

**LEGAL ANALYSIS OF THE DETERMINATION OF CORRUPTION  
SUSPECTS LAND COMPENSATION FOR THE CONSTRUCTION OF THE  
PADANG TOLL ROAD**

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**ABSTRACT**

**Keywords:** Corruption, Land Acquisition, Tol Road.

This paper intends to examine and analyse the determination of suspects by the high prosecutor's office in the land acquisition corruption case in the Padang - Sicincin Toll Road construction project. Research using a normative juridical approach reveals that legal instruments fail to show justice, where the determination of the suspect in this case is detrimental to the people. Therefore, according to the author, it is necessary to re-analyze the procedure for naming suspects by law enforcement officials so that legal certainty can be found and the decision to designate suspects does not harm the people. The results of this study showed that there are no definite legal provisions on how the prosecutor's office can determine a suspect. Choosing the suspect so far is still in a grey area because there are no explicit provisions regarding "preliminary evidence" to determine the suspect. On the other hand, the panel of judges, in their considerations, decided that the subsidiary charges were not proven and had not been legally and convincingly proven guilty of committing a criminal act. On the other hand, the panel of judges, in their considerations, decided that the subsidiary charges were not proven and had not been legally and convincingly proven guilty of committing a criminal act.



**Introduction**

On November 3 2020, several Padang Pariaman residents claimed compensation for the land used to construct the Padang–Sicincin section of the toll road (Badgley et al., 2020). However, after the disbursement of compensation money was carried out, there was a problem, namely the location of the land that was compensated in the Parit Malintang area, especially those that entered the Biological Garden area in 2009, had received compensation for plants and buildings sourced from the regional budget and had been recorded as assets of the Padang Pariaman Regional Government (Kafara, 2020)v. If the land has been recorded as an asset of the Padang Pariaman Regional Government, there should be no need to compensate residents. Based on this, the West Sumatra High Prosecutor's Office named 13 people as suspects of corruption in land acquisition for road construction consisting of two Nagari officials, four people from the National Land Agency, the Regional Government (Pemda) of Padang Pariaman Regency and the Land Acquisition Executive, and seven people who received land or land compensation (Khairunnisa, 2022). Not only were suspects established, but the 13 people were also detained. The lawyer for the community, who is a suspect in this case, said that several communities named as suspects were victims of the poor land

compensation process system. Even though the community only follows instructions based on legal documents issued by the government and checked by BPN. This means that people only follow systems and processes and complete all administration and papers while the government determines the system and processes (Gomgoman Simbolon, Albisar, Mulyadi, & Leviza, 2016).

The potential for abuse of authority can occur at the level of investigation and prosecution by law enforcement officials against a person, for example, reducing and limiting the right to independence and human rights of suspects that should not be done by law to someone who is suspected of being a perpetrator or suspect (Masinambow, 2022).

After the detention process and trial in the court of first instance, the defendant was acquitted of all charges. Decision number 08/Pid contains one of the verdict processes. Sus.TPK/2022/PN.Pdg on behalf of defendant Yuniswan and decision number 13/Pid.Sus.TPK/2022/PN.Pdg on behalf of defendant Kaidir.

The criminalisation and detention of land-owning communities are very detrimental when they are innocent and do not reflect the state's objectives in the 1945 Constitution, namely "as protectors of the entire Indonesian nation and all Indonesian bloodshed, promoting the general welfare, educating the life of the nation, participating in efforts for world peace based on independence, lasting peace, and social justice."

Therefore, it is necessary to conduct research or re-analyze the prosecutor's authority over the determination of suspects so that the determination of suspects is not carried out arbitrarily to the detriment of the people. Apart from that, it is necessary to re-examine how the Padang Pariaman District Court judges consider when deciding cases.

