



LEGAL REVIEW OF THE POSITION OF THE REGULATION OF THE HEAD OF THE CAPITAL CITY AUTHORITY OF NUSANTARA AS LOCAL LEGAL PRODUCT

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Authority; regulations; IKN. The relocation of the National Capital from Jakarta to Kalimantan has sparked various public discussions, particularly concerning the constitutionality of the Nusantara Capital City Authority (IKN) system, where the term "authority" is not explicitly mentioned in the 1945 Constitution. Furthermore, provisions in the IKN Law stating that the Head of the IKN Authority is equivalent to a minister have also raised ambiguity regarding the position of the Head of the IKN Authority and the status of the legal regulations issued. This study aims to address these issues. The research methodology employed is normative juridical with a legislative approach. The findings indicate that the IKN system and the position of the Head of the IKN Authority align with Article 18B paragraph (1) of the 1945 Constitution, which recognizes the specificity of regions. The Head of the IKN Authority is appointed directly by the President after consultation with the DPR, in accordance with the constitution, which does not require direct election by the people. Regulations issued by the Head of the IKN Authority retain the status of local regulations, without requiring approval from the Regional Representative Council (DPRD).

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A. Introduction

The 1945 Constitution of the Republic of Indonesia as Indonesia's written constitution states that Indonesia is a unitary state in the form of a republic. The Unitary State of the Republic of Indonesia is then divided into provinces, and further divided into districts/cities that have their own local governments based on the principles of autonomy and co-administration (Rahman, 2020). Of course, the principle of autonomy is in accordance with the pluralistic state of Indonesia because it provides flexibility to local governments to manage their own government affairs according to the special needs of each region.

Article 18B paragraph 1 of the 1945 Constitution of the Republic of Indonesia states that "The State recognizes and respects units of regional government that are

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special or special in nature which are regulated by law." This provision shows the state's commitment to respecting the diversity and uniqueness of the various regions in Indonesia (Simandjuntak et al., 2015). Through this recognition, the state ensures that regions with special characteristics or privileges can maintain their identity and local wisdom, while remaining within the framework of a unitary state (Razak et al., 2023). Regulation through law allows for flexibility and fairness in the administration of regional governance, so that special regions such as Yogyakarta and Aceh, for example, can exercise special autonomy according to their own needs and socio-cultural context. This not only strengthens national integration, but also promotes more equitable and harmonious regional development.

Article 18B paragraph 1 of the 1945 Constitution of the Republic of Indonesia, which recognizes and respects units of regional government that are special or privileged, is relevant to the special autonomy system in the Nusantara Capital City governed by the Nusantara Capital City Authority. This special autonomy is designed to provide special flexibility and authority to the Capital City of the Nusantara, enabling the management and development of the city with a more adaptive approach and in accordance with local needs (Purba et al., 2023). Recognition of this special status allows the Nusantara Capital City to implement innovative and efficient policies in infrastructure development, environmental management, and public services, while remaining within the national legal framework. As such, the special autonomy granted to the Nusantara Capital City Authority reflects the principles set out in Article 18B paragraph 1 of the 1945 Constitution, which supports diversity and uniqueness in Indonesia's local government system.

In running the regional government and implementing the principle of regional autonomy in order to realize the welfare of the community, each province, district / city is led by a democratically elected regional head. This is in line with what is mandated by Article 18 paragraph (4) of the 1945 Constitution. The democratic election of Regional Head/Deputy Regional Head is important because Indonesia is a democratic country with popular sovereignty (Hutapea et al., 2015). It should be understood that the norm provision of Article 18 paragraph (4) of the 1945 Constitution does not mandate that the election of regional heads must be directly elected by the people, but only mandates that regional heads be elected democratically. So that regional heads can be elected through various methods as long as the method is democratic.

The Head of the Nusantara Capital Authority, who is appointed and dismissed by the President as stipulated in Article 5 paragraph 4 of the IKN Law, reflects flexibility in the regional head election mechanism tailored to the special needs of the Nusantara Capital (Baihaki et al., 2022). This is in line with Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which does not require regional heads to be directly elected by the people, but simply democratically elected. Democracy is not always synonymous with direct elections, the appointment by the President remains valid as long as the process is transparent and accountable (Hutapea et al., 2015). In the context of the Nusantara Capital Authority, this appointment allows for more effective

control and coordination from the central government to ensure that the development of the new capital city runs in accordance with the national strategic plan (Suryani, 2015). Thus, the mechanism for appointing the Head of the Authority stipulated in the IKN Law still respects the democratic principles mandated by the constitution, while allowing flexibility in the management of areas that have special status and needs.

