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**MOVING THE NATIONAL CAPITAL – OPPORTUNITY, CHALLENGE:
A STUDY OF LAW #3 OF 2022 CONCERNING THE STATE CAPITAL****Musa Dyah Ayu Riska*, Safa'at Muchamad Ali, Uyun Dhia Ai**

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*E-mail: dyahayuriska@gmail.com**ABSTRACT**

The capital city is one of the important functions in a country. The capital city is considered the center of government, the center of the country, and describes the identity of the country. Since the independence of the Republic of Indonesia in 1945, the capital city of the Republic of Indonesia is located in Jakarta. In the Constitution of the Republic of Indonesia, the phrase the capital city of the state is only mentioned 2 (two) times and is not equipped with other definitions or explanations. The absence of a special regulation regarding the capital city of the country reflects the existence of a legal vacuum, which is why it is necessary to establish a regulation concerning the capital city of the country. The issue of relocating the national capital became one of the bases for the formation of regulations regarding the state capital, this is because Indonesia does not have regulations on how to determine or move the state capital.

KEY WORDS

National capital, relocation, center of government, regulation, legal vacuum.

The President's speech on August 16, 2019 marked the beginning of the journey to relocating the National Capital. In the agenda of the joint session of the Regional Representatives Council of the Republic of Indonesia (DPD RI) and the House of Representatives of the Republic of Indonesia (DPR RI), the President of the Republic of Indonesia at the end of his speech asked for permission to move the State Capital to the island of Kalimantan "By asking Allah SWT's blessing, by asking for permission and the support of the honorable members of the Council, the elders and national leaders, especially from all the people of Indonesia, I hereby request permission to move the capital city of our country to the island of Kalimantan" (Ministry of State Secretariat; 2019). Several considerations used in the plan to move the State Capital were also conveyed in a press release related to the relocation of the State capital on August 26, 2019. The President of the Republic of Indonesia conveyed that several considerations for the plan to move the capital city of the State are as follows: (1) Since the independence of the Republic of Indonesia, the Indonesian people have never determined and designed their own capital city; (2) Jakarta's current burden is considered to be getting heavier because it is the center of government, business center, financial center, trade center and others; (3) The population density on the island of Java is no longer possible as the new state capital; (4) The economic gap between the island of Java and the islands outside Java (Ministry of State Secretariat; 2019). (2) Jakarta's current burden is considered to be getting heavier because it is the center of government, business center, financial center, trade center and others; (3) The population density on the island of Java is no longer possible as the new state capital; (4) The economic gap between the island of Java and the islands outside Java (Ministry of State Secretariat; 2019). (2) Jakarta's current burden is considered to be getting heavier because it is the center of government, business center, financial center, trade center and others; (3) The population density on the island of Java is no longer possible as the new state capital; (4) The economic gap between the island of Java and the islands outside Java (Ministry of State Secretariat; 2019).

The issue of relocating the State Capital has been said to have existed for a long time since the Soeharto era, but this plan was officially implemented on August 16, 2019. Previously, the President of the Republic of Indonesia had held a Limited Meeting with



related staff regarding the relocation of the State capital on April 30, 2019, which even in At the meeting, the Minister of National Development Planning presented the results of the study on the relocation of the state capital. From the results of the study, there was an agenda for a review of the location of the new state capital, finally on August 7, 2019 the island of Borneo was chosen as a candidate for the location of the new state capital. Therefore, at the August 26 meeting, the President of the Republic of Indonesia announced that the State Capital would be moved to East Kalimantan (Ministry of State Secretariat).

Historically, the designation of Jakarta as the capital city of Indonesia is a legacy of colonialism in Indonesia. In the past, the VOC (Vereenigde Oost-Indische Compagnie) first arrived in the Batavia area (now Jakarta) and had an impact on colonialism in Indonesia. In 1619 the VOC under the leadership of Jan Pieterszoon Coen came to Jayakarta (Glorious Fortress) with the initial aim of trading (Waworoentoe; 2022). Jakarta has changed its name many times starting with Sunda Kelapa – Jayakarta – Batavia – Djakarta – Jakarta (Kompas; 2021). De facto Indonesia had experienced the relocation of the State Capital in 1949 during the second military aggression; this was due to the Dutch military occupation in Jakarta which then made the capital city of the State moved to Yogyakarta. However, this did not last long because the de facto capital of the State was returned to Jakarta. In 1961 there was Presidential Decree No. 2 of 1961 jo. PNPS Law No. 2 of 1961 which appointed Jakarta as the State Capital. This regulation then developed until now, namely Law Number 29 of 2007 concerning Provincial Government of the Special Capital Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia (National Development Planning Agency; 2021).