Previous research was conducted (Masinambow, 2022) entitled Legal Analysis of the Determination of Corruption Crime Suspects about the Authority of Judicial Institutions with research results. The rigid principle of legality must not bind judges in seeking justice. Based on a sociological point of view, analogies (analogy), extensive interpretation, and a contrary interpretation, the discovery of law with rational argumentation, not mere instinct, provides an opportunity to interpret pretrial objects broadly. Determining the applicant's suspect status as invalid and not based on law has, in principle, fulfilled the aim of seeking justice in determining pretrial objects. The judge interprets the pretrial object broadly using sociological (teleological) interpretation and argumentum rolealogiam interpretation, thereby including determining the suspect's status as a pretrial object.

Similar research was also conducted by (Gomgoman Halomoan Simbolon, 2016). in 2022 with the title Legal Analysis of Judges' Considerations of Nil Verdicts for Perpetrators of Corruption Crimes with the results of research that if someone has been sentenced to the death penalty or life imprisonment, then no other punishment may be imposed except the revocation of certain rights, and the announcement of the verdict judge. The judge's consideration in deciding on a nil sentence against the Defendant was because he had committed more than one crime in more than one case, and the

punishment received by the Defendant exceeded 21 years based on Article 12 of the Criminal Code Paragraph 4 in conjunction with Article 66 of the Criminal Code Paragraph 1. However, this provision limits the possibility of people committing various acts crimes are tried simultaneously or separately with a total exceeding 20 years in prison. The addition of each sentence cumulatively may be possible based on Article 272 of the Criminal Procedure Code, which states, "If a convict is sentenced to prison or confinement and is then sentenced to a similar crime before he has served the sentence imposed previously, then the sentence shall be carried out consecutively starting with the sentence imposed more formerly".

Another research that can be used as a reference for this research is research conducted by (Mokoagow, 2016), which was published in 2016 with the research title *Juridical Review of the Determination of Suspects by Investigators in Corruption Crimes by Law Number 8 of 1981 concerning the Code of Laws Criminal Procedure*. The results of this research are that what is meant by a suspect is a person who, because of his actions or circumstances, based on preliminary evidence, is reasonably suspected of being the perpetrator of a criminal act. Article 44 of Law no. 30 of 2002 concerning the Corruption Eradication Commission explains that if investigators carrying out an investigation find sufficient initial evidence of a suspected criminal act of corruption, a person can be designated as a suspect and continue at the investigative level (Sholikhati & Mardikantoro, 2017). This is in line with the words of Article 1 point 14 of the Criminal Procedure Code that a suspect is a person who, because of his actions or circumstances, based on preliminary evidence, is reasonably suspected of being the perpetrator of a criminal act. The suspect has rights from the moment he begins to be questioned. Article 52 of the Criminal Code: "During examinations at the investigation and court levels, suspects or defendants have the right to provide information freely to investigators or judges. In the explanation of the article, it is clear what is meant is that suspects must not be forced or pressured. Generally, these rights are reflected in the principle of the presumption of innocence. As a guarantee of upholding the principle of presumption of innocence in the Criminal Procedure Code, the Criminal Procedure Code has provided guarantees that strictly regulate the rights of suspects (Pratama & Apriani, 2022).

Several previous studies are related to this research, the difference being the novelty of this research. Some of the differences are that the case study in this case is relatively new, and no one has researched or analysed it. Apart from that, the variable in previous research was the Authority of Pretrial Institutions, while in this study, the variable studied was the Authority of the High Prosecutor's Office (Gomgoman Halomoan Simbolon, 2016).

With the description of the events and previous research above, the land owners are accused, and there is potential for abuse of authority; several problem formulations can be drawn that can be studied in the form of:

1. What legal provisions govern the prosecutor's authority that can determine suspects?

2. What is the basis for the consideration of the judges of the Padang Pariaman District Court in Decision Number: 08/Pid.Sus.TPK/2022/PN.Pdg and Decision Number: 13/Pid.Sus.TPK/2022/PN.Pdg that decided the suspects in corruption cases are free?

This research aims to find out and understand the legal provisions of the prosecutor's office in determining the suspects of 13 people who are suspected of committing corruption in land procurement for the Padang toll road and to study and analyse the basis for the judge's decision at the Padang Pariaman District Court to be by the law.

