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## Juridical Overview of the Mechanism for the Forest Area Release and Investment Facilities for Infrastructure Development in Nusantara Capital City

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### Abstract

The relocation of the central government and the state capital to Nusantara Capital City is accompanied by infrastructure development in East Kalimantan, known as the world's lungs because of its vast forest reserves, which have been designed as a national strategic priority project. This study examined and answered problems related to the identification of the use of forest areas for infrastructure development in Nusantara Capital and its forest realizing mechanism and the investment facility provided by the Indonesian government to boost the investment climate in Nusantara Capital. The research method used is a normative juridical approach. The main findings are the release mechanism for the convertible production forest carried out by Nusantara Capital City Authority for infrastructure development in Nusantara Capital City and the investment facility for its infrastructure development, including but not limited to granting fiscal and nonfiscal incentives.

**Keywords:** forest area release; convertible production forest; state capital; infrastructure development; investment.

### Abstrak

*Pemindahan pusat pemerintahan dan ibu kota negara ke Ibu Kota Nusantara disertai dengan pembangunan infrastruktur di Kalimantan Timur yang dikenal sebagai paru-paru dunia karena cadangan hutan yang luas telah dirancang sebagai proyek prioritas strategis nasional. Penelitian ini mengkaji dan menjawab masalah terkait identifikasi penggunaan kawasan hutan untuk pembangunan infrastruktur di Ibu Kota Nusantara dan mekanisme pelepasan kawasan hutannya serta fasilitas penanaman modal yang disediakan Pemerintah Indonesia untuk mendukung iklim Investasi di Ibu Kota Nusantara. Metode penelitian yang digunakan adalah pendekatan yuridis normatif. Temuan utama adalah mekanisme pelepasan kawasan hutan produksi yang dapat dikonversi oleh Otorita Ibu Kota Nusantara untuk kepentingan pembangunan infrastruktur di Ibu Kota Nusantara dan fasilitas penanaman modal untuk pembangunan Infrastruktur di Ibu Kota Nusantara yang termasuk namun tidak terbatas pada pemberian insentif fiskal dan non fiskal.*

**Kata kunci:** pelepasan Kawasan hutan; hutan produksi yang dapat dikonversi; ibu kota negara; ibu kota nusantara; pembangunan Infrastruktur; penanaman modal.

## Introduction

The plan to move the center of government and the state capital, from the Special Capital Region of Jakarta in Java to Nusantara Capital City or Ibu Kota Nusantara in East Kalimantan, is expected to encourage economic diversification. It is also expected to incre-

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ase the output of non-traditional economic sectors such as services, government, transportation, trade, and processing to encourage the economic growth of Kalimantan island. Kalimantan Island is known as the national energy barn and the lungs of the world. Therefore, the development of the Kalimantan Island region is directed to maintain the function of Kalimantan as the lungs of the world (Heart of Borneo) by maintaining the area for environmental and ecological conservation, increasing conservation and rehabilitation of watersheds, critical land, protected forest, and production forest, develop natural disasters prevention such as flood and forest fire.

The relocation of the state capital to Nusantara in East Kalimantan has been designed in the national strategic priority project for the Kalimantan region for infrastructure development in the country's capital area in Presidential Regulation Number 18 of 2020 concerning the 2020-2024 National Medium-Term Development Plan ("Presidential Regulation 18/2020") and Minister of Environment and Forestry of the Republic of Indonesia Regulation Number 16 of 2020 concerning the Strategic Plan of the Ministry of Environment and Forestry for 2020-2024. Nusantara is planned to cover an area of 175,000 hectares. An area of 5,600 hectares will be used as a government center and its supporting facilities, while the rest is for infrastructure, facilities, utilities, and other basic service centers with a wider range of services as a center for national strategic activities.

On February 15th, 2022, The President of the Republic of Indonesia Joko Widodo ratified Law Number 3 of 2022 concerning the State Capital ("Law 3/2022") as the basis for establishing Nusantara as the nation's capital city. Nusantara Capital City has the vision to become a world city, built and managed to become:

1. a sustainable city in the world;
2. a stimulus of the future Indonesian economy; and
3. a national identity symbol representing the diversity of the Indonesian nation, based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

As mentioned above, questions arise regarding the concept of a world sustainable city in the vision of Nusantara Capital City. The word sustainable appeared in the World Conservation Strategy (WCS) which has three main purposes: to maintain important ecological processes in life support systems, preserve genetic diversity and ensure the sustainable use of species and ecosystems (Rangkuti, 1987). There is a paradigm that emphasizes the sustainability of natural resources in supporting development, which then gives birth to the concept of sustainable development (Pudjirahayu et.al, 2013). Sustainable development is defined as development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. Principle 2 of the 1972 Stockholm Declaration affirms that "The natural resources of the earth,

including the air, water, land, flora and fauna and especially representative samples of a natural ecosystem, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.”

