



## **Introduction**

The modern rule of law prioritizes the achievement of the objectives of the welfare *state*. For this reason, the responsibility for administering government has broad consequences for the government's interference in the economic and social life of society in the context of realizing social justice, pursuing general welfare for the greatest possible prosperity of the people (See the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as UUD NRI 1945). UUD NRI 1945 paragraph IV states that "... in order to protect the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare...". water and the natural resources contained therein, are used for the greatest prosperity of the people). The main pillar in realizing this goal is through the development of road infrastructure that can connect between activity centers within the national economic unit (see Preamble Considering letter c of the Law of the Republic of Indonesia Number 2 of 2022 concerning the Second Amendment to Law Number 38 of 2004 concerning Roads). One of the road infrastructure built is the toll road. The construction of toll roads can support economic growth

through improving the distribution of goods and services by paying toll road fees from toll road users. (Novitiana, 2017) The imposition of toll road fees is an obligation that must be paid by toll road users. Even now, toll roads are no longer an alternative, but are the main transportation route for people's mobility and logistics distribution.

Toll roads are very effective roads that are used by the public as well as for business people to expedite and achieve a desired goal. In accordance with the philosophy of the toll road, namely to realize and create access to transportation that is safe, fast and comfortable. Meanwhile, for government actors, toll roads are the goal to create comprehensive growth and equitable infrastructure development in areas that are late in development. And also to add to the deficit for the state treasury in order to create economic stability to realize equitable distribution of infrastructure development nationally.

Previous research regarding toll road policies namely legal certainty guarantees for the use of electronic or non-cash money transactions in toll road payments from a consumer protection law point of view. (Suarniati, 2018) Furthermore, a review of legal norms regarding the obligation to use toll roads

not to use cash payments, so there is no choice in paying tolls. Previous research did not study the increase in toll road fares from a public interest point of view. Construction of toll roads is one of the criteria for development in the public interest. (Eric Henry Supit, 2021) in this case research has not been found on the policy of increasing toll rates, so the author will link the policy of increasing toll road rates with the viewpoint of the public interest.

As with the Decree of the Minister (Kepmen) of Public Works and Public Housing (PUPR) Number 1539/KPTS/M/2021 dated 20 December 2021 concerning Adjustment of toll road fares on the Surabaya-Gresik Toll Road. (Bahfein, 2021) The increase in toll road rates applies to groups I to group IV, the increase is quite significant starting from class I reaching Rp. 5,500 not yet with other groups. This toll road has started operating since 1993 (Sihombing, 2014), so it has been a very long time since the construction of the toll road, it is different from the construction of a new toll road.

The increase in toll road fares resulted in a paradigm for the community. An increase in toll road fares will trigger various problems. The issue of increasing toll road fares is very

interesting given the condition of toll roads, which experience more and more traffic jams every year. For this reason, the authors are interested in examining the policy of increasing toll road rates in the public interest. This research will describe the imposition of toll road tariffs on state revenues. Next, we will discuss the principle of public interest in the construction of toll roads and the policy of increasing toll road rates in the public interest.

### **Research methods**

Based on the title, this type of research is normative legal research. The choice of this type of research is because legal research is a research within the framework of *know-how* in law. As a know-how activity, legal research is conducted to solve the legal issues at hand. This is where the ability to identify legal problems is needed, do legal reasoning, analyze the problems encountered and then provide solutions to these problems. Legal research is a process to find legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand (Peter Mahmud Marzuki, 2013). Legal principles are needed in the formation of legal rules as well as the basis for solving a legal problem that arises if the existing rules are inadequate (Simamora, 2005).

Bruggink states that legal principles are the values that underlie the rule of law (Bruggink, 1996). The principle of law is also a metanorm as the basis for forming statutory regulations, finding a law against cases faced by judges to decide if they cannot refer to positive legal rules, and parameters in measuring a rule that already exists on the track. the right one (on the right track) (Shubhan, 2015). *There is a need for in-depth studies of effectiveness to analyze a form of government policy in terms of juridical truth in analyzing a government policy. The method that will be used to answer existing problems is by way of epistemology , meaning that truth can be seen in terms of knowledge. nature of knowledge sources of knowledge and scope of knowledge. In order to realize legal problem solving in analyzing a government decision in review from a juridical perspective.*

This legal research uses several approaches with the intention of obtaining information from various legal issues in question to find answers. The approach used in this study is a statutory approach (*statute approach*), a conceptual approach (*conceptual approach*). The use of the statutory approach is a *condition sine quanon* for normative legal research. This approach

is used to identify and analyze and systematize various laws and regulations related to toll roads. In addition, a conceptual approach is taken to the concept of public interest and the imposition of toll road tariffs.

