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Examining the Legal Standing of IKN Authority Regulations within Indonesian's Legislation System

| Article | Abstract |
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INTRODUCTION

The endorsement of Law Number 3 of 2022, pertaining to the Capital City (IKN Law), underscores the government's resolution to shift the National Capital from Jakarta to East Kalimantan. Legally, the IKN Law stands as the regulatory foundation for this capital translocation.¹

¹ Editha Praditya et al., "Nusantara Capital City (IKN): Threats and Defense Strategies for Indonesia's New Capital," *The Journal of Indonesia Sustainable Development Planning* 4, no. 1 (25 April 2023): 21–34, <https://doi.org/10.46456/jisdep.v4i1.420>.

Nevertheless, despite the IKN Law's implementation, lingering controversies and debates persist over the relocation of Indonesia's National Capital.²

Famously, the IKN Law extends beyond the mere handling of the National Capital's relocation. It also encompasses the structural organization of the future governance of the National Capital.³ According to the IKN Law, the National Capital is designated as a unique regional government.⁴ As a result, this raises legal complications concerning the structural organization of the National Capital's governance. This research focuses on the legal issues related to the Regulatory Authority, a crucial tool for the National Capital's governance.

As per Article 4 paragraph (1) of the IKN Law, it is clear that the special regional government of the Nusantara Capital City (IKN) will be overseen by the IKN Authority. This is further solidified by Article 4 paragraph (3), which states, "The IKN Authority, as mentioned in paragraph (1) letter b, bears the responsibility for the planning, development, and translocation of the National Capital, and the governance of the Special Regional Government of the National Capital Region." Moreover, Article 8 reinforces that "The management of the National Capital Region is the duty of the IKN Authority."

As the official authority overseeing the preparation, development, relocation, and governance of the special regional government of IKN,⁵ the IKN Authority is endowed with the power to enact regulations. This power represents a unique facet of the organizational structure of the special IKN regional government, as dictated by Article 5, paragraph 6 of Law Number 3 of 2022, pertaining to the Capital City. The provision specifies that 'The IKN Authority holds the power to enact regulations essential for the orchestration of the Special Regional Government of the National Capital and/or executing activities of the preparation, development, and relocation of the National Capital. Further delineating this clause, it is explained that 'In its unique capacity, the IKN Authority possesses the autonomy to independently enact regulations for managing the Special Regional Government of the National Capital, barring regulations that necessitate the approval of the DPR (House of Representatives) as mandated by this Law.'

With regards to the powers of the IKN Authority to enact regulations as referred to in Article 5, paragraph (6), juridical evidence demonstrates that Law Number 3 of 2022 and its associated implementing regulations fail to elaborate on this matter. Similarly, Law Number 12 of 2011, which pertains to the Formation of Laws and Regulations and has been amended multiple times, most recently by Law Number 13 of 2022, is deemed insufficient to encompass the types of regulations enacted by the IKN Authority. This has given rise to several fundamental queries: What will be the nature of the regulatory instruments enacted by the IKN Authority? What will these regulations encompass? Where will they reside within the hierarchy of Indonesian laws and regulations? How will their review system operate? These pressing questions inevitably give rise to legal ambiguity

² 'Aqil Syahru Akram and Sunny Ummul Firdaus, "Polemik Dan Urgensitas Pengesahan Undang-Undang Ibu Kota Negara," *Sovereignty* 1, no. 2 (30 September 2022): 311–21, <https://doi.org/10.13057/sovereignty.v1i2.76>.

³ Nor Fadillah, "Tinjauan Teori Hukum Pembangunan Mochtar Kusumaatmadja dalam Undang-Undang Ibu Kota Negara (IKN)," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 11, no. 1 (24 August 2022): 45–65, <https://doi.org/10.14421/sh.v11i1.2559>.

⁴ Fikri Hadi and Rosa Ristawati, "Pemindahan Ibu Kota Indonesia Dan Kekuasaan Presiden Dalam Perspektif Konstitusi," *Jurnal Konstitusi* 17, no. 3 (10 November 2020): 530–57, <https://doi.org/10.31078/jk1734>.

⁵ Richard Jatimulya Alam Wibowo, "Konstitusionalitas Pengadaan Tanah Di Ibu Kota Negara Baru Bidang Pertanahan Dalam Perspektif Reforma Agraria," *Majalah Hukum Nasional* 52, no. 1 (16 December 2022): 107–25, <https://doi.org/10.33331/mhn.v52i1.168>.

regarding the status of regulations enacted by the IKN Authority and cast aspersions on whether their position aligns with the Indonesian legal system.

This study conducts a comprehensive analysis of several preceding studies pertinent to the Nusantara Capital City (IKN), encompassing research on the role of the IKN Authority's Head by Ervin Nugrohosudin,⁶ the structure and particularities of the National Capital by Doni Nugroho⁷ and I Gede Sandy Satria,⁸ the governance of the National Capital by Khulaifi Hamdani and Ulvi Wulan,⁹ and the policy of establishing the National Capital from both legal and economic perspectives by Muhammad Kamal.¹⁰ As of now, there is a noticeable absence of research dissecting the Authority Regulations employed as a governance instrument, despite these regulations inciting juridical dilemmas within the Indonesian legislative system. Consequently, this study aims to explore the form, substance, rank in the legal hierarchy, and the review system of these regulations within the Indonesian legal system.

RESEARCH METHODOLOGY

This study is a normative juridical analysis, centered on the scrutiny of rules and norms application within positive law pertaining to specific instances.¹¹ The research relies on secondary data, which include primary, secondary, and tertiary legal materials. Primary legal materials encompass all legislative regulations formally established and/or enacted by state entities and/or governmental bodies, which are officially executed by the state apparatus for their enforcement.¹² The principal legal materials deployed in this research comprise:

1. The 1945 Constitution of the Republic of Indonesia
2. Law Number 3 of 2022 concerning the State Capital City
3. Law Number 23 of 2014 concerning Regional Governments
4. Law Number 12 of 2011 and Law Number 15 of 2019 concerning the Formation of legislation

Secondary legal materials include literary books, research findings, and additional scholarly works relevant to the research subject. Besides, secondary legal materials were procured from interview outcomes with constitutional law experts. Tertiary legal materials contain General Indonesian Language Dictionaries, English-Indonesian Dictionaries, and Legal Dictionaries.

⁶ Legislatif, "Kedudukan Kepala Otorita Ibu Kota Nusantara Dalam Undang-Undang Nomor 3 Tahun 2022 | Legislatif," 23 August 2022, <https://journal.unhas.ac.id/index.php/jhl/article/view/21002>.

