

The principle of special autonomy according to the 1945 constitution in relation to law number 3 of 2022 concerning the national capital

Dedi Wijaya¹, Eddy Purnama², M Jafar²

¹ Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

² Lecturer, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

Abstract

The IKN Law has mandated the authority to regulate its own government, so there will be legal products issued by the Head of the Authority. Then in Article 1 number 2 of the IKN Law which states, the IKN is at the same level as the Province, the existence of Regional Regulations is also at the same level, but in other blood regional regulations are issued by the DPRD and only then there is a governor regulation. This study aims to know and analyze the principle of special autonomy contained in Article 18 paragraph (2) and paragraph (3) of the 1945 Constitution in the Establishment of the State Capital. The results showed that the principle of special autonomy contained in Article 18 paragraph (2) and paragraph (3) of the 1945 NRI Constitution in the Establishment of the State Capital, gives authority to autonomous regions to regulate and manage their own government affairs within the framework of the Unitary State of the Republic of Indonesia, in the context of the establishment of IKN in Indonesia, this principle can have relevance in order to provide greater authority and space for the local region, which may play host to the new capital.

Keywords: Special autonomy, and the national capital

Introduction

The national capital is centered in a provincial area, which has the order of government and authority to carry out autonomy and assistance duties. The existence of autonomy existed before the reform by centralizing power to the central government (centralistic), this can be proven by the existence of several laws formed at that time. However, after the reform, respect for regional autonomy and state recognition of special autonomy have embraced the principle of decentralization ^[1].

The State Capital has a specificity in its government which is carried out with the principle of asymmetric autonomy. The principle of asymmetric autonomy is that the authority contained in one region is different from another and also the relationship with the central government is different. In the concept of Special Autonomy, delegation of authority is interpreted as the rights and responsibilities of local communities to regulate and manage their own government, so it can be said that decentralization is often used by Indonesia modeled on political asymmetry ^[2]. The national capital is a regional government that is special in nature to organize its own government autonomously with its character, namely, independence, freedom, and responsibility. Then in the theory of trias politica proposed by Montesquie, the existence of executive, legislative, and judicial bodies is very important in guaranteeing the rights of the community, power in government must be supervised in accordance with the principle of checks and balances so that power is not centralistic.

The basis for the existence of the principle of asymmetric decentralized autonomy in Indonesia is contained in Article 18B paragraph (1) of the Constitution of the Republic of Indonesia 1945 (UUD NRI 1945), which states that, "The State recognizes and respects the existence of special or special regions regulated by law", which is then used as a constitutional basis for the special autonomy of local governments in Indonesia.

The establishment of the new Indonesian Capital City, the Capital City of the Archipelago, which was formed based on the principle of special autonomy in accordance with its legal basis, namely Law 3 of 2022 concerning the National Capital (UU IKN). According to Article 5 paragraph (1) of the IKN Law states that, as a special regional government unit, the Special Capital City Regional Government of the Nusantara regulates and manages its own government affairs as stipulated and regulated by this Law. The substance of this IKN Law has mandated the authority to regulate its own government, then there will be legal products issued by the Head of the Authority, this is stated in Article 6 paragraph (1) of the IKN Law.

This explanation brings an understanding that, the capital city of the archipelago in carrying out its government affairs autonomously. Things that need to be considered in carrying out this autonomy are the principles of democracy, community participation, equity and justice, and paying attention to the potential and diversity of regions. The granting of authority is followed by a financial balance between regional centers ^[3].

If referring to Article 13 of the IKN Law which states, excluded from other local government units, in the Capital City of the Nusantara only holds National General Elections, meaning that in the Capital City of the Nusantara does not elect the Head of the Authority, and the Regional People's Representative Council. Meanwhile, the principle of special autonomy above requires democracy, community participation, equity and justice.

