

IMPACT OF MOVING THE NEW CAPITAL TO KALIMANTAN

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Abstract

Jakarta has been the capital of the country (IKN) since the days before Indonesia's independence. The enactment of Law Number 29 of 2007 concerning the Provincial Government of the Special Capital Region of Jakarta confirmed Jakarta to become the Capital city of Indonesia. The many dynamics over the years such as the issue of the capital will sink cause Jakarta to be considered no longer qualified to be a canyon capital. The emergence of the discourse on the transfer of the capital since the era of President Soekarno's administration until it was reaffirmed by the president Jokowi administration on August 26, 2019 that the Government said that it would move The State Capital from DKI Jakarta province to East Kalimantan Province. Evidenced by the issuance of Law Number 3 of 2022 concerning the National Capital which was passed by the House of Representatives (DPR) on January 18, 2022 and signed by President Joko Widodo on February 15, 2022. The policy to move IKN is motivated by the need for the development of new economic areas, reducing inequality between regions, and improving the welfare of the people. The author finds that the transfer of IKN has stronger strengths and opportunities than the weakness and threat side so that the transfer of IKN is expected to have an impact positive for the Indonesian economy.

Keywords: *National Capital, Development of new economic areas, Law Number 3 of 2022.*

INTRODUCTION

Since the Unitary State of the Republic of Indonesia proclaimed its independence on August 17, 1945, there has never been a discourse to build a city as the capital of the country or the capital of the country. The major cities that are currently the capital of the country (Jakarta) and the provincial capitals are all or are largely relics of Dutch colonialism. Much different from the heyday of the kingdom in the archipelago in the past, before it experienced colonization, almost all had and built capitals (king's cities). For example, Majapahit has relics of the Trowulan site which is considered the center of its government in Mataram with Yogyakarta as the center of its government. The transfer of the center of government often occurred in the age of the kingdom. If an empire is hit by a disaster, then the center of the kingdom must be moved because it is considered to have been hit by the curse of the god (Villanueva 2021).

The events of the han capital of the country have been carried out by several countries, for various reasons. Providing an illustration that the transfer of the national capital is a non-taboo event and is carried out with the aim of solving problems for the good of the maupu n progress of the nation and state. The transfer of the capital in the Unitary State of the Republic of Indonesia is very possible because in the Constitution of the Republic of Indonesia and its Amendments are not expressly regulated. In Chapter II paragraph (2) of the Constitution of the Unitary State of the Republic of Indonesia it is written "*The People's Consultative Assembly convenes at least once in five years in the national capital*". In the Constitution there is no article that mentions where and how the national capital is regulated. With demikian there is high flexibility in regulating including moving the national capital. In the transfer of the national capital, of course, a strong

and fundamental reason is needed about the effectiveness of its function (Hadi and Ristawati 2020).

There is a first alternative discourse of the capital's mindset and departure, that the condition of Jakarta as the capital of the country that has been too long until now is not ideal for equitable distribution of national development. If we look at everything in Jakarta, starting from the national capital, government offices, soe headquarters, trade centers, population concentration, industrial centers and others (Purwanto 2021). This condition is certainly not ideal, one function often hinders the function of the other, namely social justice, the whole Indonesian people. Ideally, some of those functions need to be moved to another city. Moving economic activity will be very difficult, but it is not impossible for the function as the capital to be moved to another city in order to increase the carrying capacity of the old city to be comfortable to live in and give new cities and their areas opportunities to also develop (Ministry of National Development Planning 2019).

Before determining an alternative to determine the choice of the location for moving the national capital, it is first necessary to find the ideal formulation of the national capital. A literature search of the terms of the ideal national capital tends to be unoptimized. Based on the geographical thinking of the ideal national capital, it must consider spatial, ecological, and territorial aspects, it is necessary, among others, to be: available suitable land, safe, comfortable, healthy environment, free from danger and bencana, accessibility and flow of adequate information, availability of land for representatives of friendly countries (embassies), availability of clean water, public facilities, health facilities, the surrounding community is conducive and does not cause inequality between region. Based on the formulation, it is then associated with Indonesia's geographical conditions to determine alternative locations as candidates for the national capital (Purwanto 2021).

Moving the state capital outside Java, the choice is Kalimantan Palangkaraya, if it is used as the capital of the country, it is estimated that it can last for the next 200-300 years. This is because there is still a lot of vacant land there. Kalimantan is a location that is the center of the Archipelago region. The land is still very large, so it can use the layout of the country's capital which is very ideal. The downside is that the facilities and infrastructure are not adequate, most of them have to build new ones, meaning they are expensive. Another weakness is that the provision of clean water, forest fires, floods and landslides area danger that needs to be used as a basis for consideration (Nugroho 2020).

