

THE LEGAL STATUS OF THE HEAD OF THE NUSANTARA CAPITAL AUTHORITY IN THE INDONESIAN GOVERNMENTAL SYSTEM

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ABSTRACT

This study aims to analyze the legal status of the Head of the Nusantara Capital Authority within the Indonesian governmental system and to examine the status of the legal products issued by the Head of the Nusantara Capital Authority within the hierarchy of laws and regulations. This research employs a normative legal research method using statutory, conceptual, historical, and comparative approaches. The conclusions of this study are as follows: (1) the legal status of the Head of the Nusantara Capital Authority within the Indonesian governmental system constitutes a constitutional innovation in Indonesia, introducing the concept of a Special Regional Government at the provincial level with a Head of Government holding ministerial rank, which is consistent with the 1945 Constitution of the Republic of Indonesia; (2) the legal products issued by the Head of the Nusantara Capital Authority are not included in the hierarchy of laws and regulations as stipulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations. This is because regulations issued by the Head of the Nusantara Capital Authority do not constitute regional legal products, but rather institutional regulations equivalent to ministerial regulations established pursuant to law and recognized under Article 8 paragraphs (1) and (2) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations.

Keywords: *national capital city; authority; governmental system.*

INTRODUCTION

A national capital generally functions as the center of government and, in many cases, also serves as the economic center, as has long been the role of the Special Capital Region of Jakarta (DKI Jakarta) for Indonesia. However, the status of the national capital will soon be transferred to the Nusantara Capital City (Ibu Kota Nusantara/IKN), located in the regions of North Penajam Paser and Kutai Kartanegara, East Kalimantan. This major transformation is planned to take place gradually in four main phases, with completion targeted for 2045.

Law Number 3 of 2022 concerning the National Capital regulates the Nusantara Capital City and its administration, which is carried out by the Nusantara Capital Authority. The Nusantara Capital City is envisioned as a global city for all, developed and managed with the following objectives:

- 1) to become a sustainable city a global scale;
- 2) to serve as the future economic driver of Indonesia; and
- 3) to become a symbol of national identity representing the diversity of the Indonesian nation, based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Law Number 3 of 2022 concerning the National Capital (the IKN Law) was also enacted because, until now, there has been no specific law regulating the national capital, except for Law Number 29 of 2007 concerning the Government of the Special Capital Region of Jakarta as the Capital of the Republic of Indonesia, which merely regulates the designation of the Special Capital Region of Jakarta as the national capital of the Republic of Indonesia.

Pursuant to Article 4 paragraph (1) of Law Number 3 of 2022 concerning the National Capital, the establishment of the national capital is defined as follows:

“By virtue of this Law, the following are established:

- a. Nusantara Capital City as the National Capital; and
- b. The Nusantara Capital Authority as an institution equivalent to a ministry that administers the Special Regional Government of the Nusantara Capital City.”

The designation of the Nusantara Capital City (IKN) as a Special Regional Government at the provincial level should, in principle, be administered by a provincial regional government. However, Article 4 paragraph (1) of the IKN Law provides otherwise. The Nusantara Capital Authority, as a ministry-level institution administering the Special Regional Government of the Nusantara Capital City, raises concerns regarding potential ambiguity in terminology, or *contradictio in terminis*, within the Indonesian governmental system.

Article 5 paragraph (2) of the IKN Law, which regulates the status and special nature of the National Capital, provides as follows:

“As a special regional governmental unit, the Special Regional Government of the Nusantara Capital City shall regulate and administer its own governmental affairs as stipulated and governed under this Law.”

The form of regional government established for the Nusantara Capital City constitutes a special characteristic of the IKN. This special status differs from that of the previous national capital, namely the Special Capital Region of Jakarta (DKI Jakarta), which also held provincial status, as stipulated under Law Number 29 of 2007 concerning the Government of the Special Capital Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia. Nevertheless, DKI Jakarta continues to be led by a Governor and conducts regional head elections (gubernatorial elections). In contrast, the Nusantara Capital City is led by the Head of the Nusantara Capital Authority, and no regional head election is conducted.

