

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 represents one of the national government's strategic priorities to accelerate economic growth, improve connectivity, and enhance regional mobility. Nevertheless, the success of toll road investment projects cannot be measured solely from government policies or investor commitments, but also relies heavily on the involvement and active participation of the community as key stakeholders. Community participation plays a vital role in ensuring the transparency, accountability, legitimacy, and sustainability of toll road projects, particularly considering their significant social, economic, and environmental impacts. This study aims to examine the necessity of regulating community participation elements in the toll road investment process in Indonesia. The research employs a normative juridical method, combining a statutory and case approach, with a focus on legal provisions, policy frameworks, and practical experiences. The findings indicate that the current regulatory framework governing public participation remains fragmented, sectoral, and insufficient in guaranteeing inclusivity and fairness. Therefore, more precise, comprehensive, and enforceable regulations are urgently needed to strengthen public involvement mechanisms. These should include structured consultation forums, open and timely access to information, as well as adequate protection of rights and compensation for affected communities. By institutionalizing such participatory mechanisms, toll road investments can be developed within an inclusive legal framework that not only ensures justice for communities but also fosters investor confidence and project sustainability. Ultimately, embedding community participation in toll road investment regulations will contribute to the long-term success of infrastructure development and support Indonesia's vision of equitable, sustainable, and participatory economic growth.

Keywords: Community Participation; Investment; Toll

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A. INTRODUCTION

Participation is a process that involves the community in government activities, and without exception, the community's involvement in development activities is essential. The form of community participation in development is divided into three stages, namely participation in the planning stage (idea planning stage), Participation in the implementation stage, and Participation in utilization (utilization stage). In this study, the author limits the research to community participation in the planning stage of development (idea planning). Community involvement in development planning is essential. (Husnul Imtihan 2017)

The development of toll road infrastructure in Indonesia is an integral part of the government's strategic efforts to strengthen national connectivity, reduce logistical costs, and encourage sustainable economic growth. As one of the priority sectors in national development, toll road investment is not only dependent on public and private capital, but also requires the active role of the community as stakeholders who are directly impacted by the existence of such infrastructure. Community participation is therefore crucial, as it contributes to increasing transparency, accountability, and legitimacy in the planning, construction, and operational stages of toll road projects. This study aims to highlight the urgency of regulating the elements of public participation within the toll road investment process in Indonesia. Using a normative juridical method through statutory analysis and case study approaches, this research identifies gaps and weaknesses in the existing regulatory framework that currently does not adequately protect community rights or facilitate inclusive involvement. The findings emphasize the importance of establishing comprehensive legal arrangements that incorporate mechanisms of public consultation, access to transparent information, and fair compensation for affected communities. Strengthening these participatory elements is expected not only to safeguard the rights of the public but also to ensure the long-term sustainability and success of toll road infrastructure development in Indonesia.

Community involvement in the toll road investment process is not just an additional aspect, but a crucial element in ensuring the project's success and broad social acceptance. In the midst of the dynamics of modern infrastructure development, effective regulation of community participation is becoming increasingly important to ensure that the public interest is protected, transparency in decision-making is maintained, and resources are utilized optimally. In this context, the study on the urgency of regulating community participation in toll road investment in Indonesia becomes relevant for

discussing the various social, economic, and environmental implications related to it.

B. 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 study, both norms in the form of legal dogma, and legal norms derived from a law (Mamudji 1995). The approach in this study uses a legislative strategy, namely "a research approach to legal products, where this study examines legal products. (Marzuki 2014) This research is prescriptive analysis, namely: "research that explores an object, an event, with the intention of knowing the state of the object being studied. (Soekanto 2007)

C. RESULTS AND DISCUSSION

1. Toll Road Investment In Laws And Regulations In Indonesia

The term "investment" is widely used in the business world, although it is also commonly referenced 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) (Suratman. 2015). Currently, as part of its development, investment has been made in all lines, one of which is that when infrastructure development is carried out, the government opens opportunities for business entities to be involved in the 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 undertakes.

The current government has made significant investments in various areas to facilitate ease of doing business, including providing infrastructure facilities and resources that can be leveraged as investment funds for development, enabling them to function efficiently. The government also prioritizes support from other parties, including local communities, as potential development actors. (Paulus Bing Adi Putra dan Djoko n.d.). One of the most critical infrastructures for accelerating national economic growth is ensuring good road construction. Roads, as one of the key transportation infrastructures that are the lifeblood of the community, play a crucial role in efforts to develop the nation and state.

