



Normative Gaps in Indonesia's Capital Relocation: Constitutional Implications of State Function Transition to Nusantara

Edi Saputra¹, Eman Suparman², Zainal Muttaqin³, Serhii Ablamskyi⁴

^{1,2,3} Faculty of Law, Padjadjaran University, Bandung, Indonesia

⁴ Kharkiv National University of Internal Affairs, Ukraine

✉ Corresponding author: edimcdo@gmail.com

Article history:

Received: 1 May 2024

| Accepted: 20 August 2024

| Published: 25 September 2024

How to cite:

Edi Saputra *et al.*, "Normative Gaps in Indonesia's Capital Relocation: Constitutional Implications of State Function Transition to Nusantara," *Jurnal Wawasan Yuridika* 8, No. 2 (2024): 139-158, DOI: [10.25072/jwy.v8i2.4440](https://doi.org/10.25072/jwy.v8i2.4440).

Abstract

The relocation of Indonesia's capital is a strategic constitutional decision with significant legal consequences. While Law Number 3 of 2022 formally designates Nusantara as the new capital, it fails to regulate the transition of core state functions. This research aims to identify the normative gaps in the law, focusing on the absence of two key indicators: a legally defined effective date of relocation and the formal transfer of executive, legislative, and judicial functions. This research specification is descriptive in nature and employs a normative legal method as type of research. The conceptual approach is applied to explore legal doctrines to provide a broader legal perspective, the research also employs a comparative approach. Data is collected through a literature review, and analyzed qualitatively through interpretive reasoning and legal argumentation to formulate normative conclusions relevant to the issues discussed. The lack of transitional provisions undermines legal certainty and the legitimacy of government actions taken in Nusantara. The article argues for an urgent reformulation of transitional instruments to restore coherence between political declarations and constitutional order.

Keywords:

Capital Relocation;
Constitutional Governance;
Institutional Legitimacy;
Legal Vacuum; Transitional
Law.

A. INTRODUCTION

The relocation of Indonesia's capital city (*Ibu kota Nusantara*/ hereinafter referred to as IKN) from Jakarta to Nusantara, as stipulated in Law Number 3 of 2022 (hereinafter referred to as the IKN Law), signifies a profound transformation in the country's constitutional framework. This transition should not be perceived merely as a geographic shift, but rather

as a repositioning of political and administrative authority that touches upon the most fundamental aspects of modern governance. In the context of a constitutional state, as enshrined in Article 1(3) of the 1945 Constitution, every act of the state must be grounded in clear legal norms and must be constitutionally accountable. One of the core principles of a state governed by the rule of law is legal certainty, which,

according to Tamanaha, constitutes a foundational pillar of a democratic legal system, as it ensures that power is not exercised arbitrarily but through transparent and reviewable legal instruments.¹ Juridically, the designation of Nusantara as the new capital has been formally enacted. However, to date, there remains a normative ambiguity regarding how the transfer of the executive, legislative, and judicial state functions from Jakarta to Nusantara will be operationalized. The absence of regulatory provisions concerning this institutional transition creates a space for administrative disorder and potentially triggers a legitimacy crisis in state decision-making processes. This indicates that the legal framework has yet to fully accommodate the transformative demands posed by the capital relocation policy. From a sociological perspective, a significant gap persists between legal norms and prevailing socio-political realities. Jakarta continues to serve as the central locus of all branches of state power, including the Presidential Palace, the House of Representatives (DPR/MPR), the Constitutional Court, and the Supreme Court. This reality illustrates that the mere enactment of law does not automatically alter historically and

culturally entrenched power structures. Within the framework of constitutional law, coherence between legal norms and institutional structures must be maintained to prevent fragmentation within the governance system. As explained through the systemic approach to public law, the legitimacy of the modern state is built upon the alignment between institutional clarity, the legal positioning of state actors, and the law's capacity to regulate functionally within the context of social transformation.² The relocation of the capital city, if not supported by an adequate transitional legal framework, risks undermining the consistency of the constitutional system that has been established since the 1998 Reform era.

The discourse surrounding the relocation of Indonesia's capital city (IKN) has been widely explored in various academic publications. One of the key contributions comes from studies analyzing the public policy dimensions of the capital relocation, highlighting spatial considerations, Jakarta's ecological burden, interregional development disparities, and the administrative efficiency arguments used to justify the national strategic project.³ The study by Suryadi and Chotib focuses

¹ Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004), p. 8.

² Martin Loughlin, *Foundations of Public Law* (Oxford: Oxford University Press, 2010), p. 8.

³ Aeda Ernawati *et al.*, 'Analisis Kelayakan Pendirian Usaha Pengolahan Limbah Medis Untuk Meningkatkan Pendapatan Asli Daerah', *Jurnal Ekonomi Dan Kebijakan Publik* 13, No. 1 (July 2022): 57-70, <https://doi.org/10.22212/jekp.v13i1.2155>, p. 58.

on the rationality of policy formulation and infrastructure readiness, while also examining socio-political challenges and the limitations of public participation. Although valuable, this approach remains within the realm of public policy and does not extend into a juridical-structural analysis of the implications of capital relocation on the functions of high state institutions. In contrast, this article offers a different perspective by addressing a constitutional law dimension that has not been explicitly explored in previous literature namely, the absence of transitional legal norms governing the transfer of constitutional functions from Jakarta to Nusantara. The lack of legal provisions for delegating executive, legislative, and judicial powers either in the IKN Law or its implementing regulations—points to an administrative legal vacuum that may undermine the integrity of the national governance system. The novelty and distinctiveness of this research lie in its focus on normative gaps within the national legislative framework and the potential institutional dysfunction resulting from the absence of a juridical design for the transition of state authority. Employing a normative approach grounded in the principles of the rule of law and constitutional supremacy, this article offers an academic contribution by articulating the need for a legitimate legal instrument to ensure continuity in governance during the transitional period of the capital relocation.