## **Results and Discussion**

### **Imposition of Toll Road Tariffs as State Revenue**

Indonesia as a state based on law is an absolute matter, this is based on UUD NRI 1945 Article 1 paragraph (3) that "Indonesia is a state based on law". The implied understanding that legal actions and actions carried out by persons or institutions or legal entities must be in accordance with the rule of law. This results in the actions and actions of the government in carrying out its authority to carry out tax affairs must be based on strict legal rules (Abdullah, 2013).

Sources of state revenue are useful for the continuity and improvement of national development programs in order to achieve prosperity and welfare of the people (Ahmad Munir & Dea, 2017). The realization of people's prosperity is the relationship between state duties and state spending. This relationship is the main thing in state finances (Godhart, 1972). For this reason, the source of state revenue or income must be regulated in

the Law, namely Law Number 17 of 2003 concerning State Finance (hereinafter abbreviated as UUKN), that Article 11 paragraph (3) UUKN states that "State revenue consists of tax revenue, non-tax revenue, taxes and grants". In this study, we explore the position of toll road tariffs as state revenue. Does the toll road tariff include state revenue from taxes or state revenue from non-tax sources?

State revenue comes from taxes consisting of central taxes and regional taxes. Taxes collected by the center are Income Tax (PPh), Value Added Tax (VAT), Sales Tax on Luxury Goods (PPnBM), Stamp Duty, Land and Building Tax (PBB plantations, Forestry, Mining), Export Tax, and Carbon Tax after the enactment of Law Number 7 of 2021 concerning Harmonization of Tax Regulations. The existence of toll road tariffs is also not contained in regional taxes and regional levies as stipulated in Law Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments.

Article 1 of Law Number 9 of 2018 concerning Non-Tax Tax Receipts states that non-tax state revenue which is then a levy paid by individuals or entities by obtaining direct or indirect benefits from services or utilization of resources and rights obtained by the state, based on

laws and regulations, which become central government revenue outside of tax revenue and grants and managed in the mechanism of the state revenue and expenditure budget. In Article 48 paragraph (5) of the Law of the Republic of Indonesia Number 2 of 2022 concerning the Second Amendment to Law Number 38 of 2004 concerning Roads (hereinafter abbreviated as Law No. 2 of 2022) states that "In terms of the level of financial feasibility of Toll Roads the operating period exceeds the eligibility level set by the Central Government, the excess financial feasibility level constitutes non-tax state revenue which will be used for the development of the Toll Road network as a form of service to the community which is carried out in accordance with the provisions of laws and regulations". The Article does not absolutely state that toll road fares constitute non-tax state revenue. However, based on Article 1 of Law Number 9 of 2018 that toll road tariffs can be interpreted as a levy for services or utilization of resources and rights obtained by the state. So the imposition of toll road tariffs is a source of state revenue that comes not from taxes.

### **The Principle of Public Interest in Toll Road Development**

The fundamental norm which is the highest norm in a country is a norm that is not formed by a higher norm but is "*pre-supposed* " or determined in advance by the people in a country and becomes a place where the legal norms below depend (Soeprapto, 2007). Based on UUD NRI 1945, article 33 paragraph 1 to paragraph 3 is evidence that is fundamentally authentic enough to stand on in order to be able to provide an explanation or as an understanding of the state's right to control. Based on this article, we can conclude that if we withdraw it in a static way , we will indirectly issue a statement/conclusion if something that is rooted in the state under the pretext of being in the public interest can automatically be said to be the right to control the state. This is reinforced by the existence of UUD NRI 1945 article 33 paragraph 2 which states that "The branches of production which are important for the state and which affect the livelihood of the people at large are controlled by the state". With the approval of the community together with proof of legitimacy so that the activities carried out by the government do not cause chaos because they are not acceptable to the local community or the environment concerned.

Infrastructure has a very important role in the economic system. The better the condition of the infrastructure, the better the effect on the state of the economy. Besides that, the construction of toll roads in large urban areas and their surroundings has indeed affected many industries which are located around urban areas. Even though they should pay more attention to the condition of roads in rural areas which actually really help people who are on average poor in increasing economic activity in rural areas. With equitable distribution of road development, the gap between urban and rural areas can be eliminated. Infrastructure development through the toll road industry will have an impact on economic development. Therefore, according to him, before a region wishes to build a toll road, the most important thing is that economic activity in that area must be increased so that it can contribute to the toll road project so as not to lose money. With the existence of toll roads, locations near toll road exits and exits will develop rapidly as business areas, both industry, trade, financial services and banking and so on. There is a lot of evidence showing that toll roads have contributed to advancing the regional economy and bustling business

activities, opening up employment opportunities and increasing people's economic activities and even social transactions. (Sumaryoto, 2010)

