

## **The Urgency Of Regulating Elements Of Community Participation In The Toll Road Investment Process In Indonesia**

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### ***Abstract***

*The development of toll road infrastructure in Indonesia is one of the national priorities to support economic growth and mobility. However, the success of this project depends not only on government and investor policies, but also on the active participation of the community. Public participation in toll road investment can increase transparency, accountability, and project sustainability. This study aims to examine the urgency of regulating elements of community participation in the toll road investment process in Indonesia. The research method used is normative juridical with an approach to analyzing laws and regulations and case studies. The results of the study show that clearer and more comprehensive public participation arrangements are needed to create an inclusive and sustainable investment environment. The arrangement must include a public consultation mechanism, information transparency, and protection of the rights of affected communities. Thus, community participation not only strengthens the legitimacy of the project, but also contributes to the long-term success of infrastructure development in Indonesia.*

## **I. Introduction**

Participation is the process of community involvement in government activities without exception. Where the community is involved in development activities. The form of community participation in development is divided into 3 stages, the first is participation in the planning stage (idea planning stage), second, participation in the implementation stage, and third, participation in utilization (utilitazion stage). This means that in development, the community must be involved. Therefore, in this study, the author limits the research to community participation in the idea planning stage of development, and community involvement in development is an absolute must (Husni Imtihan, Wayunadi, 2017).

One of the developments carried out by the government is the construction of toll road infrastructure. The development of toll road infrastructure in Indonesia is an integral part of the government's efforts to improve connectivity and support national economic growth. Investment in this sector not only involves private and public capital, but also requires the active involvement of the community as stakeholders directly involved with the infrastructure.

Investment comes from the word *invest* which means to invest or synergize money or capital. The term investment or investment is a term that is known in daily business activities and in legal discussions. The term investment is a popular term in the business world, while the term investment is commonly used in legislation. However, basically the two terms have the same meaning, so they are sometimes used *interchangeably*. Investment has a broader meaning because it can include both direct investment and indirect investment (*portfolio investment*) (Ana Rokhmatussa'diyah and Suratman, 2015).

Currently, in its development, investment has entered all lines, one of which is when an infrastructure development will be carried out, the government opens opportunities for business entities to be involved in toll road business. So that these business entities can be involved in investing in the construction of toll roads. In return, the business entity in question is given concession rights for the return of capital and profits from the investment results of the toll road construction that it makes.

Community involvement in the toll road investment process is not just an additional aspect, but a crucial element in ensuring the success of the project and broad social acceptance. In the midst of the dynamics of modern infrastructure development, effective regulation of elements of community participation is

becoming increasingly important to ensure that the public interest is protected, there is transparency in decision-making, and optimal use of resources. In this context, the study on the urgency of regulating the element of community participation in toll road investment in Indonesia becomes relevant to discuss the various related social, economic, and environmental implications.

## **2. Research Method**

This research is a type of normative juridical research. Because this research is intended to analyze the principles, rules and doctrines of the law described. Normative juridical research places norms as the object of research, both norms in the form of legal dogma, and legal norms that derived from a law (Soerjono Soekanto and Sri Mamudji, 1995). The approach in this study uses a legislative approach, *a statute approach, a statute approach* , namely "a research approach to legal products, where this research examines and examines legal products (Peter Mahmud Marzuki, 2014). This research is prescriptive analysis, namely: "research that explores an object, an event with the intention of finding out the state of the object being studied (Soerjono Soekanto, 2007).

## **2. Results and Discussion**

### **Toll Road Investment In Laws And Regulations In Indonesia**

The current government has massively built various needs for ease of doing business, such as providing infrastructure facilities and infrastructure that can be used as investment funds in the form of development so that they can be functioned quickly. The government also prioritizing support from other parties, including local communities as potential development actors (Paulus Bing Adi Putra and Djoko, Heroe Soewono. 2020).

