



# Environmental Law Enforcement of National Capital Relocation as an Effort to Preserve the Environment

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**Abstract.** The relocation of the State Capital which was later referred to as Nusantara is one of the government's agendas that has gone through various considerations and long discussions until it is officially realized. This transfer, which aims to solve problems in all fields, has resulted in various pros and cons from various parties. The reason is that moving the country's capital city to Kalimantan can have a negative impact on the environment and the ecosystem in it. Disturbing biodiversity, causing natural disasters, and damaging the environment are some of the public's concerns. The data collection method used in this paper is a literature review with the analysis method is a qualitative analysis that is studied from various reading sources and laws and regulations. The results of this study indicate that there is a need for clear and precise law enforcement as an effort to preserve the environment in the Kalimantan region. Various efforts and steps should have been set by the government to enforce environmental law there, preventive and repressive measures should have been carried out and refer to the environmental law that has been set.

**Keywords:** Law Enforcement, National Capital, Relocation, Preserve

## 1 Introduction

An important policy was decided by the government in early 2022 where the government together with the parliament have agreed on the legal basis for determining the relocation of the National Capital City. Various considerations were made by the government until the final decision regarding the transfer of the State Capital which had been in Jakarta was finally relocated to Penajam Paser Utara, East Kalimantan. Various concepts have been launched, various regulations are being prepared, and as many investors as possible are being attracted so that the relocation of the State Capital does not become a 'failed product' of the government.

Although it is hoped that the relocation of the State Capital will give Indonesia new hope in overcoming its various problems, this decision ultimately raises the pros and cons of various parties, from the general public, politicians, to experts in various fields.

One of the most frequently debated issues is environmental issues. Environmental problems have become a hot issue and very interesting to be studied more

deeply because the current environmental problems are very varied and threaten the survival of life on earth. One of the factors causing environmental problems is that the policies and regulations made by the government are still very weak. Because the lack of a solid and visible form of law enforcement is what leads to less-than-ideal environmental laws, law enforcement is crucial and must be maintained in order to achieve sustainable development [1]. The reason is that the government is now more inclined to pay attention to aspects of economic development which are ultimately detrimental to environmental aspects. It's the same with the relocation of the National Capital, where one of the main goals is economic contribution.

Since the environment is an inherited resource that must be protected from irresponsible parties, especially "greedy" parties who harm the environment to satisfy their economic interests, many environmental problems are anticipated to arise as a result of the relocation of the national capital. The emergence of various irregularities in environmental management, whether carried out by the ruling elite, businessmen, or the community, appears to be a result of human greed, corruption, and conspiracy on the part of the ruling elite as well as cooperation between the ruling elite and world-class businessmen [2].

Therefore, it is necessary to apply the concept of Environmental, Social, Good Governance (ESG) in moving the capital city of this country, promoting and enforcing the law as an effort to preserve the environment. Do not let the relocation of the capital city only to fulfill the political and economic agenda but at the expense of environmental aspects. Humans in their lives need a healthy and conducive living environment. A healthy environment free from pollution is the dream of every human being. Environmental change is largely determined by the attitude and protection of humans in their environment. In the utilization of natural resources, both biological and non-biological, it greatly affects environmental conditions and can even overhaul the living system that is already balanced between life itself and its environment. Humans in utilizing these natural resources must pay attention to their goals, and the effects caused by their use.

Moreover, Kalimantan is one of the regions in Indonesia that is rich in natural resources and various kinds of biodiversity, this is one of the reasons why Kalimantan deserves to be used as the capital of a new country. In accordance with Article 28H of the 1945 Constitution, which mandates that a decent and healthy environment be maintained, this has become the government's primary responsibility to continue protecting all existing natural resources and biodiversity, not just for the government but for all Indonesian citizens. All Indonesian citizens have this as a human right. Because it is a component of every Indonesian citizen's human rights, preserving a good and healthy environment is a responsibility.

## **2 Material and Methods**

The technique of collecting data from this journal is to use a literature review with the aim of unraveling relevant concepts and theories in explaining the influence of environmental law and the role of government in environmental preservation in Kaliman-

tan as the location of the National Capital City (IKN). The sources of data and information in this paper are various journals, official reports, as well as credible and reliable sources of electronic media regarding the relocation of the capital city and its impact on the environment. As well as using primary legal materials, namely Law 32 of 2009 concerning Environmental Protection and Management and secondary legal materials relating to environmental law enforcement in Indonesia [3]. The data analysis technique used is qualitative analysis, which is a way of analyzing data based on concerns, theories, laws and regulations, expert views or their own views which will try to analyze existing problems related to environmental law enforcement in Indonesia and contribute in the form of solutions to overcome these problems [4].