The physical development of the Nusantara Capital City (IKN) continues to progress; however, its legal legitimacy as the center of state power has not yet been fully established. Law Number 3 of 2022 indeed stipulates that IKN is the new national capital, but the provision that the relocation shall be carried out in stages and further regulated by a presidential regulation has yet to be implemented. From a constitutional law perspective, the lawful success of the capital relocation cannot rely solely on infrastructure development. Instead, it must be assessed based on two fundamental juridical and constitutional indicators. The first is the determination of the effective date of relocation, which should be explicitly articulated in implementing regulations as the legal and administrative starting point of the transition. In the absence of such temporal clarity, the change in capital city status remains a symbolic declaration devoid of enforceable power.

The second key indicator is the formal delegation of functions and authorities of high state institutions, including the President, the House of Representatives (DPR), the Regional Representative Council (DPD), the People's Consultative Assembly (MPR), the Supreme Court, and the Constitutional Court. To date, these constitutional functions continue to be exercised in Jakarta, and no legal document indicates any institutional transfer to IKN. The absence of transitional legal norms has resulted in a discrepancy between written norms

and actual constitutional practice, which in turn may disrupt the stability of the state's power structure. In the context of modern governance, such a transitional process should be meticulously regulated by upholding the principles of legality and legal certainty, as outlined within the framework of the rule of law and institutional transition theory.

The absence of administrative transition instruments either in the form of a Presidential Regulation or inter-institutional arrangements has created uncertainty within the structure of state authority, which de facto remains centralized in Jakarta. The legal implications of this vacuum extend beyond mere administrative technicalities; they also pose the risk of a dualism of authority that contradicts the principles of normative clarity and the unity of the constitutional system.⁴ In a state governed by the rule of law that upholds the principle of constitutional supremacy, institutional transitions must be guided by clear and authoritative written rules; political narratives or declarative provisions in legislation alone are insufficient. In the absence of such legal grounding, the legitimacy of the central government may be called into question when the exercise of state

power is not anchored in valid and systematic legal norms.

This study aims to critically identify the legal vacuum within the framework of Indonesia's capital relocation policy as established by Law Number 3 of 2022. The primary focus is directed at the absence of transitional norms governing the delegation of authority from high state institutions, as well as the lack of a formally and constitutionally defined effective date for the transfer of state power. These issues must be examined thoroughly by placing positive legal norms in tension with the fundamental principles of a state governed by the rule of law, such as legal certainty and constitutional supremacy. The misalignment between written legal norms and the actual practices of state administration may lead to institutional disorientation and jurisdictional ambiguity. In this context, the study also seeks to formulate a normative approach as a legal policy recommendation to fill the existing regulatory gap, while adhering to the principles of normative clarity, institutional effectiveness, and democratic governance.⁵ By delineating the issue through both conceptual and normative lenses, this study is expected to contribute to the design of practical

⁴ Joseph Raz, "Authority, Law and Morality 1," in *Law and Morality*, ed. Kenneth Einar Himma (London: Routledge, 2017), <https://doi.org/10.4324/9781315092003>, p. 261.

⁵ Zaka Firma Aditya and Abdul Basid Fuadi, "Konseptualisasi Omnibus Law Dalam Pemindahan Ibukota Negara", *Jurnal Ilmiah Kebijakan Hukum* 15, No. 1 (March 2021): 149-164, <https://doi.org/10.30641/kebijakan.2021.V15.149-164>, p. 151.

solutions for the transitional period of IKN, while simultaneously safeguarding the continuity of the constitutional structure within the framework of the national legal order.

B. RESEARCH METHODS

This research specification is descriptive in nature and employs a normative legal method as type of research, wherein law is understood not only as a set of binding rules but also as a value system shaping and legitimizing the structure of state authority. The study systematically analyzes the legal norms and constitutional principles surrounding the transition of governmental functions during Indonesia's capital relocation (IKN Nusantara). It integrates a statute approach by examining Law Number 3 of 2022 on the National Capital, the 1945 Constitution, Law Number 29 of 2007 concerning the Governance of Jakarta, and other related regulations, using legal documents sourced from official government publications and national legal databases. The conceptual approach is applied to explore legal doctrines such as the rule of law, constitutional supremacy, legal certainty, and transitional governance, relying on scholarly literature from peer-reviewed journals, books, and institutional reports.

To provide a broader legal perspective, the research also employs a comparative approach, drawing lessons from capital relocation and institutional transitions in countries like Brazil and Malaysia. Data is collected through a literature review comprising primary, secondary, and tertiary legal materials, and analyzed qualitatively through interpretive reasoning and legal argumentation to formulate normative conclusions relevant to the issues discussed.

C. RESULTS AND DISCUSSIONS

1. The Position of the Capital City in Indonesia's Constitutional System

In modern constitutional law theory, the concept of a capital city is not merely limited to an administrative region, but encompasses symbolic, functional, and constitutional significance that is inherently tied to the state's existence. Symbolically, the capital represents the political identity and presence of the state on the international stage. As the seat of government, the capital accommodates the primary state institutions responsible for executing the legislative, executive, and judicial functions. These roles position the capital city as the core of state power a place where strategic decisions are made and the trajectory of national development is determined.⁶

⁶ Allen Batteau and Christine Z. Miller, 'The Constitution of "Technology"', in *Tools, Totems, and Totalities* (Singapore: Springer Nature Singapore, 2024): 27-47, https://doi.org/10.1007/978-981-97-8708-1_3, p. 30.

