

Conference Paper

New National Capital City (IKN) in Legal Polemic

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The urgency of moving the national capital is a necessity that has been present since the beginning of the Indonesian Government. Problems occurs when the Indonesia development focusing on Jakarta as capital city. The process of moving the National Capital City (IKN) is going through a stage of development that has begun since the last few years, the rapid construction of this IKN must have the legal basis needed in the certainty of the process of moving this capital city. Legal certainty is an urgency for the initial steps and certainty from investors related to funding and the process. The purposes of this study is to analyse the problems in IKN from legal polemic. As an foundation of the development of IKN, the problem of IKN can be a prominent step to resolve the sustainability of the New Capital City of Indonesia. The method of this study using the normative yudical which using literature materials or mere secondary data. The transfer of IKN is a process in accelerating the Indonesian economy more evenly, the legal basis for the formation of the new capital city is very important in the foundation of development and investment guarantees. The making process, principles, the fast time, academic manuscripts, articles that do not reflect the environment and customs, economic alignment, benefits for the Indonesian community and community participation, even criticism on social media are the criticism of this law. Through the UU IKN no 3 2022, it has contained, vision, mission and basic principles, performance indicators and passed the regulation, UU no 3 about IKN is the foundation for a moving, until the whole national capital really moves and becomes a step for equitable distribution of the Indonesian economy.

Keywords: New Capital City; Capital City; Legal Polemic; IKN

1. INTRODUCTION

The urgency of moving the national capital is a necessity that has been present since the beginning of the Indonesian Government, and this discourse did not arise suddenly in the present period but has been proclaimed even during the time of President Soekarno. Quoting what President Jokowi said at a limited meeting regarding the transfer of the national capital, "The idea of moving the capital has long emerged since the era of President Soekarno. Until every era of the president there must be that idea." When

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it comes to this expression, this transfer project has been an idea that has long been thought about and wanted to be realized by the country's leaders, but it can only be executed during the Jokowi administration. In the context of equitable development, this high burden is then considered to be the main problem for the gap and uneven development in Western Indonesia and also other parts of Indonesia.

Therefore, the Government in this case wants to strive to evenly reduce the inequality that occurs between its main development in Java and other large islands. More than that, quoting what Rudolf Kjellan expressed, In the context of the geopolitics of a country, in this case the transfer of capital cities can be based on the country or a region can be equated with living things. Furthermore, based on this theory, the movement of the capital city can be interpreted as a natural context [1]. Based on the problems that arise from the process of establishing a country and region, the burden makes the movement, especially the movement of the national capital, a very natural context.

This also happens in Indonesia, where the problems that occur in Jakarta are one of the reasons for the urgency of moving the existing national capital. This problem arises due to several factors, one of which is the economic aspect where DKI Jakarta as the capital city of the country has a high burden as the center of government and economic center [2]. In addition, with a very large economic turnover, Jakarta has a very high level of urbanization. The impact of very high urbanization over a period of 60 years, now Jakarta is inhabited by more than 10 million people. With its area that cannot be said to be large and the population is fairly dense, on its journey Jakarta arguably gave birth to the main source of urban problems such as very high levels of congestion and also the worst air quality due to pollution caused by the activities of its residents. In addition, problems in Jakarta include severe flooding, limited clean water supply, high crime and most recently a significant decline in land level every year [3].

The move of the national capital has been planned to be moved to certain areas that have been focused [4]. These regions were proclaimed not without reason, these regions were chosen because they were considered capable of carrying the responsibility of being the center of government and economic center of a country. The areas that are proclaimed most aggressively include Jonggol, West Java and also to the Kalimantan region. The region was chosen based on history and also in accordance with Indonesia's geostrategic and geopolitical strategy [5].

The next urgency, the relocation of the national capital is in fact required to encourage equitable and comprehensive economic growth, especially in the eastern part of Indonesia. From the beginning of Indonesia's independence, Jakarta has become a top priority in terms of accelerating development which makes Jakarta the center of

everything, ranging from government, economy, politics and many other aspects. This has a huge effect on Indonesia, the velocity of money in Jakarta is at 70 percent with an area of only 664.01 km² or 0.003 percent of Indonesia's total land area which reaches 1,919,440 km². While the population is 10.56 million people or 3.9 percent from total population 270 millions in sensus 2020.