The consideration and legal basis for the establishment of the IKN Law does not use Article Article 18 paragraph (2) of the 1945 NRI Constitution which states, the Regional Governments of Provinces, Districts, and Municipalities regulate and manage their own government affairs according to the principle of autonomy and assistance duties. Then in Article 1 point 2 of the IKN Law which states, the Capital City of the Archipelago is a special

regional government unit at the provincial level whose area is the seat of the National Capital. Article 1 point 2 of the IKN Law has stated explicitly that the IKN is at the provincial level, meaning that the IKN is equivalent to the implementation of government affairs with other provinces in Indonesia. Furthermore, the substance of the norms of the IKN Law does not form the institution of the Regional Representative Council (DPRD), if you look at other autonomous regions, all provincial regions in Indonesia have DPRD as an institution that oversees regional government. This supervision can be in the form of the formation of regional regulations issued by the DPRD as a regional legislative institution, which then the governor / head of authority in running his government.

This has been affirmed in Article 18 paragraph (3) of the 1945 NRI Constitution states, provincial, regency, and city governments have a People's Regional Representative Council whose members are elected through general elections. However, the IKN Law does not specify the existence of the DPRD, and there is only a list of the President, DPR RI, and DPD elections.

Indonesia has known several regions that were first given the title of specificity and also special regions. However, the predicate of specificity pinned on the capital city of the archipelago does not pay attention to several principles, criteria, considerations, and also reasons commonly used in special regional governments in Indonesia. And there is also a need for a long legal political process^[4].

The specificity of the capital city of the archipelago makes democracy in the capital city of the archipelago die, because there is no public participation in building the capital city of the archipelago in accordance with the principles of Indonesian democracy where sovereignty is in the hands of the people. Granting a special regional form does not mean killing the basis of democracy with the enactment of specificity that is considered to tear regional autonomy.

Special regional nicknames are juridically permissible, as well as regulated in Article 18B of the 1945 NRI Constitution. This provision provides an opportunity to the government of the capital city of the archipelago and can be regulated freely based on the law. However, when viewed from the concept of government in the capital city of the archipelago is not an autonomous region, it is certainly not appropriate and there is a mistake in utilizing the constitutional basis.

Based on the description of legal problems in the background, the formulation in this study is, whether the principle of special autonomy contained in Article 18 paragraph (2) and paragraph (3) of the 1945 Constitution has been fulfilled in the Establishment of the National Capital?

Research Method

This research uses the type of Normative Juridical research. This type of research is legal research conducted by examining library materials or mere secondary data. The characteristics of the object of legal research in the form of legal principles, legal rules, in the sense of values (Norm), concrete legal regulations, in the form of doctrines, laws and regulations, and legal systems or *Das Sollen*^[5]. In this study using a combination of approaches, namely the Statutory Approach, and Conceptual Approach. Data sources in this study, especially literature data obtained from, primary and secondary legal materials.

Data collection techniques to be used in normative legal research are carried out by reviewing and collecting the three legal materials, namely primary, secondary legal materials using documentary studies. Documentary studies are studies that examine various documents, both related to laws and regulations and existing documents^[5].

The collected data is sorted and processed, then analyzed and interpreted logically and systematically using inductive and deductive methods. Furthermore, it is analyzed through perspective analysis, namely, to provide arguments for the results of research that has been done.

Results and Discussions

A. Specificity of the Capital City of the Archipelago

According to Thomas Paine, as quoted by Johannes Suharjana, the constitution is considered superior and has the authority to bind because it is designed to regulate special matters and run according to the wishes of the people^[6]. It is understandable that the constitution respects and gives people the freedom to govern the areas where they live, given that they are more aware of their own needs. This is known as special autonomy, special autonomy (special regions), and broadest autonomy. In fact, these three categories of terms are known as asymmetric decentralization, a principle also called regional specificity and diversity. This provision is regulated in Article 18 of the Constitution of the Republic of Indonesia Year 1945, where the legal politics in the article stipulate policies related to asymmetric decentralization.

The concept of asymmetric decentralization proposed by Tarlton can be divided into two categories, namely *de jure* asymmetry and *de facto* asymmetry, which are characterized by the degree of autonomy. Meanwhile, Indonesia adopts the category of *de facto* asymmetry, because in its application there are no clear criteria and standards to designate a region as special and special. Despite this, some regions have been admitted in advance with special and special recognition. Although it was limited through the agenda of the PAH I BP MPR meeting recorded in the comprehensive text of the process and amendments to the 1945 Constitution, during the discussion of changes to Article 18 which emphasized special and special regional provisions, members of PAH I BP MPR finally agreed to maintain the existence of special and special regions^[7].