⁷ Doni Nugroho, "Bentuk dan Kekhususan Ibu Kota Negara Nusantara dalam Negara Kesatuan Republik Indonesia," *THE INDONESIAN JOURNAL OF POLITICS AND POLICY (IJPP)* 4, no. 1 (30 June 2022): 53–62, <https://doi.org/10.35706/ijpp.v4i1.6527>.

⁸ I Gede Sandy Satria, "Otorita Ibu Kota Nusantara Dalam Perpektif Otonomi Khusus," *Civilia: Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 2, no. 1 (23 January 2023): 10–26, <https://doi.org/10.572349/civilia.v2i2.217>.

⁹ Legislatif, "Rezim Executive Heavy Dalam Penyelenggaraan Pemerintahan Daerah Ibu Kota Nusantara | Legislatif," 23 August 2022, <https://journal.unhas.ac.id/index.php/jhl/article/view/21349>.

¹⁰ Muhammad Kamal, "Prospects for the New Capital City Policy in Law and Economic Perspectives," *Substantive Justice International Journal of Law* 5, no. 1 (22 June 2022): 86–108, <https://doi.org/10.56087/substantivejustice.v5i1.205>. but it was only realized after 77 years of Indonesia's independence through Law No. 3 of 2022 concerning the State Capital (IKN Law

¹¹ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, ke-II (Malang: Bayu Media, 2006), 295.

¹² Soetandyo Wignjosoebroto Soetandyo Wignjosoebroto, *Hukum Konsep dan Metode* (Malang: Setara Press, 2013), 81.

The data collection methodology adopted in this study is library research, which involves amassing various literature (references), such as books, scientific journals, mass media, internet sources, and other pertinent references, to tackle diverse problem formulations. In addition to library research, the researcher will also accumulate supplementary legal data through direct interviews with experts and relevant stakeholders associated with the research subject.

This investigation employs two distinct approaches. First, the legislative approach is deployed to analyze the position of Regulations stipulated by the IKN Authority within the Indonesian legislative framework. Second, a conceptual approach is utilized to scrutinize and generate ideas concerning alternative regulatory designs for Regulations stipulated by the IKN Authority that align with the Indonesian legislative system.

ANALYSIS AND DISCUSSION

Legislation Theory: Conceptualization and Contextualization

From a theoretical perspective, the term “legislation” embodies two distinct connotations. Initially, legislation denotes the procedures of formulating governmental regulations, applicable at both central and regional levels. Subsequently, legislation encompasses the entirety of state regulations emanating from the legislative process, again pertinent at both central and regional stages.¹³ Normatively, Law Number 12 of 2011 concerning Legislation Formation, which has undergone multiple amendments, with the most recent being Law Number 13 of 2022, identifies legislation as regulations in written form that carry binding legal norms. These are established or stipulated by state institutions or authorized officials via procedures delineated in the legislation itself.¹⁴

In light of this provision, it is discernible that legislation possesses several inherent features: it is comprehensive and universal, designed to cater to future scenarios with as yet undefined concrete forms; furthermore, legislation bears the capacity of self-correction and enhancement.¹⁵

As per interpretation by A. Hamid S. Attamimi, the term “legislation”, or “*perundang-undangan*” in native parlance, is primarily associated with regulations pertaining to laws. This includes both laws themselves, and subordinate regulations that emerge as a consequence of the attribution or delegation of legislative authority. As per this attribution and delegation, Indonesian legislation manifests in various formats such as laws, subordinate regulations like government regulations, presidential and ministerial decrees encapsulating regulations, and decrees of non-ministerial governmental institutions encompassing regulations. Other manifestation include director-general decrees of departments established by law, primary and secondary regional regulations, and decisions by regional heads or governors as well as district heads or city mayors, all containing regulations that implement provisions of their respective regional regulations.¹⁶

Since the inception of the Unitary State of Indonesia in 1945, the Indonesian constitutional framework has segregated legislative and executive powers, a division preserved in the 1945

¹³ Ridwan HR, *Tiga Dimensi Hukum Administrasi Dan Peradilan Administrasi* (Yogyakarta: FH UII Press, 2009), 65.

¹⁴ Anggita Yudanti and Wicipto Setiadi, “Problematika Pembentukan Regulasi Indonesia Dalam Perencanaan Pembentukan Regulasi Dengan Perencanaan Pembangunan Daerah,” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 30 June 2022, 27–40, <https://doi.org/10.24090/volksgeist.v5i1.4973>.

¹⁵ Ridwan HR Ridwan HR, *Hukum Administrasi Negara* (Jakarta: Rajawali Press, 2011), 130.

¹⁶ Ridwan HR, 130.

Constitution. Nonetheless, these two institutions have maintained a symbiotic relationship. The Constitution, for instance, elucidates the dynamics between these two state institutions.¹⁷ The rapport between the executive and legislative bodies in the process of law formulation underwent a significant transformation between the pre- and post-1945 constitutional amendments. However, the shift in legislative authority does not imply the dissolution of the partnership between these two state agencies in the realm of lawmaking. Both state entities (legislative and executive) continue to contribute to the legislative process and law enactment.¹⁸

Legislation initiated by the government can fundamentally derived from either the autonomous authority to create laws¹⁹ or through collective decision-making processes. From a theoretical perspective, any legislation that the government independently constructs is more aptly termed as “regulation”—a manifestation of delegated legislation, or “*gedelegeerde wetgeving*.” Conversely, the term “*peraturan perundang-undangan*” is specifically used to denote the legal products that are the results of pure legislative activities, or what is known as “original legislation.”²⁰

The power to regulate or formulate rules (“*regeling*”) is primarily situated within the legislative body’s purview.²¹ This is based on the principle of sovereignty, which grants the exclusive authority to the representatives of the sovereign to establish binding regulations that confine the liberties of individual citizens (presumption of liberty of the sovereign people). Nevertheless, under uncertain conditions, other branches of government may also be vested with the power to establish regulations that are applicable to the general public. This is only possible if such authority has been conferred through legislation, which has been sanctioned by the people’s representatives.²² Consequently, if delegated authority is granted, both the executive and judicial branches may also create regulations. This indicates that the authority to regulate is jointly held by the legislative, executive, and judicial branches of government.²³

In his analysis, Jimly Asshiddiqie classifies regulations into four distinct categories:²⁴

1. General Regulations: These abstract regulations are universally applicable, devoid of references to specific events, cases, or situations that existed prior to their enactment.
2. Subject-Specific Regulations: These regulations are tailored to apply to particular legal subjects or entities, eschewing universal applicability.

¹⁷ M. Wildan Humaidi and Inna Soffika Rahmadanti, “Constitutional Design of State Policy as Guidelines on Indonesia’s Residential System Development Plan,” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 28 June 2023, 61–76, <https://doi.org/10.24090/volksgeist.v6i1.7981>.

