

Solution or Ambition? Relocating the National Capital to Borneo Island (Juridical Analysis of *Eco-Justice* Perspective)

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Abstract

Problems and solutions are presented at the same time in the effort to relocate the National Capital to Borneo Island. However, the existence of these solutions has not actually reduced the negative stigma of the community who say that the relocation of the National Capital is the ambition of certain elites because the National Capital Law was passed through a process that was not long and seemed not transparent. The community participation involved is considered ineffective because not all people affected by the rules are involved in the process of the draft law on the National Capital City. Using a normative juridical research method based on various related laws and regulations, several legal materials and literature. The author focuses on the basis for the formation of laws and regulations, the 1945 Constitution, then the solution presented later can be implemented properly or is just an ambition of the government to hasten relocate of the National Capital, and most importantly is a juridical analysis of the Eco-Justice perspective in the formation of the new National Capital in Borneo Island.

Keywords: Solution, The National Capital, Ecological Justice.

Introduction

The national capital is the centre of government that has the role of being a symbol of a country that not only controls the capital city, but can also control the government on a national scale. It is also the centre of the national economy and administration. Thus, the majority of countries in the world encourage their capital cities to become symbols of the dynamics of social and economic life to attract foreign investors in an effort to increase productivity in the country. The emergence of a plan to relocate Indonesia's capital city has actually made headlines in recent years. Since 26 August 2019 (kaltimprov.go.id, 2019), at the State Palace, the President of the Republic of Indonesia has made an announcement about the location of the prospective new capital city, namely in Kutai Kartanegara and Penajam Paser Utara (PPU) Regencies, East Kalimantan. Then, on 18 January 2022, the Bill on the National Capital City (IKN) was passed into law by the Indonesian Parliament and the Government. Thus, Indonesia will have a new capital city to replace Jakarta.

The parameters for selecting a new capital city candidate are based on various problems faced by the current capital city. Situations and conditions that are considered too crowded then cause major impacts until now such as congestion, air pollution, flooding and several other geographical problems. Based on data (Bappenas, 2019), around 57% of Indonesia's population is concentrated in Java Island which has the highest population \pm 56.56% of the total population of Indonesia. The largest land conversion, very high urbanisation growth, and the increasing burden of the current capital city have resulted in a decrease in the carrying capacity of the environment and the large economic losses caused by congestion (Pustral-

UGM, 2013). Meanwhile, other regions have a population of <10% except Sumatra Island. Then, the economic contribution of Java Island is also greater than other islands. In fact, according to data (Ministry of PUPR, 2016) there is a water availability crisis in Java, especially DKI Jakarta and East Java. These problems are some of the problems that exist in the capital city so that a solution is given to move the capital city to another place by proclaiming the New Capital City as a representation of the Nation's Identity, apart from being a symbol it also shows green, smart, beautiful and sustainable aspects. So that later the new capital city will be considered much more modern and of international standard with efficient and effective governance (Deny Slamet Pribadi and Setiyo Utomo, 2021).

Looking at the various problems and solutions provided above, it can be temporarily concluded that the best solution to the current problems is to move the new National Capital to *Borneo* Island. Solution or ambition? Two very important things to ponder. Reflecting on the current capital city, Jakarta. Actually, the solution to the existing problems can be given appreciation but this has not been an urgent consideration. Because, the situation and condition of the Jakarta area has been said to be very severe. Moving the Capital City to Borneo Island is not a solution because the burden on Jakarta will increase. Many cases are currently circulating, one of which is the issue of Meikarta and the reclamation of the North Coast of Jakarta. Accelerating the relocation of the Capital City with the current condition of Jakarta does not provide a solution but raises a negative perception of ambition.

Based on the background of the above writing, the author is interested in raising this theme into a title, namely "Solution or Ambition? The Relocation of the National Capital City to Borneo Island (Juridical Analysis of Eco-Justice Perspective)", which will be further discussed in several important points by linking several data and related laws and regulations and using normative juridical research methods which will later be linked to the idea of eco-justice.

Methods

Writing this research paper, the author uses a normative juridical research method based on various related laws and regulations, some legal materials and literature (library research) (Soekanto, 2007). By examining secondary data by investigating the study. By using an approach, researchers can get all the information about the issue being studied (Peter Mahmud Marzuki, 2005). There are several approaches in this research, including: 1) Statute Approach, (Bambang Sunggono, 2010); 2) Conceptual Approach (Peter Mahmud Marzuki, 2010); 3) Historical Approach and; 4) Comparative Approach. The legal materials used consist of: primary legal materials, namely laws and regulations and secondary legal materials consisting of literature, papers, scientific works, and articles related to the object of research.