In a constitutional system, the capital city holds a position that unifies all branches of state power within a single coordinative and symbolic entity. When the seat of government is dispersed without a clear legal foundation, the risk of power fragmentation and systemic dysfunction in the administration of the state becomes significantly heightened.⁷

Juridically, Jakarta's status as the capital city of the state retains full legitimacy based on Law Number 29 of 2007 concerning the Governance of the Special Capital Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia. Article 1 of the law explicitly states that Jakarta is the capital of the state, and this provision has neither been repealed nor declared void. The continued validity of this law indicates that, under positive law, Jakarta still performs state functions as the center of national governance.⁸ Meanwhile, although Law Number 3 of 2022 on the National Capital has designated Nusantara as the new capital city, the law does not contain any explicit clause repealing the validity of the Jakarta Special Capital Region Law nor does it specify an effective date for the relocation of the capital. This

situation gives rise to a conflict of norms, wherein two laws of equal legal standing regulate the status of the capital city in contradictory directions.⁹

According to the theory of the hierarchy of norms, a newer law should prevail over an older one when both regulate the same subject matter (*lex posterior derogat legi priori*). However, in this case, the IKN Law does not explicitly revoke Jakarta's status as the capital city, leaving the provisions of Law No. 29 of 2007 legally binding. This situation not only creates legal uncertainty but also opens the possibility for administrative and constitutional disputes, particularly if divergent interpretations arise among state institutions regarding the status of the seat of government. In a state governed by the rule of law, the existence of conflicting norms without a mechanism for harmonization contradicts the principles of legal coherence and normative clarity, both of which are foundational pillars of an orderly legal system.

The conflict between two concurrently operative norms reflects a legislative failure to ensure an orderly transition from one legal regime to another. This issue is exacerbated by the

⁷ Nicholas William Barber, *The Principles of Constitutionalism* (Oxford: Oxford University Press, 2018), p. 27.

⁸ Timothy Endicott, *Administrative Law* (Oxford: Oxford University Press, 2021), p. 238.

⁹ Bakhrol Amal and Aditya Yuli Sulistyawan, 'Dinamika Ketatanegaraan Pemindahan Ibu Kota Negara Indonesia Dalam Perspektif Hukum', *Masalah-Masalah Hukum* 51, No. 4 (October 2022): 346-354, <https://doi.org/10.14710/mmh.51.4.2022.346-354>, p. 347.

absence of implementing instruments, such as a Presidential Regulation, which should serve as a normative bridge between the legal status of Jakarta and Nusantara. This disharmony indicates that the capital relocation process, rather than being grounded in a systematic legal design, has instead left a normative void that undermines legal certainty and the credibility of public policy.

Law Number 3 of 2022 on the National Capital has designated Nusantara as the new capital of the Republic of Indonesia, as explicitly stated in Article 1, point 2. This provision reflects the state's normative intent to relocate the seat of government from Jakarta to East Kalimantan. However, the designation remains merely declarative in nature, lacking adequate mechanisms for implementation and institutional transition.¹⁰ Not a single provision within the IKN Law explicitly repeals or terminates the validity of Law Number 29 of 2007 concerning the Governance of the Special Capital Region of Jakarta as the national capital. This lack of legal precision has resulted in legal ambiguity and conflicting interpretations regarding the juridical status of both territories. In a legal system that upholds the principle of clarity of norms, any declaration of

change concerning the structure of the state should be accompanied by concrete and implementable legal consequences.

In addition to not explicitly revoking Jakarta's status as the capital, the IKN Law also fails to provide provisions regarding the effective date of the relocation, the scheme for the delegation of governmental functions, or the adjustment of institutional authorities. Article 39 states that the relocation shall be carried out in stages and further regulated by a presidential regulation; however, to date, no implementing regulation has been issued to serve as the operational basis for the governmental transition. This indicates that the legal design of the IKN Law has not been constructed in accordance with the principle of implementability that is, the capacity of legal norms to be concretely operationalized within the constitutional framework of governance.¹¹ This legal vacuum signifies a structural weakness in the legislative process, wherein a transformation as significant as the relocation of the capital is not accompanied by adequate implementing instruments. When legal norms are declarative but lack implementability, the legitimacy of state authority becomes inherently vulnerable.¹² In the context

¹⁰ Rob Van Gestel and Hans-Wolfgang Micklitz, "Why Methods Matter in European Legal Scholarship", *European Law Journal* 20, No. 3 (May 2014): 292-316, <https://doi.org/10.1111/eulj.12049>, p. 295.

¹¹ Lisa Hajjar, "Law and Revolution: Legitimacy and Constitutionalism after the Arab Spring", *British Journal of Middle Eastern Studies* 45, No. 5 (October 2018): 860-862, <https://doi.org/10.1080/13530194.2018.1496707>, p. 866.

¹² Francesca Bignami, "Comparative Administrative Law," in *The Cambridge Companion to Comparative Law*, ed. Mauro Bussani and Ugo Mattei (Cambridge: Cambridge University Press, 2012), p. 146.

of capital relocation, the disconnection between declarative norms and administrative structures reveals that the state has yet to complete the legal-formal process required for the transfer of state functions. As a result, a disparity emerges between political claims and legal validity, which undermines both the effectiveness and the stability of state administration.¹³

The relocation of the national capital constitutes a legal-political act that directly impacts the structure of state power and the constitutional balance. In the context of Indonesia as a state governed by law, as affirmed in Article 1 paragraph (3) of the 1945 Constitution, every strategic policy particularly those involving changes to institutional status and the configuration of central government must adhere to the principles of legal certainty, the rule of law, and the supremacy of the constitution. These three principles are not merely conceptual foundations, but substantive requirements that ensure every act of the state can be reviewed, held accountable, and implemented lawfully. A capital relocation that lacks norms on the delegation of functions, clarity on timing, and derivative legal instruments governing institutional transition constitutes a violation of the

principle of clarity of norms inherent in a rule-of-law system. This gives the impression that such a large-scale transformation is driven by political will rather than constitutional intent.

