

THE ROLE OF THE COMMUNITY IN ROAD DEVELOPMENT IN THE ISLAMIC LAW PERSPECTIVE

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Abstract: The 1945 Constitution affirms the sovereignty of the Indonesian nation, covering aspects of political democracy and aspects of economic democracy. In addition, the implementation of development measures brings economic benefits to many stakeholders and encourages continuous improvement in the welfare of local communities, one of which is toll road investment. Based on the theoretical concept of the welfare state, it can be understood that the main goal of state policy is to generate welfare for the people. This type of research is a normative juridical research using secondary data by processing data from primary legal materials, secondary legal materials and tertiary law. Based on the results of the study, the lack of investment in the infrastructure sector resulted in a decrease in the amount of Gross Domestic Product (GDP) which led to a decrease in national economic growth. In response to this, the Indonesian government prioritizes the recovery of economic conditions that will lead to the restoration of the welfare of the community and the state. The government is trying hard to attract investors to invest in Indonesia. The problem is believed to have increased the government's awareness to involve the private sector through the PPP framework, realizing the government's desire to revive and restore Indonesia's economic situation through infrastructure development. Sustainable national development to realize an independent and sovereign Indonesian nation requires a guideline or guideline for the implementation of development which is currently known as Nawa Chita and the Development Vision.

Keywords: Participation, Construction, Toll Road

Introduction

And help you in virtue and piety, and do not help in sinning and enmity. Fear Allah, indeed, Allah is very heavy in His torments. (QS. Al-Maidah [5]:2). Islamic law perspective, this is a description of relevant verses for community involvement that need to be linked in the aspect of governance.

National law perspective, the mandate of Article 33 paragraph (4) of the Constitution of the Republic of Indonesia Year 1945, as well as forming and strengthening national unity to strengthen defense and security and form spatial structures in order to realize national development targets based on the values of Pancasila.¹

¹ Konsiderans huruf c Undang-Undang Nomor 2 Tahun 2022 tentang Perubahan Kedua Atas Undang-Undang Nomor 38 Tahun 2004 tentang Jalan.

The 1945 Constitution adheres to the sovereignty of the Indonesian people which includes aspects of political democracy and aspects of economic democracy.² Furthermore, the implementation of development provides economic benefits for many parties and encourages sustainable improvement of community welfare.³ One of them is related to toll road investment.

Based on the concept of welfare state theory above, it can be understood that the main purpose of policies made by the State is to create welfare for its people. This welfare is good in terms of economy, education, health, including in terms of enjoying infrastructure facilities built by the State through the cooperation of other parties (business entities in the field of toll roads) in order to realize the development.

Understood to be related to the theory of the welfare state, it is associated with the role of the government in prospering the people through existing development that sustainable national development in order to realize an independent, personable and sovereign Indonesia requires a guide or guideline in implementing development which is currently known as Nawa Cita as a vision of development. There are 9 (nine) development priority program agendas in which 5 (five) development program priorities are set, namely infrastructure development, human resource development, inviting investment, carrying out bureaucratic reforms and ensuring the use of a focused and targeted state budget. Looking at the 5 (five) main priorities of development, infrastructure development is a top priority because it is the main foundation of the Indonesian nation to compete with other countries.⁴

Especially in the context of the perspective of public welfare in the field of investment in toll road development, it is known that one of the objectives of toll road development is in accordance with Government Regulation Number 15 of 2005 concerning Toll Roads (now Government Regulation Number 17 of 2021), which is to encourage regional progress. The existence of toll roads will encourage various activities of the economic and industrial sectors and also regional development.⁵

Aligned with the above, the use of the welfare state theory in this study is to examine the role of the government in efforts to prosper the community in the implementation of toll road construction investment. One of the government's roles is in trying to involve the people directly in participating in the investment in the construction of the toll road in question. Because the duty of the government as an institution that runs the State is responsible for the welfare of its people, not only in the short term, but also in the long term or sustainable.

Associated with the description of the theory of legal expediency above, then in the context of involving the people in toll road development investment as this study, this theory will examine the main purpose of toll road development leading to providing benefits to the community or not. Because one of the purposes of implementing existing laws, so that the law can be felt by the community. The application of legal regulations regarding investment in toll road construction, the benefits must be felt by the surrounding community where the toll road will be built.

