

## IMPLICATIONS OF THE DEVELOPMENT OF THE NUSANTARA CAPITAL CITY FOR THE PROTECTION OF CITIZENS' RIGHTS IN ENVIRONMENTAL SUSTAINABILITY

(Study on the Environmental Impact of the Plan to Move the State Capital to East Kalimantan)

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### ABSTRACT

The purpose of writing this paper is to find out how the legality and urgency of the plan to move the Indonesian National Capital to East Kalimantan in terms of regulations regarding environmental protection and management. As well as to find out how the social and environmental impacts are caused in the plan to move the Indonesian National Capital to East Kalimantan. The research method used in writing this paper is the normative juridical method or the doctrinal (dogmatic) legal research method, coupled with a statutory approach and a conceptual approach as research methods. The conclusion from writing this paper is that from the aspect of legality the government should have first made a law establishing East Kalimantan as the capital city of the Republic of Indonesia and as an autonomous region before finally announcing plans to move the national capital to the general public, in terms of social aspects, society it is also necessary to prepare oneself for the potential for the entry of foreign cultures from the transfer of the Indonesian State Capital to East Kalimantan which could change the original culture of indigenous peoples, especially the Dayak and Banjar, in terms of the environmental impact aspect, the government is required to pay attention to the environmental impacts of the plan to move the capital city to East Kalimantan.

Keywords: *Moving, Capital City, East Kalimantan, Environmental Impact*

### ABSTRAK

Tujuan dari penulisan makalah ini untuk mengetahui bagaimana legalitas dan urgensi dari rencana pemindahan Ibu Kota Negara Indonesia ke Kalimantan Timur ditinjau dari pengaturan mengenai perlindungan dan pengelolaan lingkungan hidup. Serta untuk mengetahui bagaimana dampak sosial dan dampak lingkungan yang ditimbulkan dalam rencana pemindahan Ibu Kota Negara Indonesia ke Kalimantan Timur. Metode penelitian yang digunakan dalam penulisan makalah ini adalah metode yuridis normatif atau metode penelitian hukum doktrinal (dogmatik), ditambahkan dengan pendekatan Undang-Undang dan pendekatan konseptual sebagai metode penelitian. Kesimpulan dari penulisan makalah ini yaitu dari aspek legalitas seharusnya pemerintah terlebih dahulu melakukan pembentukan Undang-Undang yang menetapkan Kalimantan Timur ditetapkan sebagai Ibu Kota Negara NKRI dan sebagai daerah otonom sebelum akhirnya mengumumkan rencana pemindahan Ibu Kota Negara ke khalayak umum, ditinjau dari aspek sosial, masyarakat perlu juga mempersiapkan diri terhadap adanya potensi masuknya budaya luar dari pemindahan Ibu Kota Negara Indonesia ke Kalimantan Timur yang dapat saja merubah budaya asli masyarakat adat khususnya Dayak dan Banjar, ditinjau dari aspek dampak lingkungan, pemerintah dituntut untuk memperhatikan dampak lingkungan dari rencana pemindahan Ibu Kota ke Kalimantan Timur.

Kata Kunci: *Pindah, Ibu Kota, Kalimantan Timur, Dampak Lingkungan.*

## **1. INTRODUCTION**

Humans as actors of the environment can't be denied that humans themselves are living beings who directly get the impact of human conscious behavior to protect the environment or even damage to the environment. In Law Number 32 of 2009 concerning Environmental Management it is stated in Article 1 point 1 that "The environment is a spatial unit with all objects, forces, conditions, and living things, including humans and their behavior, which affect the continuity of life and human welfare and other living beings". It is clear that the Law states that humans are the main actors for environmental sustainability apart from other living things, so that the choice to preserve the environment or to exploit the environment excessively which causes environmental damage lies with the humans themselves.

A well-maintained living environment will create a comfortable, beautiful environment, clean air, clear water, thriving plants, melodious birdsong so that the quality of human life itself will automatically increase in terms of health and happiness. On the other hand, if the environment is damaged, whether it is caused by accidental factors resulting from a lack of knowledge in managing the environment or is done intentionally as a result of environmental exploitation that exceeds the tolerance threshold, it can cause a decrease in the level of human health and happiness directly and in the long term.

## **2. PROBLEM FORMULATION**

Based on the things that have been described previously in the research background, several formulations of the problems are obtained which can be examined in this paper, including:

1. How is the legality and urgency of the plan to move the Indonesian National Capital to East Kalimantan in terms of regulations regarding environmental protection and management ?
2. What are the social and environmental impacts caused by the plan to relocate the Indonesian National Capital to East Kalimantan ?

