

# CHAPTER I

## INTRODUCTION

### A. Background of Study

In recent times, news about air pollution in the capital city of Jakarta has gotten out of control. Jakarta has been consistently ranked among the 10 most polluted cities globally and according to IQAir, in August 2023 it reached the 2nd. Because of this, Jakarta's government is considering ordering half of its civil servants to work from home<sup>1</sup>. This is one of the reasons the relocation of the national capital is becoming more urgent. The idea of relocating the national capital of Indonesia emerged with many factors. One of which is the situation of Jakarta. DKI Jakarta Province, by Law number 29 of 2007 concerning the Province of DKI Jakarta, serves as the capital of the Republic of Indonesia and at the same time functions as an autonomous region at the provincial level, where this causes DKI Jakarta to face various problems, which arise because Jakarta is not only the center of government but also the center of all activities, including economic and social centers<sup>2</sup>.

The relocation of the capital city from Jakarta by the name of *Ibu Kota Negara Nusantara* (from now on abbreviated as IKN Nusantara) became the main topic of conversation when the President of Indonesia, Joko Widodo,

---

<sup>1</sup> Reuters.com, "Indonesia plans random emission tests on motorists as poor air chokes Jakarta", found on, <https://www.reuters.com/sustainability/climate-energy/indonesia-start-random-emission-tests-poor-air-chokes-jakarta-2023-08-14/>, accessed on 27th August 2023.

<sup>2</sup> Academic Paper of the Draft Law on the National Capital, 2020 p. 33.

proposed moving the national capital outside Java. Concrete steps were taken regarding the transfer of the national capital from Jakarta in Java to North Penajam Paser, East Kalimantan, which was approved by almost all factions in the DPR based on Law no. 23 of 2014 concerning the Regional Government which stipulates that the Central Government can establish Special Areas<sup>3</sup>. This choice was initiated previously through a study from the Ministry of National Planning and Development (Bappenas RI).

In increasing the legal force in its transfer, in January 2022, Law Number 3 of 2022 concerning the National Capital (from now on abbreviated as IKN Law) was passed. One of its contents is that the concept of the new National Capital is not chaired by a governor as stipulated in the 1945 Constitution of the Republic of Indonesia, but led by the Head of Authority of IKN Nusantara as stated in Article 1 Number 10 of Law Number 3 of 2022 concerning the National Capital<sup>4</sup>. While this raised concern, there are other problems such as the cost and the funding of the infrastructure of IKN Nusantara. Regarding the funding regulation, it is stated in the provisions of Article 24 paragraph (1) letter b as well as Appendix II of IKN law, the sources of IKN Nusantara's financing are in the form of channelling foreign funds, including Public-Private Partnerships schemes, international funding or financing support schemes, and creative financing schemes<sup>5</sup>. The financing of

---

<sup>3</sup> Ario Andika Baskoro dan Dona Budi Kharisma, "Analisis Undang-Undang IKN Berdasarkan Asas Pembentukan Peraturan Perundang-Undangan di Indonesia", *Jurnal Demokrasi dan Ketahanan Nasional*, Vol. 1 No. 3, Universitas Sebelas Maret, 2022, p. 570.

<sup>4</sup> Achmad Badawi, "Problematika Yuridis Undang-Undang Nomor 3 Tahun 2022 tentang Ibu Kota Negara dalam Perspektif Ilmu Perundang-Undangan", *Jurnal Demokrasi dan Ketahanan Nasional*, Vol. 2 No.1, Universitas Sebelas Maret, 2023, p. 66.

<sup>5</sup> Kristianus Jimy Pratama, "Tinjauan Kritis Terhadap Manajemen Risiko Pengembalian Investasi Asing Pada Pembangunan Ibu Kota Nusantara", *Jurnal Majalah Hukum Nasional*, Vol.

this infrastructure project is encouraged, one of which is with third parties by initiating investment<sup>6</sup>. This could imply that funding for infrastructure in IKN Nusantara is mostly in the form of foreign funding.

Foreign Direct Investment (from now on abbreviated as FDI) has become an important source of private external financing for developing countries. The importance of investment for developing countries is much greater and FDI adds to investable resources and capital formation in developing countries. Not only that, it is also a means of transferring production technology, skills, innovative capacity, as well as organizational and managerial practices between locations<sup>7</sup>.

