

# Between Law and Development: The Effectiveness of the Law on the Capital City of the Nation

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## ABSTRACT

The Law No. 3 of 2022 on the Capital City (UU IKN), as a legal representation in national development, is perceived to have questionable effectiveness. The procedural approach in its formation tends to neglect scientific considerations and accommodates oligarchic interests, thereby creating a public trust crisis regarding the role of law in development. This article aims to analyze the effectiveness of the UU IKN and assess to what extent this law reflects the interests of the public. This research employs a normative method with a library research approach, examining primary, secondary, and tertiary legal materials. The findings indicate that the UU IKN was not entirely drafted based on a comprehensive academic study, as there is a selective tendency to cite development theories that support the government's agenda. Furthermore, the implementation of UU IKN demonstrates the dominance of political interests, while the public faces negative impacts such as deforestation, evictions, and a lack of realization of development promises. Therefore, the effectiveness of law in the context of the IKN development remains a fundamental issue that requires critical review.

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## Introduction

As an interdisciplinary science, law is closely related to economics, particularly in the context of development (Budiman, 2000). To realize development, a legal product is required. The 1945 Constitution of the Republic of Indonesia, Article 1, paragraph (3), states that Indonesia is a state based on law. Therefore, a law is necessary to ensure that development can be implemented as a representation of law. However, in its development, experts have argued that the law is often used as a tool for legitimizing power, with the law being a result of politics (Rishan, 2020).

As politics intervenes in law, it should not be the same for development. We hope the law can serve to ensure that development proceeds effectively. Ding Chen writes:

"We advance and defend that the rule of law is a necessary condition and an evolving response to economic development. History shows that no country has experienced industrialization without having a significant state capacity to shape and regulate markets. Among the market economic institutions critically supported by the state are banking money, financial systems, and labor markets alongside transparent and effective taxation and public

financial systems. A well-functioning legal system is a core part of the state apparatus. The legal system is a mechanism for actualizing state power." (Chen & Deakin, 2015)"

Good development must be oriented toward sustainability (Sustainable Development Goals), organized systematically, and involve experts in the field. This process is governed by law, where law plays a role in the planning, implementation, and supervision of development (Putu Sudarma Sumadi, 2018, p. 4). We must ensure that the law, which holds high prestige, is not used as an instrument of suffering. This was once the case during the New Order era, where Mochtar Kusumaatmaja referred to it as a tool of development (Fadillah, 2022).

The legal planning process requires a comprehensive and fundamental study, as stipulated in Article 19, paragraph (3) of Law No. 12 of 2011 on the Formation of Laws. This study is known as the Academic Manuscript (Naskah Akademis, NA), which serves as a scientific benchmark that can be accounted for regarding the concept of a legislative product. The NA explains the facts or background of the issue, determining what is important and urgent to regulate in regulation or legislation (Sihombing et al., 2023)

The planning of Law No. 3 of 2022 on the Capital City of the Nation (IKN) has received criticism from Kei Otsuki, Associate Professor at Utrecht University, who argues, 'The urban planning of IKN has been designed with clear territorial boundaries. Unfortunately, geographically, this has not been taken into consideration. We can see that to build a city, there needs to be planning and considerations based on future probabilities' (Satria Ardhi, 2023). Based on Kei's statement, the IKN Law's planning process has several issues, especially in the Academic Manuscript (NA), which lacks a solid scientific approach. For instance, while development theories are used, they are not comprehensively cited and are only employed to serve the interests of lawmakers rather than for sustainability.

Kei Otsuki's views on planning and considerations are because Bambang Susantono and Dhony Rahajoe resigned from their positions as Head and Deputy Head of the IKN Authority, a resignation followed by public demonstrations in IKN (Rizki, 2024). Bhima Yudhistira, Director of the Center for Economic and Law Studies (CELIOS), stated that the resignation of the Head and Deputy Head of the IKN Authority indicates a serious issue behind the development of IKN. According to Bhima, the accelerated development of IKN has impacted the governance of the IKN Authority. At least five issues have arisen: First, investments have not reached their target. Second, the issue of land status for residents remains unresolved. Third, infrastructure development is disorganized. Fourth, the voices of indigenous communities affected by the IKN development are not heard. Fifth, environmental issues include flooding, protected forest destruction, and endemic species threats (IKN, 2024).