The procurement aspect of toll road construction requires a very large budget and will be difficult if it is only borne by the State Budget (APBN) and Regional Budget (APBD). So in this case the government entered into a cooperation agreement with the private sector through a build operate and transfer (BOT) pattern (Puspitasari & Santoso, 2018). As has been done in the Cooperation in the Construction of the Semarang-Solo Toll Road. The government, in this case carried out by the Toll Road Concession Business Entity, has carried out its obligations by providing facilities in the form of land, while the parties in this matter PT. Trans Marga Jateng is a Toll Road Concession Company based on the Toll Road Concession Agreement (PPJT) of PT. Trans Marga Central Java performs its obligations in the form of build and carry out Funding Planning, Engineering Planning, Engineering Implementation, Construction, Operation and Maintenance of Toll Roads so that they have economic value (operation). After the 45 year agreement ended, the land and building were returned to the

government. One alternative that is often used is an agreement made in Build Operate Transfer (BOT) which is a binder between the parties to carry out cooperation that creates a legal relationship (Bakri, Anis Sazira, Shamsida Saidan Khaderi & Shukor, 2009). So in this case the form of cooperation carried out by the government must be in accordance with the mandate of UUD NRI 1945 article 33 paragraph 1 to paragraph 3 as a fundamental norm of a nation. The form of joint agreement/consensus between the government and the private sector, in this case, is the one that should benefit more from the government with the build operate and transfer (BOT) pattern. It is hoped that there will be certainty that the procurement of toll road construction in this case. The government will definitely control and own all operations regarding toll roads even though it is based on a mutually agreed timeframe with the private sector.

In order to achieve sustainable development in Indonesia the steps taken the government in a consensus /agreement with the private sector in the construction of toll roads. There is certainty that the time will be controlled by the government and for the sake of

achieving sustainable development in the form of cooperation with the private sector because the budget is very large and it will be difficult if it will only be charged to the APBN and APBD. But when there is no clarity in terms of the specified time it will affect efficiency or economic decline because the private sector will benefit more, the income from toll road construction which is quite large must obtain the principle of certainty from the government so that it can enter the state treasury as a whole. Therefore development in Indonesia must controlled by the state through BUMN in order to achieve economic stability and sustainable development in the future.

Development for the public interest with the aim of maximizing the welfare of the people is one of the philosophical foundations for the government to carry out land acquisition in the construction of toll roads (Isnaeni, 2020). The legal instrument which forms the basis for the state in obtaining privately owned land for the development of public interests, by way of land acquisition is based on article 33 paragraph (3) of UUD NRI 1945 as the concept of the state's right to control and is regulated further the authority of the right to control the state in article 2 paragraph (3) of the BAL. The

principle of the State's Right to Control is embodied in Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. In Law Number 2 of 2012, especially Article 10 letter b regulates the types of activities that are included in the public interest, namely the construction of toll roads.

Land procurement for toll road construction carried out by the government in its implementation includes the issue of providing land for the development itself, including land acquisition for toll road construction. The application of Law Number 2 of 2012 Article 1 point 6 states the meaning that "Public Interests are the interests of the nation, state and society which must be realized by the government and used as much as possible for the prosperity of the people". The enactment of Law Number 2 of 2022 concerning Roads contains provisions governing public interests. Article 35B Law Number 2 of 2022 concerning Roads states that "Land acquisition for the construction of public roads is carried out based on the provisions of laws and regulations related to land acquisition for development in the public interest". The basic limits of public interest in Law Number 30 of 2014 concerning



Government Administration there are elements putting the general welfare and general expediency first and not done in a discriminatory way (A Munir, Djatmiati, Aisyah, & ..., 2021). So it can be interpreted that the construction of public roads is the development of the public interest. In Article 1 point 10 of Law no. 2 of 2022 states that “Public Roads are roads designated for public traffic”. Furthermore, in Article 1 point 11 of Law no. 2 of 2022 that “Freeways are public roads for traffic with full access control and without any level crossings and equipped with road-owned fences”. Article 1 number 11 of Law no. 2 of 2022 “Toll roads are freeways which are part of the Road Network System and as national roads whose users are required to pay”. The meaning of public roads, freeways and toll roads based on these provisions can be interpreted that toll roads are part of freeways, freeways are part of public roads. For this reason, toll roads are part of public roads. Thus the construction of toll roads is development for the public interest.

### **Policy Analysis of Increasing Road Fares Against the Public Interest**

The toll road fare increase policy is an aspect to be taken into account. The reason is that the increase in toll road tariffs determined by the government

has created a paradigm in society. The emergence of an issue that is currently developing in society is regarding the increase in toll road fares in general, raising the question why and why do toll road fares always go up?. Based on the facts, it is assumed that the toll roads are starting to experience traffic jams due to the increasing volume of traffic each year.

