



## Impact of Canceling Development and Moving the Nusantara Capital City Through Legislative Instruments

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### ABSTRACT

The plan to develop the capital of the archipelago as a new capital has generated a lot of debate, especially debates regarding environmental, social and economic issues. This plan is part of achieving the Golden Indonesia Vision 2045 through economic transformation so that development is achieved evenly throughout Indonesia and is no longer only centered on western Indonesia. The IKN development project has been politicized, especially for the purposes of the 2024 Presidential Election. The assumption that the IKN project has failed has given rise to the assumption that the next Indonesian president can easily cancel the project. The aim of this research is to carry out a juridical analysis of whether the transfer of the Indonesian capital can be cancelled through statutory instruments and what the impact of this cancellation will be. Based on the findings in this research, it can be concluded that cancelling IKN development is almost impossible to carry out, and this cancellation will result in large losses for Indonesia because it will stall and the perception will emerge that Indonesia has quite high investment risks. The research method used is normative legal research. This research is included in qualitative analytical research.

**Keywords:** *cancellation; legislation; national capital of the nusantara.*

### I. INTRODUCTION

The capital city of the Republic of Indonesia has been moved from the Special Capital Region of Jakarta or abbreviated as DKI Jakarta to the Capital City of the Archipelago or abbreviated as IKN which is located in the East Kalimantan region, specifically in North Penajam Paser Regency and Kutai Kartanegara Regency.

The plan to move the capital city has been widely discussed and was the subject of discussion during the previous government. However, it was only during Joko Widodo's leadership in 2019 that the plan to move the capital outside the island was included in the 2020-2024 National Medium Term Development Plan (RPJMN).

The relocation of the capital city has started since the passing of the Bill on National Capital to become Law Number 3 of 2022 concerning National Capital in early 2022, and has been updated with Law Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 regarding the National Capital.

In order to reduce the economic impact due to dense population, especially on the island of Java, Indonesia is now dealing with this by moving the new national capital outside Java, namely North Penajam Paser Regency and Kutai Kartanegara Regency. The reason is that because the risk of disaster is minimal, the area is also considered quite strategic among developing cities, namely the cities of Balikpapan and Samarinda. In the plan to move the capital city, it is projected that various sectors in the East Kalimantan region will grow.<sup>1</sup>

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<sup>1</sup> Reni Ria Armayani Hasibuan and Siti Aisa, "Dampak Dan Resiko Perpindahan Ibu Kota Terhadap Ekonomi Di Indonesia," *At-Tawassuth: Jurnal Ekonomi Islam* 5, no. 1 (2016): 183–203, <https://doi.org/http://dx.doi.org/10.30829/ajei.v5i1.7947>.

Several capital city moves that have occurred in the world are full of dynamics. Even though they are effective per day, they do not change again, but in the process they require policy adjustments over a significant period of time. Brazil changed its capital from Rio de Janeiro to Brasilia in 1956, Pakistan changed its capital from Karachi to Islamabad, Kazakhstan changed its capital from Almaty to Astana, Malaysia changed its capital from Kuala Lumpur to Putrajaya, Australia changed Sydney to Canberra, and many other examples of effective relocation of the nation's capital have been carried out and have been successful to date after going through political and social dynamics. Indonesia plans and seems realistic about implementing a policy of relocating the country's capital to an area that is considered more geopolitically strategic compared to the current capital, Jakarta.<sup>2</sup>

The main reason for moving the capital city in several countries is to share the burden of the city as a business center and government center while reducing population density. The example of the case of moving the capital city in Brazil shows that there were no economic losses that occurred in Rio de Janeiro while at the same time increasing economic growth was achieved in Brasilia.<sup>3</sup> Currently, Egypt also has plans to move its capital city. Egypt's NACC aims to alleviate the suffering of the population on the one hand and increase economic, social and political efficiency on the other through a comprehensive plan that adheres to the concept of sustainable, green, pedestrian-friendly, livable, interconnected, smart and business districts.<sup>4</sup>