However, Article 5 paragraph 4 of the IKN Law which states that the Head of the IKN Authority is at the same level as the Minister creates confusion regarding the status of regulations issued by the Head of the IKN Authority. The phrase "at the same level as the minister" makes it unclear whether the regulations of the Head of the IKN Authority will have the same position as ministerial regulations or remain equivalent to regulations at the regional level. In addition, because there is no DPRD in the IKN Authority system, its regulatory products cannot be equated with regional regulations.

This ambiguity creates ambiguity in the legal system, given that Regional Regulations usually require an approval mechanism or discussion with the DPRD, something that does not exist in the IKN government structure. As an entity with the same status as a province, the IKN Authority is given autonomous powers to manage its own government affairs, but in the absence of the DPRD, the legislative process in IKN operates differently from other regions. This raises questions about the procedure and legitimacy of regulations issued by the Head of the IKN Authority, whether they should be treated as regional regulations with specificities or equivalent to ministerial regulations that have a broader scope.

Against this background, this research aims to explore and analyze two main issues. First, what is the position of the Head of the Authority in the context of appointment by the President and its compatibility with the principles of democracy stipulated in the 1945 Constitution of the Republic of Indonesia. Second, what is the position of the regulation of the Head of the Authority for the Nusantara Capital City, which has caused confusion as to whether it is equivalent to a ministerial regulation or a regulation at the regional level. By understanding these aspects, it is hoped that this research can provide a comprehensive insight into how this special arrangement can be effectively and legitimately implemented within the national legal framework.

B. Method

The research method used in this study is normative juridical legal research. Normative juridical legal research is research conducted by examining library materials or secondary data. The purpose of this research is to collect theories, concepts, legal principles, and positive legal provisions relevant to the research topic. The approach applied in this research is a statutory approach. This approach uses current legislation or positive legal provisions to answer the problems discussed in the research.

C. Result & Discussion

1. Position of the Head of the Nusantara Capital Authority

In terms of terms, the phrase "authority" comes from the English "authority". In the study of State Administrative Law, the term "authority" is equivalent to "power or authority" (Windarto et al., 2021). According to H.D. Stout, authority is defined as "the totality of rights and obligations explicitly granted by the legislator to the subject of public law" (Said et al., 2015). The Nusantara Capital Authority is granted rights and obligations by the legislator in relation to the preparation, construction and relocation of the National Capital, as well as the management and development of the Nusantara Capital region and its surrounding areas (Hadi et al., 2022). In addition, the Nusantara Capital Authority acts as a government organizer in the special area, which is further regulated in Presidential Regulation Number 62 of 2022 concerning the Nusantara Capital Authority.

Meanwhile, the term "capital city" is derived from the Latin "caput" which means head (Hadi et al., 2020). According to Black's Law Dictionary, the word "capital" has various meanings depending on the context. In the context of a capital city, Black's Law Dictionary defines "capital" as the place where the legislature holds its sessions and where the main offices of the executive are located; a political and governmental metropolis. The term "capital" can also be interpreted as "seat of government" (Aji et al., 2023). According to the Kamus Besar Bahasa Indonesia, a capital city is a city where the seat of government of a country is located, where administrative elements such as the executive, legislative, and judicial branches are gathered; a city that is the center of government.

Article 18B paragraph 1 of the 1945 Constitution of the Republic of Indonesia states that "The State recognizes and respects units of regional government that are special or special in nature which are regulated by law." This provision shows the state's commitment to respecting the diversity and uniqueness of the various regions in Indonesia (Razak et al., 2023). Article 18B paragraph 1 of the 1945 Constitution which recognizes and respects units of regional government that are special or special in nature, is very relevant to Article 12 Paragraph 1 of the IKN Law which states that "The Nusantara Capital Authority as the organizer of the Special Regional Government of the Nusantara Capital is given special authority based on this Law."

Recognition of regional diversity and uniqueness, as stipulated in the constitution, provides a strong basis for the establishment of the IKN Authority as an entity with special authority (Bath et al., 2024). Just as Yogyakarta and Aceh have special autonomy to maintain their local identity and wisdom, the IKN Authority is also given the necessary flexibility and authority to manage the Capital City of the Nusantara effectively and efficiently. This shows that the state supports special arrangements tailored to the unique needs of each region, which in this case, allows the Nusantara Capital to develop as a modern center of government and in accordance with the national strategic plan, while still respecting the existing legal framework.

