of the phrase "self-study" in Law Number 22 of 2009 concerning Road Traffic and Transportation is that the prospective driver in question is someone who is 17 years old, why is that, when someone meets his age standard. will be able to think and use logic and given freedom regarding the way a prospective driver learns to drive, whether through a driving course institute or self-study is the discretion of the Batu City Traffic Police.

⁷⁷ Harun Alrasid, Problems Filling the Position of President, Dissertation, University of Indonesia, Jakarta, 1993, p. 20

The use of discretion at the Batu City Traffic Police regarding the implementation of article 77 paragraph (3) and article 79 paragraph (1) of Law Number 22 Year 2009 concerning Road Traffic and Transportation is due to two reasons:

- Aims to provide public services for the benefit of the people. In this case, the public service in question is to provide a separate decision from the official / party (discretion) related to unclear and conflicting articles to enforce the law in the presence of legal clarity. Public service too
- Intended to fill in the gaps in statutory regulations. Existence

According to researchers, article 77 paragraph (3) and article 79 paragraph (1) were initially contradictory because there was a blur of the phrase "self-study" in article 77 paragraph (3) and the phrase must be accompanied by an instructor / examiner in article 79 paragraph (1), Discretion of Batu City Traffic Police to implement this article in a sustainable manner. In this sense, according to the Batu City Traffic Police that,

"Article 77 paragraph (3) and Article 79 paragraph (1) are not contradictory. The phrase "self-study" in article 77 paragraph (3) is clarified by the phrase "it is mandatory to use an instructor or examiner", the article above is interconnected and clarifies the next chapter, not contradicting or contradicting it, especially if there is a phrase in the article above that needs a separate interpretation such as a phrase. "Teach yourself" and learn to drive phrases using an instructor or tester "

2. Maqashid Sharia regarding the implementation of article 77 paragraph (3) and article 79 paragraph (1) of Law Number 22 Year 2009 concerning Road Traffic and Transportation

Based on the results of research conducted by researchers related to the implementation of Article 77 paragraph (3) and Article 79 Paragraph (1) of Law Number 22 Year 2009 concerning Road Traffic and Transportation, the perspective of Maqashid Sharia. The researcher asked the 3rd resource person, Mr. Hermanto, as the instructor of the driving course institute "Natuna", said that,⁷⁸

"I think there are two answers to this question. First, regarding the implementation of Article 77 paragraph (3) and Article 79 Paragraph (1) of Law Number 22 Year 2009 concerning Road Traffic and Transportation, we ourselves, from the "Natuna" Driving Course Institution, carry out what is said in the article above, in the sense that the article above is sustainable and we apply it only to the extent that we know. What we emphasize is to instill good and correct driving ethics. Second, the implementation of related articles in the field emphasizes the driving ethics of prospective drivers when learning to drive on the road. Because the existence of a driving agency is a means of making it easier for prospective drivers to learn in theory and practice in the field, the following can be seen in theory how good and correct driving ethics in the field. Driving etiquette here is written and written, however, most prospective drivers cannot understand and apply it on the road when driving on the road. In this sense, a young elementary school child can ride a four-wheeled bicycle if given a motorbike key, he can move but not necessarily be able to operate. This means that everyone who drives is actually capable of driving but does not necessarily have good and correct driving ethics. Examples such as giving signs when going to turn on the road correctly without confusing other drivers. Ethics like this should actually be instilled in drivers or prospective drivers when driving on the road so that when driving ethics is truly embedded in each candidate most prospective drivers are not yet able to understand and apply on the road when driving on the road. In this sense, a young elementary school child can ride a four-wheeled bicycle if given a motorbike key, he can move but not necessarily be able to operate. This means that everyone who drives is actually capable of