¹⁸ Saru Arifin, “Illiberal tendencies in Indonesian legislation: the case of the omnibus law on job creation,” *The Theory and Practice of Legislation* 9, no. 3 (2 September 2021): 386–403, <https://doi.org/10.1080/20508840.2021.1942374>; Bagus Hermanto, “Deliberate legislative reforms to improve the legislation quality in developing countries: case of Indonesia,” *The Theory and Practice of Legislation* 11, no. 1 (2 January 2023): 1–31, <https://doi.org/10.1080/20508840.2022.2080392>.

¹⁹ Claudio Michelon, “Politics, Practical Reason and the Authority of Legislation,” *Legisprudence* 1, no. 3 (1 January 2007): 263–89, <https://doi.org/10.1080/17521467.2007.11424667>; Pierluigi Chiassoni, “Some Realism about Legislation,” *The Theory and Practice of Legislation* 1, no. 1 (3 June 2013): 173–86, <https://doi.org/10.5235/2050-8840.1.1.173>.

²⁰ *Tiga Dimensi Hukum Administrasi Dan Peradilan Administrasi*, 68.

²¹ Muhammad Addi Fauzani, “The Shifting in the Legal Politics of Regulating the General Principles of Good Governance in Indonesian Legislation,” *As-Siyasi : Journal of Constitutional Law* 3, no. 1 (28 June 2023): 1–24, <https://doi.org/10.24042/as-siyasi.v3i1.14970>.

²² Ibnu Sina Chandranegara and Muhammad Ali, “Policies on Regulatory Reform in Indonesia: Some Proposals,” *Jurnal Media Hukum* 27, no. 1 (2020), <https://doi.org/https://doi.org/10.18196/jmh.20200142>.

²³ Jimly Asshiddiqie Jimly Asshiddiqie, *Perihal Undang-Undang* (Jakarta: Konstitusi Press, 2006), 11.

²⁴ Jimly Asshiddiqie, 18.

3. Territory-Specific Regulations: These regulations are constrained to a specific geographical area, their enforcement limited to that locality.
4. Internal Regulations: These regulations bear specific binding force, their applicability restricted to a certain group or organization.

General regulations, or “*algemene verbindende voorschriften*” in Dutch, are general in two key respects: the material content they regulate and the subjects they target. Subject-specific regulations, on the other hand, derive their specificity from the particular subjects they govern. For instance, laws may exist to govern specific legal subjects. In the Special Region of Yogyakarta’s context, a law specifically outline the historical rights or, at a minimum, prioritize Sultan Hamengkubuwono’s rights to be elected as the region’s governor. Laws encapsulating such legal norms are often referred to as “personal statutes.”

Transitioning to the third category, laws can be either national or local. Local laws, often called “*locale wet*” in Dutch, are typically enforced at the provincial, district, or city level.²⁵ These regulations, crafted by local legislative bodies, are confined to the jurisdiction of the specific local governmental unit. Thus, “*locale wet*” is viewed as analogous to regional regulations, also known as “*peraturan daerah*.”²⁶ Lastly, the fourth category encompasses regulations known as internal regulations or “*interne regeling*.” These regulations hold sway within specific organizations or groups, dictating their internal operations and conduct.

Delving into the third category, often referred to as regional regulations or “*peraturan daerah*,”²⁷ a point of inquiry emerges: do these regulations represent delegated legislation or attributed legislation? In response, Jimly posits that regional regulations serves as a form of implementing legislation. Fundamentally, their regulatory authority stems from powers explicitly outlined by the legislator. However, there are instances where regional regulations can independently govern issues that, while not expressly delegated by the law, are deemed necessary by the region to enact the broadest possible regional autonomy, as envisioned by Article 18, paragraphs (3) and (4) of the 1945 Constitution. Hence, regional regulations can originate from both delegated and, in specific scenarios, attributed legislation.

Delegated legislation, also known as subordinate legislation,²⁸ is primarily established due to the fact that the scope of primary legislation is often confined to general matters. Moreover, primary legislation typically only addresses policy issues of a general nature. As such, it is common practice globally to delegate the authority to further regulate technical matters to the executive branch in the form of subordinate legislations, which function as implementation regulations.²⁹

²⁵ M. Yasin al Arif and Panggih F. Paramadina, “Konstitutionalistas Perda Syari’ah Di Indonesia Dalam Kajian Otonomi Daerah,” *As-Siyasi : Journal of Constitutional Law* 1, no. 1 (2 June 2021): 49–62, <https://doi.org/10.24042/as-siyasi.v1i1.8953>.

²⁶ Jimly Asshidiqie, *Perihal Undang-Undang*, 24.

²⁷ Mohammad Agus Maulidi, “Recentralization of Regional Authority: Legal Implications of the Enactment of Emergency Law Number 2 of 2022 on Job Creation in Regional Autonomy,” *As-Siyasi : Journal of Constitutional Law* 3, no. 1 (25 June 2023): 25–43, <https://doi.org/10.24042/as-siyasi.v3i1.16484>.

²⁸ Kainat Saif, “Delegated Legislation: A Case Study of Pakistan,” SSRN Scholarly Paper (Rochester, NY, 15 Mei 2021), <https://doi.org/10.2139/ssrn.3847989>; Kenny Chng, “Re-Examining Judicial Review of Delegated Legislation,” *Legal Studies*, 27 February 2023, 1–18, <https://doi.org/10.1017/lst.2023.7>; Colin T. Reid, “The Limits of Devolved Legislative Power: Subordinate Legislation in Scotland,” *Statute Law Review* 24, no. 3 (1 January 2003): 187–210, <https://doi.org/10.1093/slr/24.3.187>; J. A. G. Griffith, “The Constitutional Significance of Delegated Legislation in England,” *Michigan Law Review* 48, no. 8 (1950): 1079–1120, <https://doi.org/10.2307/1284083>.

²⁹ Jimly Asshidiqie, *Perihal Undang-Undang*, 216.

Legal Examination of Regulatory Types Issued by the IKN Authority

Article 5, paragraph (6) of Law Number 3 of 2022 concerning the National Capital articulates that: “The IKN Authority retains the prerogative to institute regulations for managing the Special Regional Government of the National Capital City and/or conducting activities related to the planning, development, and relocation of the National Capital City.”