Toll road operators in Indonesia are called Toll Road Business Entities (BUJT), state-owned enterprises, regionally-owned enterprises, and/or privately-owned enterprises. The regulator that regulates BUJTs in Indonesia is the Ministry of Public Works and Public Housing (PUPR) through the Toll Road Regulatory Agency (BPJT). (Choirul & Anwar, 2021) BUJT as a toll road operator has the right to increase toll road fares on a toll road section and to increase toll road fares requires a process that is not easy because BUJT as an operator must meet (SPM), namely minimum service standards which have become a legal requirement for eligibility to be eligible. obtaining permission to increase toll road fares. The SPM is a determining factor in the government, in this case BPJT, which determines whether a toll road tariff increase can be recommended to the Minister of PUPR in

order to obtain permission for a price increase. Apart from that, in order to improve public services, it is added that there is government regulation number 17 of 2021 regarding the fourth amendment to government regulation number 15 of 2005 that the substance of the regulation confirms a statement to further increase the comfort and interests of toll road users starting from, every road Toll roads must provide communication facilities, other security detection facilities that allow immediate assistance to arrive at the scene of the incident, as well as safeguards against violations, accidents and other security disturbances. On inter-city toll roads there must be rest areas and services for the public interest. Places of rest and services can be developed by adding other supporting facilities in the form of:

- a. Addition of certain product promotion areas and regions such as products for micro, small and medium enterprises;
- b. Adding a transfer location area for people or goods/logistics; and/or
- c. Development for tourist destinations and industrial areas.

The government must provide services for toll road users by increasing the development of infrastructure and service facilities and also providing space

for micro-enterprises to help the economy of small communities for the public interest that is pro-people. In certain rest areas, this is very beneficial for toll road users as their resting place.

The imposition of toll road tariffs is regulated in Article 48 paragraph (1) of Law no. 2 of 2022 states that "Toll road fares are calculated based on the ability to pay road users, the profit margin for vehicle operating costs, and investment feasibility". Based on the ability to pay toll road users or Ability to Pay (ATP) is determined through a study of the spending patterns of individuals, especially users, in consuming toll road services. In this case ATP is influenced by the amount of income, needs and costs of transportation, as well as the purpose and intensity of the trip as well as other expenses of these users (Karsaman, 2009). Another parameter besides ATP that is used as the basis for determining this tariff is the Willingness To Pay (WTP) which is determined through a study of the willingness of individuals, especially users, to pay for toll road services. Apart from that, ATP and WTP are another parameter, namely investment feasibility, which is determined from the cost of land acquisition and toll road development financial projects (Wibowo, 2012). From



Public Interest, namely “the interests of the nation, state and society which must be realized by the government and used as much as possible for the prosperity of the people”. Furthermore, economic development is a process, the way the Government of Indonesia develops the country's economic life system to achieve the desired goals (Acep Rohendi, 2019). Economic development is an active effort by the Government to develop gradual and regular economic development in accordance with economic development goals. Furthermore, economic development is a continuation of the struggle for independence, namely the struggle to liberate the people from poverty, ignorance and backwardness that occur in society in order to realize people's prosperity. For this reason, economic development is interpreted as part of realizing people's prosperity.

The problem is that there is an increase in toll road fares on the Surabaya-Gresik Toll Road when inflation is high based on the Decree of the Minister (Kepmen) of Public Works and Public Housing (PUPR) Number 1539/KPTS/M/2021 dated 20 December 2021 concerning Adjustment of Toll Road Tariffs. Based on data from the Central Statistics Agency (BPS) reported the highest inflation increase in

December 2021 for the first time since the Covid-19 pandemic. Head of the Central Statistics Agency, Margo Yuwono, said that inflation or the development of the consumer price index as of December 2021 was recorded at 1.87 percent on an annual basis (Puspaningtyas, 2021). An increase in the amount of toll road fares carried out when inflation is high and there is a Covid-19 pandemic cannot be justified, because the burden on society will increase.

In addition to these indicators, the amount of toll road tariffs is adjusted to the minimum service standards provided. Article 51 A paragraph (2) states that “the minimum service standards for Toll Roads include Toll Road conditions, safety and security infrastructure, and service supporting infrastructure for Toll Road users”. Traffic jams on the Surabaya-Gresik toll road also occur (Editor, 2021). This can be due to vehicle congestion, vehicles breaking down, or damage to the toll road. An example is the difference between toll road usage rates during busy and off-peak times, for example during the day and night. Another example is the imposition of dynamic tariffs that change according to the level of traffic density using the toll road at a certain time or better known as



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