### 3 Result and Discussion

The Republic of Indonesia's 1945 Constitution, which serves as the foundation for the government, mandates that Indonesia's natural resources be utilised to the benefit of the populace [5]. This prosperity should be felt by the present and future generations, therefore there is a need for sustainable development, the same is mandated in Law No. 32 of 2009 article 1 paragraph 3 which reads

“In order to maintain the integrity of the environment as well as the safety, capacities, welfare, and quality of life of both the present and future generations, sustainable development is a deliberate and planned effort.”

This is related to the making of Kalimantan as the capital of a new country, the government does this with the aim of fixing problems in all fields. However, with this the government should be committed to maintaining all the natural resources contained therein. If examined, there are many risks and concerns regarding the relocation of the capital city to the island of Kalimantan, including concerns about the threat of biodiversity in the construction site of the new nation's capital. This concern is not without reason, but considering that Kalimantan is one of the global biodiversity hotspots with a fairly large area of tropical forest, high levels of endemism for both fauna and flora and high carbon stores [6]. In addition, the shadow of the destruction of Kalimantan's forests, which has been considered the lungs of the world, has also become one of the main concerns for the realization of the relocation of the nation's capital.

Since the beginning, the government has initiated the forest city concept as the main concept of the new state capital with one of its commitments is to create green open space of at least 50% of the new state capital area [7]. However, in fact this concept is still unclear at the planning level so it is still very possible to have an impact on the environment and its ecosystem. Referring to Law no. 41 of 1999 concerning forestry, a province or city must maintain a forest area of at least 30% of its total area with a proportional distribution [8]. From the regulation, it can be further stated that if an area has an area that has been designated as forest more than 30%, the area may not be reduced freely and for Kalimantan itself, this island has met the requirements in accordance with the legislation. Talking about natural resources, the use of natural

resources should be used sufficiently and not excessively so as not to cause new problems, as shown in the following table [9]:

**Table 1.** Impact due to excessive use of natural sources

NATURAL RESOURCES	ENVIRONMENTAL IMPACT
Forest resources	Damage to forest functions can cause a decrease in the amount of groundwater infiltration and damage to the function of the forest as a reservoir (groundwater reserves).
Land resources	Land quality decline
Mineral resources	Topography changes in mining pollution, and erosion
Water resources	Pollution of river water, swamp water, and ground water

As required by Law Number 32 of 2009 2 covering environmental protection and management, the government must take into account sustainable and ecologically friendly development when building infrastructure in the future new capital city. The law's Article 1 Paragraph 2 states:

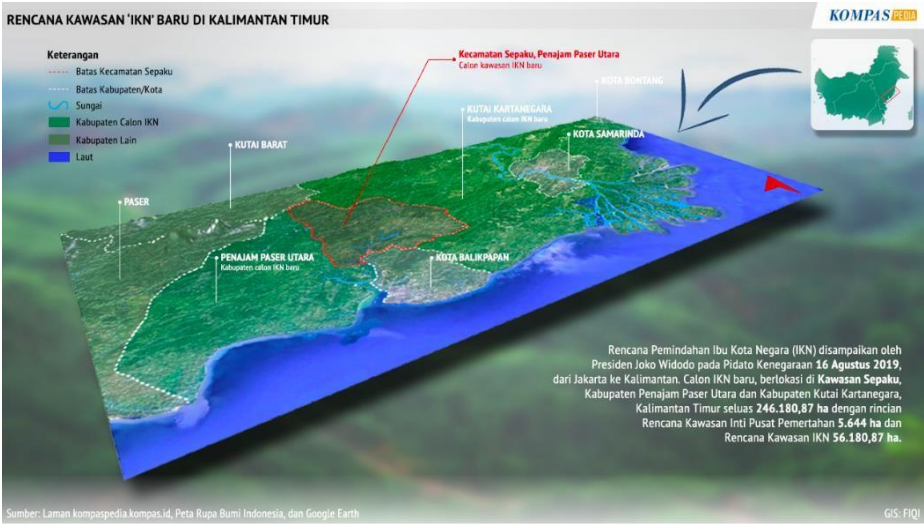
“Planning, usage, control, maintenance, supervision, and law enforcement are all components of environmental protection and management, which is a systematic and comprehensive effort to safeguard environmental functions and prevent environmental pollution and/or harm.”