From the aforementioned stipulations, it is evident that Law Number 3 of 2022 concerning the National Capital does not explicitly dictate the nature of regulations to be promulgated by the Nusantara Capital Authority. The question of whether the intended regulations are akin to local regulations (*local wet*),³⁰ as in other regions, or if they represent a different regulatory category, remains unanswered. Fitriani Ahlan Sjarif echoes this ambiguity, stating that while the IKN Authority possesses regulatory power (*regeling*), the regulatory instrument has not been assigned a specific and distinct nomenclature. Fitriani Ahlan Sjarif further underscores that the type of regulations enacted by the IKN Authority cannot be determined solely based on the Law concerning the National Capital City since this law only clarifies who holds the authority to issue regulations and the substantive content of the regulations, without mentioning their designations or types. Even if the regulations referred to in the provision align with local regulations, the law does not provide a clear definition for the term “regulation,” similar to the explicit mention of Special Regional Regulations (Perdaus) and Provincial Regional Regulations (Perdasi) in the Special Autonomy Law for the Province of Papua.

The ambiguity surrounding this issue has spurred the researchers to embark on an analytical journey via comprehensive interpretation of the IKN Law. Through their analysis, the researchers posit that the types of regulations promulgated by the IKN Authority encompass at least the IKN Regulations and the Head of IKN Authority Regulations. This postulation stems from the researcher’s interpretation that the IKN Authority is a regional government unit or entity, within which two legal regulations coexist: the Regional regulations, which are construed as IKN Regulations in this context, and Provincial Regional regulations, which are construed as Head of IKN Regulations. The researcher’s interpretation of the IKN Authority as a regional government unit or entity is predicated on several provisions in Law Number 3 of 2022 concerning the National Capital City, as follows:

Article 1 Number 2 states that the National Capital City, known as Nusantara or the IKN Authority, is a special regional government unit at the provincial level, whose territory is designated as the National Capital City’s location as per the stipulation of this Law. The term “special regional government unit at the provincial level” insinuates that the IKN Authority is a regional government unit.

Article 1 Number 9 dictates that the Special Regional Government of the National Capital City, also referred to as the IKN Authority, is tasked with executing activities related to the preparation, development, and relocation of the National Capital City, as well as administering the Special Regional Government of the National Capital City.

Article 1 Number 10 designates the Head of the IKN Authority as the leader of the Special Regional Government of the National Capital City.

Article 4 paragraph (1) letter b establishes the IKN Authority as a ministerial level institution responsible for administering the Special Regional Government of the National Capital City.

³⁰ Catur Wido Haruni, “Constitutionality of Monitoring and Evaluation of Regional Regulation Drafts and Regional Regulations by Regional Representative Council,” *Legality : Jurnal Ilmiah Hukum* 30, no. 1 (13 April 2022): 103–15, <https://doi.org/10.22219/ljih.v30i1.20532>.

Article 5 paragraph (4) announces that the Head of the IKN Authority, who holds a position equivalent to a minister, is the leader of the Special Regional Government of the National Capital City, appointed and dismissed by the President following consultation with the DPR.

The legitimacy of the assumption that the IKN Authority can establish regulations comparable to Regional Regulations (Perda) is certainly open to debate. This premise primarily hinges on the fact that the administration of the IKN's Special Regional Government is entirely under the purview of the Authority, devoid of a Regional People's Representative Council (DPRD). Furthermore, the current operational procedures reveal that the IKN Authority has solely issued regulations under the name of the Head of the IKN Authority, with no record of any IKN Authority Regulations.

Contrary to the scholar who proposed that the regulatory framework established by the IKN Authority encompasses both IKN Authority Regulations and Head of the IKN Authority Regulations, Fitriani Ahlan Sjarif posits that the regulations issued by the IKN Authority are more accurately categorized as Head of the IKN Authority Regulations. This perspective is predicated on the provisions of Law Number 3 of 2022 concerning the National Capital City, which does not delineate a specific process for the creation of such regulations as it does for Regional Regulations. This viewpoint also arises from the absence of a Regional People's Representative Council within the IKN region, an entity typically entrusted with the authority to draft Regional Regulations.³¹ Fitriani Ahlan Sjarif further asserts that insights into policymaker intent regarding the by IKN can be gleaned from implementing regulations. For instance, Presidential Regulation Number 62 of 2022 concerning the IKN Authority refers to the regulation as the Head of the IKN Authority Regulations. This regulation includes several provisions concerning the establishment of the Head of the IKN Authority Regulations. Assuming that this regulation aligns with the spirit of the law, it provides an additional interpretation that is sanctioned by the law. This interpretation can serve as a supplementary argument supporting the classification of the regulations issued by the IKN Authority as Head of the IKN Authority Regulations.³²

The IKN Authority has thus far only promulgated a single regulation, specifically the Head of the IKN Authority Regulation Number 1 of 2022. This rule was conceived to operationalize the stipulations outlined in Article 4 paragraph (5), Article 11 paragraph (3), Article 13 paragraph (3), Article 15 paragraph (5), and Article 16 paragraph (3) of Presidential Regulation Number 62 of 2022 concerning the IKN Authority. The legal groundwork for its inception is Law Number 3 of 2022 on the National Capital City and Presidential Regulation Number 62 of 2022 concerning the IKN Authority.

The Complexities of Regulations Issued by the IKN Authority within the Framework of Indonesian Legislation

The powers vested in the IKN Authority have ignited not only debates about the nature of regulations it is capable of enforcing, as touched upon earlier, but also contention surrounding its source of authority, its content, the substance of its regulations, their standing within the Indonesian

³¹ Sinta Devi Ambarwati, Sudarsono Sudarsono, and Shinta Hadiyantina, "Policies to Control and Evaluate Regional Regulations on Taxes and Levies in Indonesia: Re-Centralisation?," *Jurnal Media Hukum* 30, no. 1 (1 March 2023): 33–52, <https://doi.org/10.18196/jmh.v30i1.14172>.

³² Jimly Asshidiqie, *Perihal Undang-Undang*, 216.

legislative hierarchy,³³ and the system used to scrutinize these regulations. These debates culminate in legal ambiguities concerning the status of regulations issued by the IKN Authority and cast a shadow of doubts over their congruity with the Indonesian legislation system.

In light of this, the researcher embarked on a comprehensive examination of not only Law Number 3 of 2022 concerning the National Capital Territory but also of Law Number 12 of 2011 concerning the Formation of Legislation, which has seen several amendments, the latest being Law Number 13 of 2022. The juridical evidence indicates that Law Number 3 of 2022 concerning the National Capital Territory and its associated regulations do not extend to regulating the IKN Authority's power to issue regulations. Moreover, Law Number 12 of 2011 concerning the Formation of Legislation is deemed insufficient to embrace the variety of regulations issued by the IKN Authority.