The form of planning or management of Nusantara Capital City as a world sustainable city is stated in the explanation of Law 3/2022. “Sustainable city in the world” is a city that manages resources and provides services effectively in the utilization of water and energy resources, sustainable waste management, integrated transportation modes, a livable and healthy environment, and the natural and built environment synergistic. In addition, as a city in a forest (forest city) it must ensure environmental sustainability with a minimum of 75% (seventy five percent) green areas, and be woven into the concept of a sustainable master plan to balance natural ecology, built areas, and existing social systems harmoniously. A Forest city is an idea in urban planning that is characterized by the dominance of vegetation or greenery in urban areas, which can also be in the form of vertical forest (Guan et al., 2018). The plan for Nusantara is geared with the concept of a sustainable master plan to balance the natural ecology, built-up areas, and existing social systems in harmony.

Referring to Article 6 of Law 3/2022, the coverage area of Nusantara Capital City is of approximately 256,142 ha (two hundred fifty-six thousand one hundred forty-two hectares), and an area of marine waters covering an area of approximately 68,189 ha (sixtyeight thousand one hundred eight twentynine hectares) with borders as follow: 1. In the south, it is bordered by Penajam District, North Penajam Paser Regency, Balikpapan Bay, West Balikpapan District, North Balikpapan District, and East Balikpapan District, Balikpapan City;

2. In the west, it is bordered by Loa Kulu District, Kutai Kartanegara Regency and Sepaku District, North Penajam Paser Regency;
3. In the north, it is bordered by Loa Kulu District, Loa Janan District, and Sanga-Sanga District, Kutai Kartanegara Regency; and
4. To the east, it is bordered by the Makassar Strait.

Considering the wide coverage area designated as Nusantara Capital City City, as well as its location in and around forest areas with high biodiversity, the planning and development of infrastructure need to be focused on the efforts to fulfill the financing and maintaining forest functions with the concept of a forest city. Funding for the development of Nusantara Capital national strategy project for 2020-2024 in Presidential Regulation 18/2020 is estimated at IDR 466.98 trillion with the financing scheme designed in Law 3/2022 sourced from the State Revenue and Expenditure Budget (APBN), Public Private Partnership, and/or other legitimate sources following laws and regulations. Other legitimate sources include participation in business entities investment, international funding support (grants and/or bailouts), other funding such as crowdfunding and funds from philanthropy. The role of business entities in infrastructure development in Nusantara Capital City is expected to contribute to the fulfillment of financing. As a form of reciprocity, the Indonesian government is expected to provide convenient facilities for business entities or investors to invest in Nusantara Capital City. Based on this background, this research will further study the juridical review of the mechanism for releasing forest areas for infrastructure development in Nusantara Capital City and its investment facilities.

## Research Problems

The objectives of this study are to (1) identify forest types for infrastructure development purposes in Nusantara Capital City; (2) describe the mechanism for releasing convertible production forest areas for infrastructure development in Nusantara Capital City, and (3) Facilities for Ease of Investment in National Strategic Projects in Nusantara Capital City.

## Research Methods

This study uses a normative juridical approach, legal research, often referred to as library research. This research was conducted based on research sources of library materials or what is called secondary data and its implementation in the field practice. To achieve maximum results, the method used to analyze the data in this study is a qualitative juridical method. The method was used because this research was based on existing laws and regulations as positive law and data analysis that comes from secondary data. Using a qualitative juridical method, the author pays attention to the hierarchy of laws and regulations and the laws and regulations must not conflict with each other to seek legal certainty.

## Discussion

### Identification of Forest Areas for Infrastructure Development in Nusantara Capital City

National development aims to create a just and prosperous society, both materially and spiritually. It is a continuous effort to utilize all the natural resources within the territory of the Unitary State of the Republic of Indonesia, which are used for the greatest prosperity of the people. This is in line with Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia in the 4th Amendment which states that: “earth and water, and the natural resources contained therein are at the highest level controlled by the state, as an organization of power for the entire people (Santoso, 2012).

As a form of state control, the government determines forests based on three main functions: conservation, protection, and production. The explanation regarding the differences between each forest type can be seen in table 1 below. **Table 1** Comparison of Forest Types

Conservation Forest	forest areas with specific characteristics, which have the main function of preserving the diversity of plants and animals and their ecosystems
Protected Forest	forest area, which has the main function as the protection of the life support system to regulate the water system, prevent flooding, control erosion, prevent seawater intrusion, and maintain soil fertility.
Production Forest	forest area, which has the main function of producing forest products.

The classification is part of the written forestry law, a collection of legal rules made by the authorized institution to regulate matters relating to forest and forestry (Gane, 2020).

The current written forestry law in Indonesia is Law Number 41 of 1999 concerning Forestry as amended by Law Number 19 of 2004 concerning Government Regulations in Lieu of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 concerning Forestry and Law Number 11 of 2020 concerning Job Creation ("Law 41/1999").