Other that can be an example is investments made by Transnational Corporation (TNC). Foreign funding carried out by TNCs in developing countries such as Indonesia, in this case the host country, has succeeded in opening up an outward-oriented economic policy and creating a climate that supports TNC transfers which is the sine qua non of industrial modernization<sup>8</sup>.

Any developing country, if it is serious about improving its standard of living, must open its economy so that it can take advantage of opportunities to trade, interact, and learn from developed countries. This can be seen by taking the example of one of the newly industrialized countries (NIC) as evidence of the success of Japan's rise through the economic miracle that occurred in the

---

52 No. 1, Universitas Gadjah Mada, 2022, p. 51.

<sup>6</sup> *Ibid*, p. 49.

<sup>7</sup> Padma Mallampally and Karl P. Sauvant, "Foreign Direct Investment in Developing Countries", *Finance & Development*, Vol. 36 No. 1, 1999, p. 35.

<sup>8</sup> Terutomo Ozawa, "Foreign direct investment and economic development", *Transnational Corporations*, Vol. I, No. 1, 1992, p. 28.

period before and after the Second World War is based on these learning and competition mechanisms, and this can happen to other countries. developing countries by proposing foreign investment in their country.<sup>9</sup>

Despite the benefits, there are concerns about why this foreign funding, whether direct or not, could fail and lead to an uncertain future. TNCs, or multinational companies, often cause conflicts over human rights issues, the environment, cornering the existence of domestic business actors, healthy market manipulation, especially market share, culture, domestic politics, and other issues<sup>10</sup>. Efforts on the part of the host country to put legal pressure on the home state force the treatment of external incentives such as international supervision, as from international organizations such as WTO and NGOs, to carry out demands against foreign investors who violate agreed agreements<sup>11</sup>.

Not only that, but problems also arose when the Indonesian government itself provided additional incentives to foreign investors through Government Regulation Number 12 of 2023 which contains related matters<sup>12</sup>. However, it is also important to understand that these policies certainly have various risks, such as the emergence of issues of threats to sovereignty due to the involvement of foreign investors such as China and the UAE in IKN

---

<sup>9</sup> *Ibid*, p. 33.

<sup>10</sup> Alfirza Dafrin dan Achmad Ichwani, "Foreign Direct Investment Sebagai Salah Satu Sumber Pendanaan Dalam Pembangunan Ibu Kota Negara "Nusantara", *Jurnal Ilmiah Multidisiplin*, Vol. 1 No. 5, Universitas Indonesia, 2023, p. 7.

<sup>11</sup> *Ibid*.

<sup>12</sup> Portal Informasi Indonesia," Insentif Manis untuk Investor IKN", found on <https://indonesia.go.id/kategori/editorial/6931/insentif-manis-untuk-investor-ikn?lang=1>, Accessed on 17th November 2023.

Nusantara<sup>13</sup>.

Regarding IKN Nusantara's financing discussions, this also continues with the city concepts that will be implemented at IKN Nusantara, one of which has the theme of forest city. The aim of the study of the Forest City concept in IKN planning is to provide recommendations for development plans for IKN Nusantara to preserve forests and improve the quality of the environment, with the target of identifying the Forest City concept along with principles, criteria, and indicators in IKN Nusantara planning and development<sup>14</sup>.

On legal basis, the government has the authority and obligation to protect and manage the environment by Law Number 32 of 2009 concerning Environmental Protection and Management, and in the IKN Nusantara's development process, there can still be deviations that can have fatal consequences in the development process. A new state city certainly requires large enough land for infrastructure development to support government administration activities<sup>15</sup>.

In 2019, the Ministry of Environment and Forestry (KLHK) formulated several forest city principles for planning prospective National Capital City Capital as recommendations from the results of the Strategic Environmental Study (KLHS) Rapid Assessment<sup>16</sup>. However, aspects of foreign investor funding such as FDI and the implementation of the forest city

---

<sup>13</sup> Alfirza Dafrin Achmad Ichwani, *Op. Cit.*, p. 11.