Law Number 3 of 2022 on the National Capital normatively establishes the legal framework for relocating Indonesia's capital to the Nusantara region. Article 1 point 2 defines Nusantara as the capital city that serves as the center of government, while Article 4 paragraph (1) affirms that the Nusantara Capital Authority is the institution vested with the authority to manage and administer government affairs in the region. Article 12 expands the Authority's powers to include matters such as licensing, the granting of incentives, and the implementation of strategic infrastructure development. Meanwhile, Article 39 stipulates that the relocation of the capital will be carried out in stages, with the technical arrangements delegated to a presidential regulation. Upon closer examination, the legal structure outlined in these four articles reveals that the capital relocation has been framed as a normative declaration, lacking concrete and measurable implementation phases.

Textually, none of the aforementioned provisions stipulate the effective date for

¹³ Mustofa Muhammad Haris, "Juridical Analysis of Non-Profit Principles in The Formation of Business Entities by Foundations", *Peradaban Hukum Nusantara* 1, No. 1 (December 2024): 129-143, <https://doi.org/10.62193/fk17g819>, p. 131.

the transfer of constitutional functions from Jakarta to Nusantara, nor do they provide legal instruments governing the administrative relocation of state institutions. This creates a gap between legal intent and implemented reality. In modern regulatory design, legal norms should ideally be not only declarative but also accompanied by instructive provisions that can be directly executed or operationalized through implementing regulations. When a statute merely establishes a normative claim without providing mechanisms for execution, the effectiveness of the norm is significantly weakened, and it poses a risk of legal uncertainty in the functioning of government.

Article 39 of Law Number 3 of 2022 explicitly states that the relocation of the national capital will be carried out in stages and shall be further regulated by a presidential regulation. Normatively, this provision mandates the President to issue derivative legal instruments that specify the phases, mechanisms, and timeline for implementing the transfer of the seat of government. However, to date, no presidential regulation or government regulation has been issued to operationalize this mandate. The absence of implementing regulations has created an administrative legal vacuum that may hinder policy effectiveness and

complicate the technical execution of relocating high-level state institutions. In the context of legal-based administration, implementing instruments are a prerequisite for operationalizing legal norms within a legitimate institutional framework.

The principle of legal certainty is a fundamental cornerstone of the rule-of-law system, requiring clarity, predictability, and consistency in every legal norm that binds both citizens and state institutions. In the context of Law Number 3 of 2022, the absence of concrete provisions regarding the effective date of the capital relocation and the lack of norms governing the delegation of constitutional functions to state institutions constitute a violation of this principle. When a legal norm fails to specify who is obligated to act, when the action should be taken, and under which legal instrument, the norm loses its effective binding force. The principle of clarity of norms demands that every legal provision be formulated in a structure that is comprehensible to its legal subjects, both in terms of substance and procedural requirements.¹⁴ The inherent uncertainty within the IKN Law renders the implementation of the capital relocation dependent on political interpretation rather than on a verifiable legal foundation.

¹⁴ Patti Tamara Lenard, "The Morality of State Priorities and Refugee Admission", *Critical Review of International Social and Political Philosophy* 28, No. 1 (January 2025): 143-162, <https://doi.org/10.1080/13698230.2024.2436265>, p. 145.

From the perspective of the rule of law, the state is obliged not only to formally enact legislation, but also to ensure that the substance of such norms can lawfully guide administrative and institutional actions. When legal norms are overly general, vague, or merely declarative without operational mechanisms, the state fails in its constitutional responsibility to establish a just and reliable legal order. In this regard, the formulation of provisions in the IKN Law falls short of meeting the criterion of intelligibility, which is a crucial element of enforceable law. This condition reveals that imprecise legislative drafting is not merely a technical deficiency, but poses a serious threat to constitutional stability and the legitimacy of governance.¹⁵

The absence of transitional provisions regulating the transfer of institutional functions from Jakarta to Nusantara has serious implications for state governance. In a governmental system where institutional effectiveness is a fundamental pillar, the ambiguity regarding the locus of authority may disrupt inter-institutional coordination, create policy misalignment, and open the possibility of overlapping administrative jurisdictions. The physical separation between the formally designated normative center (Nusantara) and the

operational center that continues to function *de facto* (Jakarta) generates a structural dichotomy that may result in dual legitimacy. This situation reflects a systemic vulnerability that could weaken the principle of vertical integration across levels of state authority, which, in a presidential system like Indonesia's, should be reinforced by a unified chain of administrative command.

The absence of a transitional framework also affects the effectiveness of institutional oversight and accountability. When the location and functions of state institutions are subject to normative uncertainty, policy monitoring and program implementation become inefficient. Within the framework of good governance, effective administration requires a consistent, transparent, and law-based institutional structure. Without transitional regulations, state institutions lack juridical guidance to formulate internal policies necessary for organizational restructuring, budget allocation, or the delegation of institutional responsibilities to the new capital. As a result, national strategic policies risk losing systemic coherence, and the fragmentation of institutional functions may undermine the continuity of stable, democratic, and accountable governance.