Furthermore, Article 5 paragraph (4) of the IKN Law regulates the status and special nature of the Nusantara Capital City as follows:

“The Head of the Nusantara Capital Authority shall serve as the head of the Special Regional Government of the Nusantara Capital City with ministerial rank, appointed and dismissed by the President after consultation with the House of Representatives.”

Based on Article 5 paragraph (4), it is explained that the territory designated as the Nusantara Capital City will become a special regional governmental unit at the provincial level under the name of the Special Regional Government of the Nusantara Capital City. However, the governmental structure adopted differs from ordinary regional governments in that it takes the form of an authority body headed by a Head of Authority with ministerial rank, possessing broad powers in managing its territory.¹

¹Yusqiy Ahliyan. “Political Will Sistem Otorita IKN (OIKN) Dalam Pasal 4 Undang-Undang Nomor 3 Tahun 2022.” UIN Sunan Kalijaga: *Staatrecht Jurnal Hukum Kenegaraan dan Politik Islam* Vol. 2 No. 2, (2022); 245-262. <https://doi.org/10.14421/staatsrecht.v2i2.2806>.

This gives rise to a further question regarding whether the Special Regional Government of the Nusantara Capital City falls within the category of provincial government or regency/municipal government. Under the Indonesian constitutional system, only provincial governments and regency/municipal governments are formally recognized. This is expressly affirmed in Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which provides that the Unitary State of the Republic of Indonesia is divided into provincial regions, and each province is further divided into regencies and municipalities, each having its own regional government regulated by law.

This issue is important because it concerns the scope of governmental affairs that will become the responsibility and authority of the Special Regional Government of the Nusantara Capital City. Although the concept of an authority body is not specifically recognized in the Constitution, the regulation of special and privileged forms of government has been clearly provided. Referring to Article 18B paragraph (1) of the 1945 Constitution, the granting of special or privileged regional status may indeed be justified. Nevertheless, there has never been any prior regulation concerning a regional government institution at the ministerial level.

The implications of these arrangements include the emergence of new legislative challenges, particularly because Article 5 paragraph (6) grants the IKN Authority the power to enact regulations governing its own regional administration. However, this provision does not automatically classify regulations issued by the IKN Authority as Regional Regulations (Peraturan Daerah/Perda) commonly applicable in other regional governmental units, especially considering that the governmental structure of the national capital does not recognize the existence of a Regional House of Representatives (DPRD). This raises questions regarding the status of regulations issued by the Head of the Nusantara Capital Authority within the hierarchy of laws and regulations as stipulated under Law Number 12 of 2011 concerning the Formation of Laws and Regulations. Specifically, it remains unclear whether such regulations should be equated with provincial regulations, regency/municipal regulations, or ministerial regulations, given that the Head of the Nusantara Capital Authority is a ministerial-level official appointed and dismissed by the President after consultation with the House of Representatives.

The foregoing questions and examples of legal issues arise due to normative conflicts (antinomy of norms) contained in several provisions of Law Number 3 of 2022 concerning the National Capital, as previously described, which conflict with equivalent and higher-ranking laws regarding the legal status of the Head of the Nusantara Capital Authority within the Indonesian governmental system. Compliance with such provisions may consequently result in violations of other legal norms. Therefore, this study seeks to analyze the legal status of the Head of the Nusantara Capital Authority within the Indonesian governmental system and to examine the status of legal products issued by the Head of the Nusantara Capital Authority within the hierarchy of laws and regulations.

METHOD

This study employs a normative legal research method using statutory, conceptual, historical, and comparative approaches. The types and sources of legal materials used in this research consist of primary, secondary, and tertiary legal materials collected through library research, which were subsequently analyzed qualitatively using an inductive method.