The government, in its role as regulator, (Friedmann, 1971) stipulates in Article 38 of Law 41/1999 that the use of forest areas for development purposes outside of forestry activities can only be carried out within production forest areas and protected forest areas. It must still consider the main function of the forest area and should not cause serious damage. The use of forest areas for development purposes other than forestry activities can only be carried out for activities that have unavoidable strategic objectives, including activities:

1. religion;
2. mining;
3. electricity generation, transmission and distribution installations, as well as new and renewable energy technologies;
4. construction of telecommunications networks, radio transmitting stations, television relay stations, and space observation earth stations;
5. public roads, toll roads, and railroads;
6. non-public means of transportation to transport production;
7. reservoirs, dams, weirs, irrigation, drinking water canals, sewers and sanitation, and other irrigation structures;
8. public facilities;
9. industries other than forest product processing;
10. defense and security;
11. public safety support infrastructure;
12. shelter for victims of natural disasters and temporary or agricultural land for business in the context of food security and energy security; or
13. waste final processing sites, waste treatment facilities, or environmental restoration activities.

The efforts of the Government of the Republic of Indonesia in the development of Nusantara Capital City were immediately followed by the development of supporting infrastructure systems such as solid waste infrastructure, water infrastructure and wastewater management, public and social facilities infrastructure, transportation infrastructure, energy infrastructure, technology infrastructure, information and communication, infrastructure defense and security. Fulfilling elements of strategic objectives in infrastructure development in Nusantara Capital City provides opportunities for the government to develop production forest areas and protected forest areas.

Attachment II of Law 3/2022 stipulates that the forest area release will be carried out on industrial plantation forests (HTI) in areas that function as convertible production forests ("HPK"). This forest can be used for the construction of Nusantara Capital, with approval from the Ministry of Environment and Forestry. HPK is a production forest area which spatially can be reserved for development outside of forestry activities and can be used as permanent production forest. HPK is a production forest area which spatially can be reserved for development outside of forestry activities and can be used as a permanent production forest. HPK has the following criteria:

1. Forest area with a factor of slope class, soil type, and rain intensity, after each multiplied by a weighing number has a total value of less than 124 (one hundred and twenty-four), outside protected areas, Nature Reserve Forest Areas, Nature Conservation Forest Areas, and Hunting Park; and
2. Forest Areas spatially reserved for use for development:
  - (i) transmigration;
  - (ii) settlement;
  - (iii) agriculture;
  - (iv) plantations;
  - (v) industry;
  - (vi) national strategic infrastructure project;
  - (vii) national economic recovery; (viii) food estate and energy; and/or (ix) land for agrarian reform.

Referring to the HPK criteria above, the government has mapped out HPK plans to be released to develop national strategic infrastructure projects. Nusantara Capital City has a Production Forest Area of 63,434 ha. Within this production forest area, there are two concessions belonging to PT. ITCI Hutani Manunggal (PT IHM) covering an area of 37,314 ha and PT Inhutani I Batu Ampar covering an area of 16,058 ha. The concession area of PT IHM is in Nusantara Capital City, located in Loakulu District, Kutai Kartanegara District, Sepaku District, and Penajam District in North Penajam Paser Regency in East Kalimantan Province. The concession area of PT IHM reaches 63,434 ha of the entire land area in East Kalimantan Province, with the concession period ending in 2042. Most of the PT IHM concession area is also located in the Bukit Soeharto Forest Park, with an area of 292 ha (Dadang et al., 2021).

### **The Mechanism for releasing HPK Areas for Infrastructure Development in Nusantara Capital City**

Nusantara Capital City will later function as the capital city of the Unitary State of the Republic of Indonesia, which is the place for the implementation of central government activities, as well as the seat of representatives of foreign countries and representatives of international organizations/institutions. To understand the mechanism for releasing HPK for infrastructure development in Nusantara Capital City, it is necessary to understand the form and structure of the regional government specifically for Nusantara Capital City, which is composed of Nusantara Capital City Authority as the organizer of the special region for Nusantara Capital City. There are several specialties to Nusantara Capital City Authority, which are as follows:

1. the regional government specifically for Nusantara Capital City is only held by Nusantara Capital City Authority without the presence of the Regional People's Representative Council as applies to the form of regional government in general;
2. the regional head of Nusantara Capital is not elected through general elections but appointed and dismissed by the President in consultation with the House of Representatives of the Republic of Indonesia ; and
3. the Nusantara Authority has the authority to set its own regulations in the context of administering the Regional Government for the Special Capital Region of the Nusantara,

except for regulations that must obtain the approval of the House of Representatives of the Republic of Indonesia as regulated in this Law.

However, at the time of writing this research, there is no Presidential Regulation that further regulates the composition and procedures for the administration of the Special Capital Region of Nusantara, as well as the implementation of the preparation, development, and relocation of the national capital by Nusantara Capital City Authority.

Nusantara Capital Authority is led by the Head of Nusantara Capital City Authority and assisted by a deputy head of Nusantara Capital City Authority, who is appointed and dismissed by the President after consulting with the House of Representatives. Nusantara Capital Authority is given the authority under Law 3/2022 to carry out land acquisition in Nusantara Capital City through a forest area release mechanism and a land acquisition mechanism following development for the public interest or direct land acquisition.