¹⁵ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (New Jersey: John Wiley & Sons, 2015), p. 79.

2. Missing Juridical Indicators for the Transfer of State Functions

The determination of the effective date for the transfer of state functions from Jakarta to Nusantara is a fundamental component in ensuring the lawful and operational applicability of legal norms. In the context of institutional transition, temporal clarity is not merely an administrative requirement it carries constitutional significance that determines the validity of state actions conducted in the new location.¹⁶ In the absence of normative provisions specifying when governmental functions are officially transferred, all institutional activities in IKN risk operating without a clearly established basis of legitimacy. The principle of legal certainty requires that all state actions must be predictable, grounded in applicable written law, and carried out within a clearly defined timeframe. The lack of temporal clarity regarding the relocation opens the possibility of overlapping authority and fragmented jurisdiction between state institutions that continue to operate in Jakarta and emerging institutional claims in IKN.

In a comparative context, the experiences of capital relocation in Brazil and Malaysia provide relevant

perspectives for understanding the complexities of institutional transitions in Indonesia's capital relocation. Brazil, which moved its capital from Rio de Janeiro to Brasília in 1960, faced major challenges in effectively transferring governmental functions. Although the relocation was supported by a strong constitutional declaration, the actual transition of governmental functions, particularly in the legislative and judicial branches, took years due to the lack of adequate infrastructure and transitional legal frameworks. This situation created a phase of administrative ambiguity that generated legal uncertainty and delayed state decision-making processes.¹⁷ Meanwhile, Malaysia's administrative move to Putrajaya in the late 1990s demonstrates that the success of a transition is not solely determined by legal declarations but also by the readiness of technical regulations governing the gradual transfer of institutional functions. Malaysia adopted a structured transition model, utilizing special laws and implementing regulations to ensure that the institutional transition was synchronized with the development of administrative infrastructure and adequate logistical support.¹⁸

¹⁶ Gerard Alexander, "Institutionalized Uncertainty, The Rule of Law, and The Sources of Democratic Stability", *Comparative Political Studies* 35, No. 10 (December 2002): 1145-1170, <https://doi.org/10.1177/001041402237946>, p. 1150.

¹⁷ Richard J. Williams, "Brasília after Brasília", *Progress in Planning* 67, No. 4 (May 2007): 301-366, <https://doi.org/10.1016/j.progress.2007.03.008>, p. 302.

¹⁸ Tim Bunnell, *Malaysia, Modernity and the Multimedia Super Corridor: A Critical Geography of Intelligent Landscapes* (London: Routledge, 2004), <https://doi.org/10.4324/9780203647363>, p. 17.

From this comparative analysis, it is evident that the failure or success of a capital relocation depends not only on declarative legal legitimacy but also on the presence of clear and practical transitional norms. The Brazilian model illustrates the importance of preparing legal and administrative infrastructure before the relocation, while Malaysia highlights the necessity of legal provisions that facilitate the transfer of functions and institutional adjustments. In the Indonesian context, the lessons from these two countries indicate the need for a measurable and structured implementing regulation as a legitimate and effective transitional instrument. This would reinforce constitutional legitimacy and minimize administrative disruptions that could undermine governance. Considering the dynamics and complexities of institutional transitions in other countries, Indonesia's capital relocation requires a transition design that is not merely based on political declarations but also supported by systematic, measurable, and implementable normative frameworks within the Indonesian constitutional legal system.

The delegation of state institutional functions from Jakarta to Nusantara requires formal legitimacy established through written legal instruments.

Within Indonesia's constitutional system, the exercise of executive, legislative, and judicial powers necessitates not only physical institutional structures, but also a legal foundation that explicitly defines the status and jurisdiction of authority. The transfer of institutional functions without formal legal documents such as a Presidential Decree, Presidential Regulation, or Government Regulation would result in ambiguity regarding institutional status in IKN. This contradicts the principle of legality of governance, which mandates that all acts of government must be based on explicit legal authority, and not rely on implicit assumptions or symbolic declarations alone.¹⁹ In the context of capital relocation, institutional functions cannot be merely relocated administratively; they must be accompanied by the delegation of duties, authority, budgetary resources, and legal responsibilities.

Without a legally valid delegation of authority, there is a risk of institutional conflict between the existing center of power, which *de facto* remains in Jakarta, and the newly designated seat of government in IKN, which lacks full legal legitimacy. State institutions may find themselves in an ambivalent position: continuing to operate in their current location based on still-valid legal provisions, while simultaneously being

¹⁹ László Sólyom, "The Role of Constitutional Courts in the Transition to Democracy: With Special Reference to Hungary", *International Sociology* 18, No. 1 (March 2003): 133-161, <https://doi.org/10.1177/0268580903018001008>, p. 133.

pressured to shift their operations to the new capital without a clear normative foundation. This condition may lead to clashes of administrative authority, unclear lines of coordination, and a weakening of the checks and balances among branches of power. In democratic constitutional practice, the delegation of institutional functions is not merely a technical adjustment, but a legal process that must be properly executed to ensure the continuity of constitutional authority.

