

CONSISTENCY OF THE NATIONAL CAPITAL AUTHORITY AS A SPECIAL REGIONAL GOVERNMENT WITH THE CONSTITUTION

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ABSTRACT

With the various specialties that exist in the Archipelago Capital City, both related to the implementation of the Special Regional Government for the Archipelago Capital City and the implementation of preparation, development and relocation activities for the National Capital City, it is expected that various problems will arise, including, among other things, unclear division of affairs, tug-of-war and overlap. Overlapping authority between the Central Government and the regional government administering the National Capital in various matters and government affairs no longer occurs in its implementation. The method used in this research is normative juridical law research method. Based on article 18 paragraph (1) of the 1945 NRI Law, Indonesia is the Unitary State of the Republic of Indonesia divided into provinces and the provinces are divided into districts and cities

Keyword: Consistency, National Capital Authority, Constitution

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INTRODUCTION

In 2022, Indonesia has established a new national capital called Nusantara with the promulgation of Law Number 3 of 2022 concerning National Capital, passed on February 15 2022. Nusantara is a unitary concept that accommodates Indonesia's diverse wealth. With the name Nusantara, the capital of the Unitary State of the Republic of Indonesia represents this reality. The reality of Indonesia's pluralistic wealth has become social capital to advance the welfare of the people with justice, towards a developed, resilient and sustainable future for Indonesia.

Existence The capital city is something something fundamental in frame operate something country . Mother city or in English also called a rooted capital city from Language Latin namely caput which means is head (head). Normally , mother city

domiciled as something center central government business as well as center power And policy on something country the .¹

K.C Wheare differentiate between constitution in meaning wide And meaning narrow . In meaning broad , constitutional covers law base written And No written . This matter covers Also like habit or convention statecraft . Whereas in meaning narrow , constitutional is regulations law governing basis _ government country And has realized in A document .² Understanding This approach draft constitution as Constitution Base . From understanding that , then that becomes rock test on object study This is constitution in meaning narrow , that is Constitution Base .

Form government the IKN area is form specificity from Capital of the Archipelago. Even the specificity of the IKN different with specificity Mother city previously , namely the Special Region The capital city is Jakarta (DKI Jakarta), which is also DKI Jakarta domiciled as Province as per IKN as stated on Constitution Number 29 of 2007 concerning Government Special Regional Province The capital city of Jakarta as Capital of the Unitary State Republic of Indonesia. However, DKI Jakarta remains led by a Governor And Also carry out Election Regional Head (Election Governor).³

From conception government area side which used in The National Capital will be come Of course will questioned its constitutionality . If discuss about constitutionality , p This means discuss is something thing (or in meaning study This is something regulations) coherent with constitution in the country the . Speak about constitutionality in Indonesia means evaluate suitability between product law ie Constitution with Constitution The basis of the Republic of Indonesia on written norms _ constitution the.⁴

Related with study constitutionality institution Authority The capital city of the archipelago issue on study This tightly connection with functions the constitution among them is have function decider And barrier power of state organs , functions regulator connection power between organs/ institutions country And function giver legitimacy on power country or activity maintenance power country .⁵

The development and management of the Archipelago Capital has a vision of the National Capital as a world city for all with the main aim of realizing an ideal city that

¹ Fikri Hadi dan Rosa Ristawati, "Pemindahan Ibu Kota Indonesia dan Kekuasaan Presiden dalam Perspektif Konstitusi", *Jurnal Konstitusi*, Volume 17, Nomor 3 (September 2020), 536-537

² I Dewa Gede Atmadja, *Hukum Konstitusi: Problematika Konstitusi Indonesia Sesudah Perubahan UUD 1945*, (Malang: Setara Press, 2010), p. 31

³ Alma'arif dan Megandaru W. Kawuryan, "Memikirkan Kembali Kepala Daerah DKI Jakarta Tahun 2022: Antara Gubernur dan Pejabat Pelaksana", *Jurnal Ilmiah Ilmu Pemerintahan*, Vol. 6 No, 1 (2021), 78

⁴ Maria Farida Indrati, *Ilmu Perundang Undang-Undangan: Jenis, Fungsi Dan Materi Muatan* (Buku-1), (Jakarta: Kanisius, 2011), h, 67.

⁵ Jimly Ashiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta: Sinar Grafika, 2012), p. 28

can become a reference (*role model*) for the development and management of cities in Indonesia and the world.