### 3. RESEARCH METHODS

The research method used in writing this paper is the normative juridical method or the doctrinal legal research method (dogmatic).<sup>1</sup> Doctrinal research methods are used against empirical research methods.<sup>2</sup> This doctrinal method is carried out by studying, maintaining, and developing positive legal structures with logical structures, which are called doctrinal studies so that they can also be called normative legal studies. Then, because this paper is a comparative research between how the plan to relocate the Indonesian state capital and the urgency for environmental protection and management should be, therefore in addition to using normative juridical research methods.

The author also uses a sociological approach, supplemented by a statutory approach. The data collection method used in this doctrinal and sociological research is to conduct an assessment of documents/books regarding the environment and its laws, as well as other documents that support the writing of this paper. Document study is a data collection carried out through written data using an analysis of an object of research. The analysis in question is an analysis with content analysis techniques, namely a technique for analyzing writing or documents by systematically identifying the characteristics or characters and messages or intentions contained in a writing or a document.

### 4. THEORETICAL FRAMEWORK

#### 1. The rule of law

As we know that there are two major theories that influence the concept of rule of law throughout the world, namely:

- a. The concept of a rule of law from the Romano Germanic legal family, called the civil law system, Continental Europe with the concept of *rechstaat*, and
- b. The concept of a rule of law from the Anglo Saxon law family, is called the common law system, England and its colonial countries, namely the concept of rule of law.<sup>3</sup>

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<sup>1</sup> Saefullah Wiradipraja *Penuntun Praktis Metode Penelitian Dan Penulisan Karya Ilmiah Hukum*. (Bandung : Cv. Keni Media,2016).,hlm.5.

<sup>2</sup> *Ibid.*,hlm 10.

<sup>3</sup> I Dewa Gede Atmaja dan I Nyoman Putu Budiarta, *Op.Cit*, Hal. 198

The following discussion concerns the notion of a rule of law state in a narrow sense, namely: a rule of law state is a state based on the principle that the administration of government is limited by written law and laws.

- a. In Germany it is called the *Gesetzstaat*.
- b. In the Netherlands it is called *Wettstaat*, whereas;
- c. In Indonesia, it is called the State of Law.

From this gave birth to a thin theory of law or called the theory of a thin rule of law.

Then, a rule of law in a broad sense is a country that ideally, namely the administration of good governance in a just legal dimension, the emphasis is on the constitution and judicial review, giving birth to the theory of a broad rule of law state.

From the theory described above, Prof. Dr. I Dewa Gede Atmaja, SH., MS., and Dr. I Nyoman Putu Budiarta, SH., MH., in his book entitled "Legal Theories", he called this thin legal theory the formal rule of law state, while for the broad rule of law theory they called it the substantive rule of law theory.<sup>4</sup>

Furthermore, it can be put forward 4 (four) elements which are an inseparable part of a rule of law according to the civil law system, namely:

- a. There is a guarantee of protection and respect for human rights (*grondrechtsten*),
- b. Government in the administration of the state and administration of government based on law (*rechtmatigheid van betuur*),
- c. There is a division of power (*evenwicht van Machten*),
- d. There is an administrative court (*administratief rechtspraak*).<sup>5</sup>

## 2. Human Rights

Human rights according to the Big Indonesian Dictionary (KBBI), are: "Rights that are protected internationally, namely in the UN Declaration (Declaration of Human Rights), such as the right to life, the right to independence, the right to own, the right to express opinions".

Then the definition of human rights according to Law Number 39 of 1999 concerning Human Rights is:<sup>6</sup>"A set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected

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<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*

<sup>6</sup> Pasal 1 Angka 1 Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia.

by state, law, government and everyone for the sake of honor and protection of human dignity.

Meanwhile, the definition of human rights according to MPR RI Decree No. XVII/MPR/1998, is<sup>7</sup> :

"Basic rights inherent in human beings naturally, universally and eternally, as a gift from God Almighty include the right to life, the right to have a family, the right to self-development, the right to justice, the right to freedom, the right to communicate, the right to security, and the right to welfare. which therefore should not be neglected or seized by anyone. Furthermore, according to Miriam Budiarjo, human rights are:<sup>8</sup> "Rights owned by humans that have been obtained and brought along with birth or presence in society". According to Thomas Hobbes, are: "The only human right is the right to life".

### 3. Legal Certainty

Van Apeldoorn argues regarding legal certainty in his view, namely:<sup>9</sup> "Legal certainty has two sides. (1) The side where the law can be determined in concrete terms, meaning that parties seeking justice (*justiabellen*) want to know what is the law (*inconcreto*) in specific matters before they enter into a lawsuit. (2) The side of legal security, means protection for the parties against the arbitrariness of judges. So legal certainty can be translated that the law must be clear and provide protection for the parties to the dispute.

According to Hans Kelsen, legal certainty is:

"Legal certainty rests on the principle of imputation,<sup>10</sup> meaning legal certainty because legal norms that have been formulated in laws determine sanctions for acts that violate the law".