The absence of provisions concerning the effective date of relocation and the formal delegation of state institutional functions to IKN has serious implications for the constitutional legitimacy of state power. In the constitutional legal system, the validity of governmental actions is highly dependent on an authoritative, written, and verifiable legal basis. When the relocation of the capital is governed solely by declarative norms without transitional instruments, all state activities conducted in the new location risk lacking a legal foundation that can withstand constitutional scrutiny. Such a condition may trigger a crisis of authority, whereby state institutions operate beyond a clear legal framework, while their source of power remains grounded in the regulatory regime applicable to Jakarta. In a state governed by law, any transformation in the structure of state power must adhere to the principle of

legitimacy through law that is, the notion that authority can only be lawfully exercised when it is grounded in explicit legal norms.²⁰

Moreover, the absence of legal norms governing the delegation of functions creates vulnerability to potential judicial review and administrative lawsuits against policies issued by state institutions that have physically relocated without formal legal authorization. This disrupts the continuity of constitutional functions and undermines the cohesion of the checks and balances system, which is meant to operate in an integrated manner. Within the framework of constitutional democracy, legitimacy is not solely a matter of outcomes, but also of the legal process by which those outcomes are achieved. A capital relocation that is not preceded by a valid delegation of institutional authority risks eroding legal and governmental credibility, while also contributing to instability within the constitutional order.

The absence of adequate juridical indicators in the process of transferring state functions from Jakarta to Nusantara reflects a flaw in the design of strategic legislation that may compromise the validity of the governmental system. Within the framework of transitional norm formulation, indicators such as the effective date and the formal delegation of institutional functions are

²⁰ Jürgen Habermas, *op. cit.*, p. 23.

not merely administrative elements; rather, they are constitutive components in the establishment of a legally valid new legal order.²¹ Legal norms that are not accompanied by implementable indicators risk becoming ineffectual provisions incapable of guiding the legal behavior of state actors. The absence of such indicators also suggests that the legislative process has been driven more by pragmatic political motives than by a legal construction grounded in scientific methodology and public accountability. The relocation of the capital should not be regarded merely as a political decision, but as a fundamental legal act that reshapes the entire configuration of state power. From the perspective of legal engineering theory, legal norms must possess the capacity for real social control through clearly defined structures of implementation.²² Otherwise, the law risks being reduced to a symbolic façade of legitimacy that fails to fulfill its function as an objective and enforceable regulatory framework. In this context, the need for juridical indicators becomes increasingly urgent—not only to ensure legal certainty but also to maintain constitutional coherence between legal

norms, state institutions, and the ongoing process of institutional transition within the national capital relocation project.

3. Legal Solutions and Recommendations for Legislative Reformulation

One of the most urgent needs in the context of the national capital relocation is the issuance of a Presidential Regulation (Perpres) or Government Regulation (PP) that explicitly outlines the phases, indicators, and effective timetable for transferring state institutional functions to the territory of Nusantara. The existence of such implementing norms is a prerequisite for bridging the gap between the declarative provisions of Law Number 3 of 2022 and the practical requirements of administrative implementation on the ground. Within the framework of modern legal theory, legal norms that are purely declarative and lack functional instruments lose their binding capacity, as they are incapable of regulating behavior in an operational manner.²³ Articles 5(2) and 4(1) of the 1945 Constitution grant the President the authority to issue implementing regulations, whether in the form of

²¹ Frank Vibert, *The Rise of the Unelected: Democracy and the New Separation of Powers* (Cambridge: Cambridge University Press, 2007), p. 17.

²² Martin Krygier, "Four Puzzles About The Rule of Law: Why, What, Where? And Who Cares?", in *Getting to the Rule of Law*, by James E. Fleming (New York: New York University Press, 2020), 64-104, <https://doi.org/10.18574/nyu/9780814728437.003.0004>, p. 74.

²³ Maria De Benedetto, "Effective Law from a Regulatory and Administrative Law Perspective", *European Journal of Risk Regulation* 9, No. 3 (September 2018): 391-415, <https://doi.org/10.1017/err.2018.52>, p. 391.

Presidential Regulations (Perpres) or Government Regulations (PP), to ensure the effective administration of governance. In this context, Perpres and PP are not merely extensions of legislative enactments, but serve as articulative mechanisms that contain derivative norms capable of being operationalized by all state institutions.

The absence of a Presidential Regulation (Perpres) to date has created an administrative vacuum that not only hinders the concrete progression of the capital relocation process but also weakens the legal authority of the Nusantara Capital Authority (Otorita IKN) in executing its mandate as the primary entity responsible for the development and governance of the new capital region. Without a legal basis for transition, any governmental activity conducted in IKN risks being deemed premature and exceeding the normative authority currently in place. Implementing instruments such as a Perpres or Government Regulation (PP) should be able to specify the necessary indicators, including the determination of the effective date of relocation, the stages of institutional function delegation, and the readiness of administrative infrastructure and logistics. In contemporary administrative law, the presence of detailed technical norms

is essential to prevent uncontrolled institutional discretion and to ensure that the transitional process proceeds within legally defined boundaries.²⁴

In addition to requiring implementing instruments, the relocation of the national capital to Nusantara also necessitates the restructuring of legislative products that have the potential to create normative conflict. Law Number 29 of 2007, which explicitly designates Jakarta as the capital of the state, remains in force and has not been repealed, creating a juridical dualism with Law Number 3 of 2022, which designates Nusantara as the new capital. This disharmony leads to jurisdictional ambiguity that may undermine the legitimacy of the central government in executing its institutional functions. According to the theory of normative consistency, a sound legal system requires the absence of contradictions among legal instruments at the same hierarchical level.²⁵ When two legal norms of equal standing remain concurrently in force with contradictory substantive provisions, the effectiveness of both is diminished, creating space for subjective interpretation by implementing institutions. Therefore, Law Number 29 of 2007 must be explicitly repealed or revised in tandem with the IKN transition process.

²⁴ Nikolas Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999), p. 22.

²⁵ Lief Carter and Tom Burke, *Reason in Law* (New York: Routledge, 2017), p. 17.