ANALYSIS AND DISCUSSION

The Legal Status of the Head of the Nusantara Capital Authority within the Indonesian Governmental System

In various countries around the world, there has been a significant development in the forms of state and governmental institutions characterized by deconcentration and decentralization. According to R. Rhodes, such institutions generally perform three principal functions. First, they manage tasks delegated by the central government by coordinating the activities of various other agencies. Second, they monitor and facilitate the implementation of central government policies. Third, they represent regional interests in relation to the central government.²

At the same time, economic, political, and socio-cultural developments, together with the influences of globalization and localism, have demanded state organizational structures that are more responsive to public needs and more effective and efficient in delivering public services and achieving governmental objectives. These developments have influenced the structure of the state, including the forms and functions of state institutions as a form of institutional experimentation, which may take the form of councils, commissions, committees, boards, or authorities.³

Article 1 of the 1945 Constitution of the Republic of Indonesia stipulates that Indonesia is a unitary state in the form of a republic. As a logical consequence of being a unitary state, the Government of Indonesia was first established as a national government, which subsequently formed regional governments in accordance with prevailing laws and regulations. Furthermore, Article 18 paragraphs (2) and (5) of the 1945 Constitution provide that regional governments are authorized to regulate and administer their own governmental affairs based on the principles of regional autonomy and co-administration tasks, while also being granted the broadest possible autonomy.

The granting of broad regional autonomy is intended to accelerate the realization of public welfare through improved public services, empowerment, and community participation. In addition, within the strategic environment of globalization, regional governments are expected to enhance competitiveness while upholding the principles of democracy, equity, justice, privilege, and regional specificity, as well as recognizing regional diversity within the framework of the Unitary State of the Republic of Indonesia. Nevertheless, the implementation of broad autonomy remains grounded in the principle of the unitary state. In a unitary state, sovereignty resides solely in the national government, not in regional governments. Therefore, regardless of the extent of autonomy granted to the regions, ultimate responsibility for regional governance remains with the central government. Consequently, regional governments in a unitary state constitute an integral part of the national government. In line with this principle, policies enacted and implemented by regional governments are inseparable from national policies. The distinction lies in how local wisdom, regional potential, innovation, competitiveness, and creativity are utilized to achieve national objectives at the local level, thereby contributing to the realization of national goals as a whole.

As legal community units possessing autonomy, regions are authorized to regulate and administer their own affairs in accordance with the aspirations and interests of their communities, provided that such actions do not conflict with the national legal order or public interests. In providing broader space for regional governments to govern their communities, the central government must take local wisdom into account in formulating policies. Conversely, regional

²Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi* (Jakarta: Setjen dan Kepaniteraan MKRI, 2006), 7.

³*Ibid.*

governments, in enacting regional regulations and other policies, must also consider national interests. This balance is necessary to create synergy between national interests and local conditions, distinctiveness, and local wisdom within the overall administration of government.

Unlike the organization of the central government, which consists of executive, legislative, and judicial branches, regional governance in Indonesia is carried out by the Regional House of Representatives (DPRD) and regional heads. Both the DPRD and regional heads function as regional governmental organs mandated by the people to administer governmental affairs delegated to the regions. Accordingly, they stand as equal institutional partners with distinct functions. The DPRD performs legislative, budgeting, and supervisory functions, whereas regional heads are responsible for implementing regional regulations and policies. In exercising regional governmental authority, the DPRD and regional heads are assisted by regional apparatuses. As a consequence of the DPRD's status as an element of regional governance, its structure, position, roles, rights, obligations, authorities, and functions are comprehensively regulated under the Regional Government Law to ensure integrated governance arrangements.

Article 18B paragraph (1) of the 1945 Constitution provides:

“The State recognizes and respects regional governmental units that possess special or privileged characteristics, as regulated by law.”

A concrete implication of this provision is the constitutional legitimacy of special regional arrangements, recognition of indigenous communities, flexibility in governmental administration, and the division of authority between the central and regional governments. It acknowledges the existence of regions with unique historical, cultural, or customary characteristics that require arrangements different from ordinary autonomous regions. Consequently, this provision serves as the constitutional basis for laws granting broader authority and privileges to such regions, particularly in relation to the management of resources, culture, and legal systems. The recognition and protection of special or privileged regional governmental units through specific legislation allow broader autonomy and the coexistence of customary law alongside national law, aimed at promoting public welfare and preserving the integrity of the Republic of Indonesia. This provision also provides the constitutional foundation for the establishment of new special regions, including the Nusantara Capital City (IKN).