The existence of Nusantara Capital City Authority since the promulgation of Law 3/2022 will only organize and be responsible for the implementation, preparation, development, and relocation of the national capital after the issuance of a Presidential Decree concerning the stipulation of the transfer of the state capital to Nusantara Capital City. At the time this research was conducted, there were already judicial review requests for a formal and material review of the following articles in Law 3/2022:

1. Article 1 number 2

The State Capital named Nusantara and hereinafter referred to as Nusantara Capital City is a special regional government unit at the provincial level whose territory becomes the seat of the State Capital as stipulated and regulated by this Law.

2. Article 1 number 8

The Special Regional Government for the Capital of the Nusantara is a special regional government that carries out government affairs in Nusantara Capital City.

3. Article 4

(1) With the establishment of this Law:

- a. Nusantara Capital as State Capital; and
- b. Nusantara Capital City Authority as a ministry-level institution that organizes the Regional Government of the Special Capital Region of the Nusantara.

(2) The transfer of position, function, and role of the State Capital from the Province of the Special Capital City Region of Jakarta to the Capital of the Nusantara is stipulated by a Presidential Decree.

(3) Nusantara Capital City Authority as referred to in paragraph (1) letter b is responsible for the preparation, development, and relocation of the State Capital, as well as the administration of the Special Region of Nusantara Capital City.

4. Article 5 paragraph (4)

The Head of Nusantara Capital City Authority is the head of the Regional Government of the Special Capital Region of the Nusantara, who is at the ministerial level, appointed and dismissed by the President after consulting with the House of Representatives.

The application for review is submitted to the Constitutional Court of the Republic of Indonesia with Case Number 34/PUU-XX/2022 on March 1st 2022. This is considered to be contrary to the 1945 Constitution of the Republic of Indonesia, particularly in the following articles:

1. Article 18 paragraph (1) and paragraph (2)

- (1) The authority relations between the central government and the regional authorities of the provinces, regencies, and municipalities, or between a province and its regencies and municipalities, shall be regulated by law regarding each region's particularities and diversity.
- (2) The relations between the central government and regional authorities in finances, public services, and the use of natural and other resources shall be regulated and administered with justice and equity according to law.

2. Article 18A paragraph (1)

The authority relations between the central government and the regional authorities of the provinces, regencies and municipalities, or between a province and its regencies and municipalities, shall be regulated by law regarding each region's particularities and diversity.

3. Article 18B paragraph (1)

The State recognizes and respects units of regional authorities that are special and distinct, which shall be regulated by law.

The petitioners argued that Nusantara Capital City does not meet the qualifications of the regional government in the 1945 Constitution of the Republic of Indonesia. This, of course, affected the target for the operation of the Indonesian Capital City Authority, which is expected to start operating no later than the end of 2022.

As previously explained in issue number 1 in this study, HPK will be used as the forest areas release for the development of Nusantara Capital City. The utilization of forest areas for development purposes other than forestry activities for the public interest, especially priority projects of the Central Government in land acquisition, is carried out by government agencies through the Forest Release mechanism. The forest area release is a change in the designation of HPK Area and/or Permanent Production Forest to nonforest Area. The following are the provisions on the mechanism for releasing forest areas in Government Regulation Number 23 of 2021 concerning Forestry Implementation ("GR 23/2021"):

- a. The forest area release of is carried out on unproductive HPK, except in provinces with no more unproductive HPKs.
- b. The forest area release is carried out for the following activities:
  - (i) national strategic project;
  - (ii) national economy recovery;
  - (iii) land acquisition for food estate and energy;
  - (iv) land acquisition for natural disasters;
  - (v) land acquisition for the object of agrarian reform; and
  - (vi) business activities that have been developed and have permits in Forest Areas prior to the enactment of Law Number 11 of 2020 concerning Job Creation, by considering the carrying capacity of the environment, accompanied by a strategic environmental study compiled by the initiator of the activity, except for activities mentioned in the number (iv), (v), dan (vi).
- c. The application for approval for the forest area release is submitted to the Minister of Environment and Forestry.