The principle of forest city development is to be oriented towards maintaining ecological functions. This principle can be pursued by controlling the use of carbon, conservation of biodiversity and environmental management to create quality life.<sup>5</sup> The formulation of forest city principles for the needs of a new capital city has been formulated by the Ministry of Environment and Forests (KLHK). The formulation of the basic concept is conservation of natural resources and animal habitats, connection with nature, low carbon development and holistic, integrated and sustainable management of water resources, controlled development and community involvement.<sup>6</sup>

The plan to move the capital to Kalimantan Island has sparked a lot of debate, especially debates regarding environmental, social and economic issues. This plan is part of achieving the Golden Indonesia Vision 2045 through economic transformation so that development is achieved evenly throughout Indonesia and is no longer only centered on western Indonesia. The strategic role of the National Capital of the Archipelago as a growth pole<sup>7</sup> makes it possible to achieve equitable development.

The IKN development project seems to be politicized, especially for the sake of the upcoming 2024 presidential election. The assumption that the IKN project has failed has given rise to the assumption that the next Indonesian president can easily cancel the project. This was stated by the Deputy Chairman of the Democratic Party, Benny K Harman, in a talk show on one of the national

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<sup>2</sup> Fahrul Fauzi and Suparjo Sujadi, "Wewenang Otorita Ibu Kota Nusantara Selaku Pemegang Hak Pengelolaan Kawasan Ibu Kota Nusantara," *Tunas Agraria* 6, no. 3 (2023): 171–86, <https://doi.org/10.31292/jta.v6i3.246>.

<sup>3</sup> Hasibuan and Aisa, "Dampak Dan Resiko Perpindahan Ibu Kota Terhadap Ekonomi Di Indonesia."

<sup>4</sup> Hisham Abusaada, Abeer Elshater, and Rowaida Rashed, "Exploring the Singularity of Smart Cities in the New Administrative Capital City, Egypt," *Ain Shams Engineering Journal* 14, no. 9 (2023): 102087, <https://doi.org/10.1016/j.asej.2022.102087>.

<sup>5</sup> Ridho Erfan Nugroho, *Kisah Sukses Pemindahan Ibu Kota Negara* (Sukoharjo: CV. Graha Printama, 2022).

<sup>6</sup> Dikri Mulia, "Politik Hukum Pemindahan Ibu Kota Negara Di Indonesia Dan Malaysia" (Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2023),

<sup>7</sup> Growth Pole is a potential development for existing economic elements and can attract economic elements that do not exist, so that it can give rise to the beginning of a development process. Based on these reasons, the growth pole is often used as an economic policy in creating development strategies to create a growth pole strategy, especially in developing countries, so that the direction of development policy can be planned for regions that have superior industries (industrial centers) and address areas that are relatively passive so that they are balanced with areas that are relatively developed. Look Darnilawati, "Strategi Kutub Pertumbuhan Ekonomi," *Jurnal Ekonomi* 26, no. 2 (2018): 138–50, <https://doi.org/http://dx.doi.org/10.31258/je.26.2>.

media. According to him, the IKN project initiated by Jokowi could be canceled by the next Indonesian president. Cancellation can be done easily in two ways, the first is the revision of the IKN Law Number 3 of 2022. Then the second way, according to Benny, is through the issuance of a Government Regulation in Lieu of Law (perppu).<sup>8</sup>

Political observer Rocky Gerung also said that the fate of the Indonesian Capital City or IKN development project is currently uncertain. According to him, there is a possibility that IKN will be stopped or canceled after President Joko Widodo or Jokowi no longer serves. The reason is that the development of IKN places a huge burden on state finances while also causing debt to balloon.<sup>9</sup>

