




Compatibility of the Capital of Nusantara's Form of Government Against Article 18B Section (1) of the 1945 Constitution of the Republic of Indonesia

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Article Info	Abstract	
<p>Keywords: Capital of Nusantara; Form of Government; Article 18B Section (1); 1945 Constitution of the Republic of Indonesia.</p>	<p>Introduction: With the promulgation of Law Number 3 of 2022 on State Capital, the government realized its plan to relocate the nation's capital from the Specific Capital Region of Jakarta to the Capital of Nusantara on the Kalimantan Island. However, the law's passage has sparked a debate directed at the Indonesian new capital's form of government which is deemed to violate the 1945 Constitution of the Republic of Indonesia, specifically Articles 18, 18A, and 18B.</p> <p>Purposes of the Research: The purpose of this study is to examine and analyze the compatibility of the Capital of Nusantara's form of government against Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia.</p> <p>Methods of the Research: This is a normative juridical study using primary and secondary legal materials that are relevant to the topic of this study.</p> <p>Results of the Research: The results showed that the specific arrangements of the Capital of Nusantara's form of government are normatively compatible with Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia for two reasons, namely: the position between Article 18B section (1) and Article 18 as equals and that both of them apply independently; and the specificity that can be regulated for the Capital of Nusantara is flexible which means that the extent of the specificities can be so broad, including in terms of the form of government.</p>	

1. INTRODUCTION

Due to its position as the center of government administration as well as the business center, the Specific Capital Region of Jakarta (DKI Jakarta) is a reflection of the administration of the Indonesian government as well as the engine that drives the economy and national development. In other words, Jakarta's dual position has implications for two major, interconnected issues: national government administration and regional economic growth and development. Jakarta's rapid growth rate, combined with the fact that the unification of government functions with economic center was not planned from the start, has resulted in a slew of issues due to limited carrying capacity.¹ Such circumstances

¹ Dian Herdiana, "Pemindahan Ibukota Negara: Upaya Pemerataan Pembangunan Ataukah Mewujudkan Tata Pemerintahan Yang Baik," *Jurnal Transformative* 8, no. 1 (2022): 2; Ariesy Tri Mauleny, "Agglomerasi, Perubahan Sosial Ekonomi, Dan Kebijakan Pembangunan Jakarta," *Jurnal Ekonomi Dan Kebijakan Publik* 6, no. 2 (2015): 152.

necessitate a policy of relocating one of DKI Jakarta's functions, either as the center of government administration or as the center of the economy.²

In several state speeches in August 2019, the President announced plans to relocate the nation's capital from Jakarta to Kalimantan Island, specifically in parts of Penajam Paser Utara Regency and parts of Kutai Kertanegara Regency in the Province of Kalimantan Timur.³ The plan is based on a study conducted by the National Development Planning of the Republic of Indonesia (Bappenas RI) and at least driven by 3 (three) main reasons, namely: the complexity of the problems in Jakarta's Special Capital Region, which has an impact on less-than-optimal governance; a development gap between Java and outside Java; and the desire for the nation's capital city to represent the character and vision of Indonesia's development.⁴ It is hoped that by relocating the new capital city, it will be able to become a driver of development and economic equity, as well as to improve government administrative functions.⁵

The policy plan was then realized through the promulgation of Law Number 3 of 2022 on State Capital (State Capital Law). However, the law's passage has sparked several debates, one of which is directed at the Indonesian new capital's form of government. According to some experts, the form of the Capital of Nusantara's government, which includes the regulation of the Capital of Nusantara Authority, is ambiguous and violates the 1945 Constitution of the Republic of Indonesia, specifically Articles 18, 18A, and 18B.⁶ Thus, the main issue that needs to be addressed is the compatibility of the form of government of the Ibu Kota Nusantara to the provisions of Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia. The main issues will be addressed through two problem formulations: a) how is the interpretation of the provisions of Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia?; and how is the compatibility of the form of government of the Capital of Nusantara to the provisions of Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia?

2. METHOD

This is a normative juridical research using library materials⁷, specifically: (a) primary legal materials consisting of legal materials with a binding nature in the form of statute or

² Herdiana, "Pemindahan Ibukota Negara: Upaya Pemerataan Pembangunan Ataukah Mewujudkan Tata Pemerintahan Yang Baik," 9.

³ Fikri Hadi and Rosa Ristawati, "Pemindahan Ibu Kota Indonesia Dan Kekuasaan Presiden Dalam Perspektif Konstitusi," *Jurnal Konstitusi* 17, no. 3 (2020): 531-32.

⁴ Hadi and Ristawati, 531; Dian Herdiana, "Menemukanali Syarat Keberhasilan Pemindahan Ibu Kota Negara," *Politica* 11, no. 1 (2020): 1-3.

⁵ Kementerian Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan Nasional, *Naskah Akademik Rancangan Undang-Undang Tentang Ibu Kota Negara* (Jakarta: Kementerian Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan Nasional, 2020), 43-44; Febrianto Adi Saputro, "Ibu Kota Baru Diharapkan Jadi Motor Kemajuan Indonesia," *Republika*, 2021, <https://www.republika.co.id/berita/r0741d328/ibu-kota-baru-diharapkan-jadi-motor-kemajuan-indonesia>.

⁶ Sucipto, "Bentuk Badan Otorita IKN Nusantara Dinilai Rancu," *Kompas*, 2022, <https://www.kompas.id/baca/nusantara/2022/02/15/bentuk-badan-otorita-ikn-nusantara-dinilai-rancu>; Rofik Hidayat, "Pengaturan Sistem Otorita Dalam UU IKN Dinilai Langgar Konstitusi," *HukumOnline.com*, 2022, <https://www.hukumonline.com/berita/a/pengaturan-sistem-otorita-dalam-uu-ikn-dinilai-langgar-konstitusi-lt61e92c59b51e0/>.