⁷⁸ The interview was conducted with Mr. Hermanto as an instructor from the "Natuna" Driving Course Institute on November 10, 2020 at the "Natuna" Driving Course in Batu City

driving but does not necessarily have good and correct driving ethics. Examples such as giving signs when going to turn on the road correctly without confusing other drivers. Ethics like this must actually be instilled in drivers or prospective drivers when driving on the road so that when driving ethics is truly embedded in each candidate most prospective drivers are not yet able to understand and apply on the road when driving on the road. In this sense, a young elementary school child can ride a four-wheeled bicycle if given a motorbike key, he can move but not necessarily be able to operate. This means that everyone who drives is actually capable of driving but does not necessarily have good and correct driving ethics. Examples such as giving signs when going to turn on the road correctly without confusing other drivers. Ethics like this must actually be instilled in drivers or prospective drivers when driving on the road so that when driving ethics is truly embedded in each candidate Elementary school children can ride a four-wheeled bicycle if given a motorbike key, they can move but not necessarily be able to operate. This means that everyone who drives is actually capable of driving but does not necessarily have good and correct driving ethics. Examples such as giving signs when going to turn on the road correctly without confusing other drivers. Ethics like this should actually be instilled in drivers or prospective drivers when driving on the road so that when driving ethics is truly embedded in each candidate Elementary school children can ride a four-wheeled bicycle if given a motorbike key, they can move but not necessarily be able to operate. This means that everyone who drives is actually capable of driving but does not necessarily have good and correct driving ethics. Examples such as giving signs when going to turn on the road correctly without confusing other drivers. Ethics like this should actually be instilled in drivers or prospective drivers when driving on the road so that when driving ethics is truly embedded in each candidate Examples such as giving signs when going to turn on the road correctly without confusing other drivers. Ethics like this should actually be instilled in drivers or prospective drivers when driving on the road so that when driving ethics is truly embedded in each candidate Examples such as providing a sign when going to turn on the road correctly without confusing other drivers. Ethics like this should actually be instilled in drivers or prospective drivers when driving on the road so that when driving ethics is truly embedded in each candidate drivers and drivers on the road "

Driving ethics for prospective drivers are explained and written in the guidebooks of the driving course institutes. Are as follows:

I. TRAFFIC POLICIES.

What is meant by traffic courtesy here, is how to drive a vehicle properly and correctly on the road, so that safety, security and smooth traffic will be created. Lessons about traffic courtesy given to students / prospective drivers, including:⁷⁹

A. When Stopping and Departing

1. When Stopping and Departing

When we are driving / driving a motorized vehicle and we want to stop, then the steps that must be taken are: check the traffic behind us by using the rearview mirror, just glancing at whether the traffic behind is safe / possible or not; if so:

- Give a clear signal / sign to the left, approximately 50 meters before the place we want.
- Take the left position while reducing speed, then stop at the place we want

2. Ready to go

To leave or leave a place from stopping, the following things need to be considered:

- Check the traffic situation on the back and on our right, whether the situation is possible or not.
- Give a clear sign / signal to the right.
- Move straight ahead first, slowly (if this is possible) and don't cut straight into the middle of the road.
- Once the situation allows, take the appropriate walking position sufficiently.

⁷⁹ Driving Guide "Natuna", p. 1

B. Walk together

When we walk / drive the vehicle side by side, let us keep a sufficient distance, to prevent a collision / accident.

The distance that must be maintained by vehicles traveling side by side must be adjusted to road conditions, traffic situations, weather, vehicle conditions, lighting conditions, driver conditions, as well as reactions and physical conditions.⁸⁰

At 10 miles per hour when the brakes stop at 20 feet. So preferably, at a speed of 10 miles per hour take a minimum distance of 20 feet or more or less along the body of the car.

C. Street Positioning

We in Indonesia use the left-hand traffic system. Therefore we must walk on the left side. On certain lines, usually within the city is divided into 2 or 3 lines by a white / yellow line. These lines can be intermittent, it may also be continuous, and there are also lines that cross the road. Lines are called road markings.

What is called a road marking is a sign located on the road surface which includes equipment or signs forming longitudinal lines, transverse lines, oblique lines, as well as other symbols that function to direct the flow of traffic and areas of traffic interest.

Meanwhile, what is meant by a longitudinal line is a sign that forms a solid line or a dotted line running in the direction of the traffic movement, as a barrier to the passage.