- d. The forest area release is carried out after integrated research by an integrated team formed by the Minister of Environment and Forestry. With the results of the integrated research, the integrated team can recommend to: (i) carry out partial or complete forest area release ;  
(ii) reject the application for forest area release ; and/or (iii) change the function to a permanent forest area.
  - e. After receiving the application for the forest area release, the Minister of Environment and Forestry examines the fulfillment of administrative and technical requirements and the fulfillment of commitments. Based on the research on requirements and recommendations of the integrated team, the Minister of Environment and Forestry issues a decision on approval for the forest area release for part or all of the requested forest areas or rejection of the forest area release.
  - f. The holder of the approval for the forest area release is subject to Non-Tax State Revenue for the forest area release. This is excluded for the forest area release for national strategic projects, national economic recovery, land acquisition for food and energy security, land acquisition for natural disasters, and land acquisition for agrarian reform objects.
  - g. The holder of the approval for the forest area release is obliged to complete the boundary demarcation of the forest area being released and secure the forest area being released. For government agencies as holders of approvals for the forest area release, the period of completion of the boundary demarcation of forest areas being released is no later than 1 (one) year from the issuance of the approval and can be extended for a maximum of 1 (one) year. If the obligation is not carried out according to the given period, then the approval for the forest area release is declared invalid.
- Prior to finalizing the boundary of the forest area being released, the holder of the approval for the forest area release is prohibited from carrying out any activities in the forest area, except for preparatory activities in the form of building a board of directors kit, measuring infrastructure and nursery. Exceptions from this provision are for activities of national strategic programs, national economic recovery, food and energy security, and land for agrarian reform. Therefore, the activities can be carried out simultaneously with the implementation of forest area boundaries.
- h. The holder of the approval for the forest area release is prohibited from transferring the released forest area to another party or transferring activities that are not in line with the implementation.

Referring to the description of the mechanism for releasing forest areas in GR 23/2021, the role of Nusantara Capital City Authority is very crucial as the authority holder to carry out land acquisition in the Indonesian Capital City through the mechanism for releasing forest areas to HPK for infrastructure development in Nusantara Capital City, which is a national strategic project. Thus, as long as there is no Presidential Decree that regulates the determination of the transfer of the state capital to Nusantara Capital City, Nusantara Capital City Authority has not been able to organize and be responsible for implementation activities, preparation, development and relocation of the nation's capital to Nusantara Capital City.

In line with the plan to release forest areas from HPK for infrastructure development in Nusantara Capital City, Article 21 of Law 3/2022 stipulates that spatial planning, land and transfer of rights to land, the environment, disaster management, as well as defense and

security, are carried out by paying attention to and providing protection to individual rights or communal rights of indigenous peoples and cultural values that reflect local wisdom.

## **Ease of Investment Facility for National Strategic Projects in Nusantara Capital City**

A national strategic project is a project and/or program implemented by the Central Government, Regional Governments, and/or Business Entities that have a strategic nature for growth and equitable development in the context of efforts to create jobs and improve community welfare. As contained in Presidential Regulation 18/2020, the indication of financing for the national strategic project of Nusantara Capital City for 2020-2024 is estimated at IDR 466.98 trillion with a financing scheme sourced from the State Revenue and Expenditure Budget and/or other legitimate sources following the laws and regulations. Other legitimate sources include Public-Private Partnership, participation in business entity investment, international funding support (grants and/or bailouts), and other funding such as crowdfunding and funds from philanthropy. The involvement of business entities in financing the development of infrastructure for national strategic projects in the Indonesia opens opportunities for investment, both domestic and foreign.

The presence of Law Number 11 of 2020 concerning Job Creation (“Job Creation Law”) or the Omnibus Law is the government’s legal politics in addressing the disharmony of laws and regulations (Darmawan, 2020). The polemic after the Job Creation Law has created pros and cons in society (Munawar et al., 2021). In terms of advantages, the Job Creation Law encourages investment by simplifying risk-based business licensing and investment requirements. On the other hand, one of the shortcomings of simplifying riskbased business licensing in the Job Creation Act, which is deemed relevant to this research, is the potential threat to environmental sustainability by the ease of obtaining environmental approvals.

Ease of investment guaranteed in the Job Creation Law and its implementing regulations, such as:

- (1) Presidential Regulation of the Republic of Indonesia Number 10 of 2021 concerning Investment Business Sector as recently amended with Presidential Regulation of the Republic of Indonesia Number 49 of 2021 (“Presidential Regulation 10/2021”);
- (2) Government Regulation Number 5 of 2021 Implementation of Risk-Based Business Licensing (“GR 5/2021”); and
- (3) Government Regulation Number 42 of 2021 Ease of National Strategic Projects (“GR 42/2021”);

Those are a breath of fresh air for investment in national strategic projects in Nusantara Capital City. The following are the relevant forms of investment facilities that may bring ease to the development of national strategic infrastructure projects in Nusantara Capital City:

### **1. 100% Foreign Capital Investment Opportunity**

The issuance of Presidential Regulation 10/2021 or commonly known as the positive investment list, has given the opportunity for foreign investors to carry out investment in Indonesia with 100% foreign capital ownership while still taking into account the laws and regulations in the business sector as well as the Indonesian Standard Classification of Business Fields (“KBLI”). All business fields are open for investment activities, except for those that are declared closed for investment, or of which the activities can only be

carried out by the Central Government (activities that are service or in the context of defense and security that are strategic and cannot be carried out or cooperated with other party). Open Business Fields are commercial business fields consisting of:

- (1) Priority business fields that meet the criteria, one of which is national strategic programs/projects;
- (2) Business fields allocated or partnerships with Cooperatives and MSMEs;
- (3) Business Fields with specific requirements; and
- (4) Business fields that are not included in number 1, number 2, and number 3.