⁷ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006), 295; Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Umum* (Jakarta: RajaGrafindo Persada, 2007), 13.

regulations and court decisions; and (b) secondary legal materials that provide explanations of primary legal materials in the form of literature, journal articles, and relevant research publication.⁸ Data is gathered by conducting a literature review of relevant legal materials.⁹ In order to answer the problem formulation in this study, the data was analyzed in a qualitative descriptive manner.

3. RESULTS AND DISCUSSION

3.1 The Interpretation of the Provisions of Article 18B Section (1) of the 1945 Constitution of the Republic of Indonesia

The provisions of Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia, which states that "The State shall recognize and respect units of regional governments of specific or special nature which shall be regulated by laws," serve as the foundation for governing the formation of specific (*khusus*) regions and special (*istimewa*) regions.¹⁰ As the result of the second amendment to the 1945 Constitution of the Republic of Indonesia, the formulation of the provision is an elaboration and contextualization of the formulation of the phrase "the hereditary rights of special regions" in the provisions of Article 18 of the pre-amendment 1945 Constitution.¹¹ The change in formulation from "special regions" to "regional governments of specific or special nature" which distinguishes between specific regional government units and special regional government units are based on several dichotomous differences.

One of the opinions in the Ad Hoc Committee Session I of the 2000 MPR Working Body which explained the dichotomous difference was stated by Hatta Mustafa from the Golkar Party Faction (F-PG). According to him, the existence of a "specific" government unit in the provisions of Article 18B section (1) is based on the existence of certain specificities, for example the DKI Jakarta Province in its position as the state capital. On the other hand, regional government units that are "special" in this case are based on historical origins and factors, for example the Province of the Special Region of Yogyakarta.¹² Because there have historically been inconsistencies in determining a region's specific or special status, the meaning of the different meanings of specific and special status remains somewhat hazy.

One of these inconsistencies is the granting of the province of Aceh's special status, which was granted during the reform era through Law Number 44 of 1999 on the Implementation of the Special Privileges of the Province of the Special Region of Aceh that was based more on socio-political considerations.¹³ A similar reason underpins the passage of Law Number 21 of 2001 on Specific Autonomy for the Province of Papua, though it is not

⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia Press, 2006), 52.

⁹ Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Jakarta: Prenada Media Group, 2017), 237.

¹⁰ Dianora Alivia, "Politik Hukum Pengaturan Pemerintahan Daerah Yang Bersifat Khusus Atau Bersifat Istimewa Di Indonesia," *RechtIdee* 14, no. 2 (2019): 152.

¹¹ Tim Penyusun Naskah Komprehensif Proses dan Hasil Perubahan UUD 1945, *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses, Dan Hasil Pembahasan, 1999-2002 Buku IV Kekuasaan Pemerintahan Negara Jilid 2* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010), 1134.

¹² Tim Penyusun Naskah Komprehensif Proses dan Hasil Perubahan UUD 1945, 1183-84.

¹³ Ni'matul Huda, *Desentralisasi Asimetris Dalam NKRI* (Bandung: Nusa Media, 2015), 109; Mukhlis, "Keistimewaan Dan Kekhususan Aceh Dalam Perspektif Negara Kesatuan Republik Indonesia," *Jurnal Ilmu Hukum* 4, no. 1 (2013): 84; Suharyo, "Otonomi Khusus Di Aceh Dan Papua Di Tengah Fenomena Korupsi, Suatu Strategi Penindakan Hukum," *Jurnal Penelitian Hukum De Jure* 18, no. 3 (2018): 306.

explicitly stated whether Papua Province is a specific region or a special region.¹⁴ This example then raises the question, what exactly is the criteria for granting the status of a region to be a specific region or special region.

Other questions remain unanswered by the interpretation of the provisions of Article 18B section (1), including the possibility of forming specific or special regions following the amendment to the 1945 Constitution of the Republic of Indonesia. This is due to the phrase "The State shall recognize and respect" used in the provisions of Article 18B section (1), which appears to imply that the state only recognizes existing specific and special regional government units, hence the state does not have the capacity to form new ones. Uncertainty over the interpretation of the provisions of Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia was then addressed by the Constitutional Court in a series of decisions. The following are some of the Court's decisions:

Table 1.

Decisions of the Constitutional Court Containing the Interpretation of Article 18B Section (1) of the 1945 Constitution of the Republic of Indonesia

No.	Decision	Law(s) Reviewed
1.	Constitutional Court Decision Number 11/PUU-VI/2008	Law Number 32 of 2004 on Local Governance and Law Number 29 of 2007 on Provincial Government of the Specific Capital Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia
2.	Constitutional Court Decision Number 81/PUU-VIII/2010	Law Number 35 of 2008 on Stipulation of Government Regulations in Lieu of Law Number 1 of 2008 on Amendments to Law Number 21 of 2001 on Specific Autonomy for the Province of Papua
3.	Constitutional Court Decision Number 88/PUU-XIV/2016	Law Number 13 of 2012 on the Special Privileges of the Special Region of Yogyakarta

Source: processed by the author, 2022.