However, several suppositions can be entertained regarding the placement of regulations instituted by the IKN Authority within the framework of Indonesian law. Primarily, pertaining to the nature of regulations enacted by the IKN Authority, as previously elaborated, the researcher posits that these regulations encompass at a minimum the IKN Regulations and the Head of IKN Regulations. This inference is drawn from various clauses embedded in Law Number 3 of 2022 concerning the National Capital Territory, specifically Article 1 paragraph (2), Article 1 paragraph (9), Article 1 paragraph (10), Article 4 paragraph (1) letter b, and Article 5 paragraph (4).

Secondarily, with respect to the source of authority for the promulgation of regulations by the IKN Authority, theoretically, authority derived from legislation can be procured through three channels: attribution, delegation, and mandate. As elucidated by Ridwan HR, authority garnered through attribution stems directly from legislation. In essence, the administrative body accrues its authority directly from the verbatim of specific articles within the legislation. In case of attribution, the recipient of the authority can create new authority or augment the existing authority. Conversely, delegation does not entail the invention of new authority; it merely involves the transfer of authority from one official to another. The legal accountability no longer resides with the delegator but migrates to the delegatee. Concerning the mandate, the recipient operates strictly on behalf of the grantor, and the ultimate liability for the decisions made by the recipient remains with the grantor.³⁴ Drawing a parallel with the stipulation in Article 5, paragraph (6) of the IKN Law, one might argue that the source of authority is extracted from the attribution of authority, even though the employment of the phrase "the right to enact regulations" is deemed linguistically unsuitable from the standpoint of legislative language

Thirdly, in terms of the placement of regulatory measures enacted by the IKN Authority within the Indonesian legislative hierarchy, it is the researcher's understanding that the IKN Authority, being a governmental entity at the regional level, promulgates two types of legislative regulations. These include Regional Regulations, interpreted here as IKN Regulations, and Head of Regional Regulations, interpreted as Head of IKN Regulations. The position of these two sets of regulations within the legislative hierarchy parallels that of the Regional Regulations and the Head of Regional Regulations. As per Article 7, paragraph (1) of Law Number 12 of 2011, the position of Regional Regulations falls under Presidential regulations. The hierarchical structure of the Head of Regional Regulations is outlined in Article 8 of the same law.

³³ Simon Butt, "The Position of International Law Within the Indonesian Legal System," *Emory International Law Review* 28, no. 1 (1 January 2014): 1.

³⁴ Ridwan HR, *Hukum Administrasi Negara*, 105.

Fourthly, with respect to the procedural aspects of regulation establishment by the IKN Authority, it is the researcher's perspective that the IKN Authority, being a regional government unit, has two legislative regulations in place. These are the Regional Regulations, interpreted in this context as IKN Regulations, and the Head of Regional Regulations, interpreted as Head of IKN Regulations. The process of establishing these regulations mirrors that of the Regional Regulations and the Head of Regional Regulations. However, a point of contention arises from Article 1 paragraph 7 of Law Number 12 of 2011 concerning the Formation of Legislation, which asserts that the establishment of regional regulations is a collaborative effort between the Regional People's Representative Council and a joint approval mechanism. Yet, Law Number 3 of 2022 concerning the National Capital Territory indicates that the IKN Special Region is solely governed by the IKN Authority, devoid of a Regional People's Representative Council, as is customary in other regional governance structures.³⁵ This prompts the question of how IKN Regulations can be established when the IKN Authority is the sole executor of the IKN Special Region's governance.

Fifthly, regarding the substance of IKN Authority's regulations, it is inferred that these regulations encompass matters pertaining to the administration of the IKN Special Region and/or activities related to its preparation, development, and relocation. This inference is drawn from the language used Article 5, paragraph (6) of the IKN Law.

Sixthly, concerning the promulgation of the IKN Authority's regulations, it is postulated that the dissemination of IKN Regulations and the Head of IKN Regulations follows a similar protocol to that of Regional Regulations and the Head of Regional Regulations. As per Article 86, paragraphs (1) and (2) of Law Number 12 of 2011, Regional Regulations are publicized in the regional gazette, and the Head of Regional Regulations are announced in the regional gazette. This supposition aligns with the earlier premise that the IKN Authority operates as a regional government entity with two legislative regulations, namely the Regional Regulations, herein interpreted as IKN Regulations, and the Head of Regional Regulations, interpreted as Head of IKN Regulations.

Seventhly, in terms of examining the regulations issued by the IKN Authority, given the hierarchical parity between IKN Regulations, the Head of IKN Regulations, Regional Regulations, and the Head of Regional Regulations, any procedural or substantive discrepancies deemed to contravene the law are subject to review by the Supreme Court.³⁶

The author undertook rigorous research to validate several hypotheses with the Republic of Indonesia's National Development Planning Agency, interacting closely with the Coordinator of Legislation and Regulation, a key figure involved from the inception of the national capital's relocation, including the conceptualization and execution of the IKN Authority. The findings were illuminating, with some theories being substantiated while others diverged from the author's preliminary notions.

Initially, on the subject of the regulations promulgated by the IKN Authority, Hendra Wahanu Prabandani—serving as the Coordinator of Legislation and Regulation—clarified that the primary interpretation of Article 5 paragraph (6) of Law No. 3 of 2022 was to encompass all regulatory aspects pertaining to the orchestration of tasks for the preparation, development, and relocation of the IKN, as well as the governance of the IKN Special Capital Region. It was not confined to

³⁵ Explanatory Note to Article 5 paragraph (2) of IKN Law

³⁶ Article 9 paragraph (2) of Law Number 12 of 2011 concerning the Establishment of Legislation has been amended several times, most recently with Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Legislation.

regulations exclusively by the IKN Authority or even regulations instituted by the Head of the IKN Authority. This approach was underpinned by the pivotal concept of assigning a unique role to the IKN Authority, which was not merely established to facilitate the preparation, development, and relocation of the IKN, but also to perform governmental functions. Consequently, it was bestowed with the latitude to formulate regulations that were not strictly confined to the IKN Authority's regulations, but also to instigate other regulations necessary for the preparation, development, and relocation of the IKN. In essence, the IKN entity was given a sweeping mandate ("*sapu jagat*") to promulgate regulations concerning the IKN relocation process.³⁷

Before the introduction of the Head of the IKN No. 1 of 2022 concerning the National Capital of the IKN and Presidential Regulation No. 62 of 2022 concerning the IKN Authority, there were no further disputes about the nature of regulations issued by the IKN Authority. As per the government's consensus, the forthcoming regulations were to be those of the Head of IKN Authority, given that the IKN area lacked a Regional House of Representatives (DPRD), and the IKN Authority's status is equivalent to a ministry-level institution.³⁸