## 5. FINDING & DISCUSSION

### 1. The Legality and Urgency of the Plan to Move the Indonesian National Capital to East Kalimantan in View of the Arrangements Concerning Environmental Protection and Management

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<sup>7</sup> Lampiran Ketetapan MPR RI Nomor XVII/MPR/1998 tentang Hak Asasi Manusia, pada pembukaan bagian ke II Piagam Hak Asasi Manusia.

<sup>8</sup> Zakky, "Pengertian Hak Asasi Manusia (HAM) Menurut Para Ahli & Secara Umum", artikel diakses tanggal 07 Oktober 2019, Pkl. 15.35 WIB, dari <https://www.zonareferensi.com/pengertian-hak-asasi-manusia>.

<sup>9</sup> I Dewa Gede Atmaja dan I Nyoman Putu Budiarta, *Teori Teori Hukum*, (Malang : Setara Press, 2018)., hlm. 205

<sup>10</sup> *Ibid.*, hlm. 205

The plan to relocate the Indonesian National Capital to Kalimantan Island was triggered by various reasons, including the reason for the threat of the climate crisis combined with environmental mismanagement in DKI Jakarta. Currently, land subsidence in DKI Jakarta ranges from 1 to 15 cm/year coupled with sea level rise which has reached 8.5 cm. However, even so, the central government, in this case the President as Head of State, should not be in a hurry to make it a reason for moving the Indonesian National Capital from DKI Jakarta to Kalimantan Island before it is thoroughly (comprehensively) examined from and by various aspects and elements. . In response to this, the government should first sequentially listen to the public's aspirations from various layers of community leaders in Kalimantan, especially the adat council, to hear their opinion. In addition to traditional leaders to be explored from a sociological point of view, it is also necessary to conduct a study of environmental impacts because in practice it must be accompanied by deforestation of forests in Kalimantan which in fact are the lungs of the world, so that the lungs of the world that exist today do not later become congested and remains in its function of providing healthy air for the people of Indonesia, even the world in general.

In addition, arrangements for relocating the State Capital must be regulated at the level of the Act, therefore the Government must make changes to the existing Law if it plans to move the Capital outside Jakarta. Not only the Law on the formation of the State Capital, but more than that, the Government must also make changes to related laws and their derivatives. For example, changes to Law Number 29 of 2007 concerning the Provincial Government of DKI Jakarta as the Capital City of the Republic of Indonesia, in this case also becoming an autonomous region at the provincial level, changing to only being an autonomous region at the provincial level, the same as other provinces. In fact, the formation of this law should have been carried out before the government finally announced and published to the Indonesian people the plan to move the Indonesian State Capital to Kalimantan.<sup>11</sup>

## **2. Social Impacts and Environmental Impacts Caused by the Plan to Move the Indonesian National Capital to Kalimantan**

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<sup>11</sup> Hukum Online, "Pindah Ibukota, Aspek Hukum Komprehensif Harus Dipersiapkan", dikutip dari <https://www.hukumonline.com/berita/baca/lt5d6628b7f19f0/pindah-ibukota--aspek-hukum-komprehensif-harus-dipersiapkan?page=all>, Pada Tanggal 29 Maret 2021, Pkl. 02.34 WIB.

Not only does it have an impact on the environment, the plan to move the capital city to Kalimantan has quite a variety of impacts, both positive and negative, especially on the social and economic aspects of the people of Kalimantan in particular. For the plan to relocate the National Capital, it is not only the government that must make thorough preparations, besides that the public also needs to prepare themselves for this issued policy.

From a social perspective, for example, the province of East Kalimantan, which is planned to be made the national capital, is inhabited by local residents, the majority of whom are Dayak and Banjar ethnic groups with quite strong cultural values and local wisdom. If we examine and go back before there was a plan to move the capital city to East Kalimantan, the indigenous culture of the local Dayak tribe has begun to be eroded little by little by outside cultural influences. So, one can imagine that when it becomes the capital city of the State of Indonesia, it is full of potential to have a bigger impact on local culture so that it has the potential to cause drastic and very significant changes to local culture, especially the Dayak and Banjar tribes. For this reason, the role of various structures is needed, starting from academics, traditional community leaders, and national cultural figures who care about the sustainability of Dayak and Banjar customs and culture in Kalimantan.

Preparations made by the community are needed early on, even before the relocation of the capital city is carried out so that they are able to accept changes without being accompanied by turmoil in the community later. Apart from that, the Government is also required to align the plan to relocate the State Capital with a program to protect forests, especially in relation to the status of the land to be used, whether it is forest controlled by the state or land which is customary territory, this is of course not limited to the need for compensation. which is commensurate but more to the management rights of local communities, especially indigenous peoples who have been protecting their territorial areas from outside cultural influences for generations.