One of the most important infrastructures for the acceleration of national economic growth is to ensure good road construction. Roads that are transportation infrastructure are the lifeblood of the community, and of course have an important role in efforts to develop the life of the nation and state. Therefore, roads have a role to realize development goals such as equitable development and the results of equitable distribution of developers, economic growth and also the realization of social justice for all Indonesian people.

Road construction efforts aim to meet the community's needs for safe, comfortable, and empowered transportation of goods and services (people) that will really be

felt by the community. As part of the national transportation system, roads have an important role, especially in supporting the economy, socio-cultural, environmental, political, as well as defense and security. When viewed from the economic aspect, roads as social capital of the community, become a catalyst between the production process, the market, and the final consumer. Then seen from the socio-cultural aspect, the existence of roads can open the horizons of society and become a means of social change, build tolerance and also melt cultural barriers. From the environmental aspect, the existence of roads is needed to support sustainable development. In terms of political aspects, the existence of roads can connect and bind between regions, and finally from the defense and security aspects, the existence of roads can provide access and mobility in the implementation of defense and security systems.

The expectation of the public, especially the government, is that they want conducive investment, which is certainly the expectation of investors and banks. The World Bank states that the investment climate is defined as a collection of certain location factors that form opportunities and also incentives for business entities to invest productively, thereby creating jobs and developing business activities (World Bank, 2005). Meanwhile, according to Stern, the investment climate is all institutional and environmental policies, both ongoing and expected to occur in the future that can affect the rate of return and risk of an investment (INDEF, 2006).

In Indonesia, roads are the most widely used mode of transportation, so their development is something that needs to be carried out so that it can be used by the Indonesian people to support their activities or activities. In addition to carrying out the construction of public roads, the government also builds toll roads. Limited government funds, toll road construction often collaborates with the private sector. Toll roads are public roads and part of the road network system and also as national roads, where users are required to pay tolls (See: Road Law No. 38 of 2004). The construction of toll roads aims to facilitate traffic in areas that have developed, so that it can improve the distribution of goods and services to support economic growth. With the existence of toll roads, it can increase the equitable distribution of development results and justice and can ease the burden of government funds through the participation of road users. Furthermore, the benefits of toll road construction are also able to affect regional development and economic improvement, increase mobility and accessibility of people and goods, provide benefits to users in the form of savings in vehicle operating costs (BOK) and time compared to passing through non-toll roads, as well as provide returns on investment financing, maintenance and development of toll roads for business

entities involved. (Toll Road Regulatory Agency, 2006)

Community involvement has many forms, starting from the direct participation of the community in government programs or indirect in nature, such as donations of funds, energy, thoughts, and opinions or even rejection in making government policies. Currently, community participation is still limited to participation in the implementation of government programs or activities. In fact, community participation is not only needed during implementation, but also starts from the planning stage of decision-making (Rorong, F., Rares, J. J., & Ruru, J. M., 2017)

This infrastructure condition affects economic growth, investment, poverty alleviation, and environmental quality in Indonesia Ratih K. Esti, "(2007). Economic Growth in Indonesia is currently felt to have a less real impact on the welfare of labor absorption. Conditions that growth. The existing economy has reached a moderate level, but it is considered to be of poor quality, and at the time of investment it is actually down. One of the causes of such conditions is inadequate investment. So, one of the government's tasks is to find a solution by breaking investment stagnation so that growth can move faster and the economic sector races in the absorption of an open and wider workforce. Investment policy is a tool that can attract capital owners (investors) to invest their capital in Indonesia. The owner of the capital can come from within the country or from abroad (foreign). However, the need for foreign investment is more special, and therefore to attract foreign investment, it must be done in a special way, given the fierce competition with other countries. So that the legal, institutional and incentive systems must be built as best as possible, so that Indonesia becomes an attractive investment destination for investors both from within the country and from abroad. Investors give a lot of energy to the economy in a country, so many countries are scrambling and competing to get it. Countries that succeed in reaping foreign investment will advance the main sectors of the economy, especially in the fields of industry, trade in services and others. (Poerwoko Soebato, 2013).