Transverse lines are signs in the form of solid lines which are not included in the meaning of longitudinal or transverse lines which indicate an area of the road surface which is not a vehicle lane.⁸¹

⁸⁰ Driving Guide "Natuna", p. 2.

⁸¹ Driving Guide "Natuna", p. 2.

The use of longitudinal dashes

A solid yellow longitudinal line to be used as the outermost border of the left side of the traffic direction for a vehicle lane with the intention of providing an indication of the prohibition required by signals conveyed by traffic lights, traffic controllers or by signs.

The white dotted line can be used at intersections as a stopping limit for vehicle drivers who are required by the signal sent by the sign.

At intersections based on observations that are considered very dangerous and accidents often occur, in addition to the double dotted white line, a preliminary sign can also be given a sign of a vehicle lane with the peak angle in the direction of the coming vehicle.

On vehicle lanes, symbolic signs in the form of arrows, letters / writing or other symbols, can be used to repeat the instructions given by traffic signs to convey to usage to road users notices that are not perfectly conveyed by the sign, especially for:

- Declare parking area restrictions with solid yellow lines on the road frame,
- Declare bus stops where parking is prohibited,
- Declare a preselection before approaching an intersection whose symbol is an arrow.

On the part of the road surface which is not a vehicle lane, parallel oblique lines consisting of solid lines can be used, which means that vehicles are not allowed to enter that part of the road surface.⁸²

To indicate a pedestrian crossing place, expressed by lines parallel to traffic signs.

⁸² Driving Guide Book "Natuna", p. 3

D. Preceding and Cutting

To overtake other vehicles in front of us, we must be sure that the situation in front of us is completely safe, and that our view is not obstructed by any circumstances, such as curves, vehicles that are stopped, bridges, and so on.

When we are sure that the traffic situation is possible and our view is free without obstruction, then we take the position to the right and start the overtaking movement by increasing speed, so that it exceeds the speed of the vehicle we are passing. This movement can be preceded / accompanied by a sound signal from a horn or a light to ask for a way.

If we can pass the vehicle that we mean, do not let us directly enter the road / road position we are sharp / cut. This is very dangerous both for the vehicle that is being cut, as well as for the one who cuts.

For vehicles that will be passed, they are obliged to provide a way / opportunity, and must not accelerate their running. Even if the situation allows, if not then immediately give a clear signal.⁸³

E. Turn and Turn

1. Turning the vehicle must be kept in mind the road conditions
 - a. Turning on a wide road or on a round road needs to remember the steps as follows:
 - 1) Check the traffic situation behind us and those beside us, is it safe or not
 - 2) If the situation is safe / possible, then give clear signals. Use the existing sign from a distance of 50 meters.

⁸³ Driving Guide Book "Natuna", p. 3

- 3) Take a position towards the direction of rotation, then rotate according to what we want.
- 4) Recheck the flow of traffic coming from the opposite direction.
- 5) If the situation allows, continue the circular motion to the actual position or what we want.⁸⁴

b. Turn on the narrow road

Try to rotate with a minimum of rotation, how to:

- 1) Once the situation allows, take the position as far as possible.
- 2) Give a clear sign / signal (sign) to the right.
- 3) When the traffic situation allows, while moving slowly using small teeth (small teeth).
- 4) If the rotating position has not been reached, then before reaching the edge, the steering wheel should be pushed to the left as much as possible. Then stop and don't let the front wheels touch the curb.
- 5) Move backwards after making sure the traffic situation behind is safe / allow, then turn the steering wheel to the left.
- 6) Before the rear wheels reach the curb, the steering must return to the right and stop before the rear wheels touch the curb.
- 7) Move forward slowly while turning the steering wheel to the right and walking to take a position that is appropriate for sufficiency.