Within this framework, roads play a vital role in achieving development goals, including the equitable distribution of development and its outcomes, economic growth, and the attainment of social justice for all Indonesian people.

Roads, as part of the national transportation system, play a crucial role, particularly in supporting the economy, as well as in socio-cultural, environmental, political, and defense and security aspects. From an economic perspective, roads serve as social capital within the community, acting as a catalyst between the production process, the market, and the final consumer. From a socio-cultural perspective, the existence of roads opens up the horizon of society, serving as a vehicle for social change, fostering tolerance, and breaking down cultural barriers. From an environmental perspective, the existence of roads is necessary to support sustainable development. From a political aspect, the existence of roads connects and binds regions. In contrast, from a defense and security aspect, the existence of roads provides access and mobility in the implementation of defense and security systems.

A conducive investment climate is a hope for all levels of society, especially the government, investors, and banks. According to the World Bank, the investment climate is defined as a set of specific location factors that form opportunities and incentives for business entities to invest productively, create jobs, and develop business activities. (Bank 2005) Meanwhile, according to Stern in INDEF, the investment climate is all policies, institutions, and the environment, both ongoing and expected to occur in the future, that can affect the rate of return and risk of an investment. (Finance 2006)

In Indonesia, roads are the most widely used mode of transportation, so their development is essential to enable the Indonesian people to support their activities. In addition to constructing public roads, due to limited funds, the government also builds toll roads in collaboration with the private sector. Toll roads are public roads that form part of the national road network system, and as such, their users are required to pay tolls (Road Law No. 38 of 2004). The purpose of toll road construction is to facilitate traffic in developed areas, improve the distribution of goods and services to support economic growth, increase the equitable distribution of development benefits and justice, and ease the burden on government funds through the participation of road users. Furthermore, the benefits of implementing the toll road are also influencing regional development and improving the economy, increasing the mobility and accessibility of people and goods, providing 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 providing returns on investment financing, maintenance, and development of toll roads for the business entities involved.

Community participation takes many forms, ranging from direct involvement in government programs to indirect forms, such as donations of funds, energy, thoughts, and opinions, or even rejection in the policymaking process. So far, community participation remains limited to involvement in the implementation of government programs or activities, even though community participation is needed not only during implementation but also from the planning stage of decision-making. (Rorong 2017)

This infrastructure condition affects economic growth, investment, poverty alleviation, and environmental quality in Indonesia. (Esti 2007) Indonesia's economic growth, which is now less robust, has an impact on labor welfare and absorption. Existing economic growth has reached a moderate level, but it is considered to be of poor quality when investment is down. One reason is inadequate investment. Therefore, one of the government's key tasks is to address the issue of investment stagnation, thereby allowing growth to accelerate and enabling the economic sector to absorb a broader, more diverse workforce. Investment policy is a tool to attract capital owners (investors) to invest their capital in Indonesia. The owner of the capital can come from within the country or can also come from abroad (foreign). However, the need for foreign investment is exceptional, and therefore, attracting foreign investment must be done specially, given the fierce competition with other countries. Hence, the legal, institutional, and incentive systems must be established as effectively as possible so that Indonesia becomes an attractive investment destination. Foreign investors provide a significant boost to a country's economy, so many countries scramble and compete to attract them. Countries that succeed in attracting foreign investment will be able to advance the main sectors of the economy, especially industry and services. (Ambo 2018)

Participation has the basic intention of being an instrument that provides excellent opportunities for the community to develop according to its potential, be actively involved in the administration of government, and thus enjoy the benefits of the policies made by the government. If there is a will but there is no ability from residents or community groups, even though the government has also provided opportunities, then participation will not occur. If there is a willingness and ability, but there is no space or opportunity for community members to participate, it will also not happen. (Soebato 2013)

The concept of investing in toll road construction is integral to the framework of the toll road business. It is stated in Article 19 of Government

Regulation Number 17 of 2021 concerning the Fourth Amendment to Government Regulation Number 15 of 2005 concerning Toll Roads, namely:

1. Toll road business includes funding activities, technical planning, construction implementation, operation, and/or maintenance.
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 those determined in the auction process, in accordance with the scope of the work being auctioned. Business entities that meet the requirements are toll road business entities formed after winning the toll road investment auction process.

