

Article

Driver's Liability for Negligence Resulting in Damage to Toll Facilities from the Maqasid Syariah Perspective (Case Study of the Medan-Tebing Tinggi-Kisaran Trans Sumatra Toll Road)

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Abstract: Along with the large volume of vehicles on toll roads, it has an impact on traffic accidents that are very detrimental to toll road users, both in the form of material losses and loss of life. On the other hand, toll road managers also experience losses in the form of damage to toll road facilities. This study aims to determine the regulations related to damage to toll facilities, as well as to determine the form of driver responsibility for damage to toll facilities. This problem is analyzed from the perspective of maqasid sharia on driver responsibility for negligence resulting in damage to toll facilities. The type of research is empirical legal research with a case approach (living case approach). The results of this study indicate that PP Number 15 of 2005 Concerning Toll Roads Article 86 paragraph 3 (a) (b) (c) and (d), is a regulation that regulates damage to toll facilities due to driver negligence. In the case of the Trans Sumatra Toll Road, damage to toll facilities caused by driver negligence is the responsibility of the driver, in accordance with the toll assets that were damaged. In the maqasid sharia perspective, driver responsibility is the application of the principle of Hif al-Mal (protecting property), therefore it is obligatory to maintain toll facilities.

Keywords: Accountability, Maqasid Syariah, Toll Facilities.

1. Introduction

Infrastructure plays an important role for a country. Without supporting infrastructure, a country cannot develop optimally due to accessibility problems experienced by the community (Palilu, 2022), (Al-Dillah, 2020). Infrastructure that can be built by the state, namely Airports, Ports, Terminals, and Highways. This infrastructure is built in order to develop transportation to ensure community mobility in reaching a destination/area (Sukinto & SH, 2022), (Mairinda, 2021). Sea transportation is the lifeblood of the national economy, but land transportation is the main key to people's mobility every day. Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia explains that the State has the responsibility to provide health facilities and provide adequate public facilities. The real order contained in Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is the basis for the formation of Law Number 13 of 1980 concerning Roads, as amended by Law Number 38 of 2004 and Law Number 2 of 2022 concerning Roads. Article 1 paragraph (1) of Law Number 38 of 2004 concerning Roads states that roads are a means for public vehicles with the aim of connecting an area, both land on the upper surface, land on the lower surface, and water on the upper surface. Roads themselves can be categorized into 2 parts, namely Public Roads for shared facilities such as Highways and Special Roads which are intended for the Road Network System with the obligation to pay if they are used such as Toll Roads (PUTRA, nd).

Government Regulation Number 15 of 2005 concerning Toll Roads is a basic regulation in the design and construction of infrastructure, especially toll roads, which is in-

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tended to provide efficient distribution services to support economic growth and public mobility (Indonesia, 2005). Minimum Service Standards (SPM) for Toll Roads as stated in Article 8 of Government Regulation Number 15 of 2005 concerning Toll Roads states that toll roads have standards in serving as a minimum as possible must include road conditions, speed that must be taken, ease of access, vehicle movement speed, and minimizing accidents for both users and officers. This standardization will be monitored continuously by looking at the whole field observation determined by the toll road management business entity. This standardization is carried out as a mitigation measure for all potential accidents (Bethoven, 2023),(Ilham, 2021).

Accidents are unwanted events and can cause losses for consumers/toll road users as well as losses for Toll Road Business Entities/toll road managers. The clear losses experienced by consumers/toll road users when an accident occurs are loss of property and even life and likewise Toll Road Business Entities/toll road managers will experience losses in the form of traffic obstruction, evacuation operational costs and asset damage. This asset damage can cause the next accident to be even worse if it is left unchecked and not repaired immediately (Setiawan, 2021), (Ningrum, 2014). Damage to toll road assets caused by accidents is often a debate about who should be responsible for the damage to the assets. This is where research is needed to examine the damage to toll road assets caused by accidents. Many toll road users find obstacles and do not yet know how the consumer responsibility system works when an accident occurs on the toll road and causes damage to toll road assets (Fauzi & Koto, 2022),(Maharani & Dzikra, 2021).

