



## The 2022 Year Law Enforcement Policewoman (The Ikn Law) on the Constitutional Rights of Citizens

Suci Auliani Rahmatika; Fifiana Wisnaeni

Master of Law, Faculty of Law, Diponegoro University, Indonesia

E-mail: [Suciaulianirahmatika169@gmail.com](mailto:Suciaulianirahmatika169@gmail.com)

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### **Abstract**

The establishment of a state capital which has been set up under the law statute no. 3 years 2022 of the state capital into a polemic for the people. He said the rupiah was expected to strengthen to rp9,100 per dollar in the Jakarta interbank spot market on Tuesday. The decision of the country's capital was made by the Indonesian government. But the implementation of the LKN legislation is judged as unmet by the process of forming good legislation. The creation process is extremely brief and hasty and does not involve citizen participation makes the ikn law judged flawed enough to appeal judicial review cases to constitutional court. In addition, material defects because a government form of a provincial district and the head of its governing of autonomy are found to be inconsistent with the 18 verses (1) of the constitutionality of the constituent rights of citizens which also belong in the identification process without consideration of the support and capacity of the environment. It becomes a polyemic environmental problem such as the threat to water grammar and the risk of climate change. Then there is the potential to divert indigenous people's rights to environmental pollution and damage to the LKN development.

**Keywords:** *The State Capital; The Establishment of the Constitution; Constitutional Rights*

### **Introduction**

Indonesia, as a unified state of law, has a systemic structure. In each country there is what is called the state capital as the seat of government administration. The move of this country's capital was considered because of some of the factors that occurred in chapter ii verse (2) the 1945 bill mentions that the MPR conducted periodic hearings at least once in five years in the state capital. So under the constitution of the republic of Indonesia that the capital does not exist and is directly regulated by the constitution of the country. The central bank's decision to raise its interest rate by 25 basis points to 8.25 percent was based on the realization of the country's economic growth, he said. The constitution of 1945 (law of 1945) as the constitution of the supreme state the provisions governing the state capital are set

forth in chapters 2 verse (2); And (ii) 23g chapter (1) statute 1945. So the transfer of the state's capital became easy to implement.

The establishment of the state capital (the IKN law) act has been passed and established in early January of 2022. This creates a wide range of polaric controversy in society, where the IKN law should be concerned with the creation of regulatory regulations in 2011 statute 12 years 2019 and should not be in conflict with the state's constitution. That the idea of Indonesia as a state governed by law under article 1 verse (3) the law of 1945. The laws and certainties of the law are interrelated in a judicial basis.

As for the transfer of the state capital into East Kalimantan. In the second quarter of 2007, Bank Indonesia the central bank/BI decided to raise its key rate by 25 basis points to 8.25 percent. In addition, the development gap, which has been focused only on the island of Java. The risk of disaster on the island of Java has been high as water levels are caused by floods, and others. Governments, therefore, have taken action to move the LKN as one of the solutions to these problems.<sup>1</sup>

The establishment of the state capital (IKN) law became a political thing on the impact of the constitutional rights of the state. The polemic here is meant for both the substance and substance aspects of the IKN bill. The IKN act was rushed into haste for a short time, so one of the constitutional rights to minimize civic participation was then conducted in a non-democratic way in the establishment of a quo. Among other things, law enforcement requires a principle of openness that gives people the right to get information that is true, honest and undiscriminatory about the state arrangement.<sup>2</sup> It is not consistent with what is governed in section 96 of the 2011 statute 12 that governs the importance of public participation in the planning and drafting of laws. The LKN bill draft should have been published and debated widely, and thus a democratic climate arose for public aspirations.<sup>3</sup>

As for the constitutional rights of the LKN, which in the process even determine without consideration of the environmental support and capacity. It becomes a polyemic environmental problem such as the threat to water grammar and the risk of climate change. Then there is the potential for environmental pollution and damage in the LKN development.<sup>4</sup> Then there is the transfer of land rights to the indigenous indigenous people, which is one of the cultural groups in East Kalimantan, to achieve the country's political and economic interests. So das sollen, as a democracy that lays sovereignty to the people as in article 1 verse (2) the bill nri 1945, in deciding a policy that will determine the lot of people, the government should include the people in it and take note of the constitutional rights of citizens. From analysis of the unmet certain elements of the legal process, the IKN law is proposed to mk with article number 34/ puu-xx /2022 in its petit. petitioning mk to declare the establishment of the IKN law contrary to the 1945 constitution and without binding legal force. "Stating chapter 1 verse (2), chapter 1 verse (8), chapter 4, chapter 5 verse (4) the 2022-year law on the state capital (state paper no. 41 and a state no. 6766) conforms to the 1945 constitution and has no binding legal force.