The author in this case also focuses on the basis for the formation of laws and regulations contained in the IKN Bill which has been passed into the IKN Law. The current IKN Law is in accordance with the 1945 Constitution, then the solution presented can be implemented properly when the new State Capital is implemented or is it just an ambition of the government to immediately move the State Capital, and the most important thing is a juridical review of the Ecological Justice perspective in the formation of the new State Capital in Kalimantan Island.

Findings dan Discussion

1. Problems and Solutions in Relocating the National Capital to Borneo Island

In simple terms, the capital city can actually be interpreted as the centre of government, the centre of policy and power, as well as the economic centre of a country. However, in practice, these three things have not been accommodated. Especially in terms of a country's policy to separate the centre of government and the centre of business. The determination of

the capital city area depends on the needs of each country. The concept of the capital city, when viewed from a constitutional perspective, intersects with the terms of recognition of a country (declarative theory). In detail, the theory states that the purpose of the State Capital is as a special area as well as a place where the centre of government in a country occurs. This means that a country must have a place of government in the National Capital region in order to run effectively and efficiently (Fikri Hadi and Ristawati Ros, 2020).

Historically, the relocation of the National Capital has been going on since the old order and continued until the reform era. It was initiated by Soekarno, the First President of the Republic of Indonesia, who stated that the National Capital would be moved to Palangkaraya. The reason for relocating the National Capital is said to create equity for all regions in the archipelago that are advanced and modern (CNN Indonesia, 2022). While sociologically, the relocation of the National Capital is based on at least 2 (two) considerations: 1) to create economic and development equity. In fact, the centre of economic activity occurs centrally on the island of Java and seems to negate the existence of outside Java; 2) to create professional, integrated and advanced governance (Dian Herdiana, 2022).

The legal basis for the State Capital in Indonesia has been regulated in Law of the Republic of Indonesia Number 10 of 1964 concerning the Statement of the Special Capital Region of Greater Jakarta Remaining as the Capital of the Republic of Indonesia with the Name Jakarta. Of course, it has its own historical and philosophical background (Fanisa Luthfia Putri Erwan, Waluyo, 2022), but the establishment of Jakarta as the capital of the country is due to Jakarta as the city of the proclamation of independence and the centre of the driving force of all revolutionary activities and the spread of the Pancasila ideology.

Jakarta, the capital city of the country, has various problems. Jakarta has been the capital city for decades and has a role as the centre of government and the centre of the economy. So, it is natural when Jakarta seems to have a heavy burden so that the existing problems are still unresolved. Apart from congestion, Jakarta also has problems with overpopulation and poor drainage. The other factors that encourage the relocation of the capital city of Jakarta include: 1) Urban density which includes: population density; density of buildings and structures; density of urban development activities and density of motorised traffic; 2) Natural disasters, such as: flooding, the threat of Rob (tidal flooding); and 3) Excessive exploitation (extraction) of groundwater (Raharjdo Adisasmita, Sakti Adji Adisasmita, 2011). These factors eventually led to the discourse of moving the National Capital to Borneo Island. Borneo is considered a feasible island if it is used as a place to move the capital city, in addition to the large area of course also the number of populations that are not as high as in Java. So that the government process will be more effective and efficient.