⁸⁴ Driving Guide "Natuna", p. 4.

c. Turn on the intersection⁸⁵

How:

- 1) The vehicle stops passing the intersection that we will use to turn around.
- 2) Give a clear cue to the left then we back slowly, after we are sure that the vehicle behind is safe traffic, then enter the intersection that we mean.
- 3) Avoid going back to busy roads or downhill roads.
- 4) After retreating and the position has allowed, while the steering wheel is returned to the right, then if the traffic has allowed, progress slowly and then take the appropriate position.

2. Turn

How:

- a. Check in advance the traffic situation behind and in the direction in which we are turning.
- b. Give a clear signal long before we turn, approximately 50 meters.
- c. Get into the position towards the turn.
- d. When it comes to a turnoff, turn the vehicle.
- e. If the situation permits, then continue the turning motion until the position is truly appropriate.
- f. Take a proper position on the right track.

⁸⁵ Driving Guide "Natuna", p. 4.

F. One and Two Way Lines⁸⁶

1. One Way Way

Walking in one direction (one way traffic) is safer and should be more orderly because you will not cross paths. This road is usually divided into 2 or 3 lanes by a white dotted line. These columns are for:

- a. The slow moving vehicle on the left is below 40 km / h.
- b. Vehicles that go fast are provided a middle lane.
- c. Vehicles that want to overtake other vehicles are provided with the rightmost lane.

2. Two-Way Way

On this kind of path we have to be more careful. Besides facing road users in the same direction as us, we must also take into account the vehicles coming from the opposite direction. Generally this two-way road (two way traffic) is divided into two by the left lane and the right lane. The lines can be broken or intermittent.

G. Use of Traffic Lights & Traffic Signs

There are 2 kinds of traffic lights, namely:

1. A traffic light that emits 3 colors: red, yellow and green which turn on alternately on a regular basis. Red stands for stop, yellow stands for preparation, and green for the road. On roads that are installed traffic lights are given a thick white line across the road the vehicle must stop when the traffic light emits a red light.

⁸⁶ Driving Guide Book "Natuna", p. 5.

2. The flashing traffic light is yellow. In this place every driver of the vehicle is asked to be alert and careful with how to reduce speed, because the traffic situation in front of us requires our vigilance; it could be a lot of people crossing, it could be a flow that is sometimes busy, or it could be a crossing in front of it.⁸⁷

Traffic signs

1. In addition to traffic lights there are also traffic signs

The meaning of signs is one of the road equipment in a certain form which contains symbols, letters, numbers, sentences and or a combination thereof; which is used to provide warnings, prohibitions, orders, and directions for road users.

- Warning signs are signs that provide instructions to road users regarding the dangers to be faced and inform the nature of these hazards.
- Prohibited signs and command signs are signs that provide instructions that must be obeyed by road users regarding obligations, priorities, limitations, or prohibitions. Prohibited signs are used to state the limits of things that are not allowed by road users.
- Guidance signs are signs that provide directions, places and information, which include preliminary signs, direction signs (directions), affirmation signs, area boundary signs, and other signs that provide useful information and facilities for road users.
- Additional boards are boards that provide further explanation of a sign that contains provisions for the time, distance and type of vehicle as well as other

⁸⁷ Driving Guide “Natuna”, p. 6.

provisions installed to complement road traffic signs.⁸⁸

In the Maqhasid Sharia review of the implementation of article 77 paragraph (3) and article 79 paragraph (1) regarding the inculcation of driving ethics to prospective drivers while learning to drive, that if viewed from the point of view of the maqhasid sharia objectives are the sharia contained in each of the rules. There are several divisions of the maqhasid of sharia:

1). Hifdz Ad-Din (Maintaining Religion), 2). Hifdz An-Nafs (Caring for the Soul), 3). Hifdz Al 'Aql (Maintaining Intellect), 4). Hifdz An-Nasb (Maintaining Offspring) 5). Hifdz Al-Maal (Maintaining Treasure).