Each interpretation of the provisions of Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia is then described as follows. **First**, in Decision 11/PUU-VI/2008, the Constitutional Court presented three alternative interpretations of the provisions of Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia in relation to Article 18, as follows:¹⁵

¹⁴ Although it is not stated whether the grant of specific autonomy can qualify a region as a specific region, the Constitutional Court appears to equate the nomenclature of specific autonomy with specific regions in its legal considerations of Decision Number 81/PUU-VIII/2010. Hence, Aceh Province, which has the status of a special region based on the provisions of Article 1 point 6 of Law Number 44 of 1999 on the Implementation of the Special Privileges of the Province of the Special Region of Aceh, also has the status of specific region as stated in the consideration preamble letter b of Law Number 11 of 2006 on Aceh Governance. Huda, *Desentralisasi Asimetris Dalam NKRI*, 108; Nur Rohim, "Optimalisasi Otonomi Khusus Papua Dalam Peningkatan Kesadaran Hukum Masyarakat Guna Meredam Konflik Dan Kekerasan," *Fiat Justisia Jurnal Ilmu Hukum* 8, no. 1 (2014): 82; Mahkamah Konstitusi Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 81/PUU-VIII/2010 perihal Pengujian Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi (2012); Republik Indonesia, "Undang-Undang Nomor 44 Tahun 1999 Tentang Penyelenggaraan Keistimewaan Propinsi Daerah Istimewa Aceh" (1999); Republik Indonesia, "Undang-Undang Nomor 11 Tahun 2006 Tentang Pemerintahan Aceh" (2006).

¹⁵ Mahkamah Konstitusi Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 11/PUU-VI/2008 perihal Pengujian Undang-Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah dan Undang-

- 1) **First Alternative:** Article 18 is designated as the main norm that is generally applicable, with Article 18B section (1) serving as an additional norm that must not deviate from the main norm.
- 2) **Second Alternative:** placing Article 18B section (1) as a special provision where the application of Article 18B may deviate from the provisions of Article 18.
- 3) **Third Alternative:** Each of the provisions of Article 18 and Article 18B section (1) should be treated as a separate norm with equal status that applies independently, so that the two cannot be contradicted.

The Court chose the third alternative interpretation out of the three options based on two factors. First, in the context of the State Capital, the third alternative appears to be more in line with the original intent of the norm's formulator of the provisions of Article 18B section (1), where the specificity of the DKI Jakarta Province refers to its position as the state capital; and second, the meaning of specificity in the provisions of Article 18B section (1) is also intended to accommodate future dynamics and needs that necessitate the determination of specific status for a region.¹⁶ The Court then confirmed this viewpoint by basing it on Carl Schmitt's *Verfassungsbegriff* theory, which regards the constitution as a closed system in which each norm is autonomous.¹⁷

Second, in Decision Number 81/PUU-VIII/2010, the Constitutional Court provides qualifications for determining whether a region is a specific region or a special region. According to the Court, a region is designated as a special region if the special status relates to the rights of origin or history of the said region dating back before the establishment of the Unitary State of the Republic of Indonesia.¹⁸ The Province of the Special Region of Yogyakarta is one of the provinces granted special region status based on history and original rights to regulate and administer special powers in: a. procedures for filling out positions, roles, duties, and authorities of the Governor and Deputy Governor; b. Special Region of Yogyakarta local government institutions; c. culture; d. land; and e. spatial use.¹⁹

According to Decision Number 81/PUU-VIII/2010, the determination of a region as a specific region is related to the reality or political need that requires a region to be given specific status.²⁰ In terms of specific regions, the Court confirmed these qualifications by citing Papua Province as an example of a region granted special autonomy due to the situation and conditions of upheaval.²¹ In terms of the type and scope of the specificity granted, the Court believes that the specificity is adaptable to the actual needs of the

Undang Nomor 29 Tahun 2007 tentang Pemerintahan Provinsi Daerah Khusus Ibukota Jakarta Sebagai Ibukota Negara Kesat (2008).

¹⁶ Mahkamah Konstitusi Republik Indonesia, at 93–94.

¹⁷ Mahkamah Konstitusi Republik Indonesia, at 94; Carl Schmitt, *Constitutional Theory* (Durham and London: Duke University Press, 2008), 62.

¹⁸ Mahkamah Konstitusi Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 81/PUU-VIII/2010 perihal Pengujian Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi at 39.

¹⁹ Huda, *Desentralisasi Asimetris Dalam NKRI*, 153; Article 6 section (2) Republik Indonesia, “Undang-Undang Nomor 13 Tahun 2012 Tentang Keistimewaan Daerah Istimewa Yogyakarta” (2012).

²⁰ Mahkamah Konstitusi Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 81/PUU-VIII/2010 perihal Pengujian Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi at 39.

²¹ Mahkamah Konstitusi Republik Indonesia, at 40.

region.²² In other words, the form of specificity is flexible in the context of specificity in the authority of the regional government as well as specificity in its form of government, as seen in the following regions:

Table 2.
Some Specificities of DKI Jakarta Province and Papua Province

Region	Specificities	
	Form of Government	Government's Authority
DKI Jakarta Province	The DKI Jakarta Province is the only entity that is autonomous in its structure of government which includes administrative cities and administrative districts which are not autonomous and do not have DPRD institutions like cities and regencies in other provinces. ²³ In addition, there is a deputy who serves as an official attached to the existence of specific authorities for the DKI Jakarta Province as the State Capital. ²⁴	Specific authorities of the DKI Jakarta Provincial Government as the Capital of the Unitary State of the Republic of Indonesia which includes the establishment and implementation of policies in the fields of: ²⁵ a) spatial planning, natural resources, and the environment; b) control of population and settlements; c) transportation; d) industry and trade; and e) tourism.
Papua Province	1) Native Papuans in the requirements for the positions of Governor and Deputy Governor; ²⁶ 2) The existence of the Papuan People's	Specific powers, including: a) to cooperate with institutions or agencies abroad; ³¹ b) in fiscal matters, one of which is in provincial and district/city revenues

²² Mahkamah Konstitusi Republik Indonesia, at 40.

²³ Article 9 section (1), 19, dan 20 Republik Indonesia, "Undang-Undang Nomor 29 Tahun 2007 Tentang Provinsi Daerah Khusus Ibukota Jakarta" (2007).

²⁴ Article 14 section (1) Republik Indonesia.

²⁵ Article 26 section (1) Republik Indonesia.