The drafting of Law Number 3 of 2022 concerning the National Capital was motivated by the absence of a law that specifically regulates the National Capital in Indonesia. The laws that have been enacted so far are the laws that regulate the dual function of Jakarta, as a Provincial Autonomous Region as well as the National Capital. Jakarta was designated as the capital city of the Republic of Indonesia based on the Decree of the President of the Republic of Indonesia Number 2 of 1961 concerning the Government of the Special Region of the Capital City of Greater Jakarta as amended by the Decree of the President of the Republic of Indonesia Number 15 of 1963. After that, in succession, various laws were returned. designated Jakarta as a Special Capital Region (DKI), starting from Law Number 10 of 1964 concerning the Declaration of the Special Capital Region of Greater Jakarta remaining as the Capital of the Republic of Indonesia with the name Jakarta, Law Number 11 of 1990 concerning the Structure of the Special Capital Region Government The Republic of Indonesia, Jakarta, Law Number 34 of 1999 concerning the Provincial Government of the Special Capital Region of the Republic of Indonesia, Jakarta, until the last one which is still in force today, namely Law Number 29 of 2007 concerning the Provincial Government of the Special Capital Region of Jakarta as the Capital The Unitary State of the Republic of Indonesia.

In addition, the drafting of Law Number 3 of 2022 concerning the National Capital was based on the urgency of moving the National Capital which had previously been conveyed by the President of the Republic of Indonesia at the Annual Session of the People's Consultative Assembly of the Republic of Indonesia on 16 August 2019. The transfer was based on its centrality. economic activities in Jakarta and Java which resulted in economic disparities between Java and outside Java. Apart from that, there are study results which conclude that Jakarta can no longer carry out its role as the National Capital. This is caused by rapid uncontrolled population growth , a decline in environmental conditions and functions, and a decreasing level of living comfort. Therefore, it is hoped that moving the National Capital outside Java will accelerate the reduction of disparities and increase regional economic growth outside Java, especially the Eastern Region of Indonesia. The preparation of this Law is the basis for regulations that can fulfill expectations for an ideal form of National Capital and as a reference for the development and arrangement of other urban areas in Indonesia.

Law Number 3 of 2022 concerning the National Capital consists of 11 chapters, 44 articles; and 2 attachments, namely Appendix I Delineation Map and Appendix II Main Points of the IKN Master Plan. The regulations in the IKN Law include:

1. formation , specificity, position, regional coverage and IKN master plan.
2. form , structure, authority and affairs of government.
3. division .

4. planning , land and transfer of land rights, environment, disaster management, and defense and security.
5. transfer of positions of state institutions, State Civil Apparatus, representatives of foreign countries, and representatives of international organizations/institutions.
6. funding and managing income and expenditure budgets.
7. society participation .
8. monitoring and reviewing.

Article 5 of Law Number 3 of 2022 concerning National Capital, regulates the Position and Specialties, namely *First* , IKN functions as the Capital of the Unitary State of the Republic of Indonesia which is the place for carrying out central government activities, as well as the seat of representatives of foreign countries and representatives of international organizations/institutions . *Second* , as a special regional government unit, the Special Regional Government of the Archipelago Capital regulates and manages government affairs itself as determined and regulated by this Law. *Third* , except for other regional government units, in the capital city of the archipelago only national level elections are held. *Fourth* , the Head of the Archipelago Capital Authority is the head of the Special Regional Government for the Archipelago Capital who has a ministerial level position, appointed, appointed and dismissed by the President after consultation with the DPR. *Fifth* , the Special Regional Government of the Archipelago Capital carries out the functions and roles of the special regional government regulated in this Law, except those which are determined by statutory regulations to be matters of the central government. *Sixth* , the Archipelago Capital Authority has the right to establish regulations to organize the Special Regional Government for the Archipelago Capital and/or carry out preparation, development and relocation activities for the National Capital.

With the various specialties that exist in the Archipelago Capital City, both related to the implementation of the Special Regional Government for the Archipelago Capital City and the implementation of preparation, development and relocation activities for the National Capital City, it is expected that various problems will arise, including, among other things, unclear division of affairs, tug-of-war and overlap. Overlapping authority between the Central Government and the regional government administering the National Capital in various matters and government affairs no longer occurs in its implementation.