The theory of legal expediency will continuously examine all legal regulations or legal norms (legal aspects) that exist in the implementation of toll road development investment that has involved the community or not. Similarly, in the perspective of public welfare when the toll

² Ramlan Ramlan, "Legal Strengthening of Credit Agreement Based on Information Technology in Financial Technology Companies in Supporting Industry 4.0," *Randwick International of Social Science Journal*, Vol. 2, No. 1, January (2021): 29–42.

³ Triono Eddy, Agustina Agustina, and Sagita Purnomo, "Influence of Sustainable Construction for The Environment and Social Community," *RSF Conference Series: Business, Management and Social Sciences*, Vol. 3, No. 3, September, (2023): 410–17,

⁴ Suraji, dkk. "Analisa Permasalahan Pengadaan Tanah dan Dampak Sosial Pembangunan Jalan Tol Manado-Bitung (Studi Kasus di Kelurahan Girian Permai Kecamatan Girian Kota Bitung)". *Jurnal Media Birokasi*, Vol. 4, No. 2, Oktober 2022, hlm. 86.

⁵ *Idem.*, hlm. 91.

road will be built, the theory of legal expediency will touch the big goal of development in Indonesia solely for the prosperity of the people. So that if in realizing the existing legal substance it turns out that the welfare of the community is not created and the benefits are not felt for the surrounding community, then later a cursive problem will be encountered related to existing legal regulations. So that the theory of legal expediency will examine such aspects, so that it can answer the fundamental problems of toll road development investment from the perspective of public welfare.

Literature Review

This research uses 2 (two) approaches, namely the statutory approach (*statute approach*) and conceptual approach (*conceptual approach*). According to Fadjar Muchti and Yulianto Achmad, the approach in normative legal research is intended as material to start as a basis for a researcher's point of view and frame of mind to conduct analysis.⁶

In this study using the approach of laws and regulations and the concept approach. The statutory approach (*statute approach*) is a research approach to legal products, where this study examines and examines legal products, among the legal products referred to in this study are those related to investment law in the infrastructure sector, especially toll road construction. In other words, this legislative approach will examine legal regulations related to toll road investment. As well as legal products (laws, government regulations, ministerial regulations, etc.), where this study examines and examines legal products,⁷ among the legal products referred to in this study are those related to investment in toll road construction, especially those that involve the people directly in it.

Next, the conceptual approach is the approach used to legal concepts. These include legal institutions, legal functions and sources of law.⁸ The conceptual approach is carried out if researchers continue to conduct research based on existing legal rules. This is done because there is no legal rule on a matter under study. Peter Muhammad Marzuki said the conceptual approach departs from the views and doctrines that develop in legal science, by studying it is hoped that researchers will find ideas that give birth to legal understandings, legal concepts, and legal principles that are relevant to the issue under study. Understanding these views and doctrines is a basis for researchers in building a legal argument in solving the issue at hand.⁹

Bahder Johan said the conceptual approach is a research on legal concepts, such as legal sources, legal functions, legal institutions, and so on. This legal concept is in three domains or levels according to the level of legal science itself, namely; The level of dogmatic legal science is juridical technical legal concepts, the legal theory level is general concepts, and the legal philosophy level legal concepts are basic concepts.¹⁰

I Made Pasek Diantha said the concept approach was used to elaborate and analyze research problems that departed from the existence of empty norms. This means that in the current legal system there is no or no norm of a law that can be applied to legal events or concrete legal disputes. For researchers, the formation of new laws and regulations with new norms is considered very important because of the development of the situation that requires it.¹¹

Through this conceptual approach, it will be studied based on existing legal regulations formed such as Law Number 2 of 2022 concerning the Second Amendment to Law Number 38

⁶ Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2010), hlm. 185.

⁷ *Idem*, hlm. 248.

⁸ *Idem*.

⁹ Peter Muhammad Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2010), hlm. 95.

¹⁰ Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, (Bandung: Mandar Maju, 2008), hlm. 92. .

¹¹ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, (Jakarta: Kencana, 2017), hlm. 11-12.

of 2004 concerning Roads, Government Regulation Number 17 of 2021 concerning the Fourth Amendment to Government Regulation Number 15 of 2005 concerning Toll Roads, Regulation of the Minister of Public Works and Public Housing Number 23 of 2021 concerning Procedures for Determining the Exploitation of Upper Toll Roads Business Entity Initiative. Or other existing legal norms, which can be used as a legal basis for carrying out toll road business and/or implementing toll road construction investment. All existing legal norms will be reviewed comprehensively so that they can find a conclusion and answer from the existing problem formulation.