Revisions to the IKN Law itself have become urgent in order to introduce explicit provisions governing the formal delegation of state institutional functions and the determination of the effective date of relocation. In the context of power transition, a provision outlining the delegation of functions is not merely symbolic in administrative terms, but is essential to ensure the legality and accountability of state institutional actions.²⁶ Without clear legal provisions stipulating when the President, the House of Representatives (DPR), the Supreme Court (MA), and the Constitutional Court (MK) are officially required to carry out their duties from IKN, all forms of governmental activity risk being challenged as unlawful or *ultra vires*. Harmonizing the IKN Law with the existing regulatory framework is a constitutional requirement to safeguard governmental continuity and institutional stability. In constitutional law, the establishment of a new capital without updating existing legislation reflects a failure to integrate national development planning with the legal infrastructure of the state.²⁷ Transformative legislation must be accompanied by a process of

regulatory synchronization that is not merely symbolic, but that also creates a coherent normative system and ensures the absence of institutional authority conflicts.

The absence of transitional norms in the process of relocating the national capital has created systemic irregularities that disrupt the principle of legal coherence within Indonesia's constitutional law framework. In a structured legal system, normative coherence is a fundamental requirement for maintaining continuity between lawmaking, the exercise of authority, and the oversight of power.²⁸ When the IKN Law is not accompanied by implementing regulations that specify the stages of relocation, indicators of functional delegation, and the effective timeline of execution, normative fragmentation disrupts the logic of legal hierarchy, which should ideally be complementary and coherent. This irregularity opens the door to inter-institutional coordination failures and weakens the effectiveness of oversight within the checks and balances system. High-level state institutions may find themselves in an ambivalent position where their operational locations no

²⁶ Herlin Angela Dewi, "Sinergisitas Perencanaan dan Penganggaran Pemerintah Pusat Dan Daerah", *Peradaban Hukum Nusantara* 1, No. 1 (April 2024): 19-36, <https://doi.org/10.62193/6hwpz523>, p. 21.

²⁷ Domenico Amirante, "Environmental Constitutionalism Through the Lens of Comparative Law: New Perspectives for the Anthropocene", in *Environmental Constitutionalism in the Anthropocene* (London: Routledge, 2022), p. 11

²⁸ Winfried Brugger, "Constitutional Engagement in a Transnational Era", *Der Staat* 49, No. 2 (2010): 326-330, p. 114.

longer align with their legal status, while the formal basis for the delegation of authority remains legally unavailable. Such a situation reflects the state's failure to provide a legal design compatible with the realities of governance one that should have been systemically structured and anticipatory in nature.²⁹

This condition necessitates concrete solutions that are not only administrative in nature but also normative and structural. First, the government must promptly issue a Presidential Regulation or Government Regulation that establishes the effective date of relocation and defines measurable phases for the delegation of institutional functions. Second, Law Number 3 of 2022 should be revised to incorporate explicit transitional provisions, while simultaneously repealing or integrating the provisions of Law Number 29 of 2007 to prevent a duality of authority. Third, the formulation of transitional norms must also involve strengthened coordination among high-level state institutions to develop a legally grounded relocation agenda that ensures the lawful continuity of governance. This approach aligns with the principle of *constitutional responsiveness*, which refers to the legal system's ability to respond to constitutional dynamics through measurable, integrated, and accountable norm engineering. In this way, the

transition to the new national capital becomes not merely an administrative-political event, but also a momentum for reinforcing the national legal structure in maintaining legitimacy and constitutional cohesion.

D. CONCLUSIONS

The relocation of the national capital to Nusantara, as enacted through Law Number 3 of 2022, leaves behind significant juridical issues, particularly the absence of transitional norms governing the effective date of relocation and the formal delegation of state institutional functions. The regulatory ambiguity in this legal framework has led to a duality of authority between Jakarta and Nusantara, creating legal uncertainty that undermines the effectiveness of governance and constitutional cohesion. In such circumstances, actions taken by state institutions operating in IKN without a valid transitional legal basis may lack juridical legitimacy subject to constitutional scrutiny. This article emphasizes that the existence of two key elements namely, the determination of an effective date and the delegation of institutional functions is a fundamental prerequisite to ensuring the lawful applicability of norms during the transition of state power. The findings demonstrate that the current form of

²⁹ Neil Walker, *Intimations of Global Law* (Cambridge: Cambridge University Press, 2015), p. 19.

the IKN Law fails to meet the principles of legal certainty, clarity of norms, and legitimacy of governance, which are cornerstones of a democratic rule-of-law state. As a concrete solution, the immediate issuance of a Presidential or Government Regulation detailing the transitional implementing norms is required, alongside legislative reform through the revision of the IKN Law and the repeal of the Jakarta Special Capital Region Law to prevent normative conflict. The establishment of a new capital must be framed as a constitutional agenda, not merely a development project, to ensure that the transition of state power proceeds within a lawful, measurable, and accountable legal framework. In addition, prompt policy follow-up is essential to address the legal vacuum, and further research is warranted to develop a comprehensive transitional framework that ensures an effective and sustainable institutional shift. Furthermore, this study contributes to the development of legal scholarship, particularly constitutional law, by providing a normative framework to guide state institutional transitions in extraordinary political shifts such as capital relocation.

REFERENCES

Aditya, Zaka Firma, and Abdul Basid Fuadi. 'Konseptualisasi Omnibus Law Dalam Pemindahan Ibukota Negara'. *Jurnal Ilmiah Kebijakan*

Hukum 15, No. 1 (March 2021): 149. <https://doi.org/10.30641/kebijakan.2021.V15.149-164>.