On the other hand, whether the existence of the IKN Authority is in accordance with the construction of regional government and in accordance with the 1945 Constitution of the Republic of Indonesia still needs to be studied in depth. Article 18 paragraph (1) confirms that the Unitary State of the Republic of Indonesia is divided into provinces and the provinces are divided into districts and cities, each province, district and city has a regional government, which is regulated by law. This constitutional arrangement raises the question of whether the Authority is a Provincial Government or

not, so whether the Authority is constitutionally appropriate or not. Therefore, the author considers it important to examine whether the IKN Authority's institutions are in accordance with the 1945 NRI Constitution.

METHOD

The method used in this research is normative juridical law research method. Normative juridical research that uses a statute approach by examining various legal rules.⁶

DISCUSSION

The regulation of the IKN Authority in Law Number 3 of 2022 concerning the National Capital is in accordance with the Constitution

The institution that manages the National Capital of the archipelago is in the form of an Authority. In the academic text of the Bill on National Capital, the nature of ideal development and management institutions can be formulated as follows: (1) the authority which is part of the central government which carries out the preparation and execution of its development and continues as the IKN manager (city manager), (2) with the characteristic of the authority only being a city manager, in IKN there is no need for practical political interference because the political aspect has been carried out at the central level (mutual agreement with the President and the DPR); and 3) The authority has unique, special/discretionary duties, and is multisectoral (collaborative).

The objectives of a separate authority that manages its capital are 1) to carry out advanced, professional, modern, intelligent and innovative IKN management; 2) carry out authority functions in the national capital area regulated by special laws; 3) plan, prepare, implement, control and manage and administer the IKN area. Its functions are 1) optimizing funding and business sources in the area; 2) promote, stimulate, facilitate and carry out commercial, infrastructure and housing development in the area; 3) promote, stimulate and carry out economic and social development in the area; 3) control and coordinate the performance of activities in the area.

Next, we need to look at Article 4 paragraph (1) of Law Number 3 of 2022 concerning National Capital which stipulates that with this Law, it is established:

- a. Archipelago Capital as National Capital; And
- b. The Nusantara Capital Authority is a ministry-level institution that administers the Special Regional Government for the Archipelago Capital City.

It is further regulated regarding the Position and Specificities of IKN in Article 5 of Law Number 3 of 2022 concerning National Capital which regulates:

- (1) The capital city of the archipelago functions as the capital of the Unitary State of the Republic of Indonesia which is the place where central government

⁶ Eka NAM Sihombing, Cynthia Hadita , *Penelitian Hukum* (Malang: Setara Press, 2022).

activities are carried out, as well as the seat of representatives of foreign countries and representatives of international organizations/institutions.

- (2) As a special regional government unit, the Special Regional Government of the Archipelago Capital regulates and manages government affairs itself as determined and regulated by this Law.
- (3) Excluding other regional government units, in the Indonesian capital only national level elections are held.
- (4) The Head of the Archipelago Capital Authority is the head of the Special Regional Government for the Archipelago Capital who has a ministerial level position, appointed, appointed and dismissed by the President after consultation with the DPR.
- (5) The Special Regional Government of the Archipelago Capital carries out the functions and roles of the special regional government regulated in this Law, except those which are determined by statutory regulations to be matters of the central government.
- (6) The Archipelago Capital Authority has the right to establish regulations to organize the Special Regional Government for the Archipelago Capital and/or carry out activities for the preparation, development and relocation of the National Capital.

Constitutionality of the National Capital Authority

To see whether these arrangements are in accordance with the constitution, we need to convey the provisions in the 1945 Constitution of the Republic of Indonesia regarding the Chapter of Regional Government in Article 18. According to Article 18 of the 1945 Constitution of the Republic of Indonesia, it regulates that the main elements in regional government are.

First, the Unitary State of the Republic of Indonesia is divided into provinces and the provinces are divided into districts and cities, each province, district and city has a regional government, which is regulated by law.⁷ So that all regions in Indonesia must have provinces, districts and cities, and consist of their respective regional governments.

Second, provincial, district and city governments regulate and manage government affairs themselves according to the principles of autonomy and assistance duties.⁸ Regional governments exercise the broadest possible autonomy, except for government affairs which are determined by law to be the affairs of the Central Government.⁹ So that each regional government carries out government affairs because of autonomy and because of assistance duties.

⁷ Paragraph (1) Article 18 of the 1945 Constitution of the Republic of Indonesia.

⁸ Paragraph (2) Article 18 of the 1945 Constitution of the Republic of Indonesia.