The political dynamics of Joko Widodo as the President of the Republic of Indonesia have left a phenomenon that suggests, amid the busy development efforts, a sense of malaise or a lack of trust in the law and its usefulness in society exists. Franklin Allen and Chenying Zhang are even pessimistic about the law. They cite examples from China, Taiwan, and Korea, which do not rely on law but instead focus on planning economic institutions that minimize political-economic issues by not depending on law (inefficiency) (Jun, Allen & Zhang, 2011).

It is the society that ultimately suffers or becomes disappointed by legal products. For instance, the Constitutional Court's ruling No. 90/PUU-XXI/2023, which is heavily influenced by political interests (politics of interest), and the recent case of Constitutional Court ruling No. 60/PUU-XXI/2024 concerning the Regional Head Nomination Threshold, which was rejected by the DPR, leading to outrage among civil society. Furthermore, there is a discrepancy between words and reality, as the President expressed optimism about working in the IKN by June. (Media, 2024). However, by September 2024, the development had not been completed, compounded by legal uncertainty regarding the actual location of the IKN, whether it was in

Jakarta or East Kalimantan. Such circumstances create doubts in society regarding the role of law in development, as several legal products have generated problems.

The author acknowledges that the topic of this research is not a new one. The researcher has made efforts to review previous studies that are relevant to this research. The findings from the review are as follows. First, a study written by Franklin Allen, Jun 'QJ' Qian, and Chenying Zhang from the University of Pennsylvania, titled *An Alternative View on Law, Institutions, Finance, and Growth*. According to their research, most existing studies on law, financial institutions, and growth cannot explain countries in Asia such as China, South Korea, and Taiwan over the past five decades. In these economies, the legal system is underdeveloped, and its usage is limited. The researchers propose a mechanism that does not rely on law, arguing that law reduces inefficiencies associated with political-economic factors. The researchers conclude that in development, a new perspective involves sidelining the legal approach (Jun, Allen, & Zhang, 2011).

Second, the research written by Ding Chen and Simon Deakin titled *On Heaven's Lathe: State, Rule of Law, and Economic Development* serves as an antithesis to the first study. It argues that law is a necessary condition and that the rule of law actualized publicly is superior to alternative private orders based on interpersonal trust. The study concludes that law is still necessary in the development process (Chen & Deakin, 2015). Third, the article 'The Relocation of Indonesia's Capital and Presidential Power from a Constitutional Law Perspective' by Fikri Hadi and Ristawati Rosa, published in *Jurnal Konstitusi* Volume 17, Issue 3, October 11, 2020, explains that This research discusses the concept of the capital city in Indonesia, comparing it to other countries and examining it from the historical constitutional perspective in Indonesia. The study also addresses the authority of the President to relocate and designate the capital city (Hadi & Fikri, 2020).

Fourth, 'A Review of Mochtar Kusumaatmadja's Development Law Theory in the Law on the Capital City of the Nation' by Nor Fadillah from the Islamic University of Indonesia. This research explains that Mochtar Kusumaatmadja's theory of development law must be understood in its broadest sense, not only in economic terms but also in the social aspect. The study expresses concern that the New Order era, where law was used as a tool for development, may be repeated. The study concludes that the decision to relocate the capital city is inappropriate, as the budget should be optimized for post-COVID-19 recovery. The first and second studies have examined the relationship between law and development, questioning whether law is still necessary. The third and fourth studies focus on the relocation of the capital city based on theoretical, legal, and constitutional approaches. This research provides a conclusion synthesizing all the studies, asking whether, despite all the analyses, the law on the Capital City (UU IKN) as a legal product remains effective in the development approach, with the people's interests as the benchmark.

The difference between this study and previous research lies in its focus on testing the effectiveness of the law on the Capital City of the Nation (UU IKN) in the context of development implementation, particularly in terms of its orientation toward the interests of the public. This study combines critiques of the procedural approach that predominated in the formation of the UU IKN, the weaknesses in the Academic Manuscript (*Naskah Akademik*) used, and the tendency toward exclusivity of elite interests that led to the marginalization of civil society. Based on the introduction outlined above, the research questions in this study are as follows: First, is the law still effective in the development of IKN? Second, does the UU IKN prioritize the interests of the public?