The 1945 Constitution of the Republic of Indonesia does not specifically mention the definition or provisions regarding the capital city of the State. In the 1945 Constitution of the Republic of Indonesia, the capital city is only mentioned 2 (two) times, namely in Article 2 paragraph (2) which reads "The People's Consultative Assembly convenes at least once every five years in the state capital" and in Article 23G which reads "The Supreme Audit Agency is domiciled in the capital city of the country, and has representatives in each province". Legally, the regulation regarding the capital city of the State is found in Law Number 29 of 2007 concerning the Provincial Government of the Special Capital Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia. The specificity of Jakarta as a region is based on the principle of autonomy which provides specific duties, rights, obligations, and responsibilities in the administration of regional government as the capital city of the State. This is confirmed in Article 1 point 6 of Law Number 29 of 2007 concerning the Provincial Government of the Special Capital City Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia which reads "The Province of the Special Capital City Region of Jakarta, hereinafter abbreviated as DKI Jakarta Province, is a province that has specialization in the administration of regional government because of its position as the capital of the Unitary State of the Republic of Indonesia".

The legal vacuum is one of the strong reasons for the formulation of the Law on the State Capital. The issue of relocating the nation's capital has indeed existed since 2019 which the President mentioned in a joint meeting with the DPR RI and DPD RI, but the official letter and draft law were only sent on September 29, 2021. Based on Law Number 12 of 2011 concerning the Establishment of Legislative Regulations -The invitation in Article 16 states that "Planning for the preparation of laws and regulations is carried out in the Prolegnas". As stated in the article, the Draft Law on the State Capital was also included in the Prolegnas which was proposed on December 17, 2019. However, since the enactment of Law Number 3 of 2022 concerning the State Capital on January 18, 2022, by using normative research methods as well as a statutory approach and literature study, this article explains what are the opportunities and challenges in moving the national capital.

METHODS OF RESEARCH

This study uses a normative juridical approach, which is an approach that is carried out by reviewing and reviewing the applicable laws and regulations and then being used as the



basis for answering problems. The problem in question is about the benefits and legal certainty related to the transfer of the state capital through Law Number 3 of 2022, as an effort to see the fulfillment of certainty and procedures for the formation of laws and regulations.

RESULTS AND DISCUSSION

In English, the capital city of the country is referred to as capital which comes from Latin, namely *caput*. So that the state capital has the meaning as a place where the center of government is built, implemented, and held, besides that the state capital is also a place where meetings and legal formation are carried out (Mubarog; 2018). Another opinion says that the State Capital in its definition is generally the location or place of the central government of a country (Rossman; 2017), sometimes some countries combine the functions of the state capital as the center of government as well as the center of the country (various aspects of life) such as Indonesia. The center of government and the center of the state in Indonesia is located in Jakarta as Jakarta is the capital city of the country. The absence of a specific understanding of the capital city of the country makes Jakarta have a heavy burden as an autonomous province, as the center of government, as well as the center of the economy and other aspects. Because of this function, the area that is domiciled as the capital city of the country has special duties, functions, and positions compared to other regions.

The specificity of the region as the nation's capital has been reflected in Law Number 29 of 2007 concerning Provincial Government of the Special Capital Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia, however, with the rapid development of science and technology, the government considers that Jakarta is no longer worthy of being a capital city. Some of the reasons for the need to move the national capital are as follows (Mubarog; 2018):

- *Preference form country leader*. Opinions or suggestions from the leader of the President became one of the reasons for moving the country's capital, as was done by the state of Malawi in 1985. This reason has a bad image because it is considered as an excuse based on the pride of a leader and not an economic reason;
- *Logical reasons and rationalization*. The relocation of the national capital is aimed at advancing the economy and developing the functions of state administration;
- *Building "state building" and "national building"*. State building has the meaning of avoiding political competition with its opponents, while national building has the meaning of being a form of loyalty to its supporters in the new state capital;
- *Infrastructure financing through government-business cooperation*. Development is one of the mandates of the 1945 Constitution of the Republic of Indonesia and to avoid any development gaps, the Government considers the need for relocating the State Capital to a place that has the potential to be developed rapidly.