The purpose of village development is as stated in Article 78 paragraphs 1 and 2, Law Number 6 of 2004, that village development aims to improve the welfare of the village community and the quality of human life, as well as overcome poverty through the fulfillment of basic needs, the development of village facilities and infrastructure, the development of local economic potential, and the sustainable use of natural resources and the environment. Village development includes several stages, including planning, implementation and supervision. Participation has the basic intention of being an instrument that can provide great opportunities for the community to be able to develop according to the existing potential, be

actively involved in the administration of government, so that the community can enjoy the benefits of policies made by the government. When the government has provided opportunities, but residents or community groups only have the will but no ability, then participation will not occur. And if there is a will and ability but there is no space and opportunity for the community, then participation will not occur either.<sup>14</sup> reviews

In the concept of investment in toll road construction, this is included in the framework of toll road business. It is mentioned in Article 19 of Government Regulation Number 17 of 2021 concerning the Fourth Amendment to Government Regulation No. 15 of 2005 concerning toll roads, among others: 1. Toll road business includes funding activities, technical planning, construction, operation, and/or maintenance. and 2. Toll road business is carried out by the Government and/or Business Entities that meet the requirements.

It is explained that the requirements referred to above are the conditions specified in the Article above in the auction process in accordance with the scope of the work being auctioned. Business entities that do meet the requirements are toll road business entities formed after winning the toll road investment auction process (See: Explanation of Article 19 paragraph (2) of Government Regulation Number 15 of 2005 concerning Toll Roads).

So that based on the provisions of Article 19, toll road business can be carried out by the government directly or through qualified business entities, related to which it is further explained in Article 21 of the Government Regulation on Toll Roads, that:

One, that the toll road business by business entities as referred to in the article includes several things, namely. a. the entire scope of toll road construction that is economically and financially feasible. b. Operation and maintenance of toll roads built by the government. c. Continuing the part of the toll road built by the government and the operation and maintenance of the entire toll road.

Second, the entire scope of toll road business as referred to in paragraph (1) above in letter a, includes funding activities, technical planning, construction implementation, operation and maintenance.

Third, the toll road business as referred to in paragraph (1) letters b and c, must take into account the return on government investment.

The feasibility of investment in toll road construction carried out by business entities determines the toll tariff that will be determined as a provision of Article

66 paragraph (1) of Government Regulation Number 15 of 2005, which states "Toll rates are calculated based on the ability to pay toll road users, the amount of profit from vehicle operating costs, and the feasibility of investment". In fact, investment in the construction of toll roads involving business entities is carried out by the Toll Road Regulatory Agency (BPJT). According to Article 1 number 3 of the Regulation of the Minister of Public Works and People's Enterprises Number 6 of 2023 concerning the Toll Road Regulatory Agency, it states that "The Toll Road Regulatory Agency, hereinafter referred to as BPJT, is a body formed by the Minister are under and responsible to the Minister who exercises part of the Central Government's authority in the Implementation of Toll Roads".

The duties and functions of BPJT in the investment process for toll road construction are mentioned in Article 6 of the Minister of PUPR Number 6 of 2023, which outlines that in carrying out the duties as referred to in Article 5, BPJT carries out the following functions: a. procuring toll road investment through transparent and open auctions; b. recommend to the Minister for the initial tariff and adjustment of toll rates; c. recommend to the Minister to take over the concession rights of toll roads that have completed their concession period and operation; d. recommend to the Minister to take over the temporary rights of the toll road business that fails in the implementation of the Concession, to then re-auction the business; and e. supervise the Business Entity on the implementation of the obligations of the Toll Road business agreement and report it periodically to the Minister.

In Article 6 letter a above, it can be seen that in the implementation of investment in toll road construction, the implementation function is in the hands of BPJT. However, it was emphasized that BPJT carried out an auction on toll road investment involving business entities, the business entity in question is a legal entity engaged in toll road business, in other words, it is not an open investment to the public personally. It was also emphasized that only qualified business entities can participate in the toll road investment auction.