It is feared that moving the nation's capital to Kalimantan may violate the rules outlined in this legislation because, in order to build a new city, the government must clear land for the construction of governmental buildings, housing, and other supporting infrastructure. The development of a new national capital certainly requires a large area of land for infrastructure development to support government administration activities. Although the initial construction of the capital will only start in 2020, the government needs to carry out land acquisition because the process will certainly take a long time because there is still a lot of local wisdom and customary land that is guarded by the local community and forest area land. With the relocation of the capital to East Kalimantan, it is necessary to prepare a revision of the provincial spatial plan. East Kalimantan is rich in forests, so the designation of the region must be altered in accordance with Government Regulation Number 104 of 2015 regarding the process for changing the allocation and function of forest areas. According to Article 3 of Law Number 26 of 2007 [10], the use of spatial planning strives to provide a plentiful, safe, comfortable, and productive place based on the understanding of the archipelago and national resilience by:

- a. The accomplishment of environmental balance between man-made and natural systems
- b. The actualization of integrated resource use—natural and artificial—while giving human resources appropriate consideration; and

c. The understanding that space must be protected in order to prevent detrimental effects on the environment from resulting from its use.

Based on the socialization of Law Number 3 of 2022 concerning the State Capital by Bappenas, there are 3 regional developments divided into three planning areas namely the Development Area with an area of 199,962 hectares, the IKN Area with an area of approximately 56,180 hectares and the Central Government Core Area with an area of approximately 6,671 hectares [11]. If accumulated, the government has provided approximately 262,813 hectares for the construction of the new city.



Source: Kompaspedia.id

Figure 1. New 'IKN' area plan in East Kalimantan

Based on the data above, it is not surprising that organizations such as Grpeace Indonesia are concerned about the impact of the physical development of the country's new capital city on forests and the species within them, such as orangutans. Furthermore, at least half a million civil servants will move to the new nation's capital. Meanwhile, with a current population of 900,000 people, the Kutai Kartanegara and Penajam Paser Utara areas have had an impact on the surrounding environment. The rapidly increasing population near Mahakam lake will increase the risk of peatland fires in the area [12].

However, this anxiety seems to be quelled by the government by releasing a product in the form of Law Number 3 of 2022 [13]. In article 18 paragraph 1 which reads "Environmental protection and management in the Capital of the Archipelago is carried out based on the Master Plan for the Capital of the Archipelago and the Spatial Plan for the KSN for the Capital of the Archipelago by considering the aspects of the carrying capacity and capacity of the environment in accordance with the provisions of the legislation."

Furthermore, in paragraph 2, this Law mandates that the protection and management of the environment is carried out by the Archipelago Capital Authority, including the implementation, monitoring, control, and evaluation of the environmental quality in the Nusantara Capital City in accordance with the provisions of the legislation.

However, despite the fact that the regulations are expressly mentioned in the legislation, there is still a chance that they will be broken, as the execution of laws and regulations is ineffective without law enforcement to support it. The provisions of sanctions, which can take the form of administrative, civil, or criminal penalties, specify one of the ways that law enforcement against a statutory rule might be carried out. Sanctions provisions in the applicable laws are not always required to follow law enforcement against a statutory regulation [14]. The government or law enforcement must take this issue into consideration in order to subsequently apply administrative sanctions to all parties who break environmental conservation rules and regulations in the new capital city. In addition, if environmental harm later happens in Kalimantan, the government may invoke administrative sanctions as a repressive tool under Law Number 32 of 2009, Article 76, Paragraph 2. According to the article, administrative fines may include written warnings, governmental pressure, the suspension or revocation of environmental permits, and more [15].