Some of these reasons are then in line with President Jokowi's statement in a press statement on August 26, 2019 which stated the reasons for the need to move the state capital outside Java, including the following (Ministry of State Secretariat; 2019):

- Since the independence of the Republic of Indonesia, the Indonesian people have never determined and designed their own capital city;
- Jakarta's current burden is considered to be getting heavier because it is the center of government, business center, financial center, trade center and others;
- The population density on the island of Java is no longer possible as the new state capital;
- The economic gap between the island of Java and the islands outside Java.

The problem of relocating the nation's capital is not only done by Indonesia, but several countries have also done this. Malaysia is one of the countries that has moved its capital city, where in 2000 Malaysia moved its capital city from Kuala Lumpur to Putra Jaya (BBC; 2021). The transfer of the capital city of Malaysia to Putrajaya based on the Malaysian



Government's desire to create a better government center with modern technology and adequate infrastructure (Rachmawati; 2021). Some other countries that have moved their capital cities are as follows:

Table 1 – List of Countries that have moved their capital cities

No	Year	Country	Capital of the Old Country	New National Capital
1	1946	Montenegro	Cetinje	Podgorica
2	1956	Brazil	Rio de Janeiro	Brasilia
3	1957	Mauritania	Saint Louis	Nouakchott
4	1959	Pakistan	Karachi	Islamabad
5	1961	Botswana	Mafeking	Gaberone
6	1963	Libya	Benghazi	Tripoli
7	1965	Malawi	Zombies	Lilongwe
8	1970	Belize	Belize City	Belmopan
9	1973	Tanzania	Dar Es Salaam	Dodoma
10	1974	Guinea Bissau	Boe	Bissau
11	1975	Nigeria	Lagos	Abuja
12	1982	Sri Lanka	Colombo	Sri Jayawardenapu Ra Kotte
13	1983	Cote D'voire	Abidjan	Yamoussoukro
14	1990	Germany	Bonn	Berlin
15	1997	Kazakhstan	Almaty	Astana
16	2000	Malaysia	Kuala Lumpur	Putrajaya
17	2005	Myanmar	Rangoon	Naypyidaw
18	1016	Tanzania	Dodoma	Dar Es Salaam

The Constitution of the Republic of Indonesia only mentions the phrase the capital city of the state 2 (two) times, both of which explain the domicile of state institutions. In addition, the discussion regarding the state capital is only contained in Law Number 29 of 2007 concerning the Provincial Government of the Special Capital Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia. Therefore, in the Academic Paper of the Draft Law on the State Capital, it is stated that one of the reasons it is necessary to formulate a law on the state capital is the absence of legislation or legal umbrella that specifically explains what, where, and how the state capital is run.

As mandated by Article 5 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "the President has the right to submit a draft law to the House of Representatives", this was then carried out by the President on September 29, 2021, President Jokowi officially sent the Draft Law on the National Capital. Like the formation of laws in general, the draft law on the state capital also goes through several stages (Table 1). If you look at the timeframe for the formulation of the law on the capital city of this country, it is very fast because it only takes 4 (four) months. The speed with which this law was formulated became one of the grounds for a formal application for a judicial review at the Constitutional Court in Decision Number 25/PUU-XX/2022. The Petitioner argues that Law Number 3 of 2022 concerning the State Capital follows a pattern of fast track legislation which has implications for the non-realization of the deliberative process in the formation of laws (Hehamahua; 2022). However, in its decision, the Constitutional Court considered that as long as all stages of the formulation of laws and regulations were met, the fast track legislation pattern was one of the efforts to form laws and regulations that embody the principle of prudence and earnestness:

- Planning. A draft law must be included in the list of the National Legislation Program (Prolegnas);
- Preparation of laws and regulations. The draft law can come from the DPR or the President, in which the draft from the DPR can also be a proposal from the DPD;
- Discussion of the Draft Law. The discussion of draft laws is carried out by the DPR together with the President or the assigned Minister. Where there are 2 (two) main agendas, namely Level I Discussions and Level II Discussions;
- Ratification of the Bill. The draft law that has been approved by the DPR together with the DPR is then ratified by the President as a law.