Need to know, in Appendix II of the IKN Law regarding IKN funding schemes, the schemes that will be used are: 1). APBN which can be carried out through budget allocation and/or financing; 2). Government and business entity cooperation scheme (KPBU) to support IKN; 3). All or part of the capital is owned by the state, including BUMN/pure private sector, including BUMN through investment which in its implementation can collaborate with the private sector, BUMN through assignments from the Government in accordance with statutory provisions, and pure private sector through pure investment from the private sector which can be given incentives. in accordance with the provisions of laws and regulations; 4). International funding/financing support schemes; 5). Other funding schemes (creative financing), such as crowd funding and funds from philanthropy.<sup>10</sup>

Picture 1. IKN Budget Realization



Source(s): Sri Mulyani, "APBN KITA EDISI SEPTEMBER 2023".<sup>11</sup>

The total budget allocation for the Indonesian Capital City (IKN) in the 2022 to 2024 State Revenue and Expenditure Budget (APBN) is IDR 75.5 trillion. The realization in 2022 is IDR 5.5 trillion, while the allocation in the 2023 APBN reaches IDR 29.4 trillion with the realization up to 31 August 2023 amounting to IDR 6.4 trillion. The 2024 Draft APBN (RAPBN) has also allocated funds amounting to IDR 40.6 trillion for IKN development.

<sup>8</sup> Ruth Meliana, "Dianggap Gagal, Presiden Baru Disebut Bisa Batalkan IKN, Begini Prosedurnya," suara.com, 2023, <https://www.suara.com/news/2023/06/16/143730/dianggap-gagal-presiden-baru-disebut-bisa-batalkan-ikn-begini-prosedurnya>.

<sup>9</sup> Amelia Rahima Sari, "Rocky Gerung Sebut IKN Berpotensi Dibatalkan Di Pemerintahan Setelah Jokowi, Ini Alasannya," tempo.co, 2023, <https://bisnis.tempo.co/read/1757467/rocky-gerung-sebut-ikn-berpotensi-dibatalkan-di-pemerintahan-setelah-jokowi-ini-alasannya>.

<sup>10</sup> Zaki Vernando, "Skema KPBU, Apa Perannya Dalam Mendukung Pembangunan IKN?," <https://kpbu.kemenkeu.go.id/>, 2023, <https://kpbu.kemenkeu.go.id/read/1142-1364/umum/orang-juga-bertanya/skema-kpbu-apa-perannya-dalam-mendukung-pembangunan-ikn>.

<sup>11</sup> Sri Mulyani, "APBN KITA EDISI SEPTEMBER 2023", <https://www.youtube.com/live/smsIpqX5BY8?si=yk7HdeVcQBEde0b>.

By looking at the IKN project which has realized a very large budget, canceling the capital city relocation project is certainly not an easy thing because a large budget has been given, and many parties have been involved in it and if it is cancelled, there will be consequences.

With many parties voicing that the transfer of the capital from DKI Jakarta to the National Capital of the Archipelago can and must be canceled by statutory instruments, it needs to be studied judicially.

Based on this background, the author wants to raise the problem set out in the form of legal writing entitled "Impact Of Canceling Development And Moving The Nusantara Capital City Through Legislative Instruments"

## II. RESEARCH METHOD

The method used in this research is normative juridical approach which would analyze the relevant provisions of the positive laws and regulations relating to the major theme of this research. This research is also enriched by utilizing library materials as basic research data which is classified as secondary data.

Data collection techniques and data collection tools are carried out through studies obtained from statutory regulations, books, journals, research results, encyclopedias, bibliographies, and observation methods related to the implementation of moving the capital city to IKN Nusantara.

In this research, the data were analyzed using qualitative analysis, namely by explaining the relationship between legal facts and legal rules contained in the law.