²⁶ Article 12 letter a Republik Indonesia, "Undang-Undang Nomor 21 Tahun 2001 Tentang Otonomi Khusus Bagi Provinsi Papua" (2001); Republik Indonesia, "Undang-Undang Nomor 35 Tahun 2008 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 Tentang Perubahan Atas Undang-Undang Nomor 21 Tahun 2001 Tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang" (2008); Republik Indonesia, "Undang-Undang Nomor 2 Tahun 2021 Tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 Tentang Otonomi Khusus Bagi Provinsi Papua" (2021).

³¹ Article 4 section (5) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

<p>Council (MRP) institution, which consists of native Papuans and is intended as cultural representations of indigenous Papuans.²⁷</p>	<p>within the framework of Special Autonomy;³²</p>
<p>3) The membership composition of the DPRP and DPRK, one of which consists of members appointed from elements of native Papuans.²⁸</p>	<p>c) in the economic sector, one of which is in making capital investments in State-Owned Enterprises (BUMN) and private companies domiciled and operating in the Papua Province;³³</p> <p>d) protection of the rights of indigenous peoples;³⁴</p> <p>e) in the field of human rights, one of which is in fostering, protecting the rights and empowering women with dignity and making all efforts to position them as equal partners to men;³⁵</p>
<p>4) The existence of a <i>distrik</i> institution which is the</p>	

²⁷ Article 1 number 8 dan Article 19 section (1) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

²⁸ Article 6 section (1) letter b dan Article 6A section (1) letter b Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

³² Article 34 section (1) letter c dan section (3) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

³³ Article 41 section (1) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

³⁴ Article 43 section (1) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

³⁵ Article 47 Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

name for an area at the sub-district level. ²⁹	f) the field of public order and peace, one of which is in the regulation of police duties including financing; ³⁶
5) The existence of <i>kampung</i> (village) institution that have the authority to regulate and manage the interests of the local community based on local origins and customs. ³⁰	g) judicial power, one of which is regarding the recognition of <i>adat court</i> ; ³⁷
	h) in the field of religion, one of which is in Papua Province licensing the placement of foreign workers in the field of religion; ³⁸
	i) in the field of education and culture, one of which is protecting, fostering, and developing Papuan indigenous culture; ³⁹
	j) in the health sector, one of which is in setting quality standards, providing health services; ⁴⁰

²⁹ Article 1 number 13 dan Article 3 section (3) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

³⁰ Article 1 number 14 Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

³⁶ Article 48 section (3) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

³⁷ Article 50 section (2) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

³⁸ Article 55 section (2) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

³⁹ Article 57 section (1) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

⁴⁰ Article 59 section (1) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang;

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- k) in the field of population and manpower, one of which is in the placement of residents in Papua Province in the context of national transmigration;⁴¹
 - l) in the field of sustainable development and the environment, one of which is in the management of protected areas;⁴²
 - m) in the social sector, one of which is maintaining and providing a decent life guarantee to the population of Papua Province who has social problems;⁴³

Specific powers:

- a) regional symbol;⁴⁴
 - b) Governor's right in giving considerations on the making of international agreements related to the interests of the Papua Province;⁴⁵
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Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

⁴¹ Article 61 section (2) dan (3) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

⁴² Article 64 section (2) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

⁴³ Article 65 section (1) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

⁴⁴ Article 2 section (3) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

⁴⁵ Article 4 section (8) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

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- c) determination of membership and number of MRP members;⁴⁶
 - d) implementation of the duties and authorities of the MRP;⁴⁷
 - e) implementation of the rights and obligations of the MRP;⁴⁸
 - f) further distribution of natural resource revenue sharing from oil mining and natural gas mining between provinces and regencies/cities;⁴⁹
 - g) economic efforts in Papua Province that utilize natural resources;⁵⁰
 - h) providing special attention and handling for the development of isolated, remote, and neglected tribes in Papua Province;⁵¹ and
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⁴⁶ Article 19 section (3) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

⁴⁷ Article 20 section (2) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

⁴⁸ Article 21 section (2) dan Article 23 section (3) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

⁴⁹ Article 34 section (7) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

⁵⁰ Article 38 section (2) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

⁵¹ Article 66 section (2) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

i) implementation of social supervision.⁵² which is regulated by a Special Regional Regulation (*perdasus*) as a form of further implementation of the provisions in the Papua Specific Autonomy Law.

Source: processed by the author, 2022.

Third, in Decision Number 88/PUU-XIV/2016 which examines the provisions of Article 18 section (1) letter m of Law Number 13 of 2012 on the Special Privileges of the Special Region of Yogyakarta.⁵³ In the legal considerations of the decision, the Court is of the opinion that the granting of the status of a "special region" to the Province of the Special Region of Yogyakarta is due to the role and contribution of the Ngayogyakarta Hadiningrat Sultanate and the Duchy of Pakualaman in maintaining the integrity of the Unitary State of the Republic of Indonesia and the voluntary integration of the two into the Unitary State of the Republic of Indonesia after the Proclamation of Independence on August 17, 1945 which was later confirmed by the Charter of the President of the Republic of Indonesia dated September 6, 1945 which stated the integration of Yogyakarta into the Republic of Indonesia with the status of a special region.⁵⁴ The Court's position at least emphasizes the distinction between specific and special regions, particularly in terms of a region's qualifications to become a special region.