This has abandoned the constitutional rights of citizens. And then the right to the same opportunities in law and government as governed in article 28 d (1) in the 1945 chapter chapter "all citizens together in law and government and duty to uphold that law and government in unrivaled form,"

<sup>1</sup> Aqil Syahru Akram, 2022, Polemik dan Urgensitas Pengesahan Undang-Undang Ibu Kota Negara, *Jurnal Demokrasi dan Ketahanan Nasional*, Vol.1, No.2, Hlm .2-3.

<sup>2</sup> Mohammad Roky Huzaeni dan Wildan Rofikil Anwar, 2021, Pelaksanaan Asas Keterbukaan dalam Pembentukan Peraturan Daerah, *Jurnal Dialektika Hukum*, Vol. 3 No. 2. Hlm. 214.

<sup>3</sup> Raden Ariyo Wicaksono, "Digelar Tertutup, Konsultasi Publik RUU IKN Tak Layak Diteruskan", *Betahita | Digelar Tertutup, Konsultasi Publik RUU IKN Tak Layak Diteruskan*, Diakses pada tanggal 20 Desember 2022.

<sup>4</sup> <https://www.cnnindonesia.com/nasional/20220121205915-32-749796/segudang-masalah-ikn-kebut-pengesahan-uu-hingga-persoalan-lingkungan/2>, Diakses Pada tanggal 22 Desember 2022.

and "every man has a right to the recognition of security, protection, and equitable law and treatment in accordance with the law" and the equal principle of opportunity (equal opportunity principle).<sup>5</sup>

The matter was much more complicated when the constitutional court rejected the application for testing law number 3 in 2022 on the state's capital of disabled form as well as monetary defects were proposed by petitioners with case number 25/ puu-xx /2022. The constitutional court considered that the constitution's no. 3 year 2022 act on the state capital was in accordance with constitutional regulation. Therefore, it is necessary to consider further that Indonesia as a legal state has a duty to fulfill constitutional rights, which is associated with the establishment of the state capital's constitution.

## ***Formulation of the Problem***

1. How does the state capital act fit under the terms of the process Legislation forming in effect?
2. how should the constitutional rights of citizens affect legislation First lady?

## ***Research Methods***

The method of research used in this study was normative-juridical research that focused on the subjective norms of the law. The approach to the study is that of legislation (approach) approach that involves studying all legislation related to legal issues under study. Data collection methods are done with literature studies aimed at obtaining such data as books, journals that are relevant to research topics and regulatory regulations. The data collected is then analyzed using a qualitative descriptive data analysis technique that is intended to classify, measure and test the data by relevant concepts of principles and theories used in the study to be referenced by current law laws. Thus, a study will be obtained that will answer the issues raised.

## ***Discussion***

Based on the urgency of the transfer of the capital of the state in the year 2022 of legislation on the state capital (the Ikn) as for the following urgency of the Icn transfer:<sup>6</sup>

- a. Facing the challenges of the future requires the transformative force of economic factors.
- b. He said the rupiah was expected to strengthen to rp9,100 per dollar in the Jakarta interbank spot market on Tuesday
- c. As a result of the increase in net profit in the first half of 2007, the company's net profit in the first half of 2007 fell to rp8.3 trillion from rp2.9 trillion in the same period last year.

According to the minister for national development planning (PPN) as well as the head of the national development planning agency (bappenas) Bambang Brodjonegoro made the point that the transfer of state capitals was needed on the following basis:<sup>7</sup>

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<sup>5</sup> Andi Yuliani, "Hak Konstitusional Warga Negara", <http://jdih.sukabumikab.go.id/v1/artikel/detail/5/hak-konstitusional-warga-negara/>, Diakses pada tanggal 20 Desember 2022.

<sup>6</sup> Forum Dialog Nusantara, 2022, *Pembangunan Ibu Kota Baru & Stabilitas Politik Nasional*, editor: Big Publishing, CV. Bhamana Indonesia Gemilang; Jakarta Selatan, Hlm.9-12.

<sup>7</sup> Choirul, M. 2019, "Ada 6 Alasan Utama Ibu Kota RI Harus Pindah dari Jakarta", [cnbcindonesia.com/news/20190430124613-4-69663/ada-6-alasanutama-ibu-kota-ri-harus-pindah-dari-jakarta](https://cnbcindonesia.com/news/20190430124613-4-69663/ada-6-alasanutama-ibu-kota-ri-harus-pindah-dari-jakarta), Diakses pada tanggal 21 Desember 2022.

- a. Can reduce the burden of Jakarta and its surroundings including jabodetach;
- b. To encourage equalization of development to the eastern part of Indonesia;
- c. Can change people's view of development in what is often referred to as centralized Indonesia;
- d. has a state capital that can present a national identity, insult and sentiment towards Pancasila;
- e. can improve efficient and effective management of central relationships;
- f. has a capital that can apply smart, green and beautiful city concepts to promote competitiveness within local and global levels.