## III. DISCUSSION AND RESULTS

### 3.1 Cancellation of Development and Relocation of the Archipelago Capital Through Legislative Instruments

In general, the formation of regulations in Indonesia refers to the Law on the Establishment of Legislative Regulations.<sup>12</sup> Basically, according to Attachment II Number 158 in Law Number 12 of 2011 concerning the Formation of Legislative Regulations, a statutory regulation can only be revoked and declared invalid by statutory regulations that have the same or higher level than the regulations. legislation that is to be revoked and declared invalid.

In the legal hierarchy, laws can be revoked by law or by government regulations in lieu of laws ('PERPPU') because of equality of position. Meanwhile, in a higher hierarchy, namely the MPR Decree and the 1945 Constitution.

The MPR Decree does not allow it to be used in the case of repealing a law, because the MPR Decree cannot issue a regulatory MPR Decree, but only a decision or *beschikking*. Currently, only the temporary MPR Decree and the MPR Tap which are still in force are in effect as intended in Article 2 and Article 4 of the MPR Decree I/MPR/2003.

In accordance with Attachment II Number 224 to Law Number 11 of 2012 concerning the Establishment of Legislative Regulations, the revocation of a Law through a higher level statutory regulation is only carried out if the higher level of Legislative Regulation is intended to accommodate all or part of the material of the repealed lower Legislation.

Revocation by replacement occurs when an existing law is replaced by a new law. In this revocation with replacement, the revocation provisions can be placed at the front (in the opening) or at the back (in the closing provisions). If the revocation provisions are placed at the front (in the preamble), then these revocation provisions have the effect that the law which is declared to be revoked will be

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<sup>12</sup> Achmad Jaka et al., "Urgensi Reformasi Undang-Undang Tentang Pembentukan Peraturan Perundang-Undangan Sebagai Dampak Penerapan Konsep Omnibus Law Di Indonesia," *Jurnal Ilmiah Living Law* 14, no. 2 (2022): 117–28, <https://doi.org/https://doi.org/10.30997/jill.v14i2.6299>.

revoked along with its roots, in the sense that the law is revoked along with all its implementing regulations.<sup>13</sup>

When repealing a regulation because the old law is no longer needed and replacing it with a new regulation, the new regulation must explicitly revoke the regulation that is no longer needed. If the material in the new law causes the need to replace all or part of the material in the old law, the new law must clearly regulate the repeal of all or part of the law.

In this case, Law Number 3 of 2022 can be revoked by issuing a new law, and this law will be revoked along with all its implementing regulations. However, in the case of Law Number 3 of 2022, if it is to be revoked, there will be another law to protect it, such as when the Jakarta Special Region Bill was passed which strengthened the transfer of the status of the National Capital.

Canceling the transfer of the National Capital from Jakarta to Kalimantan by amending Law Number 3 of 2022 with a Government Regulation in Lieu of Law can indeed be done, but it requires the condition of a "compelling urgency" so that it cannot change the law using a Regulation The Government Substitutes Laws for reasons of the President's political interests. For the President who wishes to cancel the relocation of the National Capital by amending Law Number 3 of 2022 using a Government Regulation in Lieu of Law, he must fulfill three conditions, namely:

1. There is a situation, namely an urgent need to resolve legal problems quickly based on the law;
2. The required law does not yet exist, resulting in a legal vacuum, or there is a law but it is inadequate;
3. This legal vacuum cannot be overcome by making a law using the normal procedure because it will take quite a long time, while the urgent situation needs certainty to be resolved.

The President who wishes to cancel the relocation of the National Capital by amending Law Number 3 of 2022 using a Government Regulation in Lieu of Law must be submitted to the DPR and must obtain approval from the DPR so that the Government Regulation in Lieu of Law can be enacted into law. Because every legal regulation must be made by an authorized body or official. Otherwise, the statutory regulations are null and void (*van rechtswegenietig*). It is considered that it never existed and all consequences are legally null and void. For example, laws in the formal sense (*wet in formelesin*) are made by the President with the approval of the DPR. Any law that is not a joint product between the President and the DPR is null and void.<sup>14</sup>

Looking at the political reality, when the IKN Bill is approved as Law with more than 90% of the factions in the DPR agreeing, it is almost impossible for the DPR to approve a Government Regulation in Lieu of Law which would replace the IKN Law and cancel the relocation of the capital city. Country. Likewise, by making a new law to amend or revoke the IKN Law to cancel the relocation of the capital city, seeing that the number of DPR factions that approve the IKN Law is at more than 90%, it will be impossible for the DPR to approve the proposed law. will revoke the IKN Law and cancel the relocation of the capital city.