Secondly, concerning the authority source for the regulations issued by the IKN Authority, Hendra Wahanu Prabandani postulated that the IKN Authority's power to establish regulations stems from attribution authority. Although Article 5, paragraph (6), does not explicitly mention authority, it does refer to rights. This attribution authority originates from Law No. 3 of 2022 concerning the National Capital of IKN, not from Article 8 of Law No. 12 of 2011 concerning Legislation Formation.³⁹

Thirdly, regarding the regulations established by the IKN Authority's positioning in the Indonesian legislation hierarchy, Hendra Wahanu Prabandani articulated that it was initially agreed that the IKN Authority is not a local government entity but a central government entity. This notion is reflected, at the very least, in the substance and interpretation of Article 4, paragraph (1), letter b, which states that the IKN Authority is an institution equivalent to a ministry, overseeing the IKN Special Capital Region. As a result, regulations established by the IKN Authority are considered central-level regulations.⁴⁰

The practical treatment of regulations issued by the IKN Authority can be observed through the implementation of the Head of Authority Regulations. Contrary to initial assumptions, these regulations do not align hierarchically with the Head of Region Regulations, but are on par with the Minister's, Agency's, and Institution's Regulations. The positioning is justified not by Article 7 (1) of Law Number 12 of 2011, but by Article 8 (1), provided that Head of Authority Regulations are interpreted as equivalent to ministerial regulations. This insight contradicts the initial assumption that the IKN Authority operates as part of the regional government, implying that its regulations could be equated to the Regional Regulations and the Head of Regional Regulations

Fourthly, the formation process of the IKN Authority's regulations is heavily influenced by its central-level status. In practice, the Head of Authority's regulations are subjected to the same procedures as other central-level regulations. These include review by the Ministry of Law and Human Rights, harmonization by the Directorate General of Legislation within the same Ministry,

³⁷ Hendra Wahanu Prabandani, Konsep Peraturan yang Ditetapkan Otorita Ibu Kota Negara menurut perumus UU Ibu Kota Negara, wawancara, September 2023.

³⁸ Prabandani.

³⁹ Prabandani.

⁴⁰ Prabandani.

and compliance with the Presidential approval process as stipulated in Presidential Regulation Number 68 of 2021 concerning Presidential Approval for Draft Ministerial/Head of Agency Regulation.⁴¹

Fifthly, regarding the substance of the regulations issued by the IKN Authority, Hendra Wahanu Prabandani notes that regulations generally reflect the specific mandates set out in Law Number 3 of 2022 on the Nusantara Capital. The regulatory content primarily pertains to the execution of the Special Regional Government of the IKN and/or the preparation, development, and relocation to the IKN. This gives the regulations as a unique standing, as they extend beyond the scope of typical ministerial or institutional regulations, which usually address specific affairs. Notably, the IKN Authority's regulations also include a detailed spatial plan for the Nusantara Capital, as explicitly required by Article 15 (4) of the IKN Law.⁴²

Sixthly, the promulgation of the IKN Authority's regulations follows a central-level process. Despite initial assumptions, the regulations are announced in the state gazette rather than the regional gazette. This approach mirrors the treatment of central-level regulations, reinforcing the idea that IKN Authority's regulations are on par with ministerial regulations.⁴³

Seventh, the judicial review process for the IKN Authority's regulations aligns with the hierarchy established by Article 8 (1). As long as the regulations are interpreted as equivalent to ministerial regulations, any perceived legal discrepancies in the procedures or content of the regulations can be addressed by the Supreme Court. This framework upholds the integrity of the legislation and ensures that any potential conflicts with the law are properly scrutinized.

The Pertinence of the IKN Authority's Regulation to the Indonesian Judiciary Framework

The preceding discourse comprehensively addresses the position of the IKN Authority's regulations within the Indonesian legal framework. This analysis considers both the theoretical assumptions derived from a systematic review of Law Number 3 of 2022 concerning the Nusantara Capital City and Law Number 12 of 2011 concerning the Establishment of Legislation. Furthermore, it takes into account practical applications observed thus far. Several provisions within the IKN Authority's regulations, as stipulated in Law Number 3 of 2022 concerning the Nusantara Capital City, appear to conflict with the Indonesian legal order. These inconsistencies warrant debate and require the attention of various stakeholders.

Firstly, we previously noted that the original purpose of Article 5, paragraph (6) of Law Number 3 of 2022 was to accommodate all regulations pertinent to the preparation, development, and relocation activities of the IKN, as well as the governance of the IKN Special Regional Government. This scope was not confined to the Authority's regulations or the Head of the Authority's regulations. This broad interpretation stems from a grand vision that positions the Authority as a unique entity, not only tasked with the preparation, development, and relocation of the IKN, but also with future governance responsibilities. Hence, the Authority was granted the flexibility to establish laws and regulations, which were understood to encompass not only the directives of the Authority or its head but also any other regulations required to facilitate the IKN's preparation, development, and relocation.

⁴¹ Prabandani.

⁴² Prabandani.

⁴³ Prabandani.

Integration of all directives associated with the preparation, development, and relocation initiatives of IKN, along with the management of IKN Special Regional Government, into Article 5, paragraph (6), was a strategic move. At the time, this exact nature of the rules the IKN Authority might promulgate was not entirely discernible. This was particularly relevant given the ongoing discussions about the potential for subsidiary bodies within the IKN Authority to issue their own regulations.

These circumstances raise significant questions about whether Article 5, paragraph (6), sufficiently provides a legal foundation for the IKN Authority to create diverse regulations. Furthermore, can this article be utilized as a foundation for subsidiary bodies within the IKN Authority to establish their own regulations? These pivotal questions remain unanswered by the stakeholders involved in the formulation. The researcher opines that such regulations are not pertinent to one of the core objectives of the Indonesian legal system's policy, which is the realization of legal certainty in state affairs. Moreover, these regulations seem to contradict the principle of clarity in the enactment of laws and regulations.

Secondly, with respect to the origin of the power to establish IKN Authority regulations, it was previously mentioned that this power arises from the authority of attribution. However, Article 5, paragraph (6), does not refer to authority but rights. The attribution in question stems from Law Number 3 of 2022 concerning the Nusantara Capital City, rather than Article 8 of Law Number 12 of 2011 concerning the Establishment of Legislation.

The dialogue concerning the origin of the power to formulate regulations by the IKN Authority can be initiated by examining the term "right." The semantic implications of "right" are a stark contrast from those of "authority." Moreover, the IKN Authority's right to establish regulations is oddly not delineated in the authority section but is instead defined within the context of position and specificity. This regulatory structure prompts questions about whether the term "right" adequately encapsulates the fact that the IKN Authority maintains the power to create regulations. This inquiry remains unresolved by those involved in the regulation drafting process. According to the researcher's perspective, such regulations appear incongruous with the Indonesian legal framework, particularly in regards to one of the principles in the creation of legislation, namely "the principle of the appropriate institution or official." This principle stipulates that each type of legislation should be devised by a state institution or official who possesses the authorization to formulate legislation.