It is often explained that in fact Islamic law is a joy of human life in the world in the hereafter, namely by taking the path for benefit and preventing mafsadah of adversity that is useless for the surrounding environment. In other words, the purpose of Islamic law is the benefit of human life, both spiritual and physical, both individual and social, which must be fulfilled. Associated with the problem formulation above, the resource person above mentioned that driving ethics such as procedures for how to stop and leave, how to go hand in hand, how to position the right and correct road, how to overtake and cut, turn and turn, how do lanes one and two directions, and use of traffic lights & traffic signs. It is very important for prospective drivers to even be instilled in prospective drivers when learning to drive, because the more the driving ethics described above are well embedded in each prospective driver, the more competent in driving a vehicle and from here it can create safety and driving comfort in Highway. So, the role of Maqhasid Syariah itself is very important, because in teaching driving ethics to prospective drivers when learning to

⁸⁸ Driving Guide "Natuna", p. 6.

drive is to maintain common safety in accordance with Sharia objectives such as protecting the soul, safeguarding property, protecting religion and reason. increasingly competent in driving a vehicle and from here it can create safety and driving comfort on the highway. So, the role of Maqhasid Syariah itself is very important, because in teaching driving ethics to prospective drivers when learning to drive is to maintain common safety in accordance with Sharia objectives such as protecting the soul, safeguarding property, protecting religion and reason. increasingly competent in driving a vehicle and from here it can create safety and driving comfort on the highway. So, the role of Maqhasid Syariah itself is very important, because in teaching driving ethics to prospective drivers when learning to drive is to maintain common safety in accordance with Sharia objectives such as protecting the soul, safeguarding property, protecting religion and reason.

The perspective of Maqhasid Syariah with the objectives of Islamic law, namely by protecting the soul or preserving the human soul in this study preserving the soul in terms of prospective drivers and other traffic drivers. Then contemporary scholars argue that the preservation of the soul is to protect the soul is an entry into the maqhasid of general sharia. Then sharia also came to guarantee the safety of the lives of the members of the human body, Islam also obliges each individual to take care of each one as it is in QS Al-Maidah: 32 which reads as follows:

من اجل ذلك كتبنا على بني اسرائيل انه من قتل نفسا بغير نفس او فساد في الارض فكانما قتل الناس جميعا ومن احياها فكانما احيا الناس جميعا ولقد جاءتهم رسلنا بالبينت ثم ان كثيرا منهم بعد ذلك في الارض لمسرفون

Meaning:

"Therefore We set (a law) for the Children of Israel, that whoever kills someone, not because that person killed other people, or not because of doing damage on earth, it is as if he has killed all

humans. Whoever maintains the life of a human being, it is as if he has taken care of the lives of all humans. Indeed, Our Apostle has come to them with (with) clear information. But then many of them after that transgressed on earth., " (Surah Al-Maidah: Verse 32)⁸⁹

Then in the hadith of the Prophet Muhammad SAW which explains about preserving the soul or also maintaining the safety of the soul, it is contained in the following:

مَنْ تَرَدَّى مِنْ جَبَلٍ فَقَتَلَ نَفْسَهُ فَهُوَ فِي نَارٍ جَهَنَّمَ يَتَرَدَّى خَالِدًا مَا

Meaning: "Whoever drops himself from the mountain and then he kills himself (dies), then he will be in Hell in a state of throwing himself forever". (Reported by Imam Bukhari)⁹⁰

In the explanation of the Hadith above it is clear that Rasullah SAW forbids us to prohibit humans from committing suicide in any form and by any means. Because the human soul is very expensive. It must be cared for and cared for. It is a mandate from Allah SWT and Rasullah SAW.

Islamic law places great importance on preserving the soul, so among the laws it determines it as an important benefit and rejects mafsadat, because if a life is wasted, the mukallaf will disappear, and in turn it will lead to the loss of religion. What is meant by soul here is a nurtured soul.⁹¹

The scholars agree that the purpose of the shari'ah was revealed by Allah to preserve the human soul. They give an example of the shari'a rules revealed by Allah in this regard, namely: prohibition of qishas punishment, obliging qishas punishment with appropriate punishment, prohibiting suicide, not killing children for fear of being poor and many others. All of that

⁸⁹ *Al-Qur'an Al-Karim and its Translation with transliteration*, Ministry of Religion of the Republic of Indonesia.