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:

1. The operation of toll roads by Business Entities as intended in Article 19 includes: a). the entire scope of toll road business that is economically and financially feasible; b). operation and maintenance of toll roads built by the Government; and c). continue the part of the toll road built by the Government, and the operation and maintenance of the entire toll road.
2. The entire scope of toll road business, as referred to in paragraph (1), includes funding activities, technical planning, construction implementation, operation, and maintenance.
3. The operation of toll roads as referred to in paragraph (1), letters b and c, must take into account the return on investment of the Government.

The feasibility of investment in toll road construction carried out by business entities determines the toll tariff that will be defined 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 Affairs 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, is 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-lease the company; and
- e. supervise Business Entities on the implementation of Toll Road business agreement obligations and report it periodically to the Minister.

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, many conditions must be met by the business entity before it is approved as an investor in the construction of toll roads. From this perspective, it can be observed that all legal regulations related to the investment in the construction of this toll road do not contain a single article or paragraph that allows the public to be directly involved in investing in the toll road. In fact, it is clear that Law Number 2 of 2022 concerning Roads and Government Regulations on Roads state that the development of road infrastructure, especially toll roads, is to provide the most significant benefits for the prosperity and welfare of the people.

Investment in toll road infrastructure in Indonesia is regulated through several detailed laws and regulations. In general, this regulation encompasses the legal, economic, and technical aspects that govern the planning, construction, management, and maintenance of toll roads. Such as: Law Number 38 of 2004 concerning Roads, Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest, Government Regulation Number 32 of 2021 concerning Toll Road Management and Development, Regulation of the Minister

of PUPR Number 10/PRT/M/2018 concerning Toll Road Maintenance. However, among all the existing regulations, there is no room for community participation.

2. The Urgency of Legal Regulation of Community Participation in Toll Road Investment

The mandate contained in Pancasila and the 1945 Constitution serves as the foundation for state life, encompassing all fields, including legal, economic, social, cultural, and others. Therefore, every policy made must not deviate from the values of Pancasila and the 1945 Constitution. In general, community welfare is the goal of economic development directed by the national financial system. In relation to the national legal system, government policies must be directed towards the formation of appropriate laws and regulations to achieve the vision and mission mandated by Pancasila and the 1945 Constitution. ([Juwana 2013](#))

Indonesia is one of the developing countries that is focusing on national economic development and economic growth. High economic growth can be an indicator of a country's success in driving development, which ultimately can be leveraged to improve the welfare of its people. Economic development requires investment support, which is a primary source of economic growth. Investment activities produce investments that will continue to increase capital stock. Furthermore, an increase in capital stocks will enhance productivity, production capacity, and quality, which in turn can stimulate economic growth and improve labor absorption. ([Sukirno 2004](#))

Significant tax revenues, by suppressing the real/investment sector, are a fatal mistake, because weakening investment means a decrease in people's purchasing power and ability, which results in reduced tax revenues. Reduced tax revenue implies a weakening of the state's ability to provide for the people. ([Purnawan 2005](#)). Development from the past to the present has always been a fascinating theme to explore in discussions about development. This is because development is an integral part, as well as the central point, of national development. Development can be considered successful, as evidenced by the extent to which development planning encourages community participation in the area. ([Fadli 2012](#))

Development is not only carried out in the aspect of community empowerment, which encompasses the fields of education, social, economic, political, and cultural aspects, but also in the aspects of infrastructure, such as the construction of roads, bridges, markets, and other public infrastructure. Development in the aspect of infrastructure that requires more space or ample

land must still consider the environmental ecosystem. Development needs to be carried out, but it must not damage either the biotic (living things) or the abiotic (non-living) environments. This is because humans are part of the environment, so humans will be affected by development. For this reason, it is necessary to have a long-term development concept that is environmentally friendly, meaning development that prioritizes environmental sustainability and human ecology. (Khasanah 2017) Thus, the development process has a positive impact on environmental sustainability and provides benefits in general, as its goal is to promote the welfare of the community. To achieve these development goals, supporting facilities and infrastructure are necessary. (Mulyawan 2015)

National development carried out by the Government, especially in the economic sector, aims to improve the welfare of the people. However, in its implementation, the development cannot be separated from the encouragement of investment and the participation of the private sector as business actors. Law Number 25 of 2007 concerning Investment (UUPM) has provided for investment regulations in Indonesia. One of the considerations for issuing the UUPM is to promote national economic development. One of the considerations for the issuance of the UUPM is that to accelerate national economic development and realize Indonesia's political and economic sovereignty, it is necessary to increase investment in processing economic potential into real economic strength by utilizing capital from both domestic and foreign sources.