Basically (das sollen) toll road users can be categorized as consumers. This is clearly stated in Law Number 8 of 1999, namely Article 1 paragraph 2, namely "Consumers are every person who uses goods and/or services available in society, whether for the benefit of themselves, their families, other people, or other living creatures and not for trading" (Kurnianingsih, 2023).

Furthermore, the study also reviewed the results of previous studies. Reviewing the results of previous studies aims to obtain comparative and reference materials. In addition, this review also aims to avoid the assumption of similarity with existing research. So in the literature review, the researcher includes the results of previous studies based on two titles. In a study conducted by Ariel Abigail Parulian Pasaribu entitled "Legal Responsibility of Toll Road Managers for Losses to Toll Consumers Who Are Victims of Traffic Accidents (Study at PT. Jasa Marga (PERSERO) Tbk in the Management of the Medan-Belawan-Tanjung Morawa Toll Road Section)," in his study explains the form of accountability carried out by PT. Jasa Marga on the Medan-Belawan-Tanjung Merawa toll road section (Pasaribu, 2020). The similarity of this study with the author's research is that both discuss accountability on toll roads. And the difference between this research and the author's research is that this research discusses the accountability of toll managers to consumers, whereas the author's research discusses the accountability of consumers (drivers) to toll managers which is reviewed through Maqasid Syariah (BAKHTIAR PRADANA ERIANTO, 2023).

Then, in research conducted by Shela Indah Kurnianingsih entitled "Criminal Liability for Drivers Who Use Cell Phones While Driving on Highways Which Result in Death," her research explains a deeper understanding of the responsibility of drivers when driving on highways in the form of criminal penalties (Lisa, 2022),(ANGOLARIA, 2022). The similarity between this research and the author's research is that they both discuss the responsibility of drivers when driving. And the difference between this research and the author's research is that the author's research covers more broadly the responsibility of drivers for all negligence that occurs on toll roads (Prabowo, 2020),(Al-Farisi, 2020).

Based on previous research similar to this research, it can be said that this research is different from previous research. Based on the description above, the focus of this research is: (1) To find out the regulations related to damage to toll facilities, (2) To find out

the form of driver responsibility for damage to toll facilities, and (3) To find out how the perspective of maqasid sharia is on driver responsibility for negligence that results in damage to toll facilities.

2. Materials and Methods

This research is an empirical legal research, namely a type of legal research conducted by examining the actual conditions that occur in society, namely looking for facts related to the problems in the research (Benuf & Azhar, 2020). This research is a case approach (living case approach) where the approach is used to examine legal facts in society regarding driver liability for negligence resulting in damage to toll facilities, carried out by reviewing all laws and regulations related to the legal issues being handled that occur in the field, and a conceptual approach to find out how the concept is actually applied to driver liability to the toll road and maqasid sharia for damage to toll facilities. This research is descriptive analytical. Field data was collected through observation and interviews, then the data obtained was processed using qualitative methods, described and analyzed based on deductive thinking logic so that it was clearly revealed.

3. Results and Discussion

3.1 Regulations on Driver Negligence in Damage to Toll Facilities

Toll roads are public roads that are part of the road network system and as national roads whose users are required to pay tolls (Article 1 of PP No. 15 of 2005). The implementation of toll roads itself is intended to realize equitable development and its results as well as balance in regional development by paying attention to justice, which can be achieved by developing a road network whose funds come from road users. Meanwhile, the purpose of toll roads is to increase the efficiency of distribution services in order to support increased economic growth, especially in areas with high levels of development (Article 2 of PP No. 15 of 2005).

Any form of action or action that has an impact on the surrounding environment must be regulated in regulatory provisions in order to create a sense of comfort, safety and order in society in order to avoid various forms of losses that can occur at any time, such as material and immaterial. Explained in Law Number 22 of 2009 concerning Traffic and Road Transportation, in Article 234 paragraph (2) "Every driver, motorized vehicle owner, and/or public transportation company is responsible for damage to roads and/or road equipment due to driver negligence or error," this explains that everyone is prohibited from carrying out actions that interfere with the function of road equipment (Masniari, et al., 2021).