Using the various interpretations presented above, the author in this case will extract the Constitutional Court's interpretation of the provisions of Article 18B section (1). The use of the Constitutional Court's interpretation in this case is based on the Constitutional Court's position as the final interpreter of the constitution.⁵⁵ In other words, the Constitutional Court's interpretation stated in its decision is a final interpretation, which means it is binding on all parties, including legislators in the making of laws.⁵⁶ Based on decisions number 11/PUU-VI/2008, 81/PUU-VIII/2010, and 88/PUU-XIV/2016, the Constitutional Court's interpretation of the provisions of Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia is as follows:

- 1) that the norms of the provisions of Article 18B section (1) have an equal and independent position with respect to the provisions of Article 18. This has implications

⁵² Article 67 section (2) Republik Indonesia, Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua; Republik Indonesia, Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus Bagi Provinsi Papua Menjadi Undang-Undang; Republik Indonesia, Undang-Undang Nomor 2 Tahun 2021 tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

⁵³ Mahkamah Konstitusi Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 88/PUU-XIV/2016 perihal Undang-Undang Nomor 13 Tahun 2012 tentang Keistimewaan Daerah Istimewa Yogyakarta terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (2017).

⁵⁴ Mahkamah Konstitusi Republik Indonesia, at 301.

⁵⁵ Janedjri M. Gaffar, "Peran Putusan Mahkamah Konstitusi Dalam Perlindungan Hak Asasi Manusia Terkait Penyelenggaraan Pemilu," *Jurnal Konstitusi* 10, no. 1 (2013): 13; Bisariyadi et al., *Penafsiran Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2016), 18-19.

⁵⁶ Nabiatus Sa'adah, "Mahkamah Konstitusi Sebagai Pengawal Demokrasi Dan Konstitusi Khususnya Dalam Menjalankan Constitutional Review," *Administrative Law & Governance Journal* 2, no. 2 (2019): 242-43; Anna Triningsih and Oly Viana Agustine, "Putusan Mahkamah Konstitusi Yang Memuat Keadilan Sosial Dalam Pengujian Undang-Undang," *Jurnal Konstitusi* 16, no. 4 (2019): 840.

for the possibility of a "special" arrangement in a specific region or special region which *prima facie* can be considered to be in violation of the provisions of Article 18. However, because the "special" arrangement is based on the provisions of Article 18B section (1) and is a logical result of an area's designation as a specific region or special region, that particular "special" arrangements can be normatively justified.

- 2) that the basis for determining an area to be a specific region or special region is based on two dichotomously different types of qualifications, namely:
 - a) **specific region:** there is a political reality or need that requires a region to be given a specific status.
 - b) **special region:** the existence of a region's right of origin and history prior to the establishment of the Unitary State of the Republic of Indonesia
- 3) that the scope of specialization granted to special regions and special regions is determined by the background of each of the two regions in question, namely:
 - a) **specific region:** because the reason for designation as a specific region is based on the existence of certain political realities or needs, the form of specificity provided, both in terms of government form and authority, is related to the form of reality and political needs. Specificity can range from very broad to very narrow, depending on legislators' political decisions. In other words, if legislators believe that there are realities and political needs that require a special area to be given such a broad specialty, then the form or authority of the special area's government follows suit, and vice versa.
 - b) **special region:** because the reason for the stipulation as a special region is related to the existence of origin rights and historical factors, the form of specialization provided is closely related to the presence of the intended right of origin and history. In other words, the scope of special privileges given cannot be fabricated and must be proven based on a region's origins and historical facts.

As for the meaning of "recognize and respect" in Article 18B section (1) in relation to the possibility of forming a new specific region or special region, the Constitutional Court in its decision number 81/PUU-VIII/2010 stated that the formation of a new special region or special region is possible as long as it fulfills the qualifications and then established by law.⁵⁷

3.2 Compatibility of the Capital of Nusantara's Form of Government According to Article 18B Section (1) of the 1945 Constitution of the Republic of Indonesia.

The regulation of Capital of Nusantara is governed by Law Number 3 of 2022 on the State Capital (State Capital Law). According to Article 1 number 2 of the Law, the Capital of Nusantara is defined as "a specific regional government unit at the provincial level whose territory is the domicile of the State Capital as stipulated and regulated by this Law".⁵⁸ The Capital of Nusantara is explicitly stated as a specific regional government unit under this definition. In other words, the regulation concerning the Capital of Nusantara in this case refers to and is subject to the provisions of Article 18B section (1) of the 1945 Constitution of

⁵⁷ Mahkamah Konstitusi Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 81/PUU-VIII/2010 perihal Pengujian Undang-Undang Nomor 35 Tahun 2008 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Daerah at 38; Yohanis Anton Raharusun, *Daerah Khusus Dalam Perspektif NKRI* (Jakarta: Konstitusi Press, 2009), 233.

⁵⁸ Article 1 number 2 Republik Indonesia, "Undang-Undang Nomor 3 Tahun 2022 Tentang Ibu Kota Negara" (2022).

the Republic of Indonesia, specifically regarding specific region. In accordance with the research limitations, the author will examine the compatibility of the regulations governing the form of government of the Capital of Nusantara against the provisions of Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia. The following provisions of the State Capital Law govern the regulations regarding the form of government:

Table 3.
Provisions Regarding the Form of Government

No.	Legal Basis	Provision
1.	Article 4 section (1) and (3) ⁵⁹	1) By this Law, hereby forms: <ol style="list-style-type: none"> a. The Capital of Nusantara as the State Capital; and b. The Capital of Nusantara Authority as a ministry-level institution that administer the Local Governance of the Specific Capital Region of Nusantara. 2) The Capital of Nusantara Authority as referred to in section (1) letter b is responsible for the preparation, development, and relocation of the State Capital, as well as the administration of the Local Governance of the Specific Capital Region of Nusantara.
2.	Article 5 section (4) ⁶⁰	The Head of the Capital of Nusantara Authority is the head of the Regional Government of the Specific Capital Region of Nusantara who is at the ministerial level, appointed, and dismissed by the President after consulting with the DPR.
3.	Article 8 ⁶¹	The administrator of the Specific Capital Region of Nusantara is the Capital of Nusantara Authority.
4.	Article 9 ⁶²	1) The Capital of Nusantara Authority is headed by Head of the Capital of Nusantara Authority and assisted by a Deputy Head of the Capital of Nusantara Authority who is appointed, and dismissed directly by the President after consulting with the DPR. 2) The inauguration of the Head of the Capital of Nusantara Authority and Deputy Head of the Capital of Nusantara Authority as referred to in section (1) is carried out by the President.
5.	Article 10 ⁶³	1) The Head of the Capital of Nusantara Authority and the Deputy Head of the Capital of Nusantara Authority as referred to in Article 9 hold positions for 5 (five) years from the date of inauguration and thereafter may be reappointed within the same term of office.