While the closed business fields are:

- (1) cultivation and industry of narcotics class I;
- (2) all forms of gambling and/or casino activities;
- (3) fishing of certain species listed in Appendix I Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- (4) the use or extraction of corals and the use or extraction of corals from natural materials used for building materials/lime/calcium, aquariums, and souvenirs/jewelry, as well as live or dead coral from nature;
- (5) chemical weapons manufacturing industry;
- (6) industrial chemical industry and industrial ozone-depleting substances; and
- (7) Liquor Industry Containing Alcohol (KBLI 11010), Beverage Industry Containing Alcohol: Wine (KBLI 11020), and Industry of Beverages Containing Malt (KBLI 11031).

Based on the explanation above, investment is for national strategic projects to develop supporting infrastructure systems in the Indonesian capital, such as waste infrastructure, water infrastructure and wastewater management, public and social facilities infrastructure, transportation infrastructure, energy infrastructure, technology infrastructure, information and communication are classified as a business field that is open for investment.

## 2. Simplification and Acceleration of Business Licensing

With the issuance of GR 5/2021 there is a change in the fulfilment of licensing, where the implementation of licensing is carried out based on the determination of the level of risk. Furthermore, based on the assessment of the hazard level, the assessment of the potential occurrence of hazards, and the level of risk of business activities, they are classified into several categories, and the fulfillment of permits is described in table 2 below.

**Table 2** Risk Based Business Licensing

Risk Category	Required Business Licenses
Business Activities with Low-Risk Level	Business Identification Number or <i>Nomor Induk Berusaha</i> (“NIB”) serves the identity of business actors and the legality of business activities.
Business Activities with Medium-Low Risk Level	- NIB; and - Standard Certificate: is the legality to carry out business activities in the form of a statement of Business Actors to fulfill business standards in order to conduct business activities provided through the OSS RBA system.

Business Activities with - NIB; and a Medium-High Risk - Standard Certificate: Standard Certificate for the

Level implementation of business activities issued by the Central Government or Regional Governments according to their respective authorities based on the verification results of fulfillment of standards for the implementation of business activities by business actors.

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Business Activities with - NIB; and a High-Risk Level - Permit: is the approval from the Central Government or Regional Governments to implement business activities that business actors must fulfill before carrying out their business activities.

GR 42/2021 has guaranteed the acceleration of granting Business Licensing for business activities included in high risk in National Strategic Projects Ministers/heads of institutions, governors, and regents/mayors per their respective authorities.

### 3. Abolishment of Environmental Permits and Simplification of Environmental Impact Analysis

The form of administrative law in the function of norms, instruments, and guarantees can be found in licensing, which is emphasized by the government to concretize its authority to regulate and control community activities with several or certain motives (I Made, 2007). To simplify the licensing administration process, the Job Creation Law abolishes the provisions for environmental permits and simplifies Environmental Impact Analysis (“AMDAL”).

Prior to the Job Creation Law, an environmental permit was required for every person carrying out a Business and/or Activity that required AMDAL or Environmental Management Efforts and Environmental Monitoring Efforts (“UKL-UPL”) in the context of environmental protection and management as a prerequisite for obtaining a business and/or activity permit. However, after the enactment of the Job Creation Law which also amended Law No. 32 of 2009 concerning Environmental Protection and Management (“Law 32/2009”), the environmental permit was abolished for every business and/or activity that did not have a significant impact on the environment. It was replaced with environmental approval, which is a decision on environmental feasibility or a statement of ability to manage the environment that has obtained the approval from the Central Government or Regional Government. The environmental approval then becomes the basis for issuing business permits.

Meanwhile, every business and/or activity that has an important impact on the environment must have an AMDAL. This is emphasized in GR 5/2021 which states that AMDAL is part of the licensing requirements that must be met by business activities with a high level of risk. AMDAL, which is a study of the significant impact on the environment from a planned business and/or activity to be used as a prerequisite for making decisions regarding the operation of a business and/or activity and contained in a Business Licensing, or approval from the Central Government or Regional

Government. The criteria for businesses and/or activities that have a significant impact on the environment that must be accompanied by an AMDAL consist of:

- (1) changing landforms and landscapes;
- (2) the exploitation of natural resources, both renewable and non-renewable;
- (3) processes and activities that can potentially cause environmental pollution and/or damage as well as waste and degradation of natural resources in their utilization;
- (4) processes and activities whose results can affect the natural environment, the artificial environment, as well as the social and cultural environment;
- (5) processes and activities whose results will affect the preservation of natural resource conservation areas and/or protection of cultural heritage;
- (6) introduction of types of plants, animals, and micro-organisms;
- (7) manufacture and use of biological and non-biological materials;
- (8) activities that have a high risk and/or affect national defense; and/or
- (9) application of technology that is estimated to have great potential to affect the environment.