Regulations regarding damage to toll facilities have been explained in the Government Regulation of the Republic of Indonesia Number 15 of 2005 concerning Toll Roads. In Article 86 of the Government Regulation of the Republic of Indonesia Number 15 of 2005 concerning Toll Roads, the rights and obligations of toll road users have been explained.

In Article 86 paragraph (1) "Government Regulation of the Republic of Indonesia Number 15 of 2005 concerning Toll Roads." The author sees in Government Regulation of the Republic of Indonesia Number 15 of 2005 concerning Toll Roads Article 86 paragraph 1, toll road users have rights and obligations, one of which is the obligation to pay tolls according to the established rates. It can be said that toll roads will not be free because for their construction the government relies on debt obtained either through the

sale of government bonds and so on. In addition, Indonesia also implements the Public Private Partnership (PPP) Scheme which has been operating since 2012 which allows corporations to invest in toll roads. To attract investors, of course there must be something in return that they get. Toll road users also get the benefit of faster travel time. The existence of toll roads has the benefit of smoother traffic because the distance and time are shorter. However, toll road users must pay a fee to be able to enjoy this facility.

In Article 86 paragraph (2) "Toll road users are required to pay a fine of twice the toll rate for the longest distance on a toll road section with a closed system in the event that: a) the toll road user cannot show proof of entry to the toll road when paying the toll; b) shows proof of entry that is damaged when paying the toll; c) cannot show proof of correct entry or entry that matches the direction of travel when paying the toll.' The author sees in the Government Regulation of the Republic of Indonesia Number 15 of 2005 Concerning Toll Roads Article 86 paragraph 2 (a) (b) and (c), toll road users have rights and obligations, namely Toll road users are required to pay a fine of twice the longest distance rate on a toll road section with a closed system in the event that toll road users cannot show proof of entry to the toll road when paying the toll at the exit gate, show proof of damaged entry when paying the toll at the toll exit gate, and cannot show proof of correct entry or entry that matches the direction of travel when paying the toll at the toll exit gate. The toll road management considers the loss of the ticket to be negligence of the toll road user.

In Article 86 paragraph (3) "Toll road users are required to compensate for losses to Business Entities caused by their mistakes in the amount of the damage caused by damage to: a) parts of the toll road; b) toll road equipment; c) toll road auxiliary buildings; d) toll road operating support facilities." The author sees in the Republic of Indonesia Government Regulation Number 15 of 2005 Concerning Toll Roads Article 86 paragraph 3 (a) (b) (c) and (d) toll road users have rights and obligations, namely Toll road users are required to compensate for losses to Business Entities caused by their mistakes in the amount of the damage caused by damage to parts of the toll road, toll road equipment, toll road auxiliary buildings and toll road operating support facilities. Accidentally or intentionally damaged due to accidents involving toll road users. The provisions as referred to in paragraph (3) also apply to connecting roads between public roads and toll roads. .

3.2 Responsibility for Driver Negligence to the Management of the Trans Sumatra Medan-Tebing Tinggi-Kisaran Toll Road Regarding Damage to Toll Facilities

In PP Number 15 of 2005 Article 86 paragraph (3), that toll road users are required to compensate for losses to Business Entities caused by their mistakes in the amount of the damage caused by damage to toll facilities. For users of the Trans Sumatra Medan-Tebing Tinggi-Kisaran Toll Road, there have been many cases of damage to toll facilities caused by drivers. In the case of the Trans Sumatra Medan-Tebing Tinggi-Kisaran Toll Road, there are several factors of asset damage caused by driver negligence, such as drowsiness and speeds outside the applicable provisions. Apart from that, the condition of the vehicle is not prime, for example tires that are no longer suitable for use/bald which cause bursts and steering (Interview with Mr. Damanik, 2025).

- a. How drivers resolve issues with toll road operators regarding damage to toll road facilities.