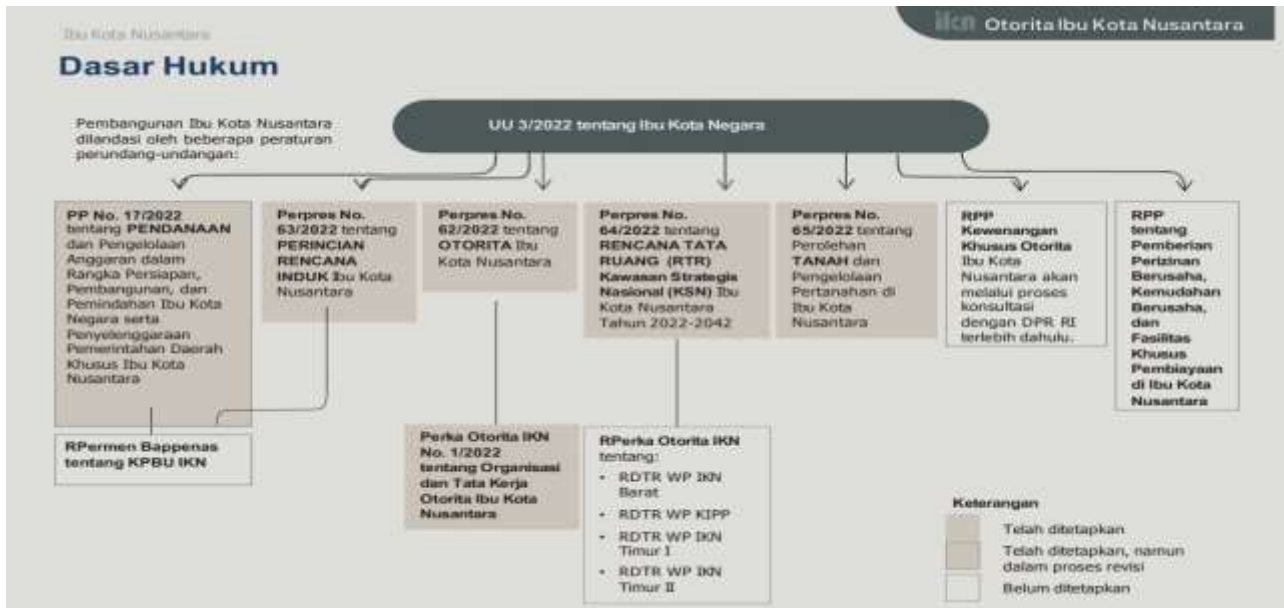
Based on data (Bappenas, 2021) the urgency of moving the National Capital is because around 57% of Indonesia's population is concentrated in Java, so it is very lame with the population outside Java, such as: Sumatra 22.1%; Kalimantan 6.1%, Sulawesi 7.4%, Bali and Nusa Tenggara 5.6% and Maluku and Papua 2.8%. So that it also affects economic growth and contribution to the National Gross Domestic Product (GDP) (BPS, 2020). Furthermore, the high growth of urbanisation has resulted in high congestion and unhealthy air quality. According to data (WEF, 2017) in 2013 Indonesia was ranked the 10th most populous city in the world and in 2017 became the 9th most populous city in the world. The high population is followed by a large number of round-trip movements of the population, which affects Indonesia's congestion index, which is ranked 7th out of 403 cities surveyed in 56 countries (Tomtom, 2018). This high congestion causes air pollution and Jakarta is the city with the worst air quality in the world (Air Visual, 2019). Equally important is the decline in Jakarta's environmental carrying capacity, which has led to flood, earthquake and land subsidence hazards.

The government solution was then present in the chaos of the National Capital in Jakarta so that East Kalimantan was chosen on the grounds that the accessibility of the location is high, close to two major cities: Balikpapan and Samarinda; Heterogeneous and open population structure, low conflict potential; Defence can be supported by Tri Matra Land, Sea, Air; Medium land capability for building construction; Safe location and minimal disaster threat; Large land, status of Production Forest (HP) and Plantation; Main infrastructure: BalikpapanSamarinda and Trans Kalimantan toll roads; Airports in Balikpapan and Samarinda; Kariangau Container Terminal Port, Balikpapan and Semayang Port, Samarinda; Raw water from 3 existing reservoirs, 2 planned reservoirs, 4 rivers, and 4 watersheds; and is on the ALKI II (Makassar Strait) route. It is hoped that the State Capital will provide convenience in government processes and systems as well as increased economic growth (Ministry of National Development Planning/Bappenas, 2021).

2. Elite Ambition in Relocating the Nation's Capital

Budget issues for the relocation of IKN have been in the public spotlight. The government has previously revised the IKN funding portion to 53.3% of the State Budget (APBN). The figure is up from the initial plan which was only 19.2%. If calculated from the total funding needs for IKN of IDR 486 trillion, the funds to be spent from the APBN reach IDR 259 trillion. This figure is far from the previous figure of around Rp 89 trillion (CNN Indonesia, 2022). Of course, questions arise regarding what kind of financial management method will be used in IKN later. Not only the budget issue, the ratification of Law Number 3 of 2022 concerning the National Capital City (IKN Law) by the President of the Republic of Indonesia as the basis for the construction of IKN in East Kalimantan has also become a public concern. Relocating the capital city from Jakarta to East Kalimantan, which is called Nusantara, is seen by many as a fairly ambitious plan. Public comments are certainly diverse because they consider the relocation of the capital city to be hasty. The IKN Law was passed by all factions in the DPR except the PKS faction. It was said to be fast, because it took 43 days, starting from 7 December 2021 until it was passed on 18 January 2022 (Choirul, 2019). Several assessments must be considered in the matter of passing the IKN Law. First, formal problems in the formation of the IKN Law. Second, the hierarchy of laws and regulations. Third, the issue of the existence of the authority of the National Capital City. The drafting process, which was very short and did not involve public participation, made the IKN Law considered formally flawed so that a judicial review lawsuit was filed to the Constitutional Court. In addition, the form of government in the form of a special region at the provincial level and the head of government in the form of autonomy are considered incompatible with Article 18 paragraph (1) of the 1945 Constitution so that it is said to be unconstitutional.