In addition, there is Constitutional Court Decision No. 81/2010 which explains the meaning of special regions or special regions as stipulated in Article 18B

paragraph 1 of the 1945 Constitution (Mahdi et al., 2022). In the decision, the Constitutional Court explained that a region can be designated as a special region if the specificity is related to political realities and needs that require the granting of special status that cannot be equated with other regions based on their position and conditions. The Constitutional Court also clarified that the scope of specificity must be based on real needs, so that a region can be given flexible specificity according to actual needs.

Article 1 point 10 of the IKN Law emphasizes that the head of the Nusantara Capital Authority is the head of the Nusantara Capital Special Regional Government. Thus, this article confirms that the IKN special regional government has special characteristics that are different from other regional government structures in Indonesia which are generally headed by governors or regents/mayors, as stipulated in Article 18 paragraph (1), paragraph (2), and paragraph (4) of the 1945 Constitution. However, Constitutional Court Decision No. 81/2010 also explained that Article 18B of the 1945 Constitution is not an exception to Article 18, which means that the norms set out in Article 18B paragraph 1 stand alone and are not related to Article 18. Therefore, the regulation of special regions in laws referring to Article 18B paragraph 1 does not necessarily have to be tied to Article 18 of the 1945 Constitution (Mahdi et al., 2022). Thus, although the term "authorita" is not mentioned in the text of Article 18 of the 1945 Constitution, this does not mean that the authorita system is contrary to the constitution, because Article 18B paragraph 1 stands alone in accordance with the Constitutional Court's interpretation.

Article 5 paragraph (4) of the IKN Law explains that the Head of the Nusantara Capital Authority has a ministerial-level position and is appointed, removed, and dismissed by the President after consulting with the DPR. This shows that the mechanism for appointing the Head of the IKN Authority is different from that of regional heads in general in Indonesia, which are usually elected through general elections (Rinaldi et al., 2023). The appointment of the Head of the Authority also emphasizes the special characteristics of the IKN regional government, which has specific authorities and responsibilities in the preparation, development, and relocation of the National Capital City (Aziz et al., 2023). Although not directly elected by the people, the appointment process still fulfills democratic principles in accordance with the provisions of Article 18 paragraph (4) of the 1945 Constitution which mandates the democratic election of regional heads because they are not appointed unilaterally by the President but also in consultation with the DPR.

In short, the direct appointment of regional heads by the President is not unconstitutional, because Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia only mandates that regional heads be elected democratically, without specifying that it must be through direct election by the people (Riqiey et al., 2023). The position of the Head of the Nusantara Capital Authority which is equivalent to a minister, as mentioned in the IKN Law, indicates that this position is under the direct authority of the President. While direct appointment by the President may give the impression of centralization by the central government and

seem to contradict the principle of decentralization, it is designed to ensure that the implementation of the Nusantara Capital City development is effective and coordinated. An Authority system with a directly appointed Head of Authority allows focus on unique and multi-sectoral tasks without distraction from practical politics, in line with democratic principles and existing legal provisions.

2. Regulatory Position of the Head of the Nusantara Capital Authority

In carrying out regional governance and implementing the principle of regional autonomy to achieve public welfare, each province, district and city is led by a democratically elected regional head (Sunarso, 2023). This is in line with the provisions of Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. The democratic election of Regional Heads and Deputy Regional Heads is very important because Indonesia is a democratic country that is sovereign over the people (Hutapea et al., 2015). With the democratic election of the Regional Head / Deputy Regional Head, the people are involved in determining the leader, moreover the regional government system is based on autonomy which is expected to have policies in accordance with the expectations of the community.

The IKN government will be run with special characteristics to avoid disharmony between the central government and local governments and overcome the rigid requirements of provinces or autonomous regions (wicipto, 2022). This is expected to encourage the development and construction of IKN through the Special Regional Government of the Capital of the Nusantara. This administration will be carried out by the IKN Authority Agency led by a Head of the IKN Authority. This form of authority utilizes the provisions of Article 18B paragraph (1) of the 1945 Constitution, which states that the state recognizes and respects units of regional government that are special or special in nature which are regulated by law (Mahdi et al., 2022). The specificity of IKN is outlined in Article 12 paragraph (1) of the IKN Law, which stipulates that IKN is a special regional government unit at the provincial level and is the seat of the National Capital. As a special regional government unit, the Government of the Special Capital Region of the Nusantara has the authority to regulate and manage government affairs in accordance with Law Number 3 of 2022 concerning the National Capital.