### **Research Methods**

The research was conducted from August 2023 to November 2023, with the primary source of library material being the Padang Pariaman District Court Decision No: 08/Pid.Sus.TPK/2022/PN.Pdg and 13/Pid.Sus.TPK/2022/PN.Pdg. Library materials as secondary information in the form of books, journals and scientific research are also used as data for this research.

This study used a normative approach. Normative legal research means analysing law through legal principles, legal system analysis, legal synchronisation analysis, legal history analysis, and comparative legal analysis. Normative legal research refers to library materials classified as basic information for scientific research as secondary information. With this secondary information, researchers do not need to conduct their research and directly examine the factors behind it.

Normative legal research is doctrinal legal research. In normative research, the law is often conceptualised as written in laws and regulations (law in the book) or as rules or norms that provide a reference for behaviour considered appropriate in society (Efendi, Prawitasari, & Susanto, 2021).

### **Results and Discussion**

#### **1. Authority of the Prosecutor's Office in Determining Suspects and Detaining Suspects**

The criminal justice system is aimed at organising the criminal justice process. Each component has its function, for example, the police as investigators, the prosecutor as the public prosecutor, the court as the prosecuting party, and the penitentiary whose role is to socialise the convicted, where these components cooperate and integrate to achieve the goal of dealing with crime.

The Prosecutor's Office, as the public prosecutor itself in the criminal field based on Article 30 of Law Number 16 of 2004, has the following authorities:

1. Performing prosecution,
2. Determine judges and court decisions that have obtained permanent legal force,
3. To conduct oversight of the execution of conditional criminal decisions, supervising illegal decisions and post-conditional decisions;
4. Conduct investigations into certain criminal acts based on the law;

5. Complete specific case files and conduct additional examinations before being transferred to the court, which is coordinated with investigators in its implementation.

Law number 16 of 2004 does not regulate how the prosecutor's authority determines a person to be a suspect and how the prosecutor's authority detains corruption suspects. While the provisions for a person to be made a suspect are stipulated in Article 1, paragraph 14 of Law No. 8 of 1981 concerning the Code of Criminal Procedure, the suspect should be suspected of being a criminal offender because of his actions or circumstances based on preliminary evidence.

The determination of suspects with 2 (two) pieces of evidence is still in the grey area when determining how investigators obtain them; it could be that the suspect is framed by making evidence or when there are administrative errors that can cause someone to be entangled in a legal case. The Constitutional Court has revealed that the Criminal Code does not have a check and balance system for determining suspects by investigators because there is no mechanism to verify the accuracy of how investigators obtain evidence. As stated by Constitutional Judge Anwar Usman in Hanifah (2015), the Indonesian Criminal Procedure Code has not fully applied the principle of due process of law because the actions of police officers in searching and finding evidence cannot be verified how to obtain evidence.

In the absence of clear regulations regarding the determination of suspects and the detention of suspects, the prosecutor's office should be more careful in determining suspects because it can defame and damage the dignity and dignity of a person. The decision of the prosecutor's office to detain a person without reason or error or application of the law can be countersued by its citizens by Article 95 paragraph 1 of Law No. 8 of 1981, namely suspects, defendants, or convicts have the right to claim damages for being arrested, detained, prosecuted and tried or subjected to other actions, without reasons based on law or because of errors regarding their person or the established law.

In the USU Law of Journal journal written by (Masinambow, 2022), the decision to determine the status of a suspect may be invalid and not based on the law by considering the principle of having fulfilled the aim of seeking justice in determining the pretrial object.

Before granting a detention order, the prosecutor's office should consider whether the person is innocent because the prosecutor's decision to detain an innocent person violates human rights, harms society, and violates the law's purpose to protect citizens and achieve justice. This happens because there are still many regulations protecting the rights of suspects, defendants, and convicts that have not been regulated as rights but are applied as guidelines for administering justice. This has led to differences in perception among investigators and public prosecutors who do not need to abide by the regulation because it only regulates the conduct of justice. Human rights protection should be carried out from the start of the investigation stage to something other than the education stage (Kaligis, 2006).