### **1. Legislation Was Established under the Rule of Legislation Kesesuaian**

The proposed IKN law was subject to a great deal of criticism from various parties based on a juridical basis or other law laws. The establishment of the LKN act is judged by both formal and material defects. In formative error analysis was conducted and came to the conclusion that the establishment of the LKN law was not organized by agreement with the document development planning, regulation planning, financial planning of the state as well as implementation of development. The policy of the LKN, which one of the law enforcement teams filed a lawsuit against MK, stated that the plan of the IKN was never included in the 2005-2025 national long-term development plan, which was governed by Law No. 17 of 2007, nor was it listed in the national middle-term development plan in 2015-2019. The LKN is immediately entered and regulated in 2020's number 18 presidential regulation on the national middle-term development plan of 2020-2024. Whereas under Statute No. 15 of 2019, a change to Act 12 in 2011 on Legislation 12, the process of legislation forming would have to go through the level of legislation that was decided with the bill raised and then passed. The rupiah's exchange rate was recorded at Rp9,209,2022 per dollar at the Jakarta interbank spot market on Tuesday.

The creation of state capital legislation has also been understated to the effectiveness of legislation in societies both on a philosophical basis, where the IKN law has not specifically defined the relation to Pancasila as a guide to the purpose of legislation. Sociologically, that the formation of the IKN law has explained the purpose and effect of the moving capital to the state. It is expected that the capital of Jakarta will remain the capital of Indonesia and there has been no special change in arrangements from the capital Jakarta. The rupiah's exchange rate against the US dollar in the Jakarta interbank spot market on Tuesday afternoon strengthened to Rp9,300 per dollar in the Jakarta interbank spot market on Tuesday as investors bought the local unit on Tuesday.<sup>8</sup>

The creation of the IKN law is not carefully assessed for content content. The material requirements of the cargo are governed in article 10 of Statute 12 of 2011 and the principles governing good legislation are regulated in article 6 of Bill No. 12 of 2011. Then, the need for legislation was felt no country needed in a time of need. Given the development and implications of the IKN law.

The creation of the IKN law that seems to be hasty, even the IKN bill is considered a material flaw because it is judged contrary to the 1945 Bill of Rights. One is under article 5 of the IKN (4) the IKN law that the head of authority is the minister's level, in which the President's appointment and termination was carried out by the President after consulting with the parliament. However, the rupiah's exchange rate against the dollar was still small, he said. This clearly sets out a violation of article 18 verses (4) the Bill of Rights 1945 that governed the democratically elected head of provincial government.

The establishment of the IKN law is judged to be formalistic because it does not even involve community participation as governed by article 27 verses (1) and section 28c (2) the 1945 Law (2) and therefore ignores the principle of people's sovereignty. It becomes unsatisfied the principle of openness in

<sup>8</sup> Oti Ilham Khair, 2022, Analisis Landasan Filosofis, Sosiologis, dan Yuridis Pada Pembentukan Pada Undang-Undang Ibukota Negara, *Jurnal Inovasi Riset Akademik*, Vol 2. No 1, Hlm. 9.

the 2022-year law on the state capital can be seen as well from not revealing information on each discussion. That community participation should be conducted, which should qualify three conditions as the right to be heard, the right to be considered, and the right to an explanation or an answer to an opinion given primarily to communities that directly affect or have regard for the bill.

When one standard is not met, legislation that is established is said to be deformed in the event of a disability from some of the passed stages.<sup>9</sup> That the rights to consideration and the right to an explanation for the establishment of the IKN law conflict with article 1 verse (2) of the 1945 constitution that states the constitution must place the sovereignty of the people as one of the main pillars. Understandably, when legislation is established in the process and mechanisms that shut down or abate the participation of the population to join in and discuss and debate the matter, it should be said that the establishment of such an invitation would violate the accepted principle of sovereignty as a violation of the citizens' constitutional rights. In a motion of complaint to MK with case number 34/PUU-XX/2022 in his cabinet, petitioners asked the court to declare the establishment of the IKN law contrary to the 1945 constitution and without the binding power of the law. "Stating chapter 1 verse (2), chapter 1 verse (8), chapter 4, chapter 5 verse (4) the 2022 year law on the state capital (state paper no. 41 and a state no. 6766) conforms to the 1945 constitution and has no binding legal force."<sup>10</sup>

But after the proceedings came in, the constitutional court denied a request for testing of statute number 3 of 2022 on the state's capital and blemish material was filed by petitioners with case number 25/PUU-XX/2022. The constitutional court considered that the constitution's no. 3 year 2022 act on the state capital was in accordance with constitutional regulation.