## Research Method

This study is normative research, which involves investigating library materials (library research) using secondary legal materials, which consist of: 1) primary legal materials, including the Law on the Capital City of the Nation (UU IKN), the Academic Manuscript (Naskah Akademik), and the 1945 Constitution of the Republic of Indonesia (UUD 1945); 2) secondary legal materials, including books, research journals, and other scientific works related to this study; 3) tertiary legal materials, which include: a) the Indonesian Dictionary (Kamus Besar Bahasa Indonesia); b) the English-Indonesian Dictionary; c) the Legal Terminology Dictionary (Kamus Istilah Hukum); d) encyclopedias. The data obtained in this study will be presented and processed qualitatively through the following steps: 1) data obtained from the research will be classified according to the issues in the study; 2) the qualified data will then be systematized; and 3) the systematized data will be analyzed to form the basis for decision-making.

The theory used in this paper is Arief Budiman's theory of Third World development, which includes several indicators: average wealth, equity, quality of life, environmental degradation, social justice, and sustainability. Additionally, the paper utilizes the Progressive Law theory formulated by Satjipto Raharjo as a critical response to the chaotic legal situation, where the practice often relies on dogma rather than on public interests. Raharjo conceptualizes progressive thought that is grounded in humanistic perspectives. This paper also applies the approach outlined in Law No. 12 of 2011 on the Formation of Legislation, specifically Article 19, paragraph (3), which states that the material regulated in paragraph (2), after undergoing examination and harmonization, should be outlined in the Academic Manuscript.

## The Effectiveness of Law in the Development of IKN

Law strengthens as a principle (Mahfud, 2024). Exactly as Mahfud MD stated, it cannot be denied that the Law in Indonesia, as a principle, strengthens. In every issue, people rely on legal rules. When problematic legislative products exist, the public is eager to protest or viralize them on social media. Movements (civil society) in the form of demonstrations in response to several legal phenomena show that society has great hope in the law. Society still desires that law will emerge as the fair queen, capable of resolving issues quickly, bringing about "tata tentram kerta raharjo" (Kusumaatmadja, 2013, p. 10).

When the public is enthusiastic about discussing the law, it usually indicates that injustice is occurring. In this case, the public tends to focus on a normative order that holds a higher position than the law itself. Therefore, in legitimizing the people's demands, focusing on what is contained in the state's laws is unnecessary. The public demands that the actions taken align with a higher norm than the legal norms in the laws, namely the principles of justice (Aburera et al., 2017).

The law indeed serves as a force for the weak in society to achieve justice. However, it can also become an instrument of evil in the hands of unjust rulers. At its core, law is used to regulate human interactions as social beings because one man is a wolf to another (*homo homini lupus*). The failure of the law as a regulator (Kusumaatmadja, 2013, p. 3) can lead to a state of war against all (*Bellum Omnium contra omnes*). Therefore, the law remains necessary for planning, supervision, and implementation in development, particularly in the context of IKN.

To achieve justice, the law serves as a benchmark for determining whether the law is still necessary. According to John Rawls, justice is understood as a condition in which those least fortunate benefit the most. Naturally, correlating law and justice in practice is not a simple task, as law is objective and applies to everyone, while justice is subjective. It is challenging to

say that the law on the Capital City of the Nation (UU IKN) benefits marginalized communities, as the fact remains that, as of today, there is still no certainty about IKN. People are still debating where the capital city is. Let alone for marginalized communities, even for the country, the IKN remains unclear.

Despite the difficulty in understanding the law on the Capital City of the Nation (UU IKN) in the context of development, the author argues that law remains necessary in national development planning, at least to ensure that change occurs in an orderly manner (Kusumaatmadja, 2013). This change becomes the Academic Manuscript (NA) rationale for building a new IKN. Theoretically, three changes are expected from IKN: first, to build a modern city; second, a sustainable city; and third, an internationally competitive city. The academic manuscript also references the theories of Weber, Harrod, Domar, Rostow, Hoselitz, and Inkeles and Smith. These theorists represent the ideas behind the IKN development, which is envisioned to have more advanced, developed, and non-traditional characteristics. The modern concept is interpreted as transitioning from agriculture to industry, encouraging citizens to evolve toward a more modern, global society with a shared vision.