The central government, committed to expanding various infrastructure, aims to accelerate national economic growth through increased infrastructure support. Many facilities are established in the areas traversed by these infrastructures. Among them is the ease of access to sell regional added value to other areas in need quickly. The distance between the city as a market and the village as a producer is no longer a significant obstacle. The central government, in its program to improve the quality and quantity of infrastructure, is not limited to toll roads, but also includes ports, airports, railways, and other key infrastructure, as this will increase Indonesia's competitiveness and raise its standing compared to other neighboring countries. Similarly, the availability of complete infrastructure will attract investors to Indonesia and create job opportunities. Based on the above thoughts, infrastructure development is a priority for the government in supporting economic growth and increasing Indonesia's human resources through education. (Wirjodirdjo JURNAL PAMATOR)

Development is an effort to increase all resources carried out in a planned and sustainable manner, with the principle of equitable and sustainable use

([Effendi, 2002](#)). Development also has the meaning of a "process" describing the existence of development, either including the process of growth or change in social and cultural life (organization). ([Mustanir 2016](#))

According to Utrecht, the law guarantees legal certainty in human relationships. Utrecht's assumption is based on the vanilla assumption that the law is to protect the interests of each human being so that those interests cannot be interfered with (containing considerations of which interests are greater than others). However, in essence, legal certainty aims to achieve its primary objective, which is itself useful.

According to Mochtar Kusumaatmadja, as cited by Sudikno Mertukosumo, the primary purpose of law is to maintain order, and order is the basic condition for the existence of an orderly human society. Another purpose of the law is to achieve justice, which varies in content and scope according to society and era. According to Schuit, the characteristics of the orderly state have been detailed as follows, which can be predicted: cooperation, control of violence, appropriateness, lasting, steady, tiered, obedience, without disagreement, uniformity, togetherness, order, birth pattern, and arrangement. ([Soekanto. 1978](#))

Development is an effort to increase all resources carried out in a planned and sustainable manner, with the principle of equitable and sustainable use ([B. Effendi, 2002](#)). Development also has the meaning of a "process" describing the existence of development, either including the process of growth or change in social and cultural life (organization) ([Mustanir 2016](#)). Participation is a process that involves the community in government activities, and without exception, the community's involvement in development activities. The form of community participation in development is divided into three stages: participation in the planning stage (idea planning stage), participation in the implementation stage, and participation in utilization (utilization stage). ([D. W. Husnul Imtihan 2016](#))

Government policies must be made pro-people so that the progress of infrastructure development, particularly toll road construction, can be felt more directly by the community. Community participation has become increasingly important. This occurred as a logical consequence of the opening of the faucet of people's freedom of expression following the 1998 reform process in Indonesia. As a result, the public has become more critical and open to reviewing and criticizing the policies that the government is implementing. From these conditions, institutions have emerged that grow in the community, which are not only a form of concern for their own fate. It turns out that some of these institutions or organizations have evolved into tools or means for mediating the

interests of the community, including those of the government. Related to that, it is natural for the government to see this wisely and kindly today.

