



ELECTION OF THE HEAD OF THE NATIONAL CAPITAL AUTHORITY (NUSANTARA)

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Abstract:

The long journey regarding the transfer of IKN has reached the present, namely during the time of President Joko Widodo that in mid-March 2022 the start of construction (IKN) in North Panajam Paser Regency, East Kalimantan, which is targeted for 2024, will begin the gradual relocation until 2045. The Head of the Authority Ibu Kota Negara Nusantara (IKN) and its representatives were officially inaugurated on March 10, 2022. The Head of the Nusantara IKN Authority and its representatives are directly elected by the President of the Republic of Indonesia. This is by Article 5 paragraph (4) and Article 9 paragraph (1) Law of the Republic of Indonesia Number 3 of 2022 concerning the State Capital. This direct appointment is problematic among the public and academics. It is considered that there was been a decline in democratization that is not by the principles contained in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

Keywords:

IKN, Election, Head Of Authority

1. Introduction

Indonesian is a democratic country that follows to the notion of constitutionalism, the presence of the notion of constitutionalism began when the constitution was used as a law in running a country. constitutionalism regulates the actualization of the rule of law in the relationship between the individual and the government. constitutionalism provide the conditions that can promote peace and prosperity, with the separation of government authorities that have been determined previously. The enactment of the constitution becomes a legal basis based on the highest jurisdiction or understanding of sovereignty that is believed by one State, if the State believes in the concept of people's sovereignty then the source of legitimacy is the people.(Pery Rehendra Sucipta, 2016). This has been stated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely "Sovereignty is in the hands of the people and implemented according to the Constitution".

The law will only exist in society and there is no society without a law governing them. That is one of the maxims of legal science(Michael, 2016). Indonesia as a legal state that upholds democratization is a political declaration of the Indonesian nation. The provisions relating to the election of state leaders and leaders at the regional level, namely regional heads, are a fact that the 1945 Constitution of the Republic of Indonesia is the constitution to be the most democratic codified law. The elections for regional heads are carried out democratically through direct elections. This is stated in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, namely "Governor, Regent, and Mayor respectively as heads of provincial, district and city governments are democratically elected."

Referring to Article 18(4) of the 1945 Constitution of the Republic of Indonesia, which was subsequently strengthened by Article 56 of Law No. 32 of 2004 on Regional Governments (Act No. 32 of 2004), which states: Principles of Universality, Freedom, Confidentiality, Honesty and Fairness A democratically elected pair of candidates and deputy regional heads Almost all regions in Indonesia began with the promulgation of Law No. 32 of 2004, and regional director elections are currently taking place at the state level , and by law at the city/district level. The preparation of the state director election process suggests that such a thing has become a national consensus. (Aziz, 2011)

The case is different with the election of regional heads in the new State Capital later. Through the Law of the Republic of Indonesia Number 3 of 2022 concerning the State Capital, hereinafter referred to as Law No. 3 of 2022 which was approved by the Indonesian Government and the House of Representatives (DPR) in January 2022, and regulates the relocation of state capitals. The President emphasized that the new National Capital will not only be meaningful as a representation of the identity of the Indonesian nation but also be a sign of the nation's progress. The new capital city which is located in the center of Indonesia is expected to manifest a balance of development and equal economic rights. (Hadi et al., 2020) The government has stated that Nusantara will be used as the name of the State Capital which is located in East Kalimantan Province, precisely in Kab. Panajam Paser Utara. (KHAIR, 2022),

Judging from the current series of processes for relocating the State Capital, it can be seen that the executive power seems to be very dominant in the planned relocation of the capital city. In this case, the President represented by the National Planning and Development Agency (Bappenas) first reviewed to determine the location of the new capital city, excluding legislative institutions, namely the Regional Representatives Council (DPD), the People's Representative Council (DPR) (Ferry Hidayat, 2019). Therefore, the relocation of the capital city will have an impact on the position of various state institutions.

Previously for Indonesia, the relocation of the National Capital was not something new. History in Indonesia has recorded that since independence, Indonesia has experienced several relocations of its capital city. The relocation of the State Capital was not without reason, but at that time due to the unstable political situation of the country because it was still during the physical war against the Dutch military aggression who wanted to re-occupy Indonesia. After the physical war that took place was over, on August 17, 1950, the State Capital was moved back to Jakarta. The long journey of relocating IKN has reached the present, namely during the time of President Joko Widodo in mid-March 2022 the construction of the National Capital of the Nusantara in Kab. Panajam Paser Utara, Prov. East Kalimantan and it is targeted that in 2024 the relocation will begin in stages until 2045. The transfer of IKN has several reasons: First, there is about 57 percent of the population lives on the island of Java. Second, inter-island economic distribution of Gross Domestic Product at the national level. Third, the availability of water resources in the Java hemisphere, especially in DKI Jakarta and East Java. Fourth, land conservation is spread over the island of Java. Fifth, the development of population migration is very large in DKI Jakarta. Sixth, the increasing burden of Jakarta so that there is a reduction in the area's carrying energy and the amount of national loss. Nusantara was chosen directly by President Joko Widodo because it is well known and internationally iconic. Nusantara is a unified concept that accommodates pluralism and expresses the reality of Indonesia. This plan should take over the city of Jakarta, the city is already very dense, polluted, prone to floods and traffic jams with catastrophic effects, especially earthquakes, now the country is slowly sinking, this is the result of research from all parties (Salsabila & Nurwati, 2020).