However, on the other hand, the economic impact of the plan to move the National Capital to Kalimantan can be a breath of fresh air for the people of Kalimantan because moving the capital will be directly proportional to the relocation of the economic base, which was previously concentrated in Jakarta, so that local people flock to Jakarta. to try their luck, even so do not rule out the possibility that in the future the potential for economic growth will shift to Kalimantan.

The plan to move the capital city to Kalimantan will definitely require development in various sectors. In carrying out this infrastructure development, quite a large area of land is needed, so that it has the potential to have an impact on the environment because the need for land must be supported by exploiting and exploring forests. Although currently clearing forests for the construction of the capital city plan is not very significant, Kalimantan is already vulnerable to disasters caused by the practice of clearing forests for mining needs.

Kalimantan is the lungs of the world in which there are extensive tropical forests so that the approach to infrastructure development in this region of Kalimantan must be based on the environment as has also been protected in Article 28H of the 1945 Constitution (Amendment). In addition to the needs for the construction of facilities and infrastructure for the plan to relocate the capital city, Kalimantan has a mining area that has previously exploited existing forests in Kalimantan, moreover the project for moving the capital city is referred to as a new business plan that could damage Kalimantan's environment. Moreover, Kalimantan has the most mining permits, with more than 1,404 business permits for mineral and coal mining and 48 oil and natural gas operating areas which have also caused pollution and destruction of upstream rivers and mine pits.<sup>12</sup>

The Central Kalimantan Forum for the Environment (WALHI) responded to the plan to relocate the National Capital to Kalimantan, that: "WALHI requests that efforts to clear land that will be carried out not interfere with the process of improving natural resources in Central Kalimantan which is currently underway. Even though the capital city planning is on mineral soil, not peat and the area is certain, the development area may not be controlled".<sup>13</sup>

The government stated that one of the reasons for moving the capital city was because the government had a dream of launching Living with Nature (Forest City Concept), this concept required, among other things, the presence of green open space (RTH) of at least 50% of the total area used as recreational parks, gardens animals,

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<sup>12</sup> Kumparan, "Pemerintah Harus Perhatikan Dampak Lingkungan Jika Ibu Kota ke Kaltim", dikutip dari: <https://kumparan.com/kumparannews/pemerintah-harus-perhatikan-dampak-lingkungan-jika-ibu-kota-ke-kaltim-1riYYN5aX6y/full>. Pada Tanggal 29 Maret 2021, Pkl. 00.40 WIB.

<sup>13</sup> CC Nurhadi Suahyo, "Problem Sosial dan Lingkungan Iringi Pemindahan Ibu Kota", dikutip dari <https://www.voaindonesia.com/a/problem-sosial-dan-lingkungan-iringi-pemindahan-ibu-kota/4967033.html>. Pada Tanggal 29 Maret 2021, Pkl. 00.11 WIB.



botanical parks, all of which are integrated with native Kalimantan forests, and watersheds (DAS).<sup>14</sup>

## 6. CONCLUSION

Taking into account the results of the discussion as conveyed by the author in the identification and formulation of the problem for a paper entitled "**IMPLICATIONS OF DEVELOPMENT OF THE ARCHIPELAGO'S CAPITAL FOR THE PROTECTION OF CITIZENS' RIGHTS IN ENVIRONMENTAL SUSTAINABILITY (Study of Environmental Impacts on the Plan to Relocate the State Capital to East Kalimantan)**", the author can withdraw conclusion as follows:

1. In terms of the legality aspect, the government should have first enacted a law which stipulated that East Kalimantan would be designated as the capital city of the Republic of Indonesia and as an autonomous region before finally announcing plans to move the national capital to the public. The government must also first sequentially listen to the public's aspirations from various layers of community leaders in Kalimantan, especially the adat council to have their opinion heard. In addition, it is also necessary to conduct a study of environmental impact.
2. Viewed from the social aspect, the community also needs to prepare themselves for the potential for foreign cultures to enter from the relocation of the Indonesian State Capital to Kalimantan which could change the original culture of indigenous peoples, especially the Dayak and Banjar. In terms of environmental impacts, the government is required to pay attention to the impacts environment from the plan to relocate the capital city to Kalimantan, so that in this way the people can still receive their rights to be able to obtain physical and spiritual well-being as well as a place to live and get a good and healthy environment. Apart from that, Kalimantan, which is the lungs of the world, remains the lungs of the world which are healthy and not congested.

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<sup>14</sup> CNN Indonesia, "KLHK Identifikasi Risiko Lingkungan Ibu Kota Baru", dikutip dari <https://www.cnnindonesia.com/nasional/20190917031227-20-431058/klhk-identifikasi-risiko-lingkungan-ibu-kota-baru>. Pada Tanggal 29 Maret 2021, Pkl. 01.52 WIB.

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