The theories cited in the academic manuscript only highlight points that benefit the development of IKN. At the same time, modern theories are also based on non-material factors as causes of regression, manifesting in individuals' psychology. Therefore, education becomes one of the most important ways to change a person's psychology or the cultural values of society (Budiman, 2000). If this theory is applied, the primary focus of development should be the Indonesian people first, not infrastructure development. The Academic Manuscript (NA) drafters have only taken a partial view of the theory, not its entirety. Upon closer inspection, the citations in the academic manuscript and Budiman's writings on this theory are identical, including the theorists' order and explanations. However, curiously, the conclusions drawn are different.

Arief Budiman provides several development indicators, namely (Budiman, 2000) Average wealth, Equity, Quality of life, Environmental degradation, Social justice, and sustainability. Arief Budiman calculates average wealth using the Gross National Product (GNP). Looking at Indonesia's GDP at the time when the law was enacted, Indonesia's economy grew by 5.31 percent, based on data from the Central Statistics Agency (Indonesia, n.d.-a). The issue is that this law was passed during the post-pandemic situation, where the most prioritized policies should have been those that directly impact the public rather than high-risk policies. One of the worst risks of the IKN development project is its potential to become stalled, deviating from the initial calculations (Amila et al., 2023). As of today, the IKN megaproject remains unfinished.

Based on the 2022 Gini Ratio, equity in Indonesia is recorded at 0.381 (Indonesia, n.d.-b). It is important to note that the Gini ratio is calculated on a scale from 0 to 1, where the smaller the value, the better (Budiman, 2000). A study by Bappenas explains that IKN will positively impact national economic equity; however, compared to the environmental damage indicator, this is disproportionate. The environmental aspects affected include: first, deforestation; second, carbon emissions; third, threats to wildlife habitats; and fourth, limited availability of clean water (Habib et al., 2024). Justifying equity by damaging the environment is a poor consideration.

The quality of life, based on the Human Development Index (HDI), in Indonesia in 2022 reached 72.91, an increase of 0.62 points (0.86 percent) compared to the previous year (72.29) (Indonesia, n.d.-c). Statistical data shows improvements in Indonesian society, such as longer life expectancy, healthier living, and a decent standard of living. Based on the data, the development of quality of life indicates progress. The funds used for development should focus

on improving this quality of life rather than relocating the capital city. There is no data, as of today, that states that the relocation of IKN has had an impact on the quality of life of the Indonesian people.

As referred to by Arief, social justice and sustainability are not based solely on moral considerations but are also related to the sustainability of development. Environmental damage, which can disrupt the continuity of development, and social damage are key concerns (Budiman, 2000). While previous researchers have extensively addressed the issue of environmental damage, this paper will focus solely on explaining the development indicators. Thus, the benchmarks for successful development emphasize economic productivity, justice (income distribution), and environmental factors, which preserve continuous and sustainable development. However, the fact remains that IKN, with all the indicators explained, has not had any impact. Even though data shows that Indonesia is experiencing economic growth, this is insufficient to justify the development of IKN because, once again, IKN has failed as a development project.

The effectiveness of law in the context of the development of the Capital City of the Nation (IKN) is essentially determined by how well the law can function as an instrument for planning, implementation, and oversight that favors the public interest and is based on the principle of social justice. In practice, the Law on IKN reveals weaknesses rooted in a procedural approach that lacks comprehensive scientific study and low public participation in the legislative process. Therefore, the effectiveness of law in the development of IKN must be questioned, as the law should not merely serve as a tool for legitimizing power but truly guarantee the sustainability and equitable distribution of national development.

### **The Law on the Capital City of the Nation (UU IKN) and the Interests of the Public**

Laws play a crucial role in Indonesia's development. Based on continental European law, the civil law system adopted by this nation requires codifying policies, which then become laws. Article 1 of Law No. 12/2011 on the Formation of Legislation explains that the formation process includes planning, drafting, deliberation, approval or enactment, and promulgation. In addition, a law is considered good if it incorporates juridical, philosophical, and sociological elements (Manan, 1992). When analyzing the Law on IKN solely from a procedural perspective, it may seem perfect, without any problems, and even the Constitutional Court rejected all formal and material tests of the law.