The transfer of the capital should be a study that has been carried out by Bappenas. The Minister of Public Works of the SBY cabinet, Djoko Kirmanto, had said that the transfer plan might be implemented, as long as the discussions were carried out carefully in the form of economic calculations, and other sectors, such as the long-term benefits of the project to build a more just and developed Indonesia together. There is also the view of AIPI chairman Ryaas Rasyid that the mother of a state of the Republic of Indonesia must be moved from Jakarta no later

than 10 years later or in 2016. Because, currently Jakarta is so congested that it is no longer worthy of being the capital of the country (Toun NR 2018).

Based on this, the state and society should immediately formulate a strategic concept of public policy regarding urban politics in Indonesia from now on. If the government is smart-minded and willing to be earnest for the good and prosperity of the future, then it is necessary to study and design a model for moving the capital from now on. In addition to the state capital being moved there was also the transfer of part of the government's power. Many people argue that if the national capital is taken from Jakarta, then the Indonesian state will become a union country like Singapore. If the capital is moved, the problems that will arise are related to infrastructure problems and how the type of arrangements will be, including if the transfer of the capital is carried out, there will be an extraordinary change in order (Mkrtchyan 2017).

Various explanations explained by the author from the introduction above, the author wants to examine the authority of the head of the negara nusantara capital authority given by the president in carrying out his duties to advance the capital of the archipelago.

RESEARCH METHODS

The type of research used is normative legal research. It is carried out by researching legislation and secondary data in the form of (documents and literature which are as a reference in research). This research uses one approach, namely the statute approach, and uses the doctrines of law, namely views according to the teachings of legal experts regarding the research to be studied.

RESULTS AND DISCUSSION

Meaning and function of a National Capital

The capital city (a capital, capital city, political capital) is a city designed as the center of government of a country; physically the capital of the country generally functions as an office center and a gathering place for government leaders. Derived from the Latin caput which means head (head) then associated with the word capitol which means the location of the main government center building carried out. Historically, the capital was formed through a conquest or merger. The capital city as the main economic center of a region is also always used as the center point of political power, so it has its own charm that is needed for the efficiency of government administration such as jurists, journalists and policy researchers. The capital is an economic, cultural or intellectual center (Villanueva 2021).

The capital has become a symbol of government and kenegaraan, as well as a place for political, economic and cultural content to flourish. In medieval cities, the election and establishment of a modern capital was formed on an emotional foundation. Examples are as follows:

- 1) A devastating and almost unpopulated Athens was made the new capital of Greece, as a symbol of past glory. The same thing happened during the Cold War and German Reunification, where Berlin became the capital again for Germany.
- 2) Russia moved its government from Moscow to Saint Petersburg to give Russia greatness westward, it was a symbolic relocation from the capital to a geographical and demographic location on economic or strategic grounds (often called the future capital or pioneer capital).
- 3) Kemal Atatürk moved the seat of government from Ottoman Istanbul to Ankara.
- 4) Emperor Ming moved the capital from Nanjing to Beijing to stay away from Mongols and Manchus (Hutasoit 2019).

The capital has an important function, the capital city is always used as the main target in warfare, because controlling the capital will be a guarantee to be able to control a large number of enemies or opponents, so as to lower morale to defeat the enemy (military). As was the case in the past in China, where its government was slightly concentrated on flexibility at the provincial level, the collapse of the capital could result in the collapse of a Dynasty. Therefore, the Ming Dynasty moved the capital Nanjing to Beijing on the grounds that it could control the enemies who came from the Mongols and Manchus. With regard to the important function of the national capital, there is another point that the function of the national capital is less important as a military target (Yahya 2018).

Because the center of government can be moved to another place. For example, in the revolutionary war and the war of 1812 British soldiers repeatedly attacked several American capitals, American soldiers could still fight from outside the city, where they were supported by the local government and civil residents on the border. The exception is France, whose bureaucracy is effectively coordinated and centralized and supported by vast resources, making its country very much more than its competitors, but in its military strategy it has a high risk if the capital is occupied by the enemy. The traditional threat from France is that Germany is focused on taking control of Paris (Usman and others 2021).