Under the IKN Law, regional governance within the Nusantara Capital City is administered through special arrangements that differ from existing forms of regional government. Such a special governmental structure is constitutionally permissible pursuant to Article 18B paragraph (1) of the 1945 Constitution.

As one form of this special arrangement, the Special Regional Government of the Nusantara Capital City is administered solely by the Nusantara Capital Authority without the existence of a Regional House of Representatives, unlike ordinary regional governments. By deviating from general regional government regulations, the IKN Law establishes the Nusantara Capital Authority and grants it authority to regulate and administer regional governmental functions, including but not limited to the preparation, development, relocation, and management of the national capital.

The concept of an “authority body” was previously introduced during the administration of President Soeharto through Presidential Decree Number 74 of 1971, which established the Batam Industrial Development Authority. All land areas on Batam Island were placed under the management rights of the Chairman of the Batam Industrial Development Authority. These management rights granted authority to: (1) plan land allocation and use; (2) utilize the land for institutional functions; (3) allocate portions of the land to third parties through rights of use

pursuant to Articles 41–43 of the Basic Agrarian Law; and (4) collect fees, compensation, and annual mandatory payments.

Batam Island was designated as an Industrial Area pursuant to Presidential Decree Number 41 of 1973, which replaced Presidential Decree Number 74 of 1971 and was later amended several times, most recently by Presidential Decree Number 25 of 2005. The Batam Industrial Development Authority was defined as the governing body responsible for industrial development in Batam. Its Chairperson and Deputy Chairperson were appointed and dismissed by the President, and the institution was directly accountable to the President. However, the development and management of the Batam Industrial Area were not conducted solely by the Authority but also involved a supervisory board and a state-owned enterprise. The Batam Authority fundamentally differs from the Nusantara Capital Authority in two respects. First, special or privileged regional governments must be established by law, whereas the Batam Authority was created through a presidential decree. Second, the Batam Authority did not constitute a special regional government under Article 18B paragraph (1) of the Constitution, but rather an institution established to manage an industrial area within the Province of Riau, which already possessed a regional government. Consequently, the Batam Authority exercised only area-management functions, not regional governmental functions.

Since the enactment of Law Number 3 of 2022 concerning the National Capital, a new institution, namely the Nusantara Capital Authority, has emerged. This institution is responsible for the preparation, development, and relocation of the national capital. The Nusantara Capital Authority will begin administering the Special Regional Government of the Nusantara Capital City only after the issuance of a Presidential Decree officially relocating the national capital to Nusantara.

The development of the national capital through the concept of the Nusantara Capital Authority as the institution fully responsible for planning, development implementation, and administration of the Special Regional Government of the Nusantara Capital City represents an unprecedented model within the Indonesian constitutional system.⁴

As part of its special characteristics, the Special Regional Government of the Nusantara Capital City is administered solely by the Nusantara Capital Authority without a Regional House of Representatives, unlike ordinary regional governments. Nevertheless, the House of Representatives (DPR) retains supervisory authority. The DPR may supervise, monitor, and review the administration of the Special Regional Government of the Nusantara Capital City. According to the author, this authority is justified for several reasons: (a) the Head of the IKN Authority serves as the head of the Special Regional Government with ministerial rank and is appointed and dismissed by the President after consultation with the DPR; (b) the DPR exercises legislative functions, including deliberating and approving the IKN Law together with the Government; (c) the DPR exercises budgetary functions because funding for the preparation, development, relocation, and administration of the IKN partly derives from the State Budget (APBN), which must be jointly approved by the DPR and the Government; and (d) the DPR exercises supervisory functions over the implementation of the IKN Law, state administration, and the policies and performance of the IKN Authority.⁵

The explicit provision granting the DPR authority to supervise, monitor, and review the administration of the Special Regional Government of the IKN as a province-level special region constitutes a new variable in regional governance and represents one of the distinctive

⁴Syarif Anwar Said Al-Hamid, Ade Arif Firmansyah dan Siti Khoiriah. “Kedudukan Otorita Ibu Kota Nusantara Dalam Ketatanegaraan Indonesia,” Universitas Indonesia: Jurnal Hukum & Pembangunan Vol. 53 No. 4, (2023): 741-766, <http://doi.org/10.21143/jhp.vol53.no4.1505>.