This problem is the cause of uneven development and prosperity in Indonesia. Centralized development only in Jakarta makes conditions less favorable for the Indonesian economy which is expected to be sustainable, in fact it cannot explore the regional potential optimally, lack of justice between regions with one another, and is very vulnerable to jealousy between regions which results in many people not wanting to inhabit and develop underdeveloped areas.

The process of moving the National Capital City (IKN) is going through a stage of development that has begun since the last few years, the rapid construction of this IKN must have the legal basis needed in the certainty of the process of moving this capital city. Legal certainty is an urgency for the initial steps and certainty from investors related to funding and the process. The purposes of this study is to analyse the problems in IKN from legal polemic. As an foundation of the development of IKN, the problem of IKN can be a prominent step to resolve the sustainability of the New Capital City of Indonesia.

2. METHODOLOGY/ MATERIALS

The method of this study using the normative yudical which The normative juridical research method is literature law research carried out by examining literature materials or mere secondary data and the legal principles. The uses of secondary data is main discussion of this study [6].

3. RESULTS AND DISCUSSIONS

The initiation regarding the transfer of IKN became real when President Joko Widodo on August 16, 2019 applied for permission to the House of Representatives of the Republic of Indonesia to move the National Capital (IKN) to Kalimantan Island, although interrupted due to the handling of the Covid-19 pandemic, at the end of 2021 the discourse on the transfer of IKN was again present. The government's seriousness in transferring IKN was reported by the establishment of Undang- undang No. 3 of 2022

concerning the National Capital (UU IKN) on February 15, 2022. This IKN Law is the legal basis for ensuring the clarity of the status and process of transferring IKN.

Therefore, the relocation of the National Capital is expected to realize Indonesia to have a safe, modern, sustainable, and resilient National Capital City and become a reference for the development and arrangement of other regions in Indonesia..

Undang- undang No 3 of 2022 concerning the National Capital on February 15, 2022. The IKN Law consists of: a. 11 Chapters; b. 44 Articles; and c. 2 Annexes, namely Annex I Delineation Map and Annex II Fundamentals of the IKN Master Plan. The regulations in the IKN Law include the following:

1. The formation, specificity, position, coverage area, and master plan of IKN.
2. Form, structure, authority, and government affairs.
3. Division of territory.
4. spatial planning, land and transfer of land rights, environment, disaster management, and defense and security.
5. transfer of the position of state institutions, State Civil Apparatus, representatives of foreign countries, and representatives of international organizations/institutions.
6. Funding and management of revenue and expenditure budgets.
7. Community Participation.
8. Monitoring and Review.

The National Capital City named Nusantara is a special regional government unit at the provincial level whose area is the seat of the National Capital as determined and regulated by this Law .In this Law discusses the complete vision, mission, goals, and realization as a city of hope, the IKN Law was issued as an effort to improve the governance of the national capital region, which is part of efforts to realize the goals of statehood, namely protecting the entire Indonesian nation and all Indonesian bloodshed, promoting general welfare, educating the nation's life and participating in implementing world order based on independence, lasting peace, and social justice in accordance with the 1945 Constitution [7].

The preparation of the IKN Law was motivated by the absence of a law that specifically regulates the national capital in Indonesia. In addition, the preparation of the IKN Law is also based on the urgency of moving the national capital which was conveyed by the President of the Republic of Indonesia at the Annual Session of the People's Consultative

Assembly of the Republic of Indonesia on August 16, 2019. The vision of development and management of the national capital is as a world city for all, with the main aim to realize an ideal city that can be a reference (role model) for the development and management of cities in Indonesia and the world [8].

The preparation of the IKN Law is the basis for regulations that can meet the expectations of an ideal form of national capital and as a reference for the development and arrangement of other urban areas in Indonesia [9]. In the process of forming the IKN Law, it has gone through a process that only began at the end of 2021. With the basis regulated by Law No.12 of 2011 concerning the Establishment of Laws and Regulations and its amendments which include the stages of planning, drafting, discussing, ratifying and promulgation. The journey of the Law has gone through all stages from the beginning and was officially signed by the President. This process took 5 months to form the capital city relocation regulations and was considered too fast in the process of formation. Chronology in the formation of IKN is:

1. On September 29, 2021, the Presidential Decree was sent The process of forming the IKN Law was marked by the sending of a presidential letter (surpres) regarding the IKN draft law (RUU) to the DPR.
2. On December 7, 2021, the House of Representatives determined a special committee (Pansus) on the IKN Bill. The Committee on the IKN Bill consists of 56 members, including 6 leaders. and the composition of the committee consists of 12 PDIP Factions, 8 Golkar Factions, and 8 Gerindra Factions. Then, 6 people from the Nasdem Faction, 6 from the PKB, 5 from the Democrats, 5 from the PKS, 4 from the PAN, and 2 people from the PPP Faction.
3. On January 3, 2022 Comparative study to Kazakhstan, Members of the Committee on the IKN Bill made a working visit to Kazakhstan with the Ministry of National Development Planning / Planning Agency in the context of a comparative study because Kazakhstan had also moved its national capital.
4. On January 17, 2022, the discussion meeting on the IKN Bill held a meeting to discuss the new national capital bill. The new meeting ended Tuesday (18/1/2022) early morning and resulted in an agreement that the IKN Bill would be brought to the plenary meeting of the House of Representatives to become law. In the meeting, 8 out of 9 factions agreed to bring the IKN Bill to the plenary meeting. Only the Prosperous Justice Party (PKS) faction refused.

5. January 18, 2022 Passed into Law Despite the rejection at the meeting, the process continues. The IKN Bill was officially passed into law through a plenary meeting of the House of Representatives which was held on Tuesday (18/1/2022) afternoon.

The law passed consists of 11 chapters and 44 articles containing all matters related to the transfer of the capital. The form of derivative rules Now, the IKN Law has been officially signed by the President. The government is currently continuing to draft various regulations derived from the law. At least, there are 9 derivative rules targeted to be completed in the next 2 months. "The derivative rules consist of Presidential Regulations (Perpres), Government Regulations (PP), to Presidential Decrees (Keppres). Here are the details:

1. Presidential Decree on the Structure and Procedures for the Implementation of the Special Regional Government of the Capital City of the Archipelago, as well as the Preparation, Construction and Transfer of the National Capital (Article 5 paragraph (7) of the IKN Law) combined with: Presidential Decree on the Organizational Structure, Duties, Authorities, and Work Procedures of the Nusantara Capital City Authority (Article 11 paragraph (1) of the IKN Law);
2. Presidential Decree on Details of the National Capital City Master Plan (Article 7 paragraph (4) of the IKN Law);
3. Presidential Decree on the KSN Spatial Plan of the Capital City of the Archipelago (Article 15 paragraph (2) of the IKN Law);
4. PP on Funding for the Preparation, Development, and Relocation of the National Capital, as well as the implementation of the Special Regional Government of the Capital City of the Archipelago (Article 24 paragraph (7) of the IKN Law) combined with: PP on the Work Plan and Budget of the Nusantara Capital City Authority (Article 25 paragraph (3) of the IKN Law); PP on the management of State Property and assets under control (Article 35 of the IKN Law); PP on Transfer from Ministries/Institutions to the Nusantara Capital City Authority (Article 36 paragraph (7) of the IKN Law); PP on Procedures for the Implementation and Accountability of the Capital City Budget of the Nusantara Capital City (Article 26 paragraph (2) of the IKN Law);
5. PP concerning the Special Authority of the National Capital Authority in the Implementation of Special Regional Government (Article 12 paragraph (3) of the IKN Law);

6. Regulation of the Head of the Nusantara Capital City Authority concerning the Detailed Spatial Plan of the Capital City of the Archipelago (Article 15 paragraph (4) of the IKN Law);
7. Presidential Decree on the Division of the Capital City of the Archipelago (Article 14 paragraph (2) of the IKN Law);
8. Presidential Decree on the Transfer of State Institutions, State Civil Apparatus, Representatives of Foreign States, and Representatives of International Organizations/Institutions (Article 22 paragraph (5) of the IKN Law);
9. Presidential Decree on the Transfer of the Position, Function, and Role of the National Capital from the Province of the Special Capital Region of Jakarta to the Capital City of the Nusantara (Article 14 paragraph (2) of the IKN Law)

The process of formulating the IKN Law is also supported by studies and academic texts that have been discussed jointly between the government, the DPR, and experts.

In the course of polemics regarding this law, it has also become a challenge with the repeated Constitutional Court tests from the public, one of which is from the National Axis of State Sovereignty (PNKN), including Abdullah Hehamahua (Applicant I), Marwan Batubara (Applicant II), Muhyidin Junaidi, (Applicant III), and others. In this case, the petitioners see that the process of forming the IKN Law is formally flawed because it is not prepared with continuous planning, and this is seen in the documents of development planning, state financial planning, regulatory planning, and development implementation [10].