Method

Based on the problems and objectives of the research, the type of research used is the type of normative research.¹² Normative juridical research is useful to be able to explain, recognize, know, or explain related to positive legal norms that can be used to solve problems in research. According to Sri Mamuji and Soerjono Soekanto, normative legal research is legal research conducted by examining secondary data and library materials.¹³

The approach carried out in this study uses 2 (two) approaches, namely the *statutory approach* (*statute approach*) and conceptual approach (*conceptual approach*).

The nature of this research is prescriptive, which is a research aimed at obtaining suggestions on what should be done to overcome certain problems that can produce arguments, theories or new concepts as a *preskripsi* in solving the problems faced. Prescriptive means that the object of legal science is cohesion between legal norms and legal principles, coherence between legal rules and legal norms, and coherence between individual behavior and legal norms.¹⁴

The data sources needed in this study were obtained from libraries and documents, through secondary data.¹⁵ The source of data used in this normative legal research is using secondary data. Secondary data consists of primary legal material, secondary legal material and tertiary legal material.¹⁶

Data collection techniques are carried out by means of *library research*. Literature study is a series of efforts to obtain data by reading, studying, clarifying, identifying, and understanding legal materials in the form of laws and regulations and literature books that have relevance to research problems.

Result and Discussion

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 the discussion of legislation. The term *investment* is a popular term in the business world, while the term *investment* is commonly used in legislation. But basically both terms have the same meaning, so they are sometimes used *interchangeably*. Investment has a broader understanding because it can include both *direct investment and indirect investment (portfolio investment)*.¹⁷

¹² I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, (Jakarta: Kencana, 2017), hlm. 11-12.

¹³ Salim HS dan Erlies Septiana Nurbaini. *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*. (Jakarta: PT. RajaGrafindo Persada, 2019), hlm. 12.

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group, 2014), hlm.42.

¹⁵ *Idem*, hlm. 4.

¹⁶ Salim HS dan Erlies Septiana Nurbani II. *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi*. Jakarta: PT RajaGrafindo Persada, 2016, hlm. 17-18.

¹⁷ Ana Rokhmatussa'diyah dan Suratman. *Hukum Investasi & Pasar Modal*. (Jakarta: Sinar Grafika, 2015), halaman 3.

One of the most important infrastructures for the acceleration of national economic growth is to ensure good road construction. Roads as one of the transportation infrastructure which is the lifeblood of the community have an important role in efforts to develop the life of the nation and state. Within this framework, roads have a role to play in realizing development targets such as equitable development and its results, economic growth, and the realization of social justice for all Indonesian people.

Road construction in order to meet the needs of the community for safe, comfortable, and efficient transportation of goods and services (people) will really be felt by the community. Roads as part of the national transportation system have an important role, especially in supporting economic, socio-cultural, environmental, political, as well as defense and security. From an economic aspect, roads as the social capital of society are catalysts between production processes, markets, and end consumers. From the socio-cultural aspect, the existence of roads opens up people's horizons that can be a vehicle for social change, build tolerance, and melt cultural barriers. From an environmental aspect, the existence of roads is needed to support sustainable development. From the political aspect, the existence of roads connects and binds between regions, while from the defense and security aspect, the existence of roads provides access and mobility in the implementation of defense and security systems.¹⁸

Given the importance of road infrastructure development, the Indonesian government believes in increasing the quantity of infrastructure quality through investment channels in infrastructure. However, in its development to date, investment in infrastructure (roads) in Indonesia is often considered risky and expensive, so investors often think about many considerations before investing in Indonesia. This problem then causes the pace of investment in Indonesia to be fairly stagnant, in line with national economic growth. This was exacerbated by the consequences of the crisis which resulted in the depreciation of the Rupiah, national currency, and other exchange rates accompanied by a lot of unemployment caused by the bankruptcy of national companies.