⁹⁰ Ridwan Aam, "The Use of Motorbikes as Public Transport Facilities in Malang City (Perspective of Law Number 22 Year 2009 concerning Road Traffic and Transportation and Maqâshid Syari 'Ah), Malang: Thesis, 2012), p. 94.

⁹¹ Al-Yubi, *Maqashid al-Syriah*...., P., 211

is in order to nurture the soul and ensure the survival of human life and it is related to *maslahah dharuriyat*⁹².

Mental safety as the goal of *Maqashid Syariah* in this study is the mental safety of prospective drivers while learning to drive. At the time of learning to drive, prospective drivers are guided directly by the instructor either using a driving course or self-study (guided by a person who is competent in driving) based on the discretion of the Batu City Traffic Police. Emphasizing driving ethics to prospective drivers when learning to drive is one way to save the souls of prospective drivers and other road users. This is in accordance with one of the objectives of the *Maqashid Sharia*, namely the maintenance of the soul.

Related regarding implementation of Article 77 paragraph (3) and Article 79 Paragraph (1) regarding the issue of extracting a law for the benefit of the people and upholding justice. Where there is a vague phrase and a contradiction of norms in Article 77 paragraph (3) and Article 79 Paragraph (1) which in the end according to the data in the field the article above is carried out according to the procedure from the discretion of the Batu City Traffic Police and existing regulations, the same as the party from the City Traffic Traffic Unit. The stone that emphasizes driving ethics to prospective drivers is in accordance with the objectives of *Maqashid Sharia* and is included in *The primary maqâshid syari'ah* which covers the obligation to protect the soul, safeguard property, safeguard the lineage, safeguard the honor of all of these are included in the general *maqasid syari'ah*.

Mr. Hermanto as the instructor of the driving course institute also said that, *“Traffic and driving courses have a reciprocal relationship where the driving agency is the best means for prospective drivers to learn good driving ethics. So that during the driving test to get a driver's license (SIM) or a prospective driver on the road, it is increasingly competent*

⁹² Yusuf al Qardawi ., *Madkhal Li Dirasat al-Shariat al Islamiyah*, (Cairo: Maktabah Wahbah, 2001), p. 73

because of the existence of a driving course institute. From Satlantas itself, it does not have written rules regarding driving ethics, so a driving course institution that instills driving ethics in theory and practice. If a prospective driver is competent in driving, the better will be to create safety and comfort in driving in traffic. If there is more safety and order in traffic, there will also be safety for others. "

Furthermore, how to apply driving ethics both in theory and practice to prospective drivers while studying ?, Mr. Hermanto explained that,

"The material regarding driving courtesy or ethics is not delivered at one time, but gradually and is more consistent with the needs of prospective drivers while studying on the road. So depending on the situation and slowly instilled in prospective drivers while studying "

The next question asked by researchers is about what if a potential driver endangers another driver or causes a traffic accident? In accordance with article 79 paragraph (1) which states that when learning to drive, a driver instructor must be accompanied by a driver, and Mr. Hermanto answered,

"If an accident occurs while learning to drive on the road, it will be the responsibility of the company, but so far this has not happened in" Natuna "itself. It is the instructor's job to ensure the safety of prospective drivers while studying on the road and indeed must be accompanied. Being a driver, safety and security issues must be numbered, because it relates to the safety of other drivers on the road "

So the perspective of Maqashid Syariah regarding the statement from the above sources said that in order to avoid accidents, prospective drivers when learning to drive must be accompanied by an instructor because they involve security and safety issues in many people. Driving course institutions directly supervise and accompany prospective drivers when learning to drive optimally in accordance with one of the objectives of Maqashid Sharia, namely to maintain life or safety together and there is accountability from the driving course institute in the event

of a traffic accident caused by a prospective driver. while learning to drive. In this case, it is in accordance with the studies of the maqhasid sharia theory, namely preserving property according to human needs. As stated in the Surah (Qs An-nisa 20) states:

يا ايها الذين امنوا لا تأكلوا اموالكم بينكم با لبا طل الا ان تكون تجارة عن ترا
ض منكم ولا تقتلوا انفسكم ان الله كان بكم رحيمًا

Meaning:

"O you who believe! Do not eat each other's wealth in an evil way (not right), except in trade which is consensual between you. And don't kill yourself. Truly, Allah is Most Merciful to you. "⁹³(Surah An-Nisa '4: Verse 29)

⁹³ Al-Qur'an Al-Karim and its translation with transliteration, Ministry of Religion of the Republic of Indonesia.