The elucidation in Article 18 paragraph (1) of the 1945 Constitution explains that the Indonesian state is divided into provincial regions and provincial regions are divided into regencies and cities, each of which has a regional government, which is regulated by law. So that the indication of regional autonomy is decentralisation which is suitable to be applied in Indonesia because of the population in each region. The transfer of some government powers in the Republic of Indonesia is very possible, because the 1945 Constitution and its Amendments are not expressly regulated. In Chapter II paragraph (2) of the Constitution of the Republic of Indonesia it is written: The People's Consultative Assembly convenes at least once every five years in the State Capital. There is also no article in the Constitution that mentions where and how the capital city is regulated. Thus there is high flexibility in regulating, including moving the State Capital. In moving the State Capital, of course, there needs to be a strong and fundamental reason about the effectiveness of its function.



IKN legal basis chart (Dr Tri Mulyani Sunarharum, 2022)

Referring to Law No. 12/2011 on the Formation of Legislation has at least 5 (five) stages. Starting from the planning, preparation, discussion, ratification and enactment stages. The planning stage, one of which must be proven by the existence of prolegnas. Then in the drafting and discussion stages there is such a thing as participation, public discussion activities by listening to opinions from the community and others. Public participation can be carried out by involving subjects directly affected by the rules, parties who have information and data to experts. As it is known that the IKN Law is questionable whether the process of forming the IKN Bill has involved public participation or not, has been carried out transparently by conducting various kinds of public consultations.

Legal basis is important in the formation of laws and regulations. Likewise, the IKN Bill must be based on 3 (three) foundations (Otti Ilham Khair, 2022), namely the philosophical foundation, sociological foundation and juridical foundation. The philosophical foundation in the IKN Bill: conformity with the nation's philosophical foundation, namely Pancasila, which has not been thoroughly elaborated into each value of Pancasila. Sociological foundation of the IKN Bill: has explained sociologically both in socio-economic aspects and social impacts. While the Juridical Basis of the IKN Bill: has filled the legal vacuum of IKN arrangements, although in fact arrangements regarding IKN already exist in Law Number 29 of 2007 where the explanation of existing rules is adjusted to the prevailing legal politics.

Based on this, the formation of the IKN Bill with a juridical basis should be able to explain how the urgency of the Law was made based on existing juridical considerations. The legal aspects of the formation of laws and regulations can be explained in terms of authority, foundation and testing (Simatupang, 2019). There needs to be transparency in the formation of laws and regulations, especially the formation of regulations on the National Capital City, especially from the Government and DPR institutions so that the public is able to know the purpose and objectives of moving the Capital City. Openness is a condition that allows public participation in state life (Herdiawanto et al., 2019).

Further exploration in the IKN Law, there is an IKN Authority Agency (Academic Script of the IKN Bill, 2022) which will be led by the Head of Authority and Deputy Head of Authority who are directly appointed by the President in consultation with the House of Representatives (DPR). The logical consequence of this arrangement is that the IKN region will not hold Regional Head Elections (Pilkada). However, the region can still hold Presidential and legislative elections (Kompas.com, 2022). The institutional election in the

form of an Authority formulated as the IKN manager (city manager) has the aim of minimising practical political interference that has been carried out at the central government level, namely between the President and the DPR (Wahyu Laksana Mahdi, 2022).

STHI Jentera lecturer Muhammad Nor Solikhin said that the regulation of this authority is ambiguous from the aspect of the constitution or regional government (Rofiq Hidayat, 2022). This is because the existence of Article 18, Article 18A paragraph (1) and Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia limitatively mentions the regional government system, namely the Province and Regency/City. This means that there can be no other forms other than Provinces and Regencies/Cities in the regional government system. In this regard, although later on using the argument of Article 18B paragraph (1) of the 1945 Constitution, according to him, it is not appropriate because special regional government arrangements are still in the form of Provinces and Regencies / Cities, for example the Special Capital Region of Jakarta or the Special Region of Yogyakarta. Based on this analysis, it is necessary to re-understand whether or not the Authority Agency will function the same as other regional governments that have specialities or privileges. Of course, the existing IKN Law has not been able to answer such matters. So, here of course, it needs to be re-analysed whether there is a framework of legal ideals (*Recht idee*) behind the establishment of the Agency.