The National Capital of the Nusantara, which is herein after referred to as IKN, has a central role as well as a symbol of a country to be able to display the identity of the nation and the State. Therefore, the development and relocation of a new capital city need to be based on the growth of a ready-made city development concept and the sustainable needs and goals of a nation. The planning view and the concept of IKN development are designed as a meaningful review of development in a new location.

According to Article 5 paragraph (4) of Law no. 3 of 2022 Nusantara Capital is headed by the head of an authoritative agency who has the same position as a minister, appointed, appointed, and removed by the President. Referring to the article, finally caused various kinds of problems that were present in the community, one of which was the incompatibility of Article 5(4) of the IKN Act with Article 18(4) of the 1945 Constitution. This was due to the abolition of democratic election for regional leaders. What happens is a direct appointment by the President. The policies of government agencies are considered detrimental to the current democratic system in our country, as the heads of these agencies and their representatives are directly elected by the President in consultation with the DPR.

The disparity in the status of the state capital government then became an issue in various discussions among politicians, legal scholars and scholars of government science, as the Indonesian nation had maintained its authority in the region throughout the journey, only by Batam as the Batam Authority Agency. (BOB), whose designation is for the development of industrial areas, and Labuhan Bajo-Flores which is intended for tourism development. Responding to the constitutional problems regarding the election of the head of the present authority, it is necessary to conduct a study on the election of regional heads at IKN Nusantara which will become the new capital city of

Indonesia. Through this study, it will be able to provide answers to the problems regarding the suitability of the election of the head of the IKN authority body with democratic principles and as stipulated in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

Based on the previous explanation, so the researcher intends to carry out research to recognize what the election of the Head of the IKN Authority Agency is like. In research, there must be benefits that are needed so that the benefits of this research are: (1) Theoretical Benefits, later from this research can be used as a reference or add an understanding for the growth of science, precisely in the aspect of constitutional law, which is especially related to the mechanism of moving the capital city. Countries to the Nusantara, (2) Practical Benefits, for researchers by carrying out this research, researchers gain knowledge, knowledge about the suitability of the election of the head of the IKN authority body according to the 1945 Constitution of the Republic of Indonesia.

2. Method

In the preparation of this journal, it is included in the study of normative law, which examines the validity of the election of the head of the IKN Nusantara authority body according to the 1945 Constitution of the Republic of Indonesia. The approach used is using the legislation approach, case approach and facts approach. The technique of collecting data is using a literature study. The method of data analysis with qualitative descriptive techniques is to describe the results of the study first after that it is matched with existing theories after it is analyzed. it is important to produce objective research results. (Michael, 2020)

3. Research Result

3.1. Moving the State Capital to the Nusantara

Jakarta as the center of the Indonesian government is the pinnacle of the implementation of state administration which is also the capital city of Indonesia. The capital city is a city that is projected as the administrative center of government for a country. Usually, the area of the national capital is physically used as an office center and a gathering place for government leaders (Yahya, 2018). Therefore, the capital city of the country has a very important role in every implementation of the wheels of government. Jakarta as the nation's capital has also been named the city with the most populous population in Indonesia. The dense population in Jakarta can be used as one of the reasons for the relocation of the nation's capital city. Since the leadership of President Soekarno, the discourse of moving the nation's capital has begun to emerge. President Soekarno's reason for planning the relocation of the nation's capital was to achieve equitable development so that various kinds of development plans did not look centralized. During the leadership of President Soeharto, this discourse re-emerged because Jakarta was no longer able to represent the nation's capital city and thus needed a new area to build a new state capital. (Herdiana, 2022).

In any system of power transfer, the discourse of transferring state capital is always at the forefront. It was only under the leadership of President Joko Widodo that this discourse finally started to become a reality. The relocation of the capital, one of the mega-projects finally implemented by President Joko Widodo, is said to be subject to existing regulations. It took only about 42 days for the House of Representatives (DPR RI) to approve the National Capital Act on January 18, 2022, resulting in Law No. 3 of 2022.