In its entirety, the requirements for investment in toll road construction can be seen in the provisions of Articles 55 to 63 in Government Regulation Number 17 of 2021 which is the fourth amendment to Government Regulation Number 15 of 2005 concerning Toll Roads, which is then summarized briefly as follows: 1. That the general requirements for parties who can participate in the auction are Indonesian and/or foreign companies that have financial capabilities. 2. That the prequalification of every business entity that invests in the construction of toll

roads, must follow the prequalification stage which in full the requirements of the business entity that can participate in the prequalification are outlined in the provisions of Article

28 Regulation of the Minister of Public Works and Public Housing Number 01/PRT/M/2017 concerning Procedures for the Implementation of Procurement of Business Entities for Toll Road Business. 3. That the business entity must attach auction documents including auction invitations, instructions to auction participants, bid forms, general and special conditions that will be applied in the business agreement, copies of feasibility studies, copies of the concept of business agreements, bid guarantees on behalf of bidders required in bidding; and attachments, in the form of additional information that relevant, such as economic, social, population, and EIA data needed to improve the quality of the offer. 4. That the evaluation of this evaluation is an activity carried out by the Committee to assess the ability and qualifications of Interested Persons to be able to participate in the Procurement of Business Entities for Toll Road Business. For Interested Persons (business entities), emphasis is placed on aspects of financial ability and experience of Interested Parties that can accommodate the activities to be carried out. 5. That the auction winner of the auction committee makes and submits a report on the auction results to BPJT and then the Head of BPJT submits the prospective auction winner to the Minister to be determined as the auction winner. and 6. That the toll road business agreement after all conditions are met and announced as the winner of the auction of selected business entities for toll road business, then the toll road business agreement is implemented which contains many things ranging from the scope of the business, concessions, initial tariffs and so on. This must be agreed upon, as a condition for the implementation of the investment in the construction of the toll road in question.

Regarding all investment requirements for toll road construction as outlined in Government Regulation Number 17 of 2021 concerning the Fourth Amendment to Government Regulation Number 15 of 2005 concerning Toll Roads and those contained in the Regulation of the Minister of Public Works and Public Housing Number 01/PRT/M/2017 concerning Procedures for the Implementation of Procurement of Business Entities for Toll Road Business, It only contains about toll road investment involving business entities that have established legal entities engaged in the field of toll road JAL business. Moreover, there are many conditions that must be met by the business entity before it is approved as an investor in the construction of toll roads. From this side, it can be seen that all legal regulations related to investment in the construction of this toll road do not have a single

article or paragraph that allows the people to be directly involved in investing in the toll road. In fact, this is clearly stated in Law Number 2 of 2002 concerning Roads or in the Government Regulation on Roads, which states that the development of road infrastructure, especially toll roads, can provide the greatest benefits for the prosperity of the people and the welfare of the people.

In fact, Article 1 number 9 of Law of the Republic of Indonesia Number 25 of 2007 concerning Investment stipulates that "Domestic capital is capital owned by the state of the Republic of Indonesia, individual Indonesian citizens, or business entities in the form of legal entities or unincorporated persons".

There should be conditions for investors who invest in toll roads, in essence, there must be the involvement of the people as investors, this is related to the welfare aspect of the community. Technically investment requirements

toll roads as stated in the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 23 of 2021 concerning Procedures for Determining Toll Road Operators on Business Entity Initiatives, as follows:

First: Article 4 paragraph (1) An initiative project that is economically and financially feasible as referred to in Article 2 letter b is an initiative project, which:

1. provides economic benefits to the wider community, and
- b. provides investment returns along with reasonable profits to Business Entities so that no Government support is needed.

Second: Article 32 paragraph (4), that in the event that the purchase of the initiative is financed by the winning business entity of the auction, the cost of the purchase of the initiative is included in the auction document and is calculated as an investment cost.

Investment in toll road infrastructure in Indonesia is regulated through a number of detailed laws and regulations. In general, this regulation covers the legal, economic, and technical aspects that govern the process of planning, building, managing, and maintaining toll roads. Law Number 38 of 2004 concerning Roads, this Law provides a legal basis for the regulation of the national road network, including toll roads as part of the network. This includes regulations regarding the status, function, and management of toll roads.

Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest, this Law regulates land acquisition procedures for the benefit of infrastructure development, including toll roads, as well as compensation mechanisms to landowners affected by the project. Government Regulation

Number 15 of 2005 concerning the Implementation of Toll Roads, This Regulation regulates in more detail the implementation of toll roads, including conditions, procedures, and mechanisms for land acquisition, financing, development, operation, and maintenance of toll roads.

Government Regulation Number 32 of 2021 concerning Toll Road Management and Development, This regulation regulates the procedures for the management and construction of toll roads, including technical aspects, financial management, and the obligations and rights of toll road managers. Regulation of the Minister of Public Works and Public Housing (PUPR) Number 23/PRT/M/2017 concerning Land Acquisition for Infrastructure Development: This regulation regulates the procedures for land acquisition for the benefit of infrastructure development, including toll roads, and the determination of the value of compensation to land owners.

Regulation of the Minister of PUPR Number 10/PRT/M/2018 concerning Toll Road Maintenance, This Regulation regulates the procedures for maintaining toll roads after they are completed, including the type and frequency of maintenance that must be Done. In addition to the above regulations, there are also other regulations related to taxation, foreign investment, the environment, and other legal aspects that can affect investment in the construction of toll roads in Indonesia. The implementation of this regulation aims to create a clear and conducive legal environment for investors, while ensuring that the development of toll road infrastructure runs efficiently, transparently, and in accordance with the public interest.

### **The Urgency Of Legal Regulation Of Community Participation In Toll Road Investment**

In Pancasila, there is a mandate, which is the foundation for state life which covers all fields, be it legal, economic, social, cultural and so on. Therefore, every policy made must certainly not deviate from the values contained in Pancasila and the 1945 Constitution. In general, community welfare is also the goal of economic development, which is directed by the national economic system. In relation to the national legal system, the policies issued by the government must also be directed to the formation of appropriate laws and regulations for the achievement of the vision and mission that is the mandate of Pancasila and the 1945 Constitution (Hikmahanto Juwana, 2020).

Indonesia is one of the developing countries, where it is focused on national economic development and economic growth. High economic growth can be an indicator of the country's success in running the wheels of development, which can then be fully used to improve the welfare of its people. Economic development requires investment, and is one of the main sources of economic growth. Investment activities produce investments that will continue to increase capital stock. Furthermore, increasing capital stocks will be able to increase productivity as well as production capacity and quality, which in turn will be able to encourage economic growth and can increase labor absorption (Sukrino, Sadono, 2004).

Along with the above, tax revenues, especially large taxes, are often carried out by suppressing the real sector/investment and it is a fatal mistake, because the weakening of investment means decreased purchasing power and people's ability, which ultimately resulted in a decrease in tax revenue. The decrease in tax revenue indicates a weakening of the state's ability to prosper its people (Retired, Amin, 2005). Development that has occurred from the past to the present is an interesting theme to be discussed in development discussions. What is interesting? Because development is an integral part as well as the central point of national development. The development is able to invite community participation in the area where the development takes place (Fadil, M, 2012).

So then when analyzing the impact of public infrastructure in more detail, which not only looks at the impact on economic growth but also on competitiveness. From the dynamic computable general equilibrium (CGE) with the social accounting matrix (SAM) database, the results of this study show that the impact of infrastructure on the manufacturing sector both in terms of output and competitiveness will be different, depending on the impact on domestic prices and also wage levels. In addition, the simulation results also show that the financing method, is an important factor that must be taken into account because the impact that will be caused can be different and again it depends on the extent to which it can affect domestic prices (Dumont, J.C and Mesple, S, 2000).