⁵⁹ Article 4 section (1) dan (3) Republik Indonesia.

⁶⁰ Article 5 section (4) Republik Indonesia.

⁶¹ Article 8 Republik Indonesia.

⁶² Article 9 Republik Indonesia.

⁶³ Article 10 Republik Indonesia.

	2) The Head of the Capital of Nusantara Authority and/or the Deputy Head of the Capital of Nusantara Authority as referred to in Article 9 may be dismissed at any time by the President before the term of office as referred to in section (1) ends.
	3) For the first time the Head of the Capital of Nusantara Authority and the Deputy Head of the Capital of Nusantara Authority are appointed by the President no later than 2 (two) months after this Law is enacted.
6. Article 11 ⁶⁴	1) Provisions regarding the organizational structure, duties, authorities, and working procedures of the Capital of Nusantara Authority are regulated by Presidential Regulation.
	2) The organizational structure and filling of the positions of the Capital of Nusantara Authority are adjusted to the stages of preparation, development, and relocation of the State Capital as well as the need for the administration of the Local Governance of the Specific Capital Region of Nusantara.

Source: processed by the author, 2022.

Based on the table above, there are at least some forms of specificity in the form of government of the Capital of Nusantara when viewed from the general arrangement in the provisions of Article 18 of the 1945 Constitution of the Republic of Indonesia, Law Number 23 of 2014 on Local Governance, as last amended by Law Number 11 of 2020 on Job Creation (Local Governance Law) and Law Number 1 of 2015 on Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors to become Laws as last amended by Law Number 6 of 2020 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2020 on Third Amendment to Law Number 1 of 2015 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors to Become Law (Local Election Law) as follows:

Table 4.
Specificity in the Arrangements on the Form of Government in State Capital Law

No.	General Provisions	Specificity
1.	Article 1 number 3 Local Governance Law: ⁶⁵	The position of the Capital of Nusantara Authority as a ministry-

⁶⁴ Article 5 section (4) dan 11 Republik Indonesia.

⁶⁵ Article 1 number 3 Republik Indonesia, "Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah" (2014); Republik Indonesia, "Undang-Undang Nomor 2 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah Menjadi Undang-Undang" (2015); Republik Indonesia, "Undang-Undang Nomor 9 Tahun 2015 Tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah" (2015); Republik Indonesia, "Undang-Undang Nomor 2 Tahun 2020 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020 Tentang Kebijakan Keuangan Negara Dan Stabilitas Sistem Keuangan Untuk Penanganan Pandemi Corona Virus Disease 2019 (Covid-19) Dan/Atau Dala" (2020); Republik Indonesia, "Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja" (2020).

<p>“Regional Government is the head of the region as an element of the Local Governance that leads the implementation of government affairs which are the authority of the autonomous region.”</p>	<p>level institution as well as the Regional Government of the Specific Capital Region of Nusantara</p>
<p>2. Article 18 section (4) 1945 Constitution of the Republic of Indonesia:⁶⁶ “Governors, Regents, and Mayors respectively as heads of provincial, district, and city governments are democratically elected.”</p>	<p>The Head of the Specific Capital Region of Nusantara as a province-level specific region is held by the Head of the Capital of Nusantara Authority, not governor</p>
<p>3. Article 4 section (1) Local Governance Law:⁶⁷ “The provincial area, apart from being a Region, is also an Administrative Region which is a working area for the governor as a representative of the Central Government and a working area for the governor in carrying out general government affairs in the province.”</p> <p>Article 59 Local Governance Law:⁶⁸</p> <ol style="list-style-type: none"> 1) Each region is led by a Regional Government head called the regional head. 2) The regional head as referred to in section (1) for a provincial area is called a governor, for a regency area it is called 	<p>The position of the Head of the Capital of Nusantara Authority as a ministerial-level official as well as the head of the Regional Government of the Specific Capital Region of Nusantara</p>

⁶⁶ Article 18 section (4) Republik Indonesia, “Undang-Undang Dasar Negara Republik Indonesia Tahun 1945” (2002).

⁶⁷ Article 4 section (1) Republik Indonesia, “Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah” (2014); Republik Indonesia, “Undang-Undang Nomor 2 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah Menjadi Undang-Undang” (2015); Republik Indonesia, “Undang-Undang Nomor 9 Tahun 2015 Tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah” (2015); Republik Indonesia, “Undang-Undang Nomor 2 Tahun 2020 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020 Tentang Kebijakan Keuangan Negara Dan Stabilitas Sistem Keuangan Untuk Penanganan Pandemi Corona Virus Disease 2019 (Covid-19) Dan/Atau Dala” (2020); Republik Indonesia, “Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja” (2020).

⁶⁸ Article 59 Republik Indonesia, “Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah” (2014); Republik Indonesia, “Undang-Undang Nomor 2 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah Menjadi Undang-Undang” (2015); Republik Indonesia, “Undang-Undang Nomor 9 Tahun 2015 Tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah” (2015); Republik Indonesia, “Undang-Undang Nomor 2 Tahun 2020 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020 Tentang Kebijakan Keuangan Negara Dan Stabilitas Sistem Keuangan Untuk Penanganan Pandemi Corona Virus Disease 2019 (Covid-19) Dan/Atau Dala” (2020); Republik Indonesia, “Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja” (2020).

a regent, and for a city area it is called a mayor.