Thus, the author concludes that no definite legal provision exists for the prosecution to determine suspects. The determination of suspects has so far remained in a grey area as there is no explicit provision on "preliminary evidence" to base the designation of suspects (Sovianti, 2019).

## **2. Judge's Consideration in Deciding Corruption Matters Indemnity for Padang Sicincin Toll Road Development**

The beginning of this case was because some people in Nagari Parit Malintang area, Enam Lingkungan district, Padang Pariaman regency, West Sumatra Province claimed land included in the construction trade of the Pekanbaru - Padang toll road, Padang - Sicincin section. They, together with Wali Nagari Parit Malintang as a member of P2T, Head of DLHPKPP, Head of Task Force A, Head of Task Force B Implementation of Land Acquisition for the Construction of the Padang - Pekanbaru Toll Road Section of the Kapalo Hilalang-Sicincin-Lubuk Alung-Padang Section (Sta 4+200 - Sta 36+600) in Padang Pariaman Regency, West Sumatra Province, and the Head of the Regional Office of BPN West Sumatra Province, who is also a member of P2T, is considered by the Prosecutor's Office to have committed or participated in committing unlawful acts, namely claiming to be owners and rappers by submitting a basis for rights to land parcels included in the toll road construction trade, where the land according to the prosecutor's office has received compensation and is recorded as an asset of the Padang Pariaman Regency Government so that the community is considered to have no rights to the land. However, on the land claimed by the community, they submitted compensation for toll road construction, which has been implemented.

Thus, by the provisions of Article 27, letter number 2 of Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles, Article 41 paragraphs (4) and (6) of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, these persons are considered to have committed acts of enriching themselves or others or a corporation that harms the country's finances or economy in the amount of compensation given or amounting to Rp27,460,213,941.00. Article 41, paragraphs (4) and (6) of Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest (Padang Pariaman District Court Decision Number 08/Pid.Sus.TPK/2022/PN.Pdg and 13/Pid.Sus.TPK/2022/PN.Pdg).

In the Padang Pariaman District Court Decision Number 08/Pid.Sus.TPK/2022/PN.Pdg and 13/Pid.Sus.TPK/2022/PN.Pdg, the panel of judges considered an error in determining local government assets. The land that was compensated in 2009, where it is currently in dispute, is not compensation for the land but for its crops and buildings (Wibawa et al., 2022). This can be proven by a Waiver of Rights, which states that the land parcel was released or handed over with a Statement Letter and Certificate from the Wali Nagari on May 15, 2009, to the District Government without compensation for the land except for the plants and buildings on it for the land to continue the ownership process to BPN Padang Pariaman. Taking into account the application for the issuance of ownership status to BPN, until this case has

occurred, there has been no transfer of customary land rights to the Padang Pariaman Regency Government.

Suppose things could still be improved in determining regional government assets (Gomgoman Halomoan Simbolon, 2016). In that case, their research explains that legal certainty of ownership of state land rights in practice still finds obstacles. The obstacles in question include incorrect land data and land transactions, unclear reasons for rejection from the relevant agencies, incompatibility with incomplete rules and regulations, and priority rights for which there is no legal basis, making legal certainty less. Thus, the panel of judges declared the subsidiary charges unproven and not legally and conclusively proven guilty of committing a criminal offence.

### **Conclusion**

There is no definite legal provision for the prosecution to determine someone to be a suspect. The determination of suspects so far is still in the grey realm because the basis for deciding suspects is preliminary evidence for determining suspects according to Article 1 Paragraph 14 of Law No. 8 of 1981 concerning the Code of Criminal Procedure. Still, it needs to be explained precisely how the initial evidence is. The judges had strong enough grounds to acquit the suspect from the prosecution's prosecution because it was confirmed that the land-owning community had not received land compensation. The community only gets compensation for the land and buildings, while the land will be processed through BPN. However, until the land compensation for toll roads, the land has yet to be processed for compensation. Still, the local government has recorded the land in local government assets, which the Prosecutor's Office uses as evidence for prosecution. Thus, it can be concluded that the judges have a solid basis for freeing the suspects because they are not corrupt but demand the right to compensation for their land.

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