Development is not only carried out in the aspect of community empowerment which includes the fields of education, social, economic, political, and cultural, but also in the infrastructure aspects such as the construction of bridges, markets, roads and other political infrastructure. The development of infrastructure aspects that require more space or a large place must still consider the ecosystem in the environment. Development does need to be carried out, but development should not damage the environment, be it biotic (living things) or abiotic (non-living) environments. This is because humans are part of the environment, so humans will be greatly affected by development. Therefore, it is necessary to have a long-term development concept, which is environmentally friendly. The point is, in carrying out development, we must pay attention to environmental sustainability and human ecology.(Khasanah, U, Nygraha. N & Kokotiasa W, 2017) So that in the

development process can have a positive impact on environmental sustainability and provide benefits in general because the development goal is community welfare. In order to achieve these development goals, supporting facilities and infrastructure are also needed.<sup>22</sup> reviews

In this development, the investment law is more closely related to the rules based on the Banking Law which expressly threatens imprisonment with fines to illegal investment actors, which starts from the legal threat to the perpetrators who carry out business activities without a license to then collect funds from the community, which in addition to being regulated and criminally threatened under the Banking Law, but can also be associated with based on criminal provisions against illegal investment activities. This is closely related to corporate crime and the scope of its criminal liability. Problems that are often related to practice and a number of cases are unclear legal entity status. In fact, to be able to collect funds from the community, it should be in the form of a legal entity. Because this is part of business licensing or legality. Legal regulation and criminal threats against illegal investment activities are closely related to the crime of investment fraud as criminally threatened under Article 378 of the Criminal Code, as stated by Muljatno, with the criminal provisions in this article being about fraudulent acts (bedrog).

**Application of the Principle of Social Justice** The principle of social justice, enshrined in the 1945 Constitution, can be realized through legal regulations that ensure a fair distribution of benefits and burdens of toll road construction in the community. The urgency of legal regulation in investment in toll road construction involving the people is to create a clear, fair, and empowering legal environment, help manage conflicts, minimize legal risks, and create conducive conditions for sustainable infrastructure development and positive impacts on society.

#### **4. Conclusion**

Law enforcement against cases of buying and selling accounts in money laundering crimes in Indonesia faces various significant challenges. Although Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU Law) has regulated various aspects related to money laundering, it has not specifically covered the modus operandi of buying and selling accounts that are increasingly used by criminals. It is hoped that law enforcement against cases of buying and selling accounts in money laundering crimes can be more effective, so that it can reduce the movement space of criminals and strengthen efforts to prevent and eradicate money laundering in Indonesia.

Good arrangements will support international cooperation in the exchange of information and cross-border law enforcement measures. Through effective legal arrangements, the prevention of money laundering crimes can be improved, and the financial system can be kept from risks that can harm its stability and integrity.

It is important to note that the practice of buying and selling accounts or bank accounts is not explicitly regulated in positive law in Indonesia. Nonetheless, this practice often raises legal questions especially related to violations of banking rules, financial security, and potential involvement in illegal acts such as money laundering or identity forgery. Some aspects that need to be considered in this context are the Banking Law Banking laws in Indonesia, especially Law No. 10 of 1998, provide a legal basis related to banking activities in Indonesia. The practice of buying and selling accounts can be considered a violation of the provisions governing the management of bank accounts. Money Laundering The act of buying and selling accounts can have serious implications related to money laundering. The Money Laundering Law (Law No. 8 of 2010) involves the abuse of the banking system to disguise the origin of illegal funds.

Fraud and Identity Forgery If the practice of buying and selling accounts involves acts of fraud or identity forgery, this may violate criminal laws related to fraud and forgery. Copyright and Intellectual Property If this practice involves the use of identities or information protected by copyright or intellectual property, this may also raise legal questions. The ITE Law on Information and Electronic Transactions (UU ITE) may be used if this practice involves electronic transactions or communications. Legal Principles of Engagement The legal principles of engagement or contract can be applied if there is an agreement or contract between the parties involved in the sale and purchase of accounts. It is important to seek professional legal advice if engaging in this kind of practice because the implications can be quite complex and involve a variety of different aspects of the law. In addition, banks have strict policies related to account management and can take legal or administrative action against violations of their policies.

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