The IKN (Nusantara) area has an area of about 256,142 hectares, the IKN (Nusantara) area has 51 administrative areas at the ward/village level, most of which are in the archipelago. For example, 7 kelurahan/villages are in Muara Jawa Subdistrict, 2 kelurahan/villages are in Loa Kulu Subdistrict, 5 kelurahan/villages are in Loa Janan Subdistrict, 21 kelurahan/villages are in Samboja Subdistrict, 15 subdistricts/villages are in Sepaku Subdistrict, and 1 kelurahan/village in Penajam District. As a region has residents or residents, the same is the case with IKN (Nusantara), based on scientific studies after development, the number of people will be in the range of 1.7 - 1.9 million people (Nicholas Ryan Aditya, 2022). Which consists of State Civil Apparatus at each State Ministry, TNI, Polri, Business Actors, Private Workers, and the community. The limited number of residents of the Capital City (Nusantara) is useful to prevent population density like in Jakarta and other big cities so that population control and urban planning can run more optimally.

The State Capital (Nusantara) will later have form of government the form of a regional government that has special characteristics equivalent to the Province and its location is used as an administrative area for the State Capital of Indonesia. The area that is mentioned becomes an area whose nature is special, namely Yogyakarta and Aceh, while the special ones are in Jakarta and Papua (Hidayah & Michael, 2020). this is stated in Article 1 paragraph (2) of Law

No. 3 of 2022. Regarding the government in IKN (Nusantara), has been stipulated in Article 1 paragraph (9) of Law no. 3 of 2022 concerning IKN which states "The Government of the Special Capital Region of the Nusantara, hereinafter referred to as the Nusantara Capital Authority, is the implementer of the preparation, development, and relocation of the State Capital, as well as the organizer of the Regional Government for the Special Capital of the Nusantara."

3.2. Election of the Head of the National Capital Authority (Nusantara)

Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia states: "The Governor, Regent and Mayor shall be democratically elected as the heads of provincial, district and municipal governments, respectively.". According to the above theorem, the leadership of the provincial government is exercised by the democratically elected governor. As a country that believes in the concept of democracy derived from the theory of popular sovereignty as stated in Article 1 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia and since the beginning of independence, it has been recognized by the Republic of Indonesia many times since the beginning of its independence. The nation's founding fathers The principle of democracy means that everyone's rights are respected, having an opinion, having a certain ideology, having a certain identity, respecting any opinion that comes to mind. (Michael, 2020)

One of the fundamental and always means of implementing people's sovereignty in the region is the Regional Head Election (hereinafter referred to as Pilkada). At the beginning of the reform period, referring to the Law of Regional Government Act No. 22 of 1999 of the Republic of Indonesia (Act No. 22 of 1999), Pilkada is held by the District People's Representative Committee (DPRD). Finally in 2005, it was the first time in our country that, according to the Republic of Indonesia Law No. 32 of 2004, an attempt was made to elect regional leaders by way of universal suffrage by the people at the provincial or municipal/government level. Regarding Regional Governments (Act 32 of 2004) (Suharizal, 2012).

Essentially, the word "democracy" in Article 18(4) of the Republic of Indonesia's 1945 differs when it comes to the election of President and Vice President under Article 6A of the 1945 Constitution of the Republic of Indonesia. Indonesia, which declares that both are elected in parallel by the people through direct mechanisms. This illustrates that Article 18 subsection (4) gives a way for legislators to decide how the system should be utilized to elect regional leaders (Ahmad Gelora Mahardika & Sun Fatayati, 2020). This has a purpose as a form of legal respect for the variety in terms of traditions and cultures of the population between various regions. This matter is also in line with the provisions of Article 18D of the 1945 Constitution of the Republic of Indonesia that legalizes elements of regional government in special and special forms and recognizes the integrity of customary law citizens.

This is different from the election of the Head of the National Capital Authority of the Nusantara (IKN) and his deputy officially inaugurated on March 10, 2022. This inauguration is based on Presidential Decree No. 9 concerning the Appointment of the Head of the National Capital Authority Agency and Deputy Head of the National Capital Authority of the Archipelago for the Leadership Period 2022-2027 (Maya Citra Rosa, 2022). This is based on Article 5 paragraph (4) of Law no. 3 of 2022. Regarding the process of appointing the Head of the National Capital Authority Agency and his deputy, it is stated in Article 9 paragraph (1) "The Nusantara Capital Authority is led by the Head of the Nusantara Capital Authority and assisted by a Deputy Head of the Nusantara Capital Authority who is appointed, appointed, and dismissed directly by the President after consulting with the DPR." Unlike other regional leaders who are directly elected by popular vote, IKN's regional leaders (heads of government agencies) are elected by the president through a direct nomination mechanism. This seems inconsistent with the nature of democracy as stated in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