Giving specificity to the capital of the archipelago is certainly allowed considering its position and status as the capital of the country. However, keep in mind that the granting of such specificity must not damage the democratic structure and aspirations of the people through its special form. Granting special status to a region must be in accordance with applicable regulations, and must not result in the government easily ignoring the rules, as seen in the establishment of the head of government of the Authority in the absence of a Regional People's Representative Council. This form of specificity should not be done without a fundamental reason, and the absence of DPRD should not be a characteristic of specificity. The establishment of a new capital city and authority institutions should have a solid and accountable basis. This includes the concept of city manager leadership, as explained by the Main Expert of the Presidential Staff Office (KSP) Wandy Tuturoong.:

"There is no DPRD, because that is the nature of the "specificity" of the Special Capital Region Government of the Archipelago. In the studies we discussed at Bappenas,

the City Manager leadership model is needed. So that the leader can work effectively in managing the complexity of the modern city. The point is not to be given too much burden anymore, and this I say adopt a new perspective^[8].” Nevertheless, granting specificity to a region can be done taking into account some principles, and such specificity should not violate the constitution, even if it belongs to the category of special regional units and special regions. Zudan Arif Faturullah, an expert on government, elaborated a similar concept, in which although specificity and privilege are juridically regulated and allowed to exist, must still pay attention and relate to several principles. These include the principle that special arrangements must not violate the principles of the Unitary State of the Republic of Indonesia, principles that must continue to advance the state's goals to create prosperity for local communities, equity and social justice, as well as strengthen democracy both at the local level, and the principle of implementing regional autonomy^[9].

The process of forming the Special Capital Region of the Nusantara tends to lead to a centralized and authoritarian system of government, as seen from the election process and the very dominant role of the authority body without clear provisions regarding the duration of authority power in leadership. This situation is reminiscent of the old order reign which lasted indefinitely until there was a change in the law that set the limits of his leadership period. This authority body itself is considered a new entity, where the provincial regional government is headed by a Governor in accordance with Article 18 paragraph (4) of the Constitution of the Republic of Indonesia Year 1945, while the authority operates within the territory of a special area.

The establishment of a ministerial-level head of authority in the Special Capital Region of the Archipelago is also considered an elitistic step. Supposedly, civil society participation should be a source of inspiration, where the desire to obtain this special status is inspired by the aspirations of local communities. However, in practice, the central government seems to establish these policies without directly involving and in line with the objectives of local governments in empowering communities.

Indigenous peoples in the capital region of the archipelago seem to reject the process of moving the capital. They feel that the specificity imposed can hinder their aspirations because there is no DPRD that can protect the interests of the community. The granting of the status of the Special Capital Region of the Archipelago should be followed by measures that ensure the participation and protection of people's rights so as not to cause potential harm.

B. Differences in the Formation of IKN Specificity with Other Provinces

Granting different autonomy in some regions is a form of the practice of governing all countries in the world, this form of implementation does not only run in the form of a unitary state that decentralizes, but runs in a country that uses a federative format. The formation of regional specificity must pay attention to the reasons and criteria contained in the history of regional origin, in terms of position, regional struggles, the potential for cultural diversity possessed, even as a remedy for endless conflicts that have an impact on the separation of regions from the territory of the Republic of Indonesia. The formation of special regions usually pays attention to the existence of

reasons that are no less important ranging from reasons, juridical, philosophical, historical, and sociological.

1. Special Capital Region of Jakarta

Jakarta is a special area whose age has reached 496 years, since it was established on June 22, 1527 where at that time the conquest of Sunda Kepala by Fatahillah was taking place. The provision of specificity to Jakarta is more emphasized on historical or historical aspects that are closely related to major national events such as the birth of Boedi Oetomo, the Oath of Ease, Proclamation, the establishment of Pancasila, and being a place of living witness to the upheaval of allied soldiers to achieve independence^[10].

According to Law Number 29 of 2007, the Government of the Special Capital Region of Jakarta is a special government unit because of its position as the capital of the country. Long before this law was passed, Jakarta was already referred to as an area that had specificity based on PP Number 2 of 1961 concerning the Special Region of Greater Jakarta by President Soekarno^[10].

The Special Capital Region of Jakarta is included in the autonomous region, meaning an area that has territorial boundaries in regulating and managing government and community interests in accordance with the initiatives of local community aspirations.