Users of the Trans Sumatra Medan-Tebing Tinggi-Kisaran toll road have rights and obligations, namely that toll road users are required to compensate for losses to the Business Entity caused by their mistakes in the amount of the damage caused by damage to parts of the toll road, toll road equipment, toll road complementary buildings and supporting facilities for toll road operations. The facilities of the Trans Sumatra Medan-Tebing Tinggi-Kisaran Toll Road that are often the target of driver negligence are the iron guardrails and the median (Interview with Mr. Damanik, 2025). In the statement of the KSL JLO (Head of Traffic Shift Operational Services) of PT. Hutama Karya for the Indrapura Kisaran Toll Road section, the resolution of the problem of damage to the Trans Sumatra Medan-Tebing Tinggi-Kisaran Toll Road facilities remains in accordance with PP Number 15 of 2005. So far, this can also be done by negotiating first between road users and the toll road until a mutual agreement is reached, and if there is no mutual agreement between the driver and the toll road, the settlement is delegated to the local police. In replacing damage to toll facilities caused by driver negligence, insurance does not apply. However, it can be done independently by road users, such as buying damaged assets themselves but must be in accordance with the specifications that match the toll assets and repair workers' wages (Interview with Mr. Damanik, 2025).

From one of the cases that occurred on the Kisaran Toll Road, there was a driver named X, where the driver damaged the guardrail beam. So the driver is required to replace 1 beam guardrail with a length of 4.2 meters worth IDR 1,800,000, and 1 beam consists of 16 bolts worth IDR 240,000. And the total loss that must be paid is IDR 2,040,000, after negotiating it becomes IDR 2,000,000. With the note, there is a letter of commitment from the driver/road user and then signed by both parties between the driver and the toll road manager. And if the driver is fully responsible for the damage to the Medan-Tebing Tinggi-Kisaran Trans Sumatra Toll Road facilities, the driver can take home the damaged assets such as the iron roadside barriers (guardrail) and the middle road barriers (median). With the note that the driver has completed all the damaged ones with new ones (Interview with Mr. Damanik, 2025).

- b. Obstacles to implementing driver accountability for replacing toll road facilities.

The author sees that the obstacles faced in the field are that not everyone knows about the rules of responsibility, so arguments often occur between road users who have accidents and toll road managers. After the rules were opened, road users finally understood the rights and obligations of toll road users. Users of the Medan-Tebing Tinggi-Kisaran Trans Sumatra Toll Road also need to know their obligations, namely that they must read or follow the information instructions and procedures for using or utilizing goods and/or services, for safety and security. Namely by reading the rules about toll roads and following the information instructions regarding traffic signs installed on the toll road when crossing the toll road. It is undeniable that often users of the Medan-Tebing Tinggi-Kisaran Trans Sumatra Toll Road do not get maximum benefits, or are even harmed from crossing the Medan-Tebing Tinggi-Kisaran Trans Sumatra Toll Road. However, after being investigated, the losses occurred because toll road users did not follow the information instructions, signs, procedures and warnings provided by the Medan-Tebing Tinggi-Kisaran Trans Sumatra Toll Road manager.

Then toll road users who feel less informed about their rights and obligations as toll road users. Toll road users are only given information on the applicable tariffs on the toll road section. Because one of the obligations of toll road managers is to provide correct, clear and honest information about the condition and guarantee of goods and/or services and provide an explanation of use, repair and maintenance.(PREVIOUS, 2021).

3.3 *The Maqasid Syariah Perspective on Drivers' Liability for Negligence Resulting in Damage to Toll Facilities*

Etymologically, maqashid sharia consists of the words maqashid and sharia. Maqashid is the plural form of Maqshid which means intention or purpose. While Sharia means the path to water or the path to the source of life (Ika Yunia & Badul Kadir, 2014). In terminology, maqashid al-syariah can be interpreted as the values and meanings that are used as goals and intended to be realized by the maker of Sharia (Allah Subhanallahu Wa Ta'ala) behind the creation of sharia and laws studied by the mujtahid scholars from Sharia texts. According to Ibn 'Asyur, maqashid sharia is the meaning or wisdom that comes from Allah that occurs in all or the majority of His provisions (not in certain laws). According to al-Fasi, maqashid sharia is the secret purpose of Allah in every law of His sharia. According to Ar-Risuni, maqashid sharia is the goal that sharia wants to achieve in order to realize the welfare of servants (Yuliani, 2023).