The development of IKN Nusantara and the relocation of the capital city is also strengthened by the inclusion of the IKN Nusantara project in the Government's Medium Term Development Plan and the Government's Long Term Development Plan, which means that even if the IKN Law is revoked, it will not necessarily stop the development of IKN Nusantara.

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<sup>13</sup> Nafiatul Munawaroh, "Tata Cara Pencabutan Undang-Undang," *Hukum Online*, 2023, <https://www.hukumonline.com/klinik/a/tata-cara-pencabutan-undang-undang-lt542f9da05dba4/>.

<sup>14</sup> Rachmat Trijono, "Alternatif Model Analisis Peraturan Perundang-Undangan," *Rechvinding: Media Pembinaan Hukum Nasional* 1, no. 3 (2012): 361–74, <https://doi.org/http://dx.doi.org/10.33331/rechtsvinding.v1i3.90>.

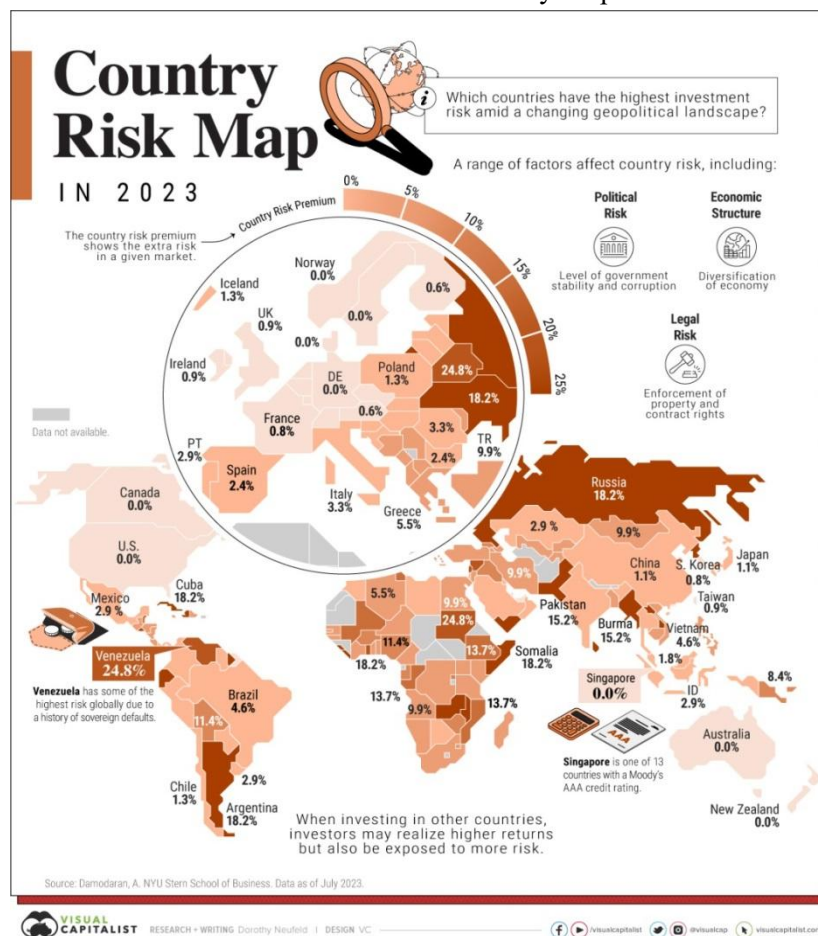
### 3.2 Impact of Cancellation of Development and Relocation of the National Capital of the Archipelago