The same thing happened in Indonesia, when Jakarta was fallen by the Dutch army during the revolutionary war the national capital once moved to Yogyakarta and to Bukit Tinggi. Thus the government continued to run, so that the Republic of Indonesia remained in the spirit of carrying out guerrilla warfare to maintain independence.

Head of the State Authority in carrying out his duties

In Article 1 Number 10 of Law Number 3 of 2022 concerning the National Capital City, the Head of the Nusantara Capital Authority is the head of the Government of the Special Capital Region of the Archipelago. The head of the National Capital Authority has a ministerial-level position, is appointed, appointed and dismissed by the President after consultation with the House of Representatives. Similarly, the president, governor and regent/mayor, the Head of the

National Capital Authority and the Deputy Head of the National Capital Authority hold office for five years, starting from the date of inauguration (Hadi and Ristawati 2020).

However, the difference is that the Head of the National Capital Authority and the Deputy Head of the State Capital Authority can be appointed and reappointed within the same term of office. In addition, in Article 10 paragraph (2), the Head of the National Capital Authority and/or the Deputy Head of the National Capital Authority as referred to in Article 9 may be dismissed at any time by the President before the end of his term of office.

In Article 11 paragraph (1) it is stated that the provisions regarding the organizational structure, duties, authorities and work procedures of the Nusantara Capital Authority are regulated by a Presidential Regulation. However, in the law, it is stated that the National Capital Authority is responsible and entitled to carry out activities for the preparation, construction and transfer of the National Capital. Not only that, the National Capital Authority has the authority to grant investment permits, ease of doing business, and provide special facilities to parties who support financing in the context of preparation, development, and transfer activities for the National Capital, as well as the development of the National Capital and partner areas (Munif Rochmawanto 2014).

Strategy of the New Capital Region of the Republic of Indonesia

As the new capital of the Republic of Indonesia, the East Kalimantan Province, precisely in part of Penajam Paser Utara Regency and part of Kutai Kartanegara Regency, has a strategic position and location, so President Jokowi chose this area to be the new capital, as a replacement for DKI Jakarta. The area chosen by President Jokowi to become the new capital city is between Samarinda city and Balikpapan and falls in parts of Penajam Paser Utara Regency and Kutai Kartanegara Regency (Primadina 2019).

President Jokowi himself has revealed the reasons for choosing this region to be the new capital of the Republic of Indonesia, where there are 5 (five) reasons as follows:

- (1) Minimal disaster risk, whether floods, earthquakes, tsunamis, forest fires, volcanoes, and landslides;
- (2) Strategic location, in the middle of Indonesia. Geographically, the average distance of East Kalimantan to all provinces in Indonesia is indeed quite short, which is 893 km, the second shortest among the other five prospective capital cities, or below Central Kalimantan, whose average distance to the entire province is 792 km;
- (3) The area is near the developed urban areas, namely Balikpapan and Samarinda;
- (4) Relatively complete infrastructure;
- (5) In the two places, there is land that has been controlled by the government, covering an area of 180 hectares (Yahya 2018).

The transfer of the national capital from Jakarta to East Kalimantan Province by the National Development Design Agency (BAPPENAS) conducted a study on the transfer plan, one that should be considered it is a legal implication if the State Capital is to be moved. Head of the field of Constitutional Law, Faculty of Law, University of Indonesia, Fitra Arsil, said that the transfer of the national capital does not only have implications for finances but also has implications law. The transfer of it poses a cost burden that is not small, but also has an impact on the constitutional law of the State (Primadina 2019).

Study of the implications of the provisions of laws and regulations related to the regulation of Land Law for Investment in the jurisdiction of the East Kalimantan Province Which is planned to become the new state capital, as referred to in Article 33 paragraph (3) of the Constitution of the Republic of Indonesia of 1945, Law Number 5 of 1960 concerning Regulations Basic Principles of Agrarian Affairs, Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development for Public Interest, Law of the Republic of Indonesia Number 25 of 2007 concerning Investment, this provision regulates the Provincial Government of the Special Capital Region in Jakarta, then the expectations of the community with their local wisdom towards the transfer of the State Capital to East Kalimantan so that there is a need for new provisions that specifically regulate the capital in Kalimantan Timur. Law Number 5 of 1960 gives a lot of authority to local governments in the management of mineral and coal mining. For this reason, the Theory of Authority needs to be discussed more deeply so that there are similar perceptions in understanding the authority of the government and local governments in the management of mineral and coal mining. Based on this view, Law Number 5 of 1960 and Law of the Republic of Indonesia Number 2 of 2012 give a lot of authority to local governments in land management for all aspects of life and development, especially physical development in facing the development of moving the State capital to East Kalimantan, have legal implications because they have the involvement of *lan gsung* towards the use of land for the construction of the new state capital in East Kalimantan (Suparji 2016).