⁹ Paragraph (5) Article 18 of the 1945 Constitution of the Republic of Indonesia.

Third, the Governor, Regent and Mayor, respectively, as heads of provincial, district and city regional governments are elected democratically.¹⁰ So regional heads are called governors, regents and mayors.

Fourth, provincial, district and city governments have Regional People's Representative Councils whose members are elected through general elections.¹¹ So that every Regional Government also has a Regional People's Representative Council which is elected in the general election.

Fifth, regional governments have the right to establish regional regulations and other regulations to carry out autonomy and assistance tasks.¹² The implementation of regional government is further regulated in the Law.¹³ In this case it is regulated in:

1. Law Number 23 of 2014 concerning Regional Government
2. Law Number 9 of 2015 concerning Second Amendment to Law Number 23 of 2014 concerning Regional Government
3. Law Number 2 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 2 of 2014 concerning Amendments to Law Number 23 of 2014 concerning Regional Government into Law
4. Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law

Government affairs which are completely under the authority of the Central Government are known as absolute government affairs and there are concurrent government affairs. Concurrent government affairs consist of Mandatory Government Affairs and Optional Government Affairs which are divided between the Central Government, provincial regions and district/city regions. Mandatory Government Affairs are divided into Mandatory Government Affairs related to Basic Services and Mandatory Government Affairs not related to Basic Services. For Mandatory Government Affairs related to Basic Services, Minimum Service Standards (SPM) are determined to guarantee the constitutional rights of the community. Considering the very broad geographical conditions, for the effectiveness and efficiency of guidance and supervision over the implementation of Government Affairs which fall under the authority of regency/city regions, the President as the final person in charge of the government as a whole delegates his authority to the governor to act on behalf of the Central Government to carry out guidance and supervision to district/city regions to implement their autonomy within the NSPK corridor determined by the Central Government.

After the second amendment to the 1945 Constitution of the Republic of Indonesia, 2 articles related to regional government were added, namely: Article 18A and Article 18

¹⁰ Paragraph (4) Article 18 of the 1945 Constitution of the Republic of Indonesia.

¹¹ Paragraph (3) Article 18 of the 1945 Constitution of the Republic of Indonesia.

¹² Paragraph (6) Article 18 of the 1945 Constitution of the Republic of Indonesia

¹³ Paragraph (7) Article 18 of the 1945 Constitution of the Republic of Indonesia

B. Article 18A regulates the relationship of authority between the central government and provincial, district and city regional governments, or between provinces and districts and cities, regulated by law taking into account regional specificities and diversity.¹⁴ Then Article 18A also regulates that financial relations, public services, utilization of natural resources and other resources between the central government and regional governments are regulated and implemented fairly and in harmony based on the law.¹⁵

the state recognizes and respects special or special regional government units that are regulated by law.¹⁶ The state recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law.¹⁷

Furthermore, to better understand regional government regulations in the constitution, it is necessary to look at the opinion of the Constitutional Court as the institution that has the authority to examine the conformity of the law with the 1945 Constitution of the Republic of Indonesia regarding Article 18, Article 18 A, and Article 18 B of the 1945 Constitution of the Republic of Indonesia. In the Constitutional Court Decision Number 11/PUU-VI/2008, it is important for the Court to also emphasize the relationship between Article 18 paragraph (1) and Article 18B paragraph (1) of the 1945 Constitution, whether the relationship between basic norms and additional norms or the relationship between *lex generalis* and *lex specialis* or the relationship between two equivalent constitutional norms.

first alternative is that Article 18 paragraph (1) contains basic norms that are generally applicable, while Article 18B paragraph (1) contains additional norms that must not deviate or override the main norms. It means, the application of Article 18B paragraph (1) as reflected in Law 32/2004 and Law 29/2007 must not deviate from and overrule the application of Article 18 paragraph (1) of the 1945 Constitution in the government structure of the Special Capital Region of Jakarta as a province.

The second alternative is that Article 18B paragraph (1) of the 1945 Constitution is considered a *lex specialis*, so that the application of Article 18B paragraph (1) in certain cases can deviate and override Article 18 paragraph (1). This means that the regulation of the Special Capital Region of Jakarta may be different from the regional autonomy of other provinces.

Meanwhile, the third alternative is that both are considered equal, in the sense that they both apply independently, so that the application of Article 18B paragraph (1) and Article 18 paragraph (1) can each apply independently and are not in a position that can

¹⁴ Paragraph (1) Article 18A of the 1945 Constitution of the Republic of Indonesia;

¹⁵ Paragraph (2) Article 18A of the 1945 Constitution of the Republic of Indonesia.