⁵Gunawan A. Tauda, *Ibu Kota Nusantara: Konstitusionalitas dan Implikasi Terhadap Penyelenggaraan Pemerintahan Daerah* (Depok: Rajawali Pers, 2025), 76.

features of the IKN compared with other special regions, particularly Jakarta. Similar arrangements are absent from the Jakarta Special Region Law and other asymmetrical regional arrangements. The DPR's legislative, supervisory, and budgetary roles concerning the IKN Government should therefore be understood as manifestations of the DPR's role as the representative institution of the Indonesian people and as support for the Government's efforts to realize national objectives.

From the perspective of the lawmaker, the transformation of the capital into a different form of provincial governance was not intended to alter the established relationship between the central and regional governments. Instead, it aims to establish an ideal model for managing a modern capital city through efficient resource management and effective public services based on sustainable development principles.⁶

The administration of the Special Regional Government of the Nusantara Capital City is entrusted to the Nusantara Capital Authority. Article 1 point 10 of the IKN Law defines the Head of the Nusantara Capital Authority as "the head of the Special Regional Government of the Nusantara Capital City." This means that the special regional government of the IKN is not headed by a governor but by the Head of the Authority. This arrangement constitutes a novel concept in the Indonesian constitutional system because, under Article 18 paragraphs (1), (2), and (4) of the Constitution, provinces are headed by governors, while regencies and municipalities are headed by regents and mayors. Law Number 23 of 2014 concerning Regional Government consistently uses the terms governor, regent, and mayor for regional heads in Indonesia.⁷

Article 5 paragraph (4) of the IKN Law further stipulates that the Head of the Nusantara Capital Authority holds ministerial rank and is appointed and dismissed by the President after consultation with the DPR. This demonstrates that the appointment mechanism differs fundamentally from that of ordinary regional heads, who are generally elected through regional elections. The appointment mechanism also reinforces the unique character of the IKN government, which exercises specific authority and responsibility in relation to the preparation, development, and relocation of the national capital.

Under Article 10 of the IKN Law, the Head and Deputy Head of the IKN Authority serve five-year terms commencing from inauguration and may be reappointed for subsequent terms. Both officials may also be dismissed by the President at any time before the expiration of their terms. Furthermore, the first Head and Deputy Head appointed after the enactment of the IKN Law were appointed directly by the President without the consultation mechanism with the DPR required under Article 5 paragraph (4).

From the perspective of legal politics, the IKN Law represents a concrete example of law functioning as an instrument of social and spatial engineering (law as a tool of social engineering). The state utilizes legislative authority to secure a long-term national commitment that is intended to remain unaffected by electoral political dynamics. Viewed through Mahfud MD's theory of legal politics, the IKN Law has generated significant debate. Critics adopting an orthodox or conservative perspective argue that the lawmaking process was excessively rapid—completed within only 42 days—and lacked meaningful public participation, indicating strong executive dominance in shaping legal policy. Conversely, proponents adopting a responsive perspective contend that the expedited process reflected the urgent need to relocate

⁶M. Reza Baihaki, Alif Fachrul Rachman. "Penjelasan Hukum (Restatement) Kedudukan Peraturan Otorita Ibu Kota Negara Menurut Hukum." Badan Pembinaan Hukum Nasional: Jurnal Majalah Hukum Nasional Vol. 52, No. 1, (2022): 89-106, <http://doi.org/10.33331/mhn.v52i1.167>.

⁷Rizki Mulyaningsih. "Kedudukan Kepala Otorita Ibu Kota Nusantara Dalam Perspektif Hukum Otonomi Daerah." Universitas Islam Indonesia: Jurnal *Lex Renaissance* Vol. 7 No. 2, (2022): 296-309, <https://doi.org/10.20885/JLR.vol7.iss2.art6>.

the capital in response to Jakarta's worsening environmental crisis. These competing legal-political constructions ultimately extended beyond academic and political discourse into the judicial sphere through constitutional review before the Constitutional Court.