Table 2 – Stages of Formulation of the State Capital Law

No	Stages	Activity	Date
1	Introduction	Assignment Bamus Meeting discusses the Bill on the State Capital to the Special Committee	November 30, 2021
2	Level I Talks Level I Talks	Special Meeting of the Bill on the State Capital (Intern Meeting) with the Agenda to discuss the Draft Schedule of Events and the Mechanism of Discussion of the Bill on the State Capital (Closed Meeting)	07 December 2021
3		Special Committee Meeting on the Draft Bill on the State Capital (Intern Meeting) with the Election Agenda and Appointment of the Chairperson of the Special Committee on the Draft Bill on the State Capital	07 December 2021
4		Plenary Meeting on the Appointment of Members of the Special Committee for the Draft Bill on the State Capital	07 December 2021
5		General Hearing Meeting of the Special Committee on the Draft Bill on the State Capital with Experts (5 experts) 1. Dr. Wicipto Setiadi (Constitutional Law Perspective) 2. Dr. Hendricus Andy Simarmata (environmental law perspective) 3. Wicaksono Sarosa (environmental law perspective) 4. Dr. Asep Sofyan (environmental perspective) 5. Dr. Nurkholis (economics perspective)	08 December 2021
6		Special Committee Meeting on the Draft Bill on the State Capital (Intern Meeting) with the Election Agenda and Appointment of the Chairperson of the Special Committee on the Draft Bill on the State Capital (Changes in the Number of Special Committee Leaders)	09 December 2021
7		General Hearing Meeting of the Special Committee on the Draft Bill on the State Capital with Experts (5 experts) 1. Prof. Paulus (Social and Community Perspective) 2. Anggito Abimanyu (Economic Perspective and Sustainable Funding) 3. Erasmus Cahyadi Terre (Alliance of Indigenous Peoples of the Archipelago) 4. Dr. Fadhill Hasan (Economic and Governance Perspective) 5. Avianto Amri (Indonesian Disaster Care Society)	09 December 2021
8		Changes in the Draft Schedule for the Discussion of the Working Committee for the Draft State Capital Bill during the Second Session of the 2021-2022 Session Year (Closed Meeting)	10 December 2021
9		General Hearing Meeting of the Special Committee for Draft Law on State Capital with Experts (5 experts) 1. Robert Endi Jaweng (ex KPPD), perspectives on Regional Autonomy and Fiscal Decentralization and Virtual Regional Institutions 2. Dr. Master P. Tumangor, Economic perspective, Funding Investment and Asset Transfer of Special Committee B 3. Dr. Mukti Ali, Lecturer of FT Hasanuddin University Perspective of Regional Planning and Virtual GIS 4. M. Djailani, Central Kalimantan AORDA (Audience) Special Committee B 5. Suharyono, IMPI (Audience) Virtual	10 December 2021
10		General Hearing Meeting of the Special Committee on the Draft Bill on the State Capital with Experts (4 Experts) 1. Prof. Satya Arinanto, SH.MH Law Expert of HTN FHUI IKN in the perspective of Present/Virtual State Constitutional Law 2. Dr. Chazali H. Situmorang Public Policy Expert of Unas IKN in the perspective of Public Policy Present 3. Dr. Aminuddin Kasim, SH.MH HTN expert at Tadulako University, Central Sulawesi IKN from the perspective of Virtual State Institutions 4. Dr. Pratama Dahlian Persadha Chairman of the CISSReC (Communication and Information System Security Research Center Virtual) Research Institute for Security and Communication	11 December 2021
11		General Hearing Meeting of the Special Committee on the Draft Bill on the State Capital with Experts (7 experts) 1. Prof. Maria SW Soemardjono SH, MCL., MPA Land Law Expert UGM IKN in the perspective of Virtual Land Law 2. Ananda B. Kusuma Expert in IKN State Administration in Virtual state administration historical perspective 3. Dr. Yayat Supriatna Spatial Planning Expert at Trisakti University IKN in the perspective of Spatial Planning, City Planning and Building Planning. 4. Dr. Arief Anshory Yusuf Expert in Economics Perspective of Present/Virtual Economics 5. Prof. Haryo Winarso, Planologist at ITB IKN in the perspective of Virtual Urban and Regional Planning 6. Siti Jamaliah Lubis President of the Indonesian Advocates Congress 7. Juniver Girsang Chair of the Indonesian Advocates Association -Suara Advokat Indonesia (Peradi SAI)	12 December 2021
12		Working Meeting of the Special Committee on the Draft Bill on the State Capital with the agenda of Approval and Determination of the Chairperson and Members of the Working Committee for the Draft Bill on the State Capital and discussion on the number of permanent DIM and DIM	December 13, 2021
13		Special Committee Meeting on the Draft Bill on the State Capital (Intern Meeting) with the Agenda for Determining the Leaders and Members of the Working Committee on the Draft Bill on the State Capital	December 13, 2021
14		The Working Committee of the Draft Bill on the State Capital with the agenda of the DIM Discussion on the Draft Bill	December 13, 2021
15		The Working Committee of the Draft Bill on the State Capital with the agenda of the DIM Discussion on the Draft Bill	December 14, 2021
16		The Working Committee of the Draft Bill on the State Capital with the agenda of the DIM Discussion on the Draft Bill	15 December 2021
17		Audience with United Dayak Forum (FDB)	17 December 2021
18		Meeting of the Drafting Team for the Bill on the State Capital (Closed Meeting)	06 January 2022
19		Meeting of the Drafting Team for the Bill on the State Capital (Closed Meeting)	January 10, 2022
20		Meeting of the Drafting Team for the Bill on the National Capital	January 11, 2022
21		Public Consultation of Special Committee Members with the Academic Community of Mulawarman University - East Kalimantan	January 11, 2022
22		Public Consultation of Special Committee Members with the Academic Community of Hasanuddin University - South Sulawesi	12 January 2022
23		Public Consultation of Special Committee Members with the Academic Community of the University of North Sumatra	12 January 2022
24		Meeting of the Working Committee on the Draft Bill on the State Capital with the agenda of the Formulating Team reporting to the Panja (Closed Meeting)	12 January 2022
25		The Working Committee of the Draft Bill on the State Capital with the agenda of the DIM Discussion on the Draft Bill	January 13, 2022
26		Special Committee Members Visit to the area of the prospective National Capital in Penajam Paser Utara - East Kalimantan	January 14, 2022
27		Special Committee Members Visit to the BSD City Mandiri area and Alam Sutera-Tangerang Banten	January 16, 2022
28		Working Committee Meeting on the Bill on the State Capital with an agenda for discussing the draft Bill on the State Capital	January 17, 2022
29		Working Meeting of the Special Committee on the Draft Bill on the State Capital with the Government and DPD RI. With the Minister of Bappenas, Minister of Finance, Minister of ATR, Minister of Home Affairs, Minister of Law and Human Rights with the following agenda: 1. Report of the Chair of the Working Committee; 2. The views of the factions and the DPD RI; 3. Decision Making/Talk I for Kindergarten I; 4. Government response; 5. Signing of the Draft Bill on IKN; and 6. Closing.	January 17, 2022
30	Level II Talk	Plenary Meeting in the context of Tk II Talks/Decision Making into Law	January 18, 2022