Considering the criteria for business activities that require AMDAL, the existence of an AMDAL is important in the implementation of infrastructure development in the Indonesian capital, which has an important impact on the environment through the release of HPK areas. The results of the AMDAL study serve as an early warning system that should be highlighted to avoid the impression that an environmental impact analysis is only a platform to complete the licensing process in business activity as a proactive effort to carry out environmental management with early planning (Herlina, et al 2021). This function encourages companies to consistently implement the contents of AMDAL documents in the field, for example, intensive efforts to operationalize management and monitoring plans to prevent environmental pollution due to industrial waste produced (Bethan, 2008).

Before the amendment of Law 32/2009 with the Job Creation Law, AMDAL preparation is prepared by the proponent by involving the community, including affected communities, environmentalists, and/or those affected by all forms of decisions in the AMDAL process. However, after being amended by the Job Creation Law and the issuance of Government Regulation No. 22 of 2021 concerning the Implementation of Environmental Protection and Management (“GR 22/2021”), The AMDAL is prepared by the proponent by only involving communities directly affected by the planned business and/or activity. Environmental observers, researchers, or supporting nongovernmental organizations that have fostered and/or assisted the directly affected communities can contribute as part of the directly affected communities.

The use of the phrase ‘can’ causes the role of environmentalists, researchers, or nongovernmental organizations to become optional. Whereas as an element in society, non-governmental organizations have an important role such as forming public awareness, assisting the community, educating the community, and criticizing government performance through actions such as demonstrations, lobbying, counseling, training, and others (Kurnia, 2013 in Sholikhah & Siti, 2019:5). If observed, environmentalists, researchers, or non-governmental organizations have an essential role in defending environmental rights as legal subjects. The role of non-governmental organizations such as the Indonesian Forum for the Environment (WALHI) in fortifying

environmental interests has been widely practiced in assisting the community and the environment in the court and outside the court. They have legal standing to participate in environmental law enforcement. WALHI West Java, one of the branches of the National WALHI, during 2015-2020 recorded a lot of assistance to the community and the environment, mainly in forest fires and environmental permit issues (Nabila, 2021). Business plans and/or activities that are required to implement AMDAL based on PP 22/2021 can submit written proposals regarding their business and/or activity plans, if necessary, free themselves from the requirement. This written proposal is submitted to the Minister of Environment and Forestry by the minister and/or non-ministerial government agencies, governors, regents/mayors and/or the public. The proposal shall at least contain (a) the identity of the proposer; (b) a description of the planned Business and/or activity to be carried out along with the scale/quantity; (c) status and environmental conditions in and around the location of the planned business and/or activity; and (d) analysis of environmental impacts that will occur, the availability of environmental management technology, and the reasons that the planned business and/or activity does not have a significant impact on the environment and can be determined to be a type of business plan and/or activity that is not required to have an AMDAL.

Provisions regarding the submission of the determination of business plans and/or activities that are not required to have an AMDAL, open an opportunity for business plans and/or activities in Nusantara Capital City. Those who were initially considered required to have an AMDAL are now non-obligatory to have an AMDAL.

#### 4. Provision of Government Bond

According to GR 42/2021, The government can provide government guarantees for national strategic projects whose financing is sourced from other legitimate financing. Government guarantees are provided for credit or sharia financing, business feasibility, Public Private Partnership and/or political risk by the Minister of Finance by considering the state's financial capacity, fiscal sustainability and fiscal risk management of the State Revenue and Expenditure Budget. The guarantee is given to national strategic projects that meet the criteria where the government contracting agency has adequate identification documents, risk mitigation plans, and technical and financial feasibility. In general, the Public Private Partnership Agreement regulates detailed provisions of the rights and obligations of the parties. For example, the government contracting agency may promise to provide cash compensation to the implementing business entity if there is a delay in land acquisition or a delay in changing the rate as agreed. Likewise, in the event of contract termination due to political risks, for example, government action or inaction, changes in law, government breach of contract, or force majeure conditions, the government contracting agency shall provide compensation to the implementing business entity. The emergence of the obligation of the government contracting agency to provide financial compensation can be classified as a contingency obligation, one of the fiscal risks as anything that in the future can cause fiscal pressure on the State Revenue and Expenditure Budget (Irwanugroho, 2019).

#### 5. Exemption of Non-Tax State Revenue for holders of approval for the forest area release

As explained in the discussion of point 2, infrastructure development in Nusantara Capital City will use the mechanism for releasing HPK areas. GR 23/2021 stipulates that the forest area release for national strategic projects is excluded from the obligation to

pay Non-Tax State Revenue. The exception is whether it has been considered with environmental economic instruments in the principle of internalizing environmental costs.

The principle of internalizing environmental costs implies that in the policy of changing the designation, function, and use of forest areas, the possibility of negative impacts on forest areas, social and environmental aspects must be considered. In the explanation of Article 43 paragraph (1) letter d what is meant by "internalization of environmental costs" is to include costs of environmental pollution and/or damage in the calculation of production costs or costs of a business and/or activity. Therefore, in the forest area change policy, some obligations must be fulfilled by business actors at social and environmental costs to overcome the negative impacts that may occur. Entrepreneurs should consider the cost of destroying the forest or forest area they are working on, so that their use can be sustainable.