Although the Constitutional Court declared the IKN Law constitutional, further examination remains necessary regarding the special status of the Nusantara Capital City. Article 18B paragraph (1) of the 1945 Constitution recognizes the establishment of special or privileged regional governmental units regulated by law. Moreover, each province is constitutionally divided into regencies and municipalities possessing their own regional governments. However, the Special Regional Government of the Nusantara Capital City does not contain regencies or municipalities within its autonomous structure. In addition, the absence of regional elections and a Regional House of Representatives potentially limits the political rights of Indonesian citizens.

From a legal-political perspective, the relocation of the national capital reflects the background and objectives underlying the enactment of Law Number 3 of 2022 concerning the National Capital, particularly the absence of a specific law regulating the national capital. The law was intended to establish a legal framework capable of realizing the vision of an ideal national capital and serving as a model for the development and management of other urban areas in Indonesia. When examined further, the legal status of the Head of the Nusantara Capital Authority under the IKN Law may be characterized as follows:

1 Institutional Hybridization

The legal status of the Head of the Nusantara Capital Authority represents a new institutional design within the Indonesian governmental system aimed at balancing the efficiency of the central government with the autonomy of a special regional government. From the perspective of legal politics, the Head of the Authority possesses a dual character: as a central government official (holding ministerial rank, appointed directly by, and accountable to, the President) and simultaneously as a regional governmental head exercising special autonomous governmental functions.

2 Centralization of Regional Affairs

As part of its special characteristics, the Special Regional Government of the Nusantara Capital City is administered solely by the Nusantara Capital Authority without a Regional House of Representatives, unlike ordinary regional governments. This arrangement reflects the Government's intention to avoid bureaucratic obstacles and political differences between the central and regional governments in order to accelerate national development. In addition, it reflects a transition from hierarchical organizational structures toward more agile governance aimed at achieving effective and efficient public administration.

3 Appointment of Regional Government Leadership without Elections

The position of the Head of the IKN Authority is designed to be equivalent to that of a minister within the governmental structure. The President possesses full authority to appoint and dismiss the Head of the Nusantara Capital Authority, although the process requires consideration or consultation with the DPR.

The Status of Legal Products Issued by the Head of the Nusantara Capital Authority within the Hierarchy of Laws and Regulations

Within the Indonesian constitutional system, the ideal of the rule of law constitutes an inseparable aspect of Indonesia's constitutional development since independence. The 1945 Constitution explicitly states that "Indonesia is a state based on law." Philip Norton argues that achieving good law may be regarded as a desirable objective because good law constitutes a public good, although its realization inevitably confronts political realities. For government

ministers, policy success is often measured by the enactment of legislation. According to Norton, legislation should be drafted as clearly and simply as possible in the interests of the citizens to whom it applies. These criteria contribute to what may properly be regarded as good law.⁸

Jeremy Webber further argues that law, particularly constitutional law, occupies a primary position in establishing the foundations of legitimate government. Democratic structures are built upon constitutional law, which fundamentally limits governmental authority. Historically, the development of the rule of law has been closely associated with efforts to restrain arbitrary government power through legal limitations, ultimately giving rise to the supremacy of law.

Although guidelines and positive legal foundations for legislative drafting already exist, the legislative process in practice remains heavily influenced by political interests. It is therefore unsurprising that legislation is often regarded as a product of political elites. Legislative processes frequently occur within “elite political spaces” that may involve politicians whose interests intersect with those of economic actors.⁹

As the head of the Special Regional Government of the Nusantara Capital City, the IKN Authority is authorized to enact regulations governing the administration of the Special Regional Government and the preparation, development, and relocation of the national capital. In practice, the term “regulation” within this context refers to regulations issued by the Head of the Nusantara Capital Authority (Peraturan Kepala Otorita IKN).