Alexander, Gerard. 'Institutionalized Uncertainty, The Rule of Law, and The Sources of Democratic Stability'. *Comparative Political Studies* 35, No. 10 (December 2002): 1145-70. <https://doi.org/10.1177/001041402237946>.

Amal, Bakhrul, and Aditya Yuli Sulistyawan. 'Dinamika Ketatanegaraan Pemindahan Ibu Kota Negara Indonesia Dalam Perspektif Hukum'. *Masalah-Masalah Hukum* 51, No. 4 (October 2022): 346-54. <https://doi.org/10.14710/mmh.51.4.2022.346-354>.

Amirante, Domenico. 'Environmental Constitutionalism Through the Lens of Comparative Law: New Perspectives for the Anthropocene'. In *Environmental Constitutionalism in the Anthropocene*. London: Routledge, 2022.

Barber, Nicholas William. *The Principles of Constitutionalism*. Oxford: Oxford University Press, 2018.

Batteau, Allen, and Christine Z. Miller. 'The Constitution of "Technology"'. In *Tools, Totems, and Totalities*. Singapore: Springer Nature Singapore, 2024. https://doi.org/10.1007/978-981-97-8708-1_3.

-
- Bignami, Francesca. "Comparative Administrative Law", in *The Cambridge Companion to Comparative Law*, ed. Mauro Bussani and Ugo Mattei'. Cambridge: Cambridge University Press, 2012.
- Brugger, Winfried. "Constitutional Engagement in a Transnational Era", *Der Staat* 49, No. 2 (2010): 326-330.
- Bunnell, Tim. *Malaysia, Modernity and the Multimedia Super Corridor: A Critical Geography of Intelligent Landscapes*. London: Routledge, 2004, <https://doi.org/10.4324/9780203647363>.
- Carter, Lief and Tom Burke. *Reason in Law*. New York: Routledge, 2017.
- De Benedetto, Maria. "Effective Law from a Regulatory and Administrative Law Perspective". *European Journal of Risk Regulation* 9, No. 3 (September 2018): 391-415. <https://doi.org/10.1017/err.2018.52>.
- Dewi, Herlin Angela. 'Sinergisitas Perencanaan Dan Penganggaran Pemerintah Pusat Dan Daerah'. *Peradaban Hukum Nusantara* 1, No. 1 (April 2024): 19-36, <https://doi.org/10.62193/6hwpz523>.
- Endicott, Timothy. *Administrative Law*. Oxford: Oxford University Press, 2021.
- Ernawati, Aeda, Jatmiko Wahyudi, Arieanti Dwi Astuti, and Siti Qorrothu Aini. "Analisis Kelayakan Pendirian Usaha Pengolahan Limbah Medis Untuk Meningkatkan Pendapatan Asli Daerah". *Jurnal Ekonomi Dan Kebijakan Publik* 13, No. 1 (July 2022): 57-70. <https://doi.org/10.22212/jekp.v13i1.2155>.
- Hajjar, Lisa. "Law and Revolution: Legitimacy and Constitutionalism after the Arab Spring". *British Journal of Middle Eastern Studies* 45, No. 5 (October 2018): 860-862. <https://doi.org/10.1080/13530194.2018.1496707>.
- Haris, Mustofa Muhammad. "Juridical Analysis of Non-Profit Principles in The Formation of Business Entities by Foundations". *Peradaban Hukum Nusantara* 1, No. 1 (December 2024): 129-143. <https://doi.org/10.62193/fk17g819>.
- Jürgen Habermas. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. New Jersey: New Jersey: John Wiley & Sons, 2015.
- Krygier, Martin. "Four Puzzles About The Rule of Law: Why, What, Where? And Who Cares?", in *Getting to the Rule of Law*, by James E. Fleming. New York: New York University Press, 2020. <https://doi.org/10.18574/nyu/9780814728437.003.0004>.
-

-
- Lenard, Patti Tamara. 'The Morality of State Priorities and Refugee Admission', *Critical Review of International Social and Political Philosophy* 28, No. 1 (January 2025): 143-162. <https://doi.org/10.1080/13698230.2024.2436265>.
- Loughlin, Martin. *Foundations of Public Law*. Oxford: Oxford University Press, 2010.
- Raz, Joseph. "Authority, Law and Morality 1," in *Law and Morality*, ed. Kenneth Einar Himma. London: Routledge, 2017. <https://doi.org/10.4324/9781315092003>.
- Rose, Nikolas. *Powers of Freedom: Reframing Political Thought*. Cambridge: Cambridge University Press, 1999.
- Sólyom, László. "The Role of Constitutional Courts in the Transition to Democracy: With Special Reference to Hungary". *International Sociology* 18, No. 1 (March 2003): 133-161. <https://doi.org/10.1177/0268580903018001008>.
- Tamanaha, Brian Z. *On the Rule of Law: History, Politics, Theory*. Cambridge: Cambridge University Press, 2004.
- Van Gestel, Rob, and Hans-Wolfgang Micklitz. "Why Methods Matter in European Legal Scholarship". *European Law Journal* 20, No. 3 (May 2014): 292-316. <https://doi.org/10.1111/eulj.12049>.
- Vibert, Frank. *The Rise of the Unelected: Democracy and the New Separation of Powers*. Cambridge: Cambridge University Press, 2007.
- Walker, Neil. *Intimations of Global Law*. Cambridge: Cambridge University Press, 2015.
- Williams, Richard J. "Brasília after Brasília". *Progress in Planning* 67, No. 4 (May 2007): 301-366. <https://doi.org/10.1016/j.progress.2007.03.008>.