The government must also be prepared to be more open, accountable, and transparent in addressing the current climate in society. Various government development plans should have started to invite community participation. Because without community participation, the development carried out will be less effective. Year after year, the government's development process is increasingly criticized by the community. The impact is that a growing negative bias is developing within the community towards the development process that is being carried out or will be carried out. At least, it turns out that some people do not care about the development process that is being carried out and will be carried out. This clearly shows a symptom of a lack of community participation in the development agenda. This case, for example, is exemplified by several incidents of community rejection of government development projects. (Muhammad Faisal Asariansyah 2013)

The relevance of Investment Policy in Indonesia is subject to several polemics regarding its implementation, so a parameter is needed to determine whether the implementation of a provision mentioned above can be effective or not. When the current context is that the government needs significant funds for development expenditures such as education and health, then there is nothing wrong with toll roads being offered to the private sector to provide them, of course, with strict concessions, and for the sake of government financial benefits and economic benefits for the general public. In addition, several transportation benefits are obtained from good road construction, which encourages people to pay more, including saving travel time, improving safety, and enhancing quality. (Small 1998)

The apparent delay that policymakers must realize is the shortness of toll roads owned by Indonesia. With a vast land area and comprising five large islands that span more than 1,000 km in length, Indonesia should have a comprehensive toll road infrastructure. In fact, until 2005, or 25 years of toll road construction, Indonesia only had 600km of toll roads. (Dardak 2005)

To carry out development in a country, it is undeniable that a significant amount of capital is required. If you rely solely on government capital, it is almost certain that achieving the goals and objectives aspired to by the founders of the Indonesian nation will be difficult. For this reason, it is necessary to seek alternative sources of funding, one of which is through investment, including both foreign investment and domestic investment. For this reason, it is necessary to make regulations that can provide a legal umbrella for these investors. This is

where the functions of the legislature and the government executive are indispensable. Responding to the significant role of investment in building their economies, many countries around the world are competing to attract foreign investors to invest their capital in the country. (Agustian 2021)

In a developing country that is carrying out development in all fields, it can be said that it is a good development country, if in the development that is carried out, in addition to pursuing economic growth, it must also pay attention to the implementation of guarantees for the protection of the human rights of its citizens that have been regulated in the constitution of the country concerned, so that the development will be able to attract community participation in development. Five legal qualities are conducive to development planning and implementation, namely 1) Stability (stability), 2) Predictability (predictability), 3) Fairness (fairness), 4) Education (education), and 5) Development of the legal profession (the special development abilities of the lawyer) (Agustian 2021). The legal regulation of toll road construction investment involving the public is crucial because it affects the rights, interests, and welfare of the community.

Legal arrangements can protect community rights, including land rights, participation rights, and other relevant rights. This prevents the abuse of power and ensures that the community's interests are respected during the project's implementation. Clear Legal Transparency and Accountability require a high level of transparency in the planning, implementation, and monitoring process of toll road projects. This helps build public trust and increases the accountability of governments and investors.

Fair Community Participation Legal arrangements can establish mechanisms that support fair and inclusive community participation. This includes public consultations, open meetings, and other channels through which people can voice their opinions and concerns. Fair Compensation: The law must provide a fair framework for assessing and paying compensation to communities directly affected by toll road construction. This includes land acquisition and compensation for economic losses.

Legal Community Empowerment can contain provisions that support the empowerment of local communities. This could include skills training, information provision, and support for local economic development projects. Legal arrangements can establish safety and quality standards that must be adhered to in the implementation of toll road projects. It involves technical and operational aspects to ensure a safe and reliable infrastructure. Legal Monitoring and Evaluation can regulate the obligation to monitor and evaluate the

implementation of projects. This ensures that the project runs smoothly and delivers the expected benefits to the community.

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 public is to create a transparent, fair, and empowering legal environment, help manage conflicts, minimize legal risks, and create conducive conditions for sustainable infrastructure development and positive societal impacts.

D. CONCLUSION

In the face of the complexity of toll road infrastructure investment in Indonesia, the presence of regulations governing community participation has proven crucial to ensure that development proceeds in accordance with the principles of sustainability and social justice. Through this study, we have seen that active community participation not only strengthens the legitimacy of the project and reduces the potential for social conflict but also promotes a more transparent and accountable management of public resources. The challenges faced, including information gaps, access to participation mechanisms, and the sustainability of public support, necessitate a holistic approach in designing effective regulations. Policy recommendations to strengthen public participation in toll road investment include increasing access to public information, strengthening the capacity of local communities, and establishing an inclusive dialogue forum between the government, investors, and civil society. Overall, the role of community participation extends beyond being a beneficiary to also being a stakeholder who actively participates in the infrastructure development process, and this role must be recognized and strengthened at every stage of project planning and implementation. Only then can toll road investment in Indonesia have a sustainable, positive impact on economic growth and overall community welfare.

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