The description emphasizes that the implications of land law on land rights in moving the State capital to East Kalimantan require the authority or power of the regional government, the center, so that legal arguments are given based on several theories of authority in line with the main pillars of the state of law, namely the principle of legality (*legaliteitsbeginsel* or *het beginsel van wetmatigheid van bestuur*), then based on this principle it is implied that the authority of government comes from legislation, meaning that the source of authority for the government is legislation. Theoretically, the authority derived from the legislation is obtained through three sources, namely, attribution, delegation and mandate. Government agencies or officials who provide delegations may use the authority that has been granted through the delegation themselves, unless otherwise specified in the provisions of the laws and regulations (Nugroho 2020).

In the event that the exercise of authority based on delegation gives rise to ineffectiveness in the administration of government, government agencies and officials who delegate authority

may withdraw the authority that has been deprecated. Government bodies and officials who obtain authority through delegation, the responsibility of authority rests with the recipient of the delegation. Based on the opinions of the scholars mentioned above, the opinion of Philip M. Hadjon is used, because as a concept of public law, authority consists of at least 3 (three) components, namely influence, legal basis and legal conformity (Abikusna 2019).

With these 3 (three) components, the authority of the government and local governments in organizing land management for investment and / or for other interests becomes clear and does not overlap. The authority granted by Law of the Republic number 5 of 1960 to the government and local governments in organizing the use of land for investment purposes as also regulated in the Law of the Republic of Indonesia Number 10 of 2006 concerning the National Land Agency and Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development for Public Interest is an attributive authority, where the authority acquired attributively because the government and the local government are expressly mandated by the law on land acquisition (Abd and others 2014).

The description Sudargo Gamain wrote that basically a state based on the law must provide guarantees of equality to each individual, because the state of law was born as a result of the struggle of the individual to break away from attachments as well as acts of arbitrariness. In a legal state, in addition to equality, there are also restrictions. The limits of this authority also change, depending on the circumstances, however, the means used to limit both interests, namely hukum. Jimly Asshiddiqie said that President Joko Widodo's idea to form an omnibus law which was only directed at the draft law on Job Creation and Empowerment of Micro, Small and Medium Enterprises (MSMEs) was again criticized because a number of laws that explicitly mentioned the phrase "state capital" should be audited and considerations regarding the need for the capital to be moved to Penajam Paser Kaltim. "the number is not less than 30s Undang-law governing various institutional laws or State commissions that mention the phrase "state capital" if this is not changed undoubtedly all of them should be moved to Penajam (Hantoro 2019).

Based on this description, the concept of simplifying regulations (omnibus law) is stated to conduct legal audits and the development of an electronic legal audit system specifically in terms of the system of laws and regulations related to the number of regulations written in the past the capital of the State of Jakarta to become the National Capital of East Kalimantan, because when traced conventionally it is very difficult to know in detail except using an information and communication technology services that continue to develop at all times.

CONCLUSION

The Unitary State of the Republic of Indonesia which has been independent for almost 76 years, the capital of its country (Jakarta) occupies the former capital of the invaders (who colonized the area for more than three centuries) (Ikhbal 2010). As a symbol of the state and the identity of the nation today and in the future, it is not worth maintaining, because as a concentration of power and economic centering, many people cause dense populations, untidy

spatial planning, traffic congestion, conflicts of interest, pollution, every year hit by floods, and inadequate environmental sanitation. The centralization of power and activities in the capital is at high risk in critical condition, president Joko Widodo had the idea of moving the state's mother to east Kalimantan. Exactly to the city of Penajam Paser Utara (Hadi and Ristawati 2020).

President Joko Widodo's consideration of choosing the city of Penajam Paser Utara as the national capital. First, Borneo is the largest island in Indonesia and is located in the middle of the Indonesian island. Second, eliminating the centralistic Jawa. Third, development in Jakarta and Java is a concept of Dutch heritage. The advantage of Kalimantan is that its location is the center of the Archipelago region. The land is still very large, so it can compile a very ideal layout of the national capital. The downside is that the infrastructure and facilities are not adequate, most of them have to build new ones, meaning they are expensive. Another weakness is that the provision of clean water, forest fires, floods and landslides are hazards that need to be used as the basis for the cultivation of land for development.

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