According to al-Ghazali, maqashid sharia is a concept that maintains five things (al-dharuriyat al-khamsah), namely religion, soul, reason, lineage and property. These five bases/principles (al-dharuriyat al-khamsah) must be realized, both at the level of dharuriyat, hajiyah, tahsiniyah, or in their hierarchical perfection (BERAMPU, 2023).

These five dharuriyat are absolute musts for humans. Therefore, Allah commands us to make every effort for their existence and perfection. On the other hand, Allah forbids us from doing things that can eliminate or reduce any of the five dharuriyat. Any action that can realize or preserve the five basic elements is good, and therefore must be done, while any action that damages or reduces the value of the five basic elements is bad, and therefore must be avoided (Afifah & Hidayat, 2024),(Rozi, Hamidah, & Arfan, 2022)

Maqashid sharia has a philosophy and wisdom regarding all the goals, intentions, essence and secrets of Islamic law prescribed by Allah SWT for mankind (Ansari & Permata, 2017). If the driver does not pay attention to security and safety at toll facilities, it can threaten human welfare. This shows that the condition of damage to toll facilities due to driver negligence is not in line with maqashid sharia, because it does not fulfill one of the five goals of sharia (al-dharuriyat al-khamsah).

Namely, Hifz al-Mal (maintaining property) which is the responsibility of the driver as a toll road user to maintain the toll facilities that have been provided. Humans are ordered to protect property from disturbances such as robbery, theft and damage. Allah has forbidden theft so that the thief is punished by cutting off his hand, forbidding fraud, taking other people's property improperly, removing and damaging other people's property and also usury. Negligence caused by the driver as a toll road user can certainly harm other toll users and the toll road management, who cannot provide security guarantees while using the toll road. Therefore, it is only right that the driver as a toll road user must provide security and accountability in the use of toll facilities.

As the idea of the role of the state for the welfare of the people, in responding to conditions that damage toll facilities that do not meet standards, therefore the government needs to take firm action and impose sanctions on drivers as negligent toll users in accordance with the provisions of Law Number 22 of 2009 concerning Traffic and Road Transportation, in Article 234 paragraph (2) "Every driver, owner of a motorized vehicle, and/or public transportation company is responsible for damage to roads and/or road equipment due to driver negligence or error." And also in accordance with Government Regulation of the Republic of Indonesia Number 15 of 2005 concerning Toll Roads, what are the rights and obligations of toll road users and business entities, Article 86 paragraph 3 (a) (b) (c) and (d).

This view is also reinforced by the principle, "where there is benefit, there is God's law" (Zulham, 2018). In this context, drivers as toll users are responsible for ensuring that every use of toll facilities is in accordance with good use and statutory provisions, to provide a guarantee of safety for toll management assets.

4. Conclusion

From this author's research, several conclusions can be drawn, namely: The legal basis/form of liability for damage to toll facilities due to driver negligence as a toll user is contained in Law Number 22 of 2009 concerning Traffic and Road Transportation, in Article 234 paragraph (2) and in Article 86 of Government Regulation of the Republic of Indonesia Number 15 of 2005 concerning Toll Roads. In resolving liability for driver negligence to the Trans Sumatra Medan-Tebing Tinggi-Kisaran toll road manager regarding damage to toll facilities, it remains in accordance with PP Number 15 of 2005. This can be done by negotiating first between road users and the toll party until a mutual agreement is reached. Replacing damaged toll facilities can be done independently by road users, such as buying damaged assets themselves but must be in accordance with the specifications that match the damaged toll assets. In the maqasid sharia, maintaining safety and security when using toll facilities is one of the efforts to maintain assets (Hifz al-Mal) and if the driver as a toll user does not maintain and violates the laws and regulations, sanctions will be imposed.

This research highlights that the application of Government Regulation (PP) Number 15 of 2005 concerning Toll Roads, Article 86 paragraph 3 (a-d), is the main legal basis for holding drivers responsible for damage to toll facilities.

From the Maqasid Sharia perspective, the principle of Hifz al-Mal (protection of wealth) justifies the driver's obligation to be responsible for the damage incurred. This principle is in line with Islamic law, which emphasizes asset preservation as part of community welfare.

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