3. Implementation of Ecological Justice in Relocating The National Capital City

The implementation of eco-justice becomes very significant by looking at the many developments that if not executed properly will have an impact on environmental damage. Community participation is the keyword of environmental justice because the community is a component of the environment itself. Kuehn (2000) and Wibisana (2017) said that one aspect of environmental justice that includes community participation is known as procedural justice. Procedural justice includes participation in decision-making, access to information, and justice for minority groups (Pedersen, 2010). Referring to procedural justice, it is necessary to conduct a further review to assess the suitability between the reality of development in Indonesia and the rights that should be received by the community.

For example, in the case of the development of IKN, the agenda of moving the capital city from the beginning did cause pros and cons from various parties. Conflicting opinions in the community continued even until the inauguration of the IKN Law. The government itself claimed that they had involved the surrounding community in decision-making on the new capital city project. In fact, only 1-2 representatives of the community were heard. In fact, according to Erasmus Cahyadi, Deputy Secretary General of the Indigenous Peoples Alliance of the Archipelago (2022), a total of 16,800 people from 21 indigenous communities are threatened with losing their land and livelihoods due to this project. According to Mulawarman University Faculty of Law Lecturer, Haris Retno Susmiyati, community participation should be substantive and not just a formality. Stirling in Scoones & Wynne (2005) also argues that in a normative perspective, community participation in decision-making is the right thing to do by itself, without the need for further justification.

Law Number 32 of 2009 on Environmental Protection and Management recognises that everyone has the right to access information. As mentioned in article 68, business actors are obliged to provide information related to environmental management. However, it is not uncommon for environmental permits to be issued without providing space for community participation and the right to information regarding AMDAL studies.

The simplest thing to research in this subheading is to highlight: "Is it appropriate or not to have an IKN on the Borneo Island?", the author here wants to narrate and criticise the government's steps in building a city. We know that IKN is imagined and considered as a solution to the current stagnation of the capital city of Jakarta. Jakarta is already full of various

burdens it carries, then another expansion is opened and IKN is formed on Borneo Island. Is that a solution or just a momentary ambition? It can be seen again from the State Finance side, is it right to move IKN after Covid, where many health workers may not have fulfilled their rights until now. However, the reality is that the government diverted the budget to build a new capital city.

Re-examined the current problems of the capital city of Jakarta, traffic jams and floods. These two problems have yet to find a solution. Actually, when this traffic jam can be overcome through Work From Anywhere (WFA) efforts, workers can use electronic-based government systems (SPBE) effectively and efficiently. This means reducing physical work, reducing employee mobility, so the problem of traffic jams will be resolved. However, there is another side to think about, namely the method of state administration, where no more workers drive to the office, online motorcycle taxis are threatened, other transportation such as planes, gas stations are significantly reduced, then hotels that are usually used by employees for government activities, things like this are thought of when the traffic jam solution is resolved. Very complex, but it can be very simple when we take a very high scope.

The implementation of WFA is the main solution to congestion. Not adding to the problem by moving. The same problem will also occur in the new capital city. The unwise thing is when we have not found the solution in the old place, then everything must be resolved first, not adding by creating problems elsewhere. That is not a solution, moving the solution to a new place later the place will be like the previous capital, there will be migration to a new place like the previous capital. So, with this settlement mechanism, it is hoped that the existing capital city will be given the best solution so that in the future the administration will be better.

Conclusion

Problems surrounding the relocation of Indonesia's National Capital City in fact and data do not produce the best solution. In the midst of the onslaught between solutions or ambitions in the effort to move the National Capital to Borneo Island, it is proven by data that the stages in the process of moving the National Capital are not fully in accordance with existing laws and regulations. Apart from the many problems and solutions presented, the data and facts show that there is an ambition that seeks the relocation of the National Capital to be carried out immediately. Budget issues for the relocation of IKN, which is funded by the state budget, the IKN Law which was passed in 43 days without transparency and public participation (Jakarta and Kalimantan communities affected by the regulation), the IKN Law is considered formally flawed so that a judicial review lawsuit was filed to the Constitutional Court and unconstitutional to issues related to the implementation of eco-justice in Indonesia after the IKN Law was passed, are considered more important to be analysed and reformulated. The new IKN is considered a solution to the current stagnation of the capital city of Jakarta. Jakarta is already full of various burdens it carries, then it opens another expansion by forming IKN on the island of Kalimantan. Presenting solutions in the old capital city is the best solution at this time rather than moving the capital city to a new place. Wherever the capital city moves, it will just repeat the old problems. Especially if the economy is built based on concentration. IKN Nusantara is not an economic equalisation, but an equalisation of depravity.

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