The lack of investment in the infrastructure sector resulted in a decrease in the amount of Gross Domestic Product (GDP) which led to a decrease in national economic growth. This sad fact can be seen that in 2000, the amount of GDP in Indonesia was only in percentage 1%, very far compared to 1997-1998 which was at 6%. Based on data from The Global Competitiveness Report in 2013-2014 alone, Indonesia's infrastructure is still ranked 61st in the world, indicating that there is a need for improvement.¹⁹

In response to this, the Government of Indonesia prioritizes the recovery of economic conditions which leads to the return of the welfare of the people and the State. The government is trying hard to restore investor interest to invest in Indonesia. These problems are what make the birth of government awareness to involve the private sector through the PPP framework which is believed to be able to realize the government's desire to be able to renew and restore Indonesia's economic condition through infrastructure development. The reason why this will happen is because of the economic stability in Indonesia after the crisis which can help attract the private sector to cooperate with Indonesia.²⁰

According to utilitarianism, the purpose of action is at least to avoid or reduce the harm caused by the action done, either to oneself or others.²¹ The maximum is to enlarge the usefulness, benefits, and benefits generated by the actions to be done. Deeds must be sought to bring happiness rather than suffering, benefit rather than vanity, gain rather than loss, for the

¹⁸ Penjelasan Atas Poin I. Umum Angka 3 Undang-Undang Nomor 38 Tahun 2004 tentang Jalan.

¹⁹ Fahmi Dzakky. "Public Private Partnership: Alternatif Pembangunan Infrastruktur dalam Negara". *Jurnal Sosial dan Budaya Syar-I*, Vol. 8, No. 2, April, (2021), hlm. 574.

²⁰ *Idem*.

²¹ Robert Audi. *The Cambridge Dictionary of Philosophy*. (United Kingdom: Cambridge University Press, 1995), hlm. 824-825.

vast majority of people. Thus, human deeds are good inethicaland bring the best impact to yourself and others.²²

The theory of legal expediency in the context of infrastructure development such as toll roads, looks at the legal aspects that are the handle of all parties when investing in toll road construction, which in fact can benefit investors in the long run. This profit is part of the benefits of toll road construction, especially for investors. Therefore, the surrounding people should feel the benefits of the construction of existing toll roads.

Increasing infrastructure development can be started with the construction of toll road networks to facilitate transportation access to reach various regions in Indonesia. Toll roads can increase equitable distribution of development while increasing social justice for the people of Indonesia. The construction of toll roads will be very useful considering that many road sections in Indonesia often do not support the condition of vehicles transporting building materials, which on average are more than four wheeled vehicles, for example trucks. The condition of the road section is usually damaged, too small, or is a main road which means that the volume of vehicles passing by is very dense. In addition, when studied from the investment sector, infrastructure investment in toll roads is arguably the most attractive form of investment. Especially when viewed from the long-term prospects.

The above view cannot be denied considering the volume of vehicles in Indonesia based on data from the Indonesian Central Bureau of Statistics that passenger cars in 2018 were recorded at 16,440,987 units. The data noted that there was an increase in the number of passenger cars by at least 1 (one) million units per year. That is, the high volume of vehicles in Indonesia will be directly proportional to the use of toll roads so that investment in this field will be very profitable.²³

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Conclusion

The challenge faced by the Government today is to provide transportation facilities and infrastructure according to increasing needs in line with population and economic growth. The government is obliged to provide and ensure the implementation of safe, smooth, and efficient transportation. However, due to government budget constraints, the construction of

²² A. Mangunhardjana. *Op. Cit.*, hlm. 231.

²³Talitha Belvrini Candraningrum dan Izzah Khalif Raihan Abidin. "Aspek Hukum Pendirian Badan Usaha Jalan Tol Oleh Penanam Modal Asing Di Indonesia". *Jurnal Kawruh Abiyasa*, Vol. 1, No. 1, Januari, (2021), hlm. 66-67..

transportation infrastructure and facilities cannot continuously keep up with this rapidly growing demand trend.

Based on the concept of welfare state theory above, it can be understood that the main purpose of policies made by the State is to create welfare for its people. This welfare is good in terms of economy, education, health, including in terms of enjoying infrastructure facilities built by the State through the cooperation of other parties (business entities in the field of toll roads) in order to realize the development.

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²⁴ Suraji, et al. "Analysis of Land Acquisition Problems and Social Impact of Manado-Bitung Toll Road Development (Case Study in Girian Permai Village, Girian District, Bitung City)". *Journal of Bureaucratic Media*, Vol. 4, No. 2, October 2022, p. 86.

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