¹⁶ Paragraph (1) Article 18B of the 1945 Constitution of the Republic of Indonesia.

¹⁷ Paragraph (2) Article 18B of the 1945 Constitution of the Republic of Indonesia

be contradicted. This means that regulations regarding the Special Capital Region of Jakarta can be fully based on Article 18B paragraph (1) without reducing the applicability of Article 18 paragraph (1) for other provinces that do not have special or special status.

Of the three alternative relationships between constitutional norms in Article 18 and constitutional norms in Article 18B of the 1945 Constitution, according to the Court, both are in an equal relationship and do not supervise each other. The choice of this third alternative, according to the Court, is considered more appropriate for at least two reasons. First, seen from the perspective of original intent in the sense that when the formulation of Article 18B of the 1945 Constitution was debated in the sessions of the Ad Hoc Committee I of the Working Body of the People's Consultative Assembly, the specificity referred to in Article 18B paragraph (1) indeed refers to Jakarta's status as a special region because of its position. as the country's capital, so it can be given provincial status. Second, the granting of provincial status by law to the Special Capital Region of Jakarta makes it seem as though it must comply with the provisions of Article 18 paragraph (1) of the 1945 Constitution, as is the opinion of expert Prof. Dr. Bhenyamin Hoessein, as reflected in the second alternative above, although historically correct based on the practice of understanding regions (*gewest*) in the past, the specificity contained in the article is also intended to accommodate the dynamic development of needs in the future which requires the determination of special status for regions. certain areas.

Moreover, the position of these two articles [Article 18 paragraph (1) and Article 18B paragraph (1) of the 1945 Constitution] from the perspective of Carl Schmitt's *Verfassungsbegriff* theory, is in an absolute sense (absolute sense of the constitution, *absolut begriff der verfassung*), law The basis is a closed system (*closed system of higher and ultimate norms*), so that each article of the constitution is autonomous as norms (*norms of norms*) [vide Carl Schmitt, *Verfassungslehre*, 1928/Constitutional Theory, 2008:62].

Regulations regarding the Special Capital Region of Jakarta can be fully based on Article 18B paragraph (1) without reducing the applicability of Article 18 paragraph (1) for other provinces that do not have special or special status. This means that the existence of Article 18 B can be used as the main basis for regional government but does not reduce the validity of Article 18 paragraph (1), namely that the Unitary State of the Republic of Indonesia is divided into provincial areas and the provincial areas are divided into districts and cities, each of which is a province. districts and cities have regional governments. So the Nusantara Capital Authority as a ministry-level institution that administers the Special Regional Government for the Archipelago Capital is certainly unconstitutional because it conflicts with Articles 18 and 18B of the 1945 Constitution of the Republic of Indonesia.

Law Number 3 of 2022 uses, among other things, Article 18 paragraph (1) and Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia. So, in relation to regional governments, it should refer to these two articles. Like the existing

special and special provincial regional arrangements, the special Regional Government consists of 8 regions, namely Aceh Province, Papua Province, West Papua Province, Southwest Papua Province, West Papua Province, Mountainous Papua Province, Central Papua Province and Papua Province South and DKI Jakarta Province. Meanwhile, there are 2 special regions, namely Aceh Province and Yogyakarta Special Region Province. With this arrangement, ideally the special regional government arrangements remain within the corridors of the provincial government, because Indonesia is divided into provincial regions, so that if there are regions other than the provinces it is not in accordance with the Constitution.

Furthermore, the decision of the Constitutional Court trial with case number 81/PUU-VIII/2010 in the case of Application for Review of Law Number 35 of 2008 concerning Determination of Government Regulations in Lieu of Law Number 1 of 2008 concerning Amendments to Law Number 21 of 2001 concerning Autonomy Specifically for Papua Province regarding the 1945 Constitution of the Republic of Indonesia.