However, it is unfortunate that there are still many factors that affect the weak enforcement of environmental law in Indonesia. Among them are [4]:

#### 1. Political and Power Intervention when Formulating Laws and Regulations in the Environmental Sector.

At the formulation stage, the entry of various political interests has a very large chance, both at the local, national, and global levels, both in the interests of entrepreneurs (industrialists), the interests of the authorities and the community. In addition, various government policies were found that were political in nature, which caused controversy and debate, because they did not pay attention to environmental, economic, and socio-cultural factors of the local community, where the negative impacts were considered to be more than the positive impacts [16]. The government easily changes the rules even though they are contrary to higher regulations, even deliberately "outsmarting" the court's decision. At least in the last 2-3 years, the quality of Indonesia as a state of law has been questioned. This is because it is easy for the government to change and formulate rules that in principle and materially conflict with other regulations and have the potential to violate human rights. The first example is PP Number 13 of 2017 and Presidential Regulation Number 58 of 2017. These two rules are closely related because the changes in the RTRWN regulated in PP Number 13 of 2017 are mainly carried out to accommodate National Strategic Projects (PSN) as stipulated in Presidential Regulation Number 58 of 2017 [17]. The problem that then arises is the ability to violate existing spatial plans, especially the Regional RTRW and RDTR and also be strengthened by providing a basis for the Minister to provide recommendations on space utilization activities that have national strategic value and have a large impact that have not been included in the RTRW and RDTR. Areas without clear conditions and parameters

#### 2. Low Human Resources

Low human resources can be in the form of low intellectual abilities of law enforcers or low morale of law enforcers in providing justice to the community. The low intellectual ability can be seen from the institutions that are given the authority to enforce, supervise and manage the environment very slowly and are not even ready to deal with increasingly complex environmental problems.

### 3. The Judicial Mafia is in the Enforcement Process of Environmental Criminal Law

The judicial mafia is a reflection of a reality that violates both material and formal law in some aspects. Judiciary mafia is illegal as a result of its existence, which transgresses legal requirements as well as social norms. These norms include bribery and the misuse of a law enforcement officer's position, authority, or opportunity for personal gain or the advantage of other people or businesses [18].

Although environmental activists often voice the importance of involving environmental aspects in every development activity, environmental law enforcement in Indonesia is still relatively weak [19]. There are several obstacles that cause weak law enforcement in Indonesia, according to the Indonesian Center for Environmental Law (ICEL) [20], some of the causes are:

1. When it comes to handling environmental matters, the law has not been respected as the commander in chief.
2. There is currently a lack of a vision and mission that aligns with the enforcement of environmental law among the stakeholders involved in the criminal enforcement of environmental legislation, including the police, prosecutors, judges, and lawyers.
3. There is a lack of coordination and a common understanding among law enforcement, a lack of systematic and long-term planning in the implementation of law enforcement, a lack of integrity in law enforcement, and very limited skills among communities, police, prosecutors, courts, and environmental management institutions. legislation that have the potential to influence law enforcement.
4. Law enforcement and supervision are improvised, reactive, and unplanned.
5. There are gaps in knowledge and poor cooperation among law enforcement officials from different agencies when it comes to the information gathering process regarding investigations and prosecutions.
6. Judges' knowledge and comprehension of natural resources and environmental functions, particularly sustainable development in general, are still not widely dispersed. The lack of acknowledgment of ad hoc judges as a means of overcoming judges' ineptitude in the area of the environment and natural resources worsened the judges' knowledge and comprehension gaps.
7. The lack of honesty among law enforcement personnel, including judges, prosecutors, police, and government officials, jeopardizes their objectivity and professionalism.

The role of the government and the strengthening of environmental law is very influential in overcoming the factors and obstacles to environmental law enforcement that occur in Indonesia, especially after taking the decision to move the country's capital city which has the potential to increase environmental problems. All statements and regulations contained in the State Capital Law should be properly imple-

mented in order to convince and reduce public concerns about the environmental impacts caused by this decision.

## 4 Conclusion

Law enforcement efforts for environmental preservation still need to be encouraged and pursued in order to protect the environment, this also applies to the decision to move the state capital to the island of Kalimantan which has the potential to disrupt the sustainability and order of the environment there. In its application, the government can refer to Law Number 32 of 2009 and also a law specifically made to regulate all matters including environmental arrangements for the relocation of the state capital, namely Law Number 3 of 2022. There needs to be preventive and repressive measures that aims to overcome the excessive use of natural resources, environmental damage, and violations of regulations that have been regulated in several environmental laws. The task of protecting the environment is not only borne by the government but all stakeholders and the Indonesian people who will later occupy the archipelago. But it is undeniable that the government plays an important role in environmental preservation and the promotion and enforcement of environmental laws.

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