Article 5 paragraph (4) of the IKN Law explains that the Head of the Nusantara Capital Authority has a ministerial-level position and is appointed, appointed, and dismissed by the President after consulting with the DPR. The provision seems to imply that the Head of the IKN Authority is fully under the central government regime. However, in reality, there are various provisions that distinguish between the special regional government of the Capital of the Nusantara and the central government (Lazuardito et al., 2024).

One of them is Article 5 paragraph 5 of Law No. 3 of 2022 concerning the National Capital, which states that "The Special Regional Government of the Nusantara Capital carries out the functions and roles of special regional governments regulated in this Law, except those that are determined by statutory regulations as

central government affairs." This article clearly distinguishes between the special regional government of the Capital of the Nusantara and the central government (Nadhir et al., 2024). Therefore, although the head of the authority is mentioned as equivalent to a minister, this does not mean that the head of the authority is within the central government, but remains as part of the local government due to the division of functions and roles between the head of the authority and the central government. So that the position of the regulation of the Head of the IKN Authority is also not appropriate if it is aligned with the Ministerial Regulation because the Head of the IKN Authority remains as the Head of the Regional Government.

The head of the IKN authority, as explained in Article 1 paragraph 10 of Law No. 3 of 2022 on the National Capital, is the head of the Government of the Special Capital Region of the Nusantara. The article states that the head of the authority acts as the head of the regional government. Based on this provision, the Head of the IKN Authority has the right to stipulate local regulations and other regulations as stipulated in Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia which states that "Local governments have the right to stipulate local regulations and other regulations to implement autonomy and assistance tasks" (Nurdin et al., 2022). Giving a position to the regulations issued by the Head of the IKN Authority as regional legal products is far more appropriate than aligning the Regulations of the Head of the IKN Authority with Ministerial Regulations. This is in accordance with the legislative framework that allows local governments, including the Head of the Nusantara Capital Authority, to establish regulations that apply at the local or regional level.

Article 3 of Permendagri No. 120/2018, which amends Permendagri No. 80/2015 on the Formation of Regional Legal Products, explains that regional legal products include regulations as stipulated in Article 2 letter a, consisting of: a. local regulations; b. regional regulations; and c. regional parliament regulations. This confirms that *perkada*, or regional head regulations, fall under the category of local regulations at the regional level. Thus, regulations issued by the Head of the IKN Authority as a regional head can be considered as local regulations included in *perkada*.

In addition to being an autonomous region based on the principle of decentralization, IKN is also considered as a State Capital Region that manages various central government affairs, so that it simultaneously also receives various authorities that are in the nature of assistance to central affairs (Law of the Republic of Indonesia Number 32, 2004). Therefore, the IKN Authority Regulation falls under the category of *Verordnung & Autonome Satzung* (implementing rules and autonomous rules) (Baihaki et al., 2022). Thus, the authority of the head of the authority is at the regional level, as explained by the Head of Bappenas Suharso Monoarfa that the special regional government of IKN is equivalent to the province, so that the resulting legal products will be equivalent to regional head regulations (Antara news, 2022).

The process of forming regional head regulations is not required to go through DPRD approval, in accordance with the provisions contained in Article 79 paragraph 1 of Permendagri No. 80 of 2015 concerning the formation of regional legal products. The article explains that the discussion of draft governor regulations and joint governor regulations is carried out by the governor together with the initiating regional apparatus. In the context of an IKN that does not have a DPRD, its regulations cannot be equated with Regional Regulations (Perda), but the head of the authority is still authorized to make regulations at the local level, namely Perkada, whose making does not require DPRD approval.

D. Conclusion

The Nusantara Capital City Authority (IKN) system and the position of the Head of the IKN Authority have been designed in accordance with constitutional provisions. Article 18B paragraph (1) of the 1945 Constitution recognizes regions with specificities regulated by law, including IKN as a Special Region. The IKN Law explains that the IKN Authority has special authority in regulating the preparation, development, and relocation of the National Capital City, as well as running the government of the IKN special region. The head of the IKN Authority is appointed directly by the President after consulting with the DPR, in accordance with the constitution which does not explicitly require direct election by the people. Although Article 5 paragraph 4 of the IKN Law mentions that the Head of the IKN Authority is at the same level as the Minister, the regulations issued by him are more appropriately aligned with the Regional Head Regulations. IKN is a special regional government unit with autonomous authority in accordance with Law Number 3 of 2022 concerning the National Capital. In the absence of DPRD, legal products produced by the Head of the IKN Authority can still function as regional head regulations, which do not require DPRD approval. The implementation of this regulation as a regional legal product at the local level ensures that IKN has a clear legal foundation and supports the effective and efficient implementation of special regional autonomy.

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