The establishment of specificity in the Special Capital Region of Jakarta is motivated by several reasons including, Jakarta's position as the capital of the country should be used as indoctrination, an exemplary city and ideals. Greater Jakarta required the fulfillment of the minimum requirements of an international city in the shortest possible time, which then required to be given a special position as a region of power of the President and Great Leader of the Revolution in his time. In this sense, this provision is issued with the aim that Jakarta is given special authority directly under the President.

If examined in the format of special autonomy the capital city of Jakarta is actually no different from autonomy rules in general, this matter is found in Jakarta's obligations and rights in managing and regulating government based on the interests of the local community, and is fairly similar to the content of Law Number 23 of 2014 concerning Regional Government. But actually in substance there are differences between the specificity of Jakarta and other regions, including:

- a. The Special Capital Region of Jakarta, which is then abbreviated as DKI Jakarta, is a province that has a specialty because of its position;
- b. There are special areas within the province. Where the area is designated by the Government to carry out certain functions in the national interest;
- c. DKI Jakarta Province apart from being the State Capital, also as an autonomous region at the provincial level;
- d. The Mayor/Regent is appointed by the Governor, through the consideration of the DKI Jakarta Provincial DPRD from civil servants. And dismissed by the Governor in accordance with laws and regulations;
- e. Laws and regulations on regional financial rules apply only to the province of DKI Jakarta. And the special implementation fund is determined together with the government and the DPR based on the proposal of the DKI Jakarta Provincial Government.

But apart from all that, the Special Capital Region of Jakarta has a specificity that is divided into several things, namely:

- a. DKI Jakarta Province is domiciled as the capital of the Unitary State of the Republic of Indonesia;
- b. DKI Jakarta Province is a special region that functions as the national capital and at the same time as an autonomous region;
- c. DKI Jakarta Province Acts as the Capital City of the Unitary State of the Republic of Indonesia which has specific duties, rights, obligations, and responsibilities in the administration of government and as an area where representatives of foreign countries are located, as well as a representative center for international institutions;
- d. the territory of DKI Jakarta province is divided into administrative cities and administrative districts;
- e. Members of the DKI Jakarta Provincial DPRD shall be at most 125% (one hundred twenty-five percent) of the maximum population of Jakarta specified in the law;
- f. The Governor may attend cabinet meetings concerning the interests of the Capital City of the Unitary State of the Republic of Indonesia, the Governor has protocol rights, including accompanying the President in state events;
- g. Funds in the context of implementing the DKI Jakarta Provincial Specificity as the State Capital are determined jointly between the government and the DPR in the State Budget based on the proposal of the DKI Jakarta Provincial Government ^[11].

From the explanation above, it can be seen that the formation of Jakarta as a special region is reviewed based on the position and history contained therein, in line with that all the specificities of Jakarta are also closely related to sociological, juridical, and political reasons, which are important in the formation and granting of special autonomy.

2. Special Capital Region of the Archipelago

Special Regions are a form of special authority given to certain regions to manage and regulate their own community interests. Such as the Special Capital Region of Jakarta because of its role and position as the capital of the country which is centered in various aspects of national life, namely from politics, economy, ideology, outlook on life, social, culture, and security defense ^[12].

The Special Capital Region of the Archipelago is contained in Law Number 3 of 2022 concerning the National Capital. The establishment of the Special Capital Region of the Archipelago is the most crucial thing because as long as the process is not carried out transparently and seems to be covered. The presence of this Legislation has been recognized by the constitution, but it is considered in substance and material content at the beginning of the formation of the National Capital Law does not consider the effectiveness of laws and regulations in society both sociologically, philosophically, as if the policies made must explain comprehensively and holistically. It is proven that in formulating the law of the national capital city, it is carried out when non-natural disasters, namely the Covid-19 Pandemic. So that it does not meet the sociological basis, even though the elements of sociological are closely related

to the needs in society, evidenced by requiring the fulfillment of community participation ^[13].