General Explanation Local Governance Law:⁶⁹

“4. The role of the Governor as a Representative of the Central Government in the Regions

Given the very wide geographical conditions, for the effectiveness and efficiency of fostering and supervising the implementation of Government Affairs which are under the authority of the Regency/Municipal Region, the President as the final person in charge of the administration as a whole delegates his authority to the governor to act on behalf of the Central Government to carry out guidance and supervision to the regencies/municipalities to carry out their autonomy within the NSPK (norms, standards, procedures, and criteria) corridor determined by the Central Government. For the effective implementation of his duties as representatives of the Central Government, governors are assisted by governor apparatus as representatives of the Central Government. Because of his role as a representative of the central government, the relationship between the governor and the regency/city regional government is hierarchical.”

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4. **Article 1 number 1 Local Election Law:**⁷⁰ Filling the positions of Head of the Capital of Nusantara Authority and
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⁶⁹ General Explanation Republik Indonesia, “Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah” (2014); Republik Indonesia, “Undang-Undang Nomor 2 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah Menjadi Undang-Undang” (2015); Republik Indonesia, “Undang-Undang Nomor 9 Tahun 2015 Tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah” (2015); Republik Indonesia, “Undang-Undang Nomor 2 Tahun 2020 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020 Tentang Kebijakan Keuangan Negara Dan Stabilitas Sistem Keuangan Untuk Penanganan Pandemi Corona Virus Disease 2019 (Covid-19) Dan/ Atau Dala” (2020); Republik Indonesia, “Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja” (2020).

⁷⁰ Article 1 number 1 Republik Indonesia, “Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Menjadi Undang-Undang” (2015); Republik Indonesia, “Undang-Undang Nomor 8 Tahun 2015 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota

<p>“Election of Governor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor, hereinafter referred to as Election is the implementation of people's sovereignty in the province and regency/city to elect the Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor directly and democratically.”</p>	<p>Deputy Head of the Capital of Nusantara Authority through appointment and removal from office by the President in consultation with the DPR⁷¹</p>
<p>5. Article 60 Local Governance Law:⁷² “The term of office of the regional head as referred to in Article 59 section (1) is for 5 (five) years as of the inauguration and after that can be re-elected in the same position only for one term of office.”</p>	<p>The term of office of the Head of the Capital of Nusantara Authority and Deputy Head of the Capital of Nusantara Authority is for 5 (five) years which can be reappointed for more than 1 (one) term of office.</p>
<p>6. Article 18 section (3) 1945 Constitution of the Republic of Indonesia:⁷³ “Provincial, district, and city regional governments have Regional People's Representative Council whose members are elected through general elections.”</p>	<p>The absence of the existence of regional people's representative institutions, <i>c.q.</i> the Regional People's Representative Council as one of the elements of local governance in addition to the regional head⁷⁵</p>

Menjadi Undang-Undang” (2015); Republik Indonesia, “Undang-Undang Nomor 10 Tahun 2016 Tentang Perubahan Kedua Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Menjadi Undang-Undang” (2016); Republik Indonesia, “Undang-Undang Nomor 6 Tahun 2020 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2020 Tentang Perubahan Ketiga Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun” (2020).

⁷¹ Article 10 section (1) Republik Indonesia, Undang-Undang Nomor 3 Tahun 2022 tentang Ibu Kota Negara.

⁷² Article 60 Republik Indonesia, “Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Menjadi Undang-Undang” (2015); Republik Indonesia, “Undang-Undang Nomor 8 Tahun 2015 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Menjadi Undang-Undang” (2015); Republik Indonesia, “Undang-Undang Nomor 10 Tahun 2016 Tentang Perubahan Kedua Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Menjadi Undang-Undang” (2016); Republik Indonesia, “Undang-Undang Nomor 6 Tahun 2020 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2020 Tentang Perubahan Ketiga Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun” (2020).

⁷³ Article 18 section (3) Republik Indonesia, “Undang-Undang Dasar Negara Republik Indonesia Tahun 1945” (2002).

⁷⁵ Explanation of Article 5 section (2) Republik Indonesia, Undang-Undang Nomor 3 Tahun 2022 tentang Ibu Kota Negara.

Article 57 Local Governance Law:⁷⁴

“Provincial and regency/municipal Local Governance Administrators consist of regional heads and Regional People's Representative Council assisted by Regional Apparatus.”

Source: processed by the author, 2022.

When compared to general regional government regulations, the form of government of the Capital of Nusantara is as follows:

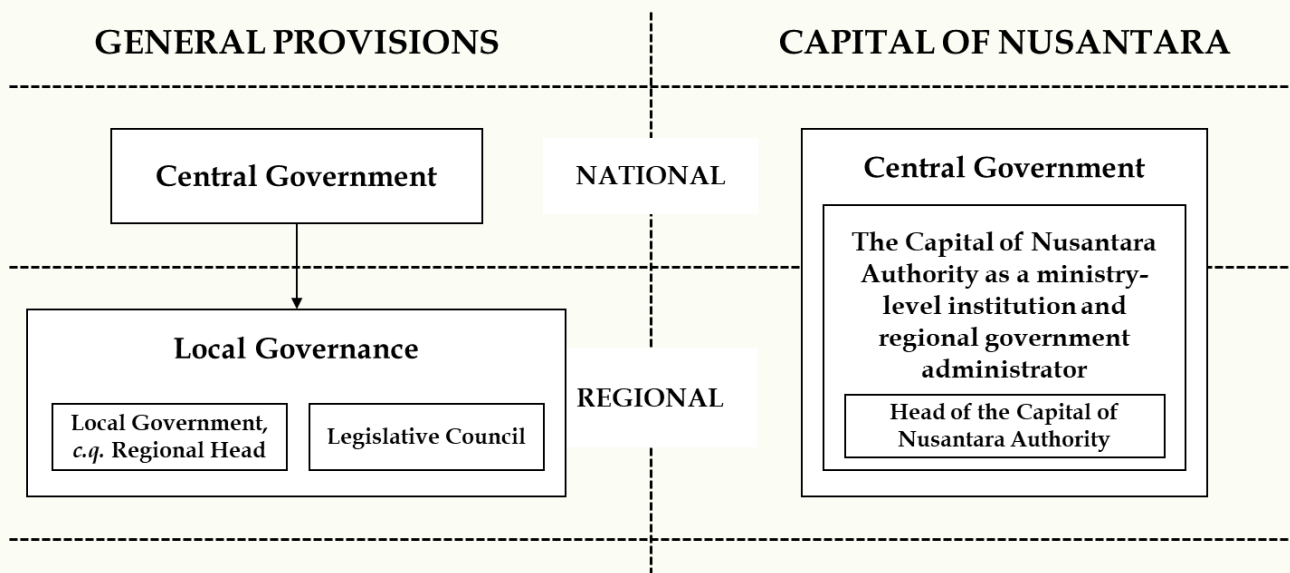


Figure 1.

Comparison of Forms of Government based on the Regional Government Law with the Specific Capital Region of Nusantara

Source: processed by the author, 2022.

When referring to the interpretation of the provisions of Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia as discussed in the previous sub-chapter, the various forms of specificities in the form of government of the Capital of Nusantara can be said to be constitutional for the following reasons. First, that the specificity in the State Capital Law is normatively possible based on the provisions of Article 18B section (1). In other words, the reference to Article 18B section (1) in the Law becomes the basis of authority for the legislators to regulate specifically and differently from the general regulation which refers to the provisions of Article 18 of the 1945 Constitution of the

⁷⁴ Article 57 Republik Indonesia, “Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Menjadi Undang-Undang” (2015); Republik Indonesia, “Undang-Undang Nomor 8 Tahun 2015 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Menjadi Undang-Undang” (2015); Republik Indonesia, “Undang-Undang Nomor 10 Tahun 2016 Tentang Perubahan Kedua Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Menjadi Undang-Undang” (2016); Republik Indonesia, “Undang-Undang Nomor 6 Tahun 2020 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2020 Tentang Perubahan Ketiga Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun” (2020).

Republic of Indonesia. This is based on the interpretation of the Constitutional Court in Decision Number 11/PUU-VI/2008 which states that the position between Article 18B section (1) and Article 18 is equal and both of them apply independently.

Second, based on the position of the Capital of Nusantara as a specific area and with reference to Constitutional Court Decision Number 81/PUU-VIII/2010, the form of specificity that can be regulated for the Capital of Nusantara is flexible, so that the form of specificity referred to is not only limited to government authority, but also the form of government. In other words, the form of government for the Capital of Nusantara does not have to comply with the provisions in Article 18 of the 1945 Constitution of the Republic of Indonesia and other laws and regulations that are the general arrangements regarding the form of regional government. In terms of the scope of special arrangements that are possible in specific regions, it does not depend on the existence of rights of origin, as in the case of special regions, but on the existence of a need that the legislators deem to require that a region be assigned a specificity, in which case the extent of the specificity granted is possible to be very broad. Based on this, the regulation of specificity in the State Capital Law is normatively consistent with the provisions and interpretations of Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia.

4. CONCLUSION

Based on the explanation above, it can be concluded two things as follows. First, based on the Decisions of the Constitutional Court Number 11/PUU-VI/2008, 81/PUU-VIII/2010, and 88/PUU-XIV/2016 as an official interpretation of the provisions of Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia that the position of Article 18B section (1) and Article 18 are equal and each applies independently which has consequences for the possibility of the existence of a "special" arrangement in a specific region or special region which *prima facie* may be considered contrary to the provisions of Article 18; that the basis for determining a region to be a specific region or a special region is based on two types of qualifications which are dichotomously different where the qualifications for a specific region are based on the existence of a political reality or need that requires a region to be granted a specific status; and the specificity of the specific area can be very broad depending on the political decisions of the legislators.

Second, that the specificities of the form of government of the Capital of Nusantara as a specific region which includes:

- 1) the position of the Capital of Nusantara Authority as a ministry-level institution as well as the Regional Government of the Specific Capital Region of Nusantara;
- 2) the Head of the Specific Capital Region of Nusantara as a province-level specific region is held by the Head of the Capital of Nusantara Authority, not governor;
- 3) the position of the Head of the Capital of Nusantara Authority as a ministerial-level official as well as the head of the Regional Government of the Specific Capital Region of Nusantara;
- 4) filling the positions of Head of the Capital of Nusantara Authority and Deputy Head of the Capital of Nusantara Authority through appointment and removal from office by the President in consultation with the DPR;
- 5) the term of office of the Head of the Capital of Nusantara Authority and Deputy Head of the Capital of Nusantara Authority is for 5 (five) years which can be reappointed for more than 1 (one) term of office; dan

- 6) the absence of the existence of regional people's representative institutions, *c.q.* the Regional People's Representative Council as one of the elements of local governance in addition to the regional head.

Normatively are in accordance with the interpretation of the provisions of Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia for two reasons, namely: the position between Article 18B section (1) and Article 18 as equals and that both of them apply independently which allows "special" arrangements on the Capital of Nusantara based on the authority of legislators according to Article 18B section (1); and the form of specificity that can be regulated for the Capital of Nusantara is flexible which means that the extent of the specificities can be so broad, including in terms of the form of government.

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