Law Number 3 of 2022 has gone through various stages as required by Law Number 12 of 2011. However, since the enactment of Law Number 3 of 2022 concerning the State



Capital on January 18, 2022, there have been 5 (five) applications for formal and material examinations at the Constitutional Court.

Although the Constitutional Court considers that fast track legislation is not a prohibited pattern in the formation of laws and regulations in Indonesia, with the condition of Indonesia as a state of law and an archipelagic state, it is very difficult to obtain the aspirations and opinions of the public in a short time to form a statutory regulation.. The relocation of the state capital which is charged to the State Budget (State Revenue and Expenditure Budget) is a difficult consideration in the midst of the transition period due to Covid-19. The development of infrastructure to support government activities in the new nation's capital also requires a very large budget, so that the formulation of the law which is only 4 (four) months old does not reflect the principles of sincerity and prudence.

CONCLUSION

The transfer of the State Capital is officially carried out through Law Number 3 of 2022 concerning the State Capital. After conducting several studies, East Kalimantan was chosen as the candidate for the new state capital. The legal vacuum regarding the regulation of the nation's capital urges the government to immediately pass the law. This is supported by the condition of Jakarta, which is considered no longer able to carry out the heavy duty of being the capital of the country and to reduce the economic gap between the island of Java and the islands outside Java. However, the formation of Law Number 3 of 2022 concerning the State Capital which uses a fast track legislation pattern is considered very hasty because it was passed in only 4 (four) months so it does not reflect prudence and sincerity.

Therefore, there is a need for further study of Law Number 3 of 2022 concerning the State Capital, both materially and formally.

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