The criticism of academic texts and principles also used In Academic Manuscripts (NA) are considered to be made haphazardly and seem perfunctory, It contains 175 very limited pages outlining the problems of the nation and state, including philosophical, sociological, and juridical aspects. Logically, the transfer of IKN which is a megaproject will certainly be related to many affected sectors, including the environment, socio-culture, economy, politics, public policy, local government law, urban and regional planning, to aspects of the legal interests of affected local communities that should be protected [11].

Law is a political product that political configuration will largely determine the laws formed or enforced in a country. Borrowing the political theory of law Mahfud MD (2017: 30), in this case, the IKN Law is considered a legal product with a conservative, orthodox, and elitist character. As characterized by Mahfud MD (2017: 32), the character of the law is substantially more reflective of the social vision of the political elite, the wishes of the

government, and is orthodox which closes the demands of groups and individuals in society. Moreover, the making of the IKN Law which is very fast (fast track) and access to public participation that is minimal and not much accommodated, is enough to illustrate that the IKN Law can be said to be a legal product with a conservative, orthodox, and elitist character [12].

In addition, in one of his criticisms is the use of the principle of clarity of purpose; principles of usability and productivity; principles can be implemented; and the principle of openness [13]. These principles are considered to have no side of inaccuracy in policy formulation and inconsistent paradigms of the purpose of forming laws, because it does not accommodate the asynchronous philosophical considerations of the transfer of IKN contained in the articles and paragraphs, as well as the non-accommodation of the rights of regional communities, especially indigenous peoples. Meanwhile, formal defects are related to the process of forming the IKN Law which does not necessarily get people's legitimacy because of its very fast formation. The people do not participate much in policy formulation.

In addition, the problem is also echoed with the #TolakUUIKN Hashtag, this is evidence of the negative sentiment that was originally distributed by generic accounts such as observers, social activists, and their followers. Netizens who rejected the relocation of the capital raised issues around IKN funds used from the State Budget during economic recovery, the impact of development on the environment (around AMDAL), to question again the urgency of this move. Many netizens doubt that this capital relocation project is related to the business interests of financiers and officials in it with the hashtag #IKNProyekOligarki.

Apart from the things mentioned above, until now no one has been able to win this MK test. In the decision of the Court, the process of forming laws does not depend on the sooner or later the discussion [14][15]. However, the process of forming laws must follow the rules of the law formation process as stipulated in Law No. 12 of 2011 concerning the Establishment of Laws and Regulations and its amendments which include the stages of planning, drafting, discussing, ratifying and promulgation. As long as all processes in these stages have been fulfilled and carried out earnestly and carefully by the framer of the law, then related to the time of completion and discussion that seems fast or fast track legislation is part of the efforts of the framer of the law to complete the law in general, including in this case the IKN Law.

However, the IKN transfer plan is important to be criticized to improve the quality of policies that accommodate the rights of affected communities and the public interest. Legal certainty is the foundation needed as the first step in moving the new national

capital, with various parties related to cooperation schemes between the government and various parties related to funding the planning to move the new capital city does not burden the state budget too much. Because our country is a country of law and legal force after the next 1945 Constitution is a law, then the most needed to be able to carry out the next stage in the implementation of the transfer of this capital city is if there is a law.

The transfer of the capital, the construction of the capital is not talking about ten, decades, but hundreds or even thousands of years. This means that we assume that Indonesia will still exist thousands years from now, the promulgation of this IKN Law, there is still a lot of homework to be done. government regulations (PP) governing the technical relocation of the capital city.

4. CONCLUSION AND RECOMMENDATION

The transfer of IKN is a process in accelerating the Indonesian economy more evenly, the legal basis for the formation of the new capital city is very important in the foundation of development and investment guarantees. Criticisms of this law include the making process, principles, the fast time, academic manuscripts, articles that do not reflect the environment and customs, economic alignment, benefits for the Indonesian community and community participation, even criticism on social media.

Through the UU IKN no 3 2022, although there are still many shortcomings, it has contained, vision, mission and basic principles, performance indicators and passed the regulation, UU no 3 about IKN is the foundation for a moving, until the whole national capital really moves and becomes a step for equitable distribution of the Indonesian economy. The issue of this legal becomes a very big polemic in the 2024 elections, the sustainability of this law is largely determined by the elected leaders from the results of the 2024 elections. These supportive leaders are expected to fill and continue this development and make it succeed.

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