<sup>14</sup> Nailus Sa'adah, Muhammad Rafiqul Hayyat, and Resti Fevria, "Analisis Issue dalam Etika Lingkungan Terkait IKN", *Semhas BIO 2022*, Universitas Negeri Padang, 2022, p. 423.

<sup>15</sup> *Ibid*, p 428.

<sup>16</sup> Appendix II Law Number 6 of 2022 concerning the National Capital.

concept conflict with each other.

This is where the author is interested in understanding this topic. The construction of the IKN Nusantara's infrastructure, one of which is funded in the form of FDI, can harm the environmental area around the project. The theme of the city "forest city" as if to add contradictory ideas to one another. With that, The main reason for the author is to comprehensively analyse and understand how IKN Nusantara's regulates its infrastructure development funding with the application of FDI and the concept of a forest city as a parameter and also the application of the concept of sustainable development.

## **B. Problem Formulation**

Two problem formulations for the author's research can be achieved as follow:

1. How is the legal framework concerning FDI funding involved in developing the IKN Nusantara?
2. What is the role of FDI-based funding regulations in developing IKN Nusantara with the forest city concept as the basis of the city plan?

## **C. Research Objectivity**

The research objectives to be achieved by the author are:

1. To analyse the legal framework of the FDI funding that is involved in the development of the IKN Nusantara, particularly under regulation of Law Number 25 of 2007 of Investment Law, Law Number 11 of 2020 of Job

Creation Law, Law Number 3 of 2022 of National Capital as well its derivatives such as in Appendix and Government Regulation.

2. To analyse the role of FDI in the development of IKN Nusantara by making the forest city concept a goal, by complementing the concept with regulation such as Law Number 3 of 2022 of National Capital as well its derivatives, Law Number 32 of 2009 of Environmental Protection and Management, as well with Law Number 11 of 2020 of Job Creation Law.

#### **D. Research Originality**

The existence of originality of this research is a review of the differences in the themes of researchers from other researchers. The purpose of the originality of this research is to avoid plagiarism and repetition of the author's research with previous researchers. The author has searched the title "Legal Analysis of FDI in IKN Nusantara based on Forest City Concept" in various sources. So, the writer found several researchers with the same theme, namely:

1. The scientific journal entitled "**Foreign Direct Investment sebagai Salah Satu Sumber Pendanaan dalam Pembangunan Ibu Kota Negara "Nusantara"**", written by Alfirza Dafrin Achmad Ichwani from the Faculty of Law, University of Indonesia, published by Jurnal Ilmiah Multidisiplin, Volume 1 Number 5, dated June 2023.

This research was conducted to study in more depth the concept of FDI along with the actors involved in this activity. This

research will focus on issues related to the use of FDI as a source of funding for the development of the IKN Nusantara. Apart from that, this research also aims to find out and explain what risks may occur in the FDI process itself. This research was conducted in a normative juridical manner which is based only on library materials or secondary data, including primary, secondary, and tertiary legal materials. The nature of this research is descriptive research.

From the previous discussion, it can be concluded that currently, many foreign investors are carrying out FDI in various countries, including Indonesia. Many factors encourage foreign investors to invest in Indonesia. Starting from considerations such as market size, economic growth, exchange rate, and infrastructure, it has a big influence on FDI. Regarding the risks, the policies that the government has implemented to attract foreign investors to invest in IKN Nusantara of course have various risks. Risks such as the emergence of issues of threats to sovereignty due to the involvement of foreign investors is one of the examples. Based on these risks, the Indonesian government should pay more attention to the IKN Nusantara development project, especially regarding its funding scheme related to FDI from foreign investors, so that in its realization the project can be well executed well and is according to target.

Regarding the researcher differences, There are differences between this research and the journal discussed above. The thing that

underlies this difference is that this journal only explains directly the definition of FDI itself and the risks posed in the development of the IKN Nusantara. Meanwhile, what is different from what the researchers wrote is a comprehensive explanation of the definition of FDI, its actors, along other aspects of the development of the IKN Nusantara. Not only that, the forest city concept has also become a reference in researchers' research as a factor in achieving aspects of the development of the IKN Nusantara.

2. Second, a scientific journal entitled “**Tinjauan Kritis terhadap Manajemen Risiko Pengembalian Investasi Asing pada Pembangunan Ibu Kota Nusantara**”, Written by Kristianus Jimy Pratama from the Faculty of Law, Universitas Gadjah Mada, published by *Majalah Hukum Nasional*, Volume 52 Number 1, dated December 16, 2022.