Article 1, paragraph 2 of the 1945 Constitution of the Republic of Indonesia states that sovereignty is in the hands of the people and is exercised according to the law. Therefore, laws should be based on the interests of the public; if not, the law may be created based on the interests of those in power. It is not easy to accept that a law is merely a product of an institution that is then presented to the public for acceptance. Instead, the value of a law should be determined by its ability to lead people to a life that is just, prosperous, and brings happiness (Rahardjo, 2009).

Is the law on the Capital City of the Nation (UU IKN) intended for the public interest? Satjipto Raharjo, in his Progressive Law theory, states that law is for the benefit of humans, not the other way around. Progressivism rejects the tradition of analytical jurisprudence or *rechtsdogmatique* (Rahardjo, 2009). What Satjipto Raharjo conveys aligns with the National Academic Manuscript (NA) if read textually. The NA of the law, in its sociological basis, states that the relocation of the capital city is aimed at governance reform to resolve issues that will meet the needs of society in aspects such as economy and business, spatial planning, land use, a corruption-free government, a good environment, disaster resilience, and effective crime



prevention. If we turn to research by Walhi, the actors with direct interests in the IKN project include state officials, politicians, and business figures (Aziz Sr, 2023, p. 110).

Walhi and several other NGOs (2021) mapped the land ownership by these actors into three categories: ring one, ring two, and ring three. Ring one covers 5,644 hectares, which the government designates as the core central government area. Ring two spans 42,000 hectares, designated by the government as the IKN area and ring three encompasses 133,321 hectares, referred to by the government as the expansion area of the capital city (Aziz Sr, 2023). Walhi and several other NGOs also note that there are 10 (ten) plantation concessions within the IKN area, namely: 8 (eight) concessions are located in ring two, and 3 (three) concessions are in the Samboja and Muara Jawa sub-districts, with the remainder in the Sepaku sub-district. The most significant concession is PT Perkebunan Kaltim Utama I, covering approximately 17,000 hectares, which is linked to the family of Luhut Binsar Pandjaitan, the Coordinating Minister for Maritime Affairs and Investment during President Joko Widodo's administration (Aziz Sr, 2023).

More concretely, Walhi and several other NGOs have noted that In rings one and two, concession control is dominated by Sukanto Tanoto and Hashim Djojohadikusumo, the brother of President Prabowo Subianto. This is followed by other entrepreneurs linked to 158 concessions in mining, palm oil, and forestry (Aziz Sr, 2023, p. 111). Furthermore, there are also names such as Rheza Herwindo, the son of Setya Novanto, the former General Chair of the Golkar Party, convicted in the E-KTP corruption case, and Yusril Ihza Mahendra, who is currently the Coordinating Minister for Law, Human Rights, Immigration, and Corrections in Indonesia.

Compromise in the creation of laws is inevitable, as lawmaking has a political aspect since laws are legislative products. However, this does not mean disregarding the interests of the public because, in addition to the political aspect, the lawmaking process also requires public participation. The goal of a state is to advance the general welfare, not just the interests of a group of people close to those in power.

## Conclusion

Based on the analysis of the effectiveness of Law No. 3 of 2022 on the Capital City of the Nation (UU IKN), the following conclusions can be drawn:

1. Law plays an important role in planning, implementing, and supervising development, which should prioritize the public interest and be based on the principle of social justice. However, in developing the Capital City of the Nation (IKN), the formulation of Law No. 3 of 2022 on IKN demonstrates a procedural tendency with minimal scientific foundation and public participation. Preparing the Academic Manuscript is more oriented toward legitimizing development than protecting public interests and social justice values. As a result, the law loses its function to achieve fair, inclusive, and sustainable development. Therefore, in the context of IKN development, the law, as outlined in the UU IKN, cannot yet be considered adequate.
2. The Law on the Capital City of the Nation (UU IKN) tends to accommodate a small group's political and economic interests rather than the collective aspirations of the people. This is reflected in the land control by parties with close ties to those in power, the lack of public consultation during the legislative process, and direct impacts such as deforestation, evictions, and uncertainty regarding the rights of the public. Development narratives such as bright and intelligent cities have yet to demonstrate tangible results that directly address the

public's interests. Therefore, the UU IKN does not thoroughly prioritize the public interest and instead reinforces oligarchy in national development policy.

### Author Contribution

As the lead author of this article, HA was responsible for the entire research process, including data collection, analysis, manuscript writing, drafting conclusions, and revising the research results to ensure the accuracy and completeness of the information presented.

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