The Court first expressed its views on Article 18B paragraph (1) of the 1945 Constitution which states in full, "The State recognizes and respects special or special regional government units regulated by law." According to the Court, the birth of Article 18B paragraph (1) in the Second Amendment to the 1945 Constitution of 2000, cannot be separated from the fact that there are Special and Special Regions which were recognized and regulated by separate Laws at that time, namely the Special Region of Yogyakarta (DIY), Special Region of Aceh (DI Aceh) and Special Capital Region of Jakarta (DKI Jakarta). In addition, due to the spirit of amendments to the 1945 Constitution which no longer places the Explanation as part of the 1945 Constitution, the norms contained in the explanation are accommodated in the amendment articles. For the drafters of the amendments to the 1945 Constitution, the explanation of Article 18 of the 1945 Constitution (before the amendment) had an important meaning for the constitutional recognition of the diversity of original government systems that existed in regions in Indonesia, including, among others, villages in Java and Bali, nagari in Minangkabau, hamlets and clans in Palembang, and so on.

The explanation of the 1945 Constitution of the Republic of Indonesia states, "These areas have an original structure, and therefore can be considered special areas. The Republic of Indonesia respects the position of these special regions and all state regulations regarding these regions will remember the rights of origin of these regions." Recognition of this diversity includes government systems and the rights and authority inherent in them, regional customs and culture which are guaranteed and respected through the enactment of laws. In addition, recognition and specialization is also needed for regions that are special because their conditions must be treated and determined specifically, such as the Special Capital Region of Jakarta (DKI Jakarta).

Thus, special regions or special areas have special features or specialties that are different from other regions. The meaning of "recognition" in Article 18B paragraph (1) of the 1945 Constitution, includes recognition of the rights of origin inherent in the area concerned based on the historical facts and background of the area. This means that according to the Court, if it can be proven, from its origins and historical facts, the region has a system of self-government that remains alive and stable, continues to be recognized and respected, which is confirmed and established by law. Thus, it is possible that a special or special region which was formed based on Article 18B paragraph (1) of the 1945 Constitution, is different from other regions which are subject to the provisions of Article 18 of the 1945 Constitution, as long as the specificity and privilege originates from the rights of origin and historical facts which then recognized and established by the Law of the Republic of Indonesia, as part of the Unitary State of the Republic of Indonesia;

According to the Court, from the facts at the time of the amendment to the 1945 Constitution regarding regional government, there were two special regions, namely the Special Region of Aceh and the Special Region of Yogyakarta and one special region, namely the Special Capital Region of Jakarta. The Province of the Special Region of Aceh was then amended by Law Number 44 of 1999 concerning the Implementation of the Specialties of the Special Region of Aceh Province and Law Number 18 of 2001 concerning Special Autonomy for the Special Region of Aceh Province and finally by Law Number 11 of 2006 concerning the Government of Aceh . Thus, in reality in Indonesian constitutional practice, there is no consistency in the use of when a region is designated as a Special Region and when it is designated as a special region. According to the Court, determining the name of an area as a special area or special area must be based on different criteria. A region is designated as a special region, if the specialty of the region is related to the origin and historical rights of the region since before the birth of the Unitary State of the Republic of Indonesia, whereas a region is designated as a special region if the specialty is related to political realities and needs which, because of its position and circumstances, require a region is given a special status that cannot be equated with other regions;

According to the Court, the type and scope of specificities and privileges of special regions and special regions determined by law are closely related to: a) the original rights attached to regions that have been recognized and remain alive; and b) the background to the formation and the real need for specificity or special features of the region concerned as part of the Unitary State of the Republic of Indonesia. By paying attention to these two criteria, according to the Court, the rights of origin and history are rights that must continue to be recognized, guaranteed and cannot be ignored in determining the type and scope of regional privileges in the law. The type and scope of specialization which is based on the background of its formation and the real needs which require specialization

to be given to a region is flexible in accordance with the real need to give specialization to the region concerned;

Based on this decision, the regulation of the Nusantara Capital Authority is not in accordance with the constitution because it should be more appropriate to use the Special Region for the National Capital so that it is in accordance with the Constitutional Court's opinion that a region is designated as a special region if the specialization is related to political realities and needs due to its position and circumstances. requires that a region be given special status that cannot be equated with other regions

CONCLUSION

Based on article 18 paragraph (1) of the 1945 NRI Law, Indonesia is the Unitary State of the Republic of Indonesia divided into provinces and the provinces are divided into districts and cities . So if there are areas that are not in the form of provinces, it will be in conflict with this article. In Article 4 paragraph 1 letter b of Law Number 3 of 2022, the Nusantara Capital Authority as a ministry-level institution that administers the Special Regional Government for the Archipelago Capital City is unconstitutional because it conflicts with Articles 18 and 18B of the 1945 Constitution of the Republic of Indonesia.

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