This research discusses the regulation of foreign investment return schemes and their implications in the infrastructure development of IKN Nusantara. The next discussion is regarding the review of investment law regarding risk management of returns on foreign investment in the development of IKN Nusantara. This research is normative legal research with a sociological approach. This research applies a statutory regulatory approach and conceptual methods and uses literature searches to collect legal materials. A qualitative approach is applied as a legal analysis technique and a deductive

method as a conclusion-drawing technique. Based on the results of this research, there are two conclusions as follows. The first conclusion is that three schemes can be used to channel foreign funds aimed at developing the infrastructure in IKN Nusantara, namely the PPP (Public-Private Partnership) scheme; consisting of tariff PPP schemes and AP (availability payment) PPP schemes, international funding or financing support schemes, and creative financing schemes. The second one is that the fund returns scheme and the different implications of the three related schemes for IKN infrastructure development also result in the risk management of the three related schemes being different when viewed from national investment law regulations.

Regarding the difference with the researchers' research, this study explains the general definition of foreign investment along with regulations and schemes in the context of the development of IKN Nusantara. Meanwhile, what makes it different from the researcher is that the researcher wants to focus his discussion on the role of funding in the FDI scheme exclusively by adding the concept of implementing a forest city as a reference for its development. The similarity is that both studies discuss regulatory schemes, roles, and the influence of risk in capital investment on the development of IKN Nusantara.

## **E. Literature Review**

### **1. Foreign Direct Investment**

The term of FDI, refers to an ownership stake in a foreign company or project made by an investor, company, or government from another country. From a macroeconomic point of view, FDI is a certain form of capital flow that crosses national borders from the home country to the host country, which is expressed in international monetary transactions, or known as the balance of payments. Meanwhile, from a microeconomic perspective, it tries to explain the motivation for cross-country investment from the investor's perspective<sup>17</sup>.

Although the origins of FDI are not yet fully understood, the first theories of FDI date back to the early work of Adam Smith in 1776 and David Ricardo in 1817, and were related to the international specialization of production. In Smith's theory of absolute advantage, he explains that trade between two countries will occur if one country can produce and export goods using a certain amount of capital and labor and more than its closest competitors, although Smith's theory does not explain how trade occurs between countries where one of the countries does not carry out production business<sup>18</sup>. It was then that Ricardo's work emerged which explained FDI using the theory of comparative advantage, which argued that different factors

---

<sup>17</sup> Vintila Denisia, "Foreign Direct Investment Theories: An Overview of the Main FDI Theories", *European Journal of Interdisciplinary Studies*, Issue 3, 2010, Academy of Economic Studies of Bucharest, p. 54.

<sup>18</sup> Patricia Lindelwa Makoni, "An Extensive Exploration of Theories of Foreign Direct Investment", *Risk governance & control: financial markets & institutions*, Volume 5 Issue 2, 2015, University of South Africa, p. 78.

of production specialize in different economic activities based on differences in their relative productivity<sup>19</sup>.

Meanwhile in Indonesia, FDI, which is considered foreign investment, is contained in Law Number 25 of 2007 concerning capital investment, (abbreviated as investment law). In Article 1 paragraph (6) of the Investment Law, it is stated that: "Foreign investors are individual foreign citizens, foreign business entities, and/or foreign governments who invest in the territory of the Republic of Indonesia"<sup>20</sup>.

Meanwhile, regarding examples of principles, examples of approaches such as multinational companies have principles and obligations in making foreign investments in the host country. Obligations such as not interfering in host state political affairs, the obligation to uphold human rights, being responsible for environmental damage, and the obligation to support the host state's economic development<sup>21</sup>. These are some examples of the principles of the home state or investors in investing in the host country.

## **2. National Capital**

National capital, or in this case, capital cities, play an important role in virtually all states. They act as administrative centres and often develop into hubs of economic, social and cultural activity as well as acting as national symbols that embody the shared values of a state, such as democracy, equality or development. The word capital itself derives from the Latin word , *caput*,

---

<sup>19</sup> Arnaud Costinot and Dave Donaldson, "Ricardo's Theory of Comparative Advantage: Old Idea, New Evidence", *Papers and Proceedings*, Vol. 102 No. 2, 2012, MIT economics, p. 1.