In relation to this, Fitriani Ahlan Sjarif argues that legislation is a legal construct devised by officials who have been granted authority. She further elaborates that the notion of attributive authority pertains to the inherent power of an official, conferred by either the 1945 Constitution of the Republic of Indonesia or by law. However, upon scrutinizing the wording of Article 5, paragraph (6) of Law Number 3 of 2022 concerning the Nusantara Capital City, no specific official with authority is identified. Instead, the authority is bestowed upon the "capital authority," a special regional government unit equivalent to a province, which serves as the site of the nation's capital as designated and regulated by the aforementioned law. Hence, the power of the IKN Authority to enact regulations cannot be categorized an attributive authority, given that it does not specify the institution responsible for formulating such regulations. Even if the objective was to confer attributive authority, the method of granting this authority is considered unsuitable.⁴⁴

⁴⁴ Fitriani Ahlan Sjarif, *Konsep Peraturan yang Direrapkan Otorita Ibu Kota Nusantara dalam Perspektif Akademik*, Wawancara, 30 November 2022.

Moreover, it has been previously elaborated that the regulations instituted by the Head of the IKN Authority do not fall under hierarchical structure of the Regional Head's regulations. Instead, they align with the Ministerial, Agency, and Institutional Regulations. The legal foundation is not grounded on Article 7, paragraph (1), of Law Number 12 of 2011, but rather on Article 8, paragraph (1). This is insofar as the Head of Authority Regulations are perceived or interpreted to be equivalent with ministerial regulations. If, in practice, the Authority's regulations are construed as being on a par with ministerial regulations, the authority to promulgate regulations should ideally originate from delegation. This is because ministerial regulations are fundamentally rules enacted as delegated legislation. The recognition of Ministerial Regulations as delegated or subordinate legislation is found in Article 8, paragraph (2), of Law Number 12 of 2011, and Law Number 15 of 2019 concerning the Establishment of Legislation, which assert that Ministerial Regulations possess legal binding force as long as they are mandated by superior legislation or formed based on authority.

Finally, in regard to the status and treatment of the regulations promulgated by the IKN Authority within the Indonesian legislative hierarchy, it has been previously established that the IKN Authority is not a regional governmental body, but rather a central governmental body. This understanding is grounded on the profound intention or meaning of Article 4, paragraph (1), letter b, which declares that the IKN is an institution equivalent to a ministry executing the Special Capital Regional Government. Therefore, the regulations instituted by the IKN Authority are treated as regulations at the central level.

On the subject of these regulations, the researcher contends that even though the IKN Authority holds a ministerial-level institutional position, it does not automatically equate the regulatory products created by the IKN Authority to ministerial, institutional, or agency regulations, nor does it categorize them as central-level regulations. This perspective is reinforced by the researcher's analysis, which reveals the IKN Authority as a regional governmental body, based on several stipulations within Law Number 3 of 2022 concerning the Nusantara Capital City. The specific provisions include:

Article 1, paragraph (2), states that the National Capital, named Nusantara and subsequently referred to as the Nusantara Capital, is a unique provincial-level regional government body whose jurisdiction is the National Capital's seat, as determined and regulated by this Law. The term "a unique provincial-level regional governmental body" implies that the IKN is a regional governmental body.

Article 1, paragraph (9), introduces the concept that the Special Regional Government of Nusantara Capital, hereinafter referred to as the Nusantara Capital Authority, is responsible for the preparation, development, and relocation of the National Capital, as well as the organization of the Special Regional Government of Nusantara Capital.

Article 1, paragraph (10), states that the Head of the Nusantara Capital Authority presides over the Special Regional Government of the Nusantara Capital.

Article 4, paragraph (1), letter b, establishes that the Nusantara Capital Authority is a ministry-level institution tasked with executing the Special Regional Government of the Nusantara Capital.

Article 5, paragraph (4), states that the Head of the Nusantara Capital Authority, who holds a position equivalent to a minister and is appointed and dismissed by the President following consultation with the House of Representatives (DPR), is the leader of the Special Regional Government of the Nusantara Capital.

Fitriani Ahlan Sjarif's viewpoint strengthens the argument, suggesting that categorizing regulations implemented by the IKN Authority as ministerial level is a misguided claim. Despite

the head of the authority holding a ministerial-level position, the regulations' breadth and substance do not have national applicability like ministerial regulations due to their specific context.⁴⁵

Building on this point, the researcher posits that it is incongruous with the Indonesian legislative system to align the Head of IKN Authority's regulations with ministerial, agency, or institutional regulations, treating them as central-level regulations. However, equating the IKN Authority's regulations with regional-scale laws, such as local regulations, also appears unsuitable, given the head of the authority's ministerial-level position.

Several facts underline the incongruity of the Nusantara Capital Authority's regulations within the Indonesian legislative framework. These discrepancies not only highlight issues with the regulatory design implemented by the Nusantara Capital Authority but also indirectly reveal numerous challenges within the overarching design of the Special Regional Government of Nusantara Capital. This situation could arise due to the hasty enactment of the IKN Law. Both the House of Representatives and the Government failed to allot adequate time and space for an in-depth exploration of the IKN Law's concept and clauses.

Reimagining Regulatory Framework: Tailoring Regulations for the IKN Authority

The capital city possesses a pivotal role in shaping a nation's trajectory, extending beyond mere governance. This assertion is upheld by several arguments: Firstly, the capital is a nexus for devising a multitude of developmental strategies that not only determine the city's evolution but also guide the course of national expansion. Secondly, the capital serves as a national barometer for gauging developmental success and setting standards for other regions. Lastly, from an international perspective, the capital city embodies the country's representation, with its state offering a glimpse into the global community's evaluation of the nation.⁴⁶

In light of these considerations, it becomes essential to overhaul the regulatory framework formulated by the IKN Authority to ensure its relevance within the Indonesian legislative context. The reimagined regulatory design concerning the IKN Authority's regulations should address the following aspects: Firstly, it should elucidate the IKN Authority's role as a distinct local government entity. The researcher's interpretation of the IKN Law identifies the IKN Authority as a component of a special local government entity, a perspective echoed by many experts. However, in execution, the government perceives the IKN Authority as an extension of the central government, primarily due to its classification as a ministerial-level institution. This ambiguity surrounding the IKN Authority's role as a unique local government entity can be resolved by providing a clear explanation for Article 4, paragraph (1), letter b.