CHAPTER V

CLOSING

A. Conclusion

1. Whereas the supervision efforts carried out by the Batu City Traffic Police to prospective drivers while learning to drive on the road are entirely left to the driving candidates or in other words the traffic police do not directly supervise, because the police have no obligation to supervise, and legally it is not explained. or there is no obligation on the part of Satlantas itself.
2. It can be concluded that the Batu City Traffic Police emphasizes driving ethics to prospective drivers in accordance with the objectives of Maqashid Sharia and is included in The primary maqâshid syari'ah which covers the obligation to protect the soul, safeguard property, safeguard the lineage, safeguard the honor of all of these are included in the general maqasid syari'ah.

B. Suggestions

The conclusion that has been described above, there are several suggestions that can be taken, namely as follows:

1. The Satlantas should supervise prospective drivers when learning to drive on the roads whose purpose is for the safety and security of other drivers. Moreover, Article 77 paragraph (3) provides options or options for prospective drivers when studying on their own, namely through a driving course institute or by self-study.
2. The traffic control system and the Driving Course Institution should instill more driving ethics, either through practice or theory, because the more drivers understand and instill driving ethics, the more competent they become in driving so as to create safety and security on the road.

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ATTACHMENTS

Attachment 1

List of questions for interviewers:

1. What efforts does the Batu City Traffic Police make to supervise prospective drivers when they are on the road in accordance with Article 77 paragraph (3) and Pasal 79 paragraph (1)?
2. How is the implementation of article 77 paragraph (3) of Law Number 22 Year 2009 concerning Road Traffic and Transportation, which states that In order to obtain a driving license, prospective drivers must have driving competence obtained through education and training or self-study?
3. "Is it permissible for a prospective driver to study on his own, in accordance with Article 77 Paragraph (3) which provides an optional choice between studying alone or using the services of a driving course institute?"
4. According to you, how is the application of articles that are contradictory to article 77 paragraph (3) and article 79 paragraph (1) of Law Number 22 Year 2009 concerning Road Traffic and Transportation and the obscurity of norms on the phrase "self-study" and the phrase "learn to drive" ?
5. The problem of obscuring norms that researchers found in the phrase "self-study" in article 77 paragraph (3). The phrase self-learning according to the researcher is blurred because the meaning is not clear, self-learning what kind and how, Has there ever been a traffic accident by allowing him to teach himself to prospective drivers while learning to drive?
6. How is the implementation of article 77 paragraph (3) and article 79 paragraph (1) of Law Number 22 Year 2009 concerning Road Traffic and Transportation?
7. How to apply driving ethics both in theory and practice to prospective drivers while studying ?,

8. What if a potential driver endangers another driver or causes a traffic accident? In accordance with Article 79 paragraph (1) which states that when learning to drive must be accompanied by a driver instructor?

Attachment 2



Interview with Mr. Emha Affandi Situmarang as Bripka Examiner for Driving Permits in Batu City regarding Traffic Supervision for prospective drivers on 9th October 2020



Interview with Mr. Asat Baur as the chief examiner for Driver's License for prospective drivers due to the confusion of legal norms and contradictions of norms in article 77 paragraph (3) and article 79 paragraph (1) of Law Number 22 of 2009 concerning road traffic and transportation on 9th October 2020



Interview with Mr. Hermanto as an instructor at the Natuna Driving Course Institute regarding the implementation of article 77 paragraph (3) and article 79 paragraph (1) of Law Number 22 of 2009 concerning Road Traffic and Transportation in 10th November 2020

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