<sup>20</sup> Article 1 Paragraph 6 of Law Number 25 of 2007 concerning Investment.

<sup>21</sup> Alfirza Dafrin Achmad Ichwani, *Op. Cit.*, p. 8.

meaning head and denotes a certain primacy status associated with the very idea of a capital<sup>22</sup>.

### 3. IKN Nusantara

IKN Nusantara is the future capital city of Indonesia that located between Kutai Kartanegara Regency and Penajam Paser Utara Regency. IKN is an abbreviation for "Ibu Kota Negara", used to shorten and simplify the pronunciation of the new capital city. Further<sup>23</sup>more, the term used throughout the planning and development process, including the creation of the Draft Law on the IKN as the legal basis for its implementation.

The IKN Nusantara stands on 56.159 hectares of land designated as the capital city area and 196.501 hectares designated as the development area for IKN Nusantara.<sup>24</sup> The development of the IKN Nusantara is based on Law No. 3 of 2022 concerning National Capital. The IKN development concept also adopts the Smart City concept, which aims to adopt the concept of environmentally sustainable future city development and serve as a capital or center for equitable economic distribution and mobility for the development of the city.<sup>25</sup>

### 4. Forest City Concept

The definition of a forest city or landscape-based city is a forest

---

<sup>22</sup> Klaus-Jürgen Nagel, et. al., The problem of the capital city: New research on federal capitals and their territory, First Edition, Entitat Autònoma del Diari Oficial i de Publicacions, Barcelona, 2013.

<sup>23</sup> M. Hibatulloh Al Habib, et.al., "*DAMPAK PEMBANGUNAN IKN NUSANTARA: MENJADI SOLUSI PEMERATAAN PEREKONOMIAN ATAU TIMBUL PERMASALAHAN LINGKUNGAN?*", Indonesian Journal of Economy and Education Economy, Volume 2 No. 2, 2024, p. 407.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

ecosystem as a structural shaper of urban space oriented towards urban life and facilitating interaction between urban activities<sup>26</sup>.

Forest cities that use an integrated landscape approach are cities that are dominated by forest-structured landscapes or open spaces that have ecosystem service functions, such as forests, and aim to create life that coexists with nature<sup>27</sup>. In the development concept, the forest city will be designed according to natural conditions to create life side by side with nature with the aim of supporting sustainable development, in particular maximizing carbon absorption and biodiversity conservation, as well as supporting environmental management to improve the quality of the living environment<sup>28</sup>.

In correlation, there is the case of forest city research in Malaysia with the support of FDI funding from China. For example, over the past decade, Chinese FDI in Malaysia has increased exponentially, especially following the launch of the Belt and Road Initiative (BRI) in 2013<sup>29</sup>. In this case, it is also discovered how Chinese foreign investment in Forest City involves a unique form of urban speculation based on the financialization of housing, for example, most buyers, before the pandemic, were Chinese nationals looking for a second home, vacation rental, or investment property, with the aim of to benefit from Forest City's attractive location and future real estate values<sup>30</sup>.

---

<sup>26</sup> Abdhy Walid Siagian, Muhammad Syammakh Daffa Alghazali, dan Habib Ferian Fajar, "*Penerapan Konsep Forest City dalam Upaya Mencapai Carbon Neutral pada Pembangunan Ibu Kota Negara*", dikutip dari Gadang Pamungkas, *Jurnal Studi Kebijakan Publik*, Vol. 1 No. 1, Universitas Andalas, p. 4.

<sup>27</sup> Appendix II Law Number 6 of 2022 concerning the National Capital. *Op. Cit.*, p 26.

<sup>28</sup> *Ibid.*

<sup>29</sup> Emma Avery, Sarah Moser, "Urban speculation for survival: Adaptations and negotiations in Forest City, Malaysia", *EPC Politics and Space*, Vol. 41 No. 2, McGill University Faculty of Science, 2023, p. 222.

<sup>30</sup> *Ibid* p. 223.