The reason for the government to form a new National Capital Region is outlined in the Academic Paper of Law Number 3 of 2022, where the government uses the constitutional basis of Article 18B of the Constitution of the Republic of Indonesia of 1945, this is because the government sees an opportunity to form the structure of the national capital city government directly. But actually, when referring to the comprehensive text of the legal politics of Article 18B philosophically there is an affirmation of the implementation of asymmetric decentralization, which apart from the state respects and respects, there is also an affirmation of the privileges, regional diversity, unity of indigenous peoples and the traditional rights regulated therein ^[14].

Reading from the explanation above, the author is worried that the form of specificity given to the capital city of the archipelago will highlight the government's wishes and establish it as a region under the control of the central government, this can be seen from the selection of a form of special autonomy that raises the existence of authority as a regional head, and eliminates the people's representative body which is the primary form of regional government, where later the distribution of aspirations and public participation in democratic rights will be raised to the level of the DPR.

Regarding the issue of general elections that are only carried out at the national level, and regional heads are appointed and appointed directly by the President as a form of special autonomy, it certainly conflicts with the form of direct implementation of people's sovereignty. As in the opinion of Philipus M Hadjon quoted by Tutik Quarterly explained that:

"The principle of democracy contained in Article 18 paragraphs (3) and (4) concerns the direct election of members of the DPRD and Regional Heads. Thus in the constitutional system of the Republic of Indonesia, general elections are not only for electing people's representatives (DPR, DPD, DPRD) but also for the election of the head of government ^[15]."

In line with the decision of the Constitutional Court case Number 15/PUU-V/2007 concerning the Examination of Local Government Law, in the legal consideration section states:

"The filling of the post of regional head must be done through elections. In other words, the filling of the position of regional head must not be done through other means outside of elections, minsally by appointment or appointment. This is one of the substances mandated by the Constitution in Article 18 paragraph (4) of the 1945 Constitution."

Through the explanation above, it is clear that the government should not be out of substance and certainly not conceptually corrected, because basically Special Autonomy is a political policy to accommodate all special conditions or different privileges in each region that remain on the principle of regional autonomy.

For comparative literature, between the formation of the specificity of the Capital of the Archipelago with the Capital City of Jakarta which is both domiciled as the State Capital which is the center of government. Jakarta has a specificity that is different from other regions in that its territorial division consists of administrative cities and administrative

districts, led by a Mayor, or Regent who is appointed and dismissed by the Governor of the Special Capital Region of Jakarta. Nevertheless, the specificity given remains in regional autonomy, as can be seen from the existence of the Governor who is directly elected by the people, and the existence of the Regional People's Representative Council (DPRD).

Special autonomy or specificity is broadly inspired as a form of response to the needs of society. Basically, the formation of specificity, which does not involve community participation from the beginning, will give birth to a more crucial form of specificity.

C. Article 18 Paragraph (2) and Paragraph (3) of the 1945 Constitution in Relation to IKN

The principle of special autonomy stipulated in Article 18 paragraph (2) and paragraph (3) of the 1945 Constitution reflects an approach that recognizes and respects the diversity and distinctiveness of regions in Indonesia. This article authorizes autonomous regions to manage their own government affairs, by giving greater space to regions that have special characteristics, both in terms of culture, customs, and political aspirations.

Article 18 paragraph (2) of the 1945 NRI Constitution confirms that, the state gives authority to autonomous regions to manage their own government affairs within the framework of the Unitary State of the Republic of Indonesia. This shows a commitment to strengthen decentralization and give freedom to regions to determine policies according to the needs and character of local communities.

Meanwhile, Article 18 paragraph (3) of the 1945 NRI Constitution allows granting greater authority to autonomous regions that can improve community welfare as high as possible. This principle provides space for differentiation in the structuring of local government, providing opportunities for policy innovation that is in accordance with the peculiarities and needs of local communities.

The establishment of the specificity of the Capital City of the Archipelago does not include the communities in the region, which consists of indigenous peoples' units. East Kalimantan, which is the destination location by taking two placement areas at once, there are indigenous peoples scattered and living in it. Such as the population of the Bajao and Paser Balik Dayak customs spread along North Penjam Paser, and Apokayan Modang Dayak, Apokayan Kenyah Dayak, Punan Lisun Dayak, and others scattered along Kutai Kartanegara. Meanwhile, indigenous peoples have an important role in welcoming their territories, the existence of indigenous peoples is strengthened by the provisions of Article 18B paragraph (2) of the 1945 NRI Constitution. This is reinforced by a statement from the indigenous people of Balik, as for the statement as follows:

"We were never invited (to dialogue about IKN), we were told. We are always left behind. All the ministers came, people said, there were many police on guard, we just saw. If there were many police soldiers there, we knew the purpose as well, and we were never invited. We are indigenous people of customary law here, we who have a village that wants to be placed in the capital, we have never been invited, we feel like we are not Indonesian citizens

[16]."