#### 6. Provision of Fiscal Incentives and/or other Non-Fiscal Incentives

Presidential Regulation 10/2021 guarantees that investors who invest in business fields listed in the list of priority business fields receive fiscal incentives and/or non-fiscal incentives. Fiscal incentives consist of tax incentives such as income tax for investment in certain business fields and/or in certain areas (tax allowance), reduction of corporate income tax (tax holiday) or reduction of corporate income tax and net income reduction facility in for investment as well as reduction of gross income in the context of certain activities (investment allowance), and customs incentives in the form of exemption from import duty on the import of machinery and goods and materials for construction or industrial development in the context of investment.

In addition to fiscal tax incentives, the Minister of Finance also provides fiscal facilities in the form of project development facilities in GR 42/2021 and Minister of Finance Regulation Number 180 of 2020 concerning Facilities for the Preparation and Implementation of Public Private Partnership Project Transactions in the Provision of Infrastructure. Project development facility is a facility provided to assist the government contracting agency in increasing the effectiveness of the preparation and implementation of the Public-Private Partnership Project transaction.

Meanwhile, non-fiscal incentives include ease of business licensing, provision of supporting infrastructure, guarantee of energy availability, guaranteed availability of raw materials, immigration, employment, and other facilities following the provisions of the legislation.

## Conclusion

Based on the analysis above, it can be concluded that:

- a. Infrastructure development in Nusantara Capital City fulfills the element of strategic objectives so that the use of forest areas for development purposes outside of forestry activities can be carried out within production forest areas and protected forest areas. However, Annex II of Law 3/2022 has stipulated that HPK will be used to release forest areas.
- b. Nusantara Capital City Authority as the organizer of the special area for Nusantara Capital City has the authority to carry out land acquisition in Nusantara Capital City through the mechanism of releasing forest areas. The mechanism for releasing forest

area on HPK is carried out following the provisions in GR 23/2021 by first applying for approval for the forest area release submitted to the Minister of Environment and Forestry which is then carried out integrated research carried out by an integrated team. The Minister of Environment and Forestry examines the fulfillment of administrative and technical requirements and commitments. Based on the research on requirements and recommendations of the integrated team, the Minister of Environment and Forestry issues a decision on the approval of the forest area release for part or all of the requested forest area or rejection of the forest area release.

- c. The government's efforts to involve business entities in fulfilling financing in the development of national strategic infrastructure projects in Nusantara Capital City include ensuring investment facilities which include but are not limited to 100% foreign capital investment opportunities, simplification and acceleration of business licensing, elimination of environmental permits and simplification of AMDAL, provision of government bonds, exemption of Non-Tax State Revenue for holders of approvals for the forest area release, as well as provision of fiscal incentives and/or other non-fiscal incentives.

## Suggestion

The relocation of the nation's capital city to Nusantara Capital City as one of the national strategic priority projects requires careful planning and attention to:

- a. completeness of regulations to ensure that the implementation of development is in line with the principles of equality, ecological balance, resilience, sustainable development, live ability, connectivity, and smart cities in Law 3/2022. Regulatory limitations as implementing regulations of Law 3/2022 which regulates the implementation, preparation, development, and transfer of the national capital to Nusantara Capital City at the time of writing this study were made to hinder the target of the operation of Nusantara Capital City Authority by the end of 2022. The delayed operation of Nusantara Capital City Authority will certainly hinder the target of releasing forest areas on HPK for infrastructure development in Nusantara Capital City as regulated in Law 3/2022.
- b. Apart from the availability of regulations that support the implementation, preparation, development, and relocation of the national capital to Nusantara Capital City, the government needs to provide legal certainty and protection for legal subjects such as the environment, individual rights or communal rights of indigenous peoples so that Nusantara Capital City with the concept of a forest city can be realized properly
- c. A better inventory of forests that will change their designation, function, and use for development purposes outside of forestry activities in Nusantara Capital City, should be made. Thus, the types and areas of the remaining forest after the forest area release can be clearly identified, and overlapping events can be avoided.
- d. The provision of investment facilities for both foreign and domestic investors, especially in the field of facilitating licensing, should not only pay attention to the interests of investors, but also to compliance with positive law (*ius constitutum*) and environmental law principles, including the principle of justice, the principle of access information, the principle of public participation, the precautionary principle, the principle of protecting biological diversity, the principle of internalizing environmental costs, the principle of environmental carrying capacity, the principle of balance, the principle of guaranteeing



legal certainty over the status of forest areas, the principle of law enforcement. In preparing the AMDAL, which is part of obtaining permits in business licensing, the participation of environmentalists, researchers, or nongovernmental organizations accompanying to foster and/or assist communities directly affected should be considered.

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