## **F. Research Method**

### **1. Type of Research**

The normative legal research is selected. It is a research that has an object of study on legal rules or regulations. Normative legal research examines legal rules or regulations as a system structure related to a legal event. This research was conducted with the intention of providing legal arguments as a basis for determining whether an event is right or wrong. And how should the event be according to the law? This normative legal research is based on secondary data consisting of primary legal materials including statutory regulations and all official documents containing legal provisions, secondary legal materials that are documents or legal materials that explain primary legal materials such as books, articles, journals, research results, papers, and others that are relevant to the issues to be discussed as well as tertiary legal materials as legal materials that provide instructions and explanations of primary and secondary legal materials, such as dictionaries and encyclopedias<sup>31</sup>.

### **2. The Research Objects**

The object of this research is to examine "Legal Analysis of FDI in the National Capital of Nusantara in The Development based on Forest City Concept".

### **3. Research Data Sources**

---

<sup>31</sup> Soerjono Soekanto, *Pengantar penelitian hukum*, UI Press, Jakarta, 1984, p. 20.

This research uses secondary data. The sources of secondary data consist of primary legal materials; secondary legal materials; and tertiary legal materials.

a. Primary Legal Materials are binding legal materials because they are issued by the government. This study includes:

- 1) The 1945 Constitution of the Republic of Indonesia after the Amendment.
- 2) Law Number 25 of 2007 concerning Investment.
- 3) Law Number 40 of 2007 concerning Limited Liability Company.
- 4) Law Number 32 of 2009 concerning Environmental Protection and Management.
- 5) Law Number 3 of 2022 concerning the National Capital.
- 6) Law Number 21 of 2023 Concerning Amendments of Law Number 3 of 2022 concerning National Capital.
- 7) Government Regulation Number 17 of 2022 concerning Funding and Budget Management in the Context of Preparation, Development, and Relocation of the National Capital City and the Implementation of the Government of the Special Region of the National Capital
- 8) Government Regulation Number 12 of 2023 concerning Granting Business Licensing, Ease of Doing Business, and

Investment Facilities for Business Players in the Capital City of Nusantara.

- b. Secondary Legal Materials, are defined as legal sources that are not binding but explain primary legal materials which are the result of processed opinions or thoughts of experts or experts who study specific fields, in the form of books, and papers.
- c. Tertiary Legal Materials are defined as a source that provides an explanation of primary legal materials

#### **4. Data Collection**

The data collection technique applied in this study is the library research method. The library research method is research carried out using literature, either in the form of books, scientific journals, minutes of meetings, mass media, the internet, and other relevant references to answer the problem formulations in this research.

#### **5. Research Approaches**

Two approaches are used in this research; a statutory approach and a conceptual approach. The statutory approach is the approach carried out by examining all laws and regulations that are related to the legal issues being handled. The conceptual approach is a type of approach in legal research that provides a point of view of problem-solving analysis in legal research seen from the aspects of the legal concepts that lie behind it or even can be seen from the values contained in the normalization of regulation in relation to the concepts used in this case relates to IKN Nusantara According to Law Number

3 of 2022, and FDI according to Law Number 25 of 2007 and Law Number 6 of 2023 is reviewed from the constitution with the Forest City concept as a benchmark.

## **6. Legal Material Analysis**

Legal materials obtained from the results of library research were analysed descriptively and qualitatively, namely collecting and selecting legal materials according to the problems studied, then described so as to produce a picture or conclusion that is in accordance with the actual situation so as to be able to answer all existing problems.

## **G. Thesis Framework**

This research is organized into 4 chapters (four chapters) in outline which in outline which consists of:

**CHAPTER I.** It contains the introduction that consists of the background of the problem, problem formulation, research objectives, literature review, research methods, and writing systematics.

**CHAPTER II.** It is about the literature review of this section and will describe Foreign Direct Investment and the Forest City Concept. The use of these 2 theories is very relevant to the problem topic and becomes an analytical point to produce conclusions and suggestions related to the issues raised.

**CHAPTER III** describes the results and discussions related to the IKN Nusantara According to Law Number 3 of 2022, FDI according to Law

Number 25 of 2007, and other regulations is reviewed from the constitution with the Forest City concept as a benchmark.

**CHAPTER IV** is closing. This section describes the conclusions and suggestions drawn from the explanation of **CHAPTER III**.