The process of forming the capital city of the archipelago into a special region does not meet the principle of recognizing and respecting special and special regional governments. In line with that, Philipus M. Hadjon also said the existence or existence of traditional rights of indigenous peoples in an area, village, or other names is the main thing that must be considered. However, in the Academic Paper of the National Capital City, in the Special Capital Region section of the State the government only takes the constitutional basis of Article 18B paragraph (1) of the Basic Law of the Republic of Indonesia Year 1945 because of an opportunity to form a special region. And if you want to form a special region, the law made does not need to use the outline of the National Capital, because the special autonomy outlined in a law directly shows which regions are given specificity.

The didir of a special region with the form of government of the Authority and without a DPRD, opens the author's mind that it is true that consciously the government wants to create new ideas outside the constitution, although in context it is certainly not a problem for the capital of the archipelago to become a special region. This is not in accordance with the principle of the region regulating and managing its own government affairs according to the principle of autonomy and assistance duties. The authority that the author inspired as a body tasked with being responsible for the head of the President because he was elected and appointed directly by the President without election, of course in this understanding the authority does not consider the community because they are not elected by the community, and do not come from the direct community, so this becomes a form of dwarfing the special rights of the people and out of the essence of democracy. And the exception to the DPRD does not have a firm proposition, even though it is clear that the DPRD is part of the administration of regional government^[17].

Apart from the above problems, the formation of special IKN regions in principle asymmetric decentralization or regional diversity, the government is right to provide it. Given the diversity of regions in Indonesia is not only one but diverse types, ranging from culture, natural wealth, geography, in terms of economic growth potential, and others. And the IKN special region has a strategic geographical review in the development of the new national capital with guaranteed security, comfort, ease of access, and minimal natural disasters, as described in the capital relocation book.

The establishment of IKN Article 18 paragraph (2) and paragraph (3) of the 1945 Constitution should discuss the principle of regional autonomy, which gives authority to autonomous regions to regulate and manage their own government affairs within the framework of the Unitary State of the Republic of Indonesia (NKRI). In the context of the establishment of a national capital in Indonesia, this principle can have relevance in order to give greater authority and space to the local area, which may host a new capital city.

Article 18 paragraph (2) of the 1945 Constitution states that, the state gives authority to autonomous regions to regulate and manage their own government affairs, as long as it is in accordance with the principles of the Unitary State of the Republic of Indonesia and does not conflict with the Constitution and laws. This creates a legal basis for granting autonomy to regions related to the management of

government affairs, including decisions related to the establishment of capital cities.

Article 18 Paragraph (3) of the 1945 Constitution then provides the possibility of granting greater authority to autonomous regions to regulate and manage their government affairs with the aim of improving the welfare of the community as high as possible. In the context of the formation of a new capital city, the granting of greater authority can include aspects such as spatial planning, infrastructure development, and environmental management, which are integral parts of the capital city development process.

The formation of the nation's capital involves many factors, including strategic considerations, infrastructure, territorial development, and environmental sustainability. The decision regarding the establishment of a new capital city is not only based on the principle of regional autonomy, but also considers various other aspects to ensure the continuity and success of the project.

Conclusion

The principle of special autonomy in Article 18 paragraph (2) of the 1945 NRI Constitution states that, the state gives authority to autonomous regions to regulate and manage their own government affairs, as long as it is in accordance with the principles of the Unitary State of the Republic of Indonesia and does not conflict with the Constitution and laws. This creates a legal basis for granting autonomy to regions related to the management of government affairs, including decisions related to the establishment of capital cities. Meanwhile, Article 18 paragraph (3) of the 1945 NRI Constitution then provides the possibility of granting greater authority to autonomous regions to regulate and manage their government affairs with the aim of improving the welfare of the community as high as possible.

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