As one of its special characteristics, the Nusantara Capital Authority possesses the authority to independently issue regulations concerning the administration of the Special Regional Government of the Nusantara Capital City, except for regulations requiring approval from the DPR as stipulated in the IKN Law. The formation of regulations issued by the Head of the Nusantara Capital Authority is governed under Articles 27 and 28 of Presidential Regulation Number 62 of 2022 concerning the Nusantara Capital Authority. The process begins with the Secretary of the Nusantara Capital Authority submitting a proposal to the Head of the Authority accompanied by a regulatory concept containing: (a) urgency and objectives; (b) targets; (c) principal ideas; (d) scope; (e) regulated objects; and (f) regulatory direction and coverage.

In drafting regulations, the Head of the Legal and Compliance Unit of the Nusantara Capital Authority may involve relevant ministries and institutions, legal experts, practitioners, academics, and other parties possessing expertise regarding the subject matter to be regulated. The formation of such regulations must comply with prevailing legislative procedures.

Based on these procedures, it is evident that there is no involvement of a Regional House of Representatives (DPRD), since the Special Regional Government of the Nusantara Capital City is administered solely by the Nusantara Capital Authority. Regulations requiring approval from the DPR under the IKN Law are limited, including regulations concerning the legal basis for imposing special taxes and levies in the Nusantara Capital City pursuant to Article 24 paragraph (6). Furthermore, amendments to the Nusantara Capital City Master Plan under Article 7 paragraph (5) require consultation with the DPR. The DPR, through its legislative bodies, may also monitor and review the implementation of the IKN Law in accordance with legislative procedures.

Indonesia recognizes several regions possessing special or privileged status, including Papua, West Papua, South Papua, Central Papua, Highland Papua, Southwest Papua, Aceh, the Special Capital Region of Jakarta, and the Special Region of Yogyakarta. These regions have obtained formal constitutional recognition under Article 18B paragraph (1) of the 1945

⁸Philip Norton, “Legislation and the Law: an Imperfect Relationship.” *Journal of International and Comparative Law* Vol. 12 (2), (2025): 353-370.

⁹Otong Rosadi dan Andi Desmon, *Studi Politik Hukum: Suatu Optik Ilmu Hukum* (Yogyakarta:Thafa Media, 2020), 122.

Constitution. Nevertheless, unlike the Special Regional Government of the Nusantara Capital City, these special regions continue to be led by governors and possess Regional Houses of Representatives involved in the enactment of regional regulations. The absence of a DPRD and the ministerial-level status of the Head of the IKN Authority therefore raise important questions concerning the position of regulations issued by the Head of the IKN Authority within the hierarchy of laws and regulations.

From the perspective of legal theory, the state legal order constitutes a system of legal norms designed to regulate its subjects. Hans Kelsen states that norms represent what “ought to be or ought to happen.” His theory focuses not on supreme power itself but on the autonomy of the legal order grounded in a basic norm.¹⁰ Legal norms are therefore inseparable from legislative science, because legislation constitutes the mechanism through which legal norms are created and applied within society. Consequently, legal norms are closely related to the hierarchy of norms as formulated by Hans Nawiasky and Hans Kelsen.¹¹

Article 7 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, as amended by Law Number 13 of 2022, establishes the hierarchy of laws and regulations as follows:

- 1 The types and hierarchy of statutory regulations consist of:
 - a. the 1945 Constitution of the Republic of Indonesia;
 - b. Decrees of the People’s Consultative Assembly;
 - c. Laws/Government Regulations in Lieu of Laws;
 - d. Government Regulations;
 - e. Presidential Regulations;
 - f. Provincial Regulations; and
 - g. Regency/Municipal Regulations.
- 2 The legal force of statutory regulations is in accordance with the hierarchy as referred to in paragraph (1).

The term “hierarchy” refers to the ranking of each type of legislation based on the principle that lower regulations must not conflict with higher regulations.

Article 8 further recognizes other forms of legislation established by institutions such as the People’s Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, ministers, and other bodies or commissions established by law or under delegated authority. Such regulations are recognized and possess binding legal force insofar as they are mandated by higher legislation or enacted pursuant to lawful authority.

Given that the Head of the IKN Authority is normatively positioned at the ministerial level under the IKN Law, the Head of the Authority may issue legal products in the form of regulations and decisions of the Head of the IKN Authority. Such legal products are recognized as regulations equivalent to ministerial regulations pursuant to Article 8 paragraphs (1) and (2) of the Law on the Formation of Laws and Regulations, although they do not form part of the formal hierarchy of laws and regulations.