If the development of IKN Nusantara is cancelled, then this will cause losses for the country. This happens because the state has spent large amounts of funds from the State Revenue and Expenditure Budget. In the IKN Nusantara development project there is also investment of very large value from various private companies and foreign parties, both from foreign governments and foreign companies. Moreover, up to now, a lot of infrastructure is being built. If it is canceled, the assets that have been built will collapse.

The cancellation of IKN development means the government has to pay penalties due to the cancellation of development and investment contracts. Depending on the terms of the contract, claims for damages may be tried by state courts or arbitration institutions.

The impact of canceling the IKN Nusantara development has implications not only for the parties who made the agreement, but also for the investment climate in Indonesia. Currently Indonesia has an investment risk value of 2.9%. If IKN Nusantara is cancelled, many investment contracts will be violated, this will have an impact on increasing Indonesia's investment risk value. This cancellation will damage Indonesia's reputation, and it will be deemed incapable of working on large projects and will create the perception that Indonesia is a country with high investment risks.

Picture 2. Investment Risk Country Map in 2023



Source(s): Dorothy Neufeld, “Mapped: Investment Risk, by Country,” Visual Capitalist (2023).<sup>15</sup>

<sup>15</sup> Dorothy Neufeld, “Mapped: Investment Risk, by Country,” Visual Capitalist, 2023, <https://www.visualcapitalist.com/investment-risk-by-country-map/>.

According to the Head of the Legal Aid Center of the Investment Coordinating Board, the main factors that are taken into consideration by foreign investors when investing in Indonesia are the economic profit factor, the legal certainty factor and the political stability factor.<sup>16</sup> Such cancellation will give rise to legal uncertainty, business uncertainty and inconvenience in doing business. Second, it is feared that it will reduce interest in foreign investment. Third, there is the possibility that the Indonesian government will be sued in international arbitration.

The cancellation of the IKN Nusantara development will also be detrimental to Kalimantan, because Kalimantan has been predicted to become the new capital city to replace Jakarta. The cancellation of the IKN Nusantara development and the relocation of the National Capital will mean that Kalimantan loses the opportunity to develop. This cancellation also makes Jakarta's status unclear when the DKJ Bill has been passed by the DPR and the Presidential Decree on the relocation of the capital city has been issued.

#### IV. CONCLUSION

Cancelling the development of IKN can be done by revoking it through law or by government regulation in lieu of law, but this is almost impossible to do because there must be approval from the DPR, which in political reality will be difficult to get approval because the DPR itself has approved the bill. IKN became law with more than 90% of the factions in the DPR. For revocation through a Government Regulation in Lieu of Law, apart from having to obtain approval from the DPR, the establishment of a Government Regulation in Lieu of Law must meet the requirements of "compelling urgency". Revoking the IKN Law does not necessarily cancel the development of the IKN Nusantara, because the development of the IKN Nusantara has been included in the National Medium Term Development Plan and also the National Long Term Development Plan

The cancellation of the IKN Nusantara development has had many negative impacts on the country. First, Indonesia will be sued by investors for violating investment agreements which will result in material losses because they will have to pay penalties due to violating the contract. Second, Indonesia will be considered a country with high investment risk. Third, Indonesia will experience losses because many assets are stalled and have cost the country's APBN a lot of money.

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<sup>16</sup> Fitri N. Heriani, "Tiga Implikasi Pembatalan Kontrak Bahasa Asing Terhadap Investasi," Hukum Online (Jakarta, 2015), <https://www.hukumonline.com/berita/a/tiga-implikasi-pembatalan-kontrak-bahasa-asing-terhadap-investasi-lt566ac67ca944a/>.

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