In Constitutional Court Judgment No.97/PUU-XI/2013, the basic idea for the formed by the provisions of Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia at that time was the mechanism for selecting regional heads which was established by each It is determined by the growth and conditions of the people in the region. The legislature has the freedom to decide the electoral mechanism that the people want in Pilkada, so the people can choose whether to use the mechanism through the mechanism of direct election by the people or through a representative mechanism that operates by the DPRD. The intention is to adapt to the dynamics of national development so that they can choose the democratic mechanism desired by the community. This is an open norm provision of the legislature and is strongly related to respecting and protecting the constitution about the diversity of customs and cultures of the population in various regions. Some regions tend to carry out a direct

election mechanism by the people and there are also regions that tend to accept the indirect election mechanism from the people. Both the indirect election system (representative democracy) and the direct election mechanism (direct democracy) can also be categorized as democratic systems.

Based on the decision of Constitutional Court No: 97/PUU-XI/2013, it can be concluded that indirect elections or direct elections by the people can also be part of democracy. However, with the condition that the election is carried out by applying the principles of a democratic general election, namely: direct, general, free, secret, honest, and fair. Even so, it is even stated in the Constitutional Court Decision No. 072-073/PUU/2004 that it is the authority of the legislative body in this case (DPR) to determine how the Pilkada should be carried out directly or indirectly. In fact, in accordance with the background of the review of the requirements for regional head elections in the 1945 Constitution of the Republic of Indonesia, the legislators can decide on the mechanism for the election of regional heads that differs according to their respective regions. If the Pilkada is held directly in Jakarta, it does not mean that it has to be the same in Yogyakarta, as well as in Papua and other regions. This matter must be adjusted to the diversity of the Indonesian population, both in terms of customs, population figures, and levels of readiness (Janedjri M. Gaffa, 2012).

This is because democracy can be interpreted as a democracy by means of representation, or direct democracy, or it can be meant to be accepted by all people through acclamation, it is not even a mechanism that does not lack democratic values (Sulardi, 2014). Therefore, from the ratification of Law No. 32 of 2004, the election of governors, regents and mayors will only be conducted in a direct mechanisms only, but can also be carried out in other ways such as direct democracy by the people, representative democracy by DPRD or by acclamation. Based on the description above, it is clear that there has been a democratization setback in the election of the Head of the Nusantara IKN Authority Body. Direct appointment by the President also creates a conflict between Article 9 (1) of Law No. 3 of 2022 and Article 18 (4) of the 1945 Constitution of the Republic of Indonesia.

4. Conclusion

Based on this explanation, it can be concluded that the relocation of the State Capital is not something new in Indonesia. Indonesia has several times changed the position of the State Capital from Bukit Tinggi, Yogyakarta, Jakarta to the most recent being the relocation of the National Capital of the Archipelago. The transfer of IKN to the Archipelago has had regulations set out through Law No. RI. 3 of 2022. Unlike the case with regions that had previously been the State Capital in the form of a regional government, IKN Nusantara will later take the form of an Authority Agency at the ministerial level. The IKN Authority Agency headed by the Head of the IKN Authority will be tasked with accelerating the development and administration of local government at IKN Nusantara later. In Article 9 (1) of the Republic of Indonesia Law no. 3 of 2022 stipulates that the Head of the IKN Authority shall be directly elected and dismissed by the President. This is certainly a problem in society because it is considered that the election does not reflect a democratic attitude and is in conflict with Article 18 (4) of the 1945 Constitution of the Republic of Indonesia. The meaning of democracy in Article 18 (4) of the 1945 Constitution of the Republic of Indonesia is stipulated in the Constitutional Court verdict No: 97/PUU-XI/2013 direct elections by the people or indirect elections can also be part of democracy. provided that the elections shall be held in accordance with the principles of democratic universal elections, namely: direct, general, free, secret, honest, and fair. Based on this decision, the election of the Head of the IKN Authority as described in Article 9 (1) of Law no. 3 of 2022 is considered not to reflect the attitude of democracy in Article 18 (4) of the 1945 Constitution of the Republic of Indonesia.

Based on the results of the discussion and conclusions the researcher therefore, submits several suggestions, including:

1. In formulating a statutory regulation, in this case the DPR, so as not to rush so as not to create a vague or even contradictory meaning in an article in the law.
2. The 1945 Constitution of the Republic of Indonesia has handed over flexibility in the election of regional heads either by direct mechanism or by means of representation by the DPRD. However, this must not forget the democratic principles adopted by the Indonesian people.

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