Furthermore, when examining the drafting and promulgation technique of Regulations issued by the Head of the IKN Authority, particularly the fact that such regulations are promulgated in the *State Gazette of the Republic of Indonesia (Berita Negara Republik Indonesia)*, it becomes evident that Regulations of the Head of the Nusantara Capital Authority do not constitute

¹⁰Todd Berry, *Sovereignty and the Limit of International Law* (New York: Routledge, 2024), 48.

¹¹Gazali, *Pengantar Ilmu Perundang-undangan*, (Mataram: Sanabil, 2022), 10.

regional legal products. As is well known, the promulgation of laws and regulations is governed under Article 1 point 12 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, which provides that:

“Promulgation is the placement of laws and regulations in the State Gazette of the Republic of Indonesia, the Supplement to the State Gazette of the Republic of Indonesia, the State Bulletin of the Republic of Indonesia, the Supplement to the State Bulletin of the Republic of Indonesia, Regional Gazettes, Supplements to Regional Gazettes, or Regional Bulletins.”

Laws and regulations promulgated in the *State Bulletin of the Republic of Indonesia* include those which, pursuant to prevailing laws and regulations, are required to be promulgated in the *State Bulletin of the Republic of Indonesia*. In contrast, Governor Regulations and Regent/Mayor Regulations are promulgated in Regional Bulletins (*Berita Daerah*) pursuant to Article 86 paragraph (2) of the Law on the Formation of Laws and Regulations.

CONCLUSION

The legal status of the Head of the Nusantara Capital Authority within the Indonesian governmental system represents a constitutional innovation in Indonesia's state administration, introducing the concept of a Special Regional Government at the provincial level headed by an official with ministerial rank. This arrangement is consistent with the 1945 Constitution of the Republic of Indonesia, as the Government is constitutionally authorized to establish special regions and regulate their special characteristics insofar as such arrangements are necessary to achieve the objectives of the state. The constitutional basis for this innovative form of special regional government is found in Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

The legal products issued by the Head of the Nusantara Capital Authority are not included within the formal hierarchy of laws and regulations as stipulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations. This is because Regulations of the Head of the Nusantara Capital Authority do not constitute regional legal products, but rather institutional regulations equivalent to ministerial regulations established pursuant to statutory authority and recognized under Article 8 paragraphs (1) and (2) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations. The legal status and binding force of regulations issued by the Head of the Nusantara Capital Authority for the administration of the Special Regional Government of the Nusantara Capital City and/or for the preparation, development, and relocation of the national capital are recognized insofar as such regulations do not conflict with higher laws and regulations and are enacted within the scope of the Authority's delegated powers.

In light of the findings of this study, the author recommends that the Government of the Republic of Indonesia enact a separate law specifically regulating the National Capital independently from the Nusantara Capital Authority. The current Law on the National Capital contains a wide range of regulatory matters, including provisions concerning the authority body, relocation of the national capital, land administration, budgeting, and other related issues, which may potentially give rise to multiple interpretations. Separating these regulatory frameworks would provide greater legal certainty, prevent potential conflicts of interest, and clarify the limits of institutional authority.

Furthermore, regarding the Government's policy establishing the Special Regional Government of the Nusantara Capital City through a new authority body at the ministerial level, the Government should first address the existing shortcomings of the current regional government system. The creation of a new autonomous region with special characteristics

will inevitably increase the Central Government's responsibility to monitor and evaluate the effectiveness of this ministerial-level authority model. In addition, it is necessary to amend the Law on the Formation of Laws and Regulations by explicitly incorporating Regulations of the Head of the Nusantara Capital Authority, thereby clarifying both their legal authority and the mechanisms for judicial review of such regulations.

The author also encourages the public, as citizens of Indonesia possessing constitutional rights, to actively participate not only in the legislative drafting process but also in the monitoring and evaluation of governmental policies. Government policies implemented rapidly and with nationwide implications require active public participation to maintain accountability and ensure that such policies remain inclusive and responsive to actual societal needs.

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