Secondly, the types of regulations issued by the IKN Authority, namely the Authority Regulations and Head of Authority Regulations, need to be clarified. This is crucial as the IKN Authority will function as a unique local government entity. As such, the IKN Authority should be empowered to create Authority Regulations and Head of Authority Regulations. A potential question that may arise is: How can the IKN Authority institute Authority Regulations in the absence of a Regional House of Representatives (DPRD)? To address this, it is vital to argue that the concept of creating Authority

⁴⁵ Sjarif.

⁴⁶ Dian Herdiana, "Menemukenali Syarat Keberhasilan Pemindahan Ibu Kota Negara [Identifying Conditions for Successful Relocation of the Nation's Capital] | Herdiana | Jurnal Politica Dinamika Masalah Politik Dalam Negeri Dan Hubungan Internasional," 24 July 2020, 5, <https://doi.org/10.22212/jp.v11i1.1382>.

Regulations will align with the notion of incorporating the DPRD into the administration of the Special Regional Government of IKN. The DPRD's involvement in managing the special regional government alongside the IKN Authority is significant, as it is a requisite for regional autonomy.

Furthermore, efforts to define the kind of regulation issued by the IKN Authority should also involve adding an article to Law Number 3 of 2022 concerning the State Capital. The added article should essentially stipulate that the Authority Regulations and Head of Authority Regulations are types of legislative regulations as cited in the Legislation Establishment Law.

Thirdly, it is necessary to clarify the source and method of conferring authority for the creation of Authority Regulations and Head of Authority Regulations, which should be derived from attribution authority. This is to prevent any regulations formulated by the IKN Authority from generating legal queries that could culminate in Supreme Court review. The IKN Authority's power source in forming regulations can be clarified by amending Article 5, paragraph 6, of Law Number 3 of 2022 concerning the State Capital. The term "entitled" should be replaced with "empowered," making it the phrase:

"The Nusantara Capital Authority is empowered to establish regulations to implement the Special Capital Region Government and/or conduct preparation, development, and relocation activities of the State Capital."

In addition, the crafting of the aforementioned article must be appropriately positioned within a chapter and/or section that fundamentally discusses authority.

The fourth aspect to consider involves defining the status of both the Regulatory Authority and Head of Regulatory Authority within the legal and regulatory hierarchy. In this regard, they should be considered equivalent to Regional Regulations and Head of Regional Regulations. This harmonizes with efforts to clarify the nature of regulations established by the IKN Authority. An additional article should be introduced into Law Number 3 of 2022 on the State Capital, essentially asserting that the Regulatory Authority and Head of Regulatory Authority are forms of legislation referred to in the Law on the Establishment of Legislation. The same law should explicitly state that the Regulatory Authority and Head of Regulatory Authority hold a position in the legal and regulatory hierarchy that is on par with Provincial Regional Regulations and Head of Provincial Regional Regulations.

The fifth point of focus pertains to the clarification of the formation process and its subsequent handling. In this instance, the process must mimic, and be treated as, the formation of regional legal products. This clarity can be achieved by incorporating an additional article into Law Number 3 of 2022 concerning the State Capital. This article should fundamentally explain that the formation of the Regulatory Authority and the Head of Regulatory Authority is driven by the Law on the Formation of Legislation and the Minister of Home Affairs Regulation on Regional Legal Products.

The sixth point to consider is the elucidation of the content within the Regulatory Authority and Head of Regulatory Authority. It is critical to clarify the substance of these authorities to prevent any violations of the principle of congruence between type, hierarchy, and content as stipulated in Article 5, letter c, of Law Number 12 of 2011 concerning the Formation of Legislation. The aforementioned article explains that:

The "principle of congruence between type, hierarchy, and content" implies that in the formation of legislation must duly consider the appropriateness of the content in relation to its type and hierarchical level.

The clarification of the content within of Regulatory Authority and Head of Regulatory Authority can be achieved by introducing two additional articles to the IKN Law. These articles, in essence, should govern the substance of the two regulations.

The seventh point emphasizes the fortification of the process within the Regulatory Authority and Head of Regulatory Authority. In this case, the processes can be reviewed by the Supreme Court.⁴⁷ The enhancement of the review process for the Regulatory Authority and Head of Regulatory Authority can originally occur once efforts to clarify their position and type within the Indonesian legislative hierarchy have been undertaken.

CONCLUSION

The regulatory scope of the IKN Authority, as outlined in Article 5, paragraph (6) of IKN LAW, extends beyond the purview of the Regulatory Authority or Head of Regulatory Authority. It encompasses all regulations pertaining to the preparation, development, and relocation of the IKN, including the administration of the Special IKN Regional Government. The right of the IKN Authority to establish these regulations stems from their attributive power. As an entity of the central government, the regulations set forth by the IKN Authority are deemed as central level regulations. However, several provisions within the IKN Authority Law regarding the establishment of regulations exhibit potential inconsistencies with the Indonesian legal system, warranting further discussion and consideration. Firstly, Article 5, paragraph (6) of the IKN Law, which is construed to include all regulations established by the IKN Authority for the execution of preparation, development, and relocation activities of the IKN, including as the administration of the Special IKN Regional Government. This interpretation could potentially serve as a foundation for sub-entities or units under the IKN Authority to establish their own regulations. Secondly, the source of the IKN Authority's power to establish regulations needs further clarification. Thirdly, the position of the Head of Regulatory Authority, equated with Ministerial, Agency, and Institution Regulations and considered at central level regulations, requires more explicit definition. Therefore, the regulation concerning the IKN Authority's establishment need to be reconfigured to align with Indonesian legal system. Proposed modification include: Firstly, the explicit definition of the Authority entity as a regulatory body, specifically as a special regional government entity. Secondly, a clear demarcation of the type of regulations established by the IKN Authority, specifically the Regulatory Authority and the Head of Regulatory Authority. Thirdly, the clarification of the source and method of delegation of authority, specifically originating from attributive power. Fourth, a clear indication of its position in the legislative hierarchy, specifically on part with Regional Regulations and Head of Regional Regulations. Fifthly, the elucidation of the process of formation and its treatment, specifically, it should follow the process and be treated as the formation of regional legal products. Sixthly, the clear definition of the content of the Regulatory Authority and the Head of Regulatory Authority. Lastly, the affirmation of its review process, specifically, it should be reviewable by the Supreme Court.

⁴⁷ Taufik Hidayat, Resti Dian Luthviati, and Suviwat Jenvitchuwong, "Disharmonization of Supreme Court Regulations in Material Judicial Rights," *Journal of Human Rights, Culture and Legal System* 2, no. 3 (1 December 2022): 149–66, <https://doi.org/10.53955/jhcls.v2i3.34>.

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