## 2. The Effect of the Constitutional Rights of Citizens Upon the Constituency of the State Capital

The constitutional rights of citizens constitute a right that pertains to the constitution of the state. The constitutional rights of citizens include the rights of human rights and the rights of citizens that are guaranteed and regulated in the 1945 constitution. Following the constitutional amendment, in terms of policy and legislation, there are additional procedures besides litigation (PTUN) and Supreme Court.<sup>11</sup> As for the protection of constitutional rights it is the constitutional court (MK) that has the authority to judge at the first and last level whose decision is final in testing laws on the constitution (section 24c verse 1), the role of MK can become a place where there is a violation of constitutional rights. With the role of MK here, it could uphold the balance of legislation and judicial legislation. While the inversion of the establishment of a legal product that was not consistent with the bill of 1945 could be corrected by the application to the MK, it had not guaranteed the full protection of constitutional rights, since a variety of procedures with the final result of the MK's own interpretation authority.

Based on the constitution's material definition that it relates to the fulfillment of the interests of society. Some societies would certainly want to ensure a protective constitutional right to be violated. In relation to the transfer of the state capital, the state is obliged to consider the interests of the constitutional right to fulfill the constitutional rights that the government stated in the 1945 bill to protect the whole of Indonesia and all of Indonesia's blood, promote public welfare, reflect the nation's lives, and contribute to the administration of world order on the basis of freedom, lasting peace, and social justice, which

<sup>9</sup> <https://www.moeslimchoice.com/read/2022/03/17/61775/pembentukan-uu-ikn-tak-kedepankan-asas-keterbukaan>, Diakses pada tanggal 20 Desember 2022.

<sup>10</sup> Nano Tresna, "Dinilai Cacat Formil, UU IKN Kembali Diuji Konstitusionalitasnya", <https://www.mkri.id/index.php/index.php?page=web.Berita&id=18074>, Diakses Pada tanggal 20 Desember 2022.

<sup>11</sup> Valeri Augustine, "Sengketa MA vs MK, Lembaga Mana yang Berwenang Menyelesaikan?", <https://www.hukumonline.com/klinik/a/sengketa-ma-vs-mk--lembaga-mana-yang-berwenang-menyelesaikan-lt5e60b8476a3da>, Diakses pada tanggal 20 Desember 2022.

empowers a secure, modern, sustainable, and resilient state capital, and serves as a model for the construction and alignment of other areas in Indonesia.<sup>12</sup>

Under the LKN act, the key points for the country are as follows:<sup>13</sup>

1. He said the rupiah was expected to strengthen to Rp9,100 per dollar in the Jakarta interbank spot market on Tuesday.
2. Could provide extensive work opportunities of economic growth in the eastern part of Indonesia. With investments coming in so that it can absorb more of the work force.
3. Ikn designed the smart transportation system. The Ikn Nusantara will be cordoned with a smart transportation system designed based on integration of public transportation system, a bike, and a driver applying integrated information system, intelligent transport system, and public transportation network and promoting the electric car.
4. The new renewable energy user Ikn Nusantara will use smart grid technology to make use of the sun as an electric source, superseding coal-generated electricity and thus reducing the amount of carbon dioxide and being able to control the distribution of electrical energy at the peak with power distribution using a lower cable network.

Based on the above figures, the government's goal of creating economic growth such as investment can also lead to broad job opportunities. This has resulted in the accomplishment of a constitutional right to promote a measure of the well-being of a good society.

But in hindsight, there are such negative effects as the potential for a constitutional rights violation of citizens. As a review of the Ikn law enforcement aspect, which does not include the participation of society as governed in chapter 27 verses (1) and section 28c (2) the 1945 law (2) and thus was judged as unconcerned by the principle of people's sovereignty. Therefore, the creation of the Ikn law is judged as unmet by the principle of openness in the process of forming the ordinance, which is one of the reasons the Ikn law is being proposed to the constitutional court. But the constitutional court rejected the petitioner's request entirely with case number 25/PUU-XX/2022 so that the state capital law was declared valid on the basis of the constitutional court. As for the legal consideration, the constitutional court stated that the principle of transparency was constitutional. Under the fact that the parliament and the government have ignored the principle of transparency under article 89 of act number 12 of 2011, requiring the parliament and the government to make a broader application of a bill to provide information and or to obtain input and critics of society and its stakeholders. In the ruling stating that refusing appeals, the MK states that the act of Ikn had been in accordance with the constitution of the Republic of Indonesia in 1945 and had fulfilled the regulation of legislation as governed by 12 year 2011 legislation and stated the 3 year 2022 law on the state capital and already had binding powers.<sup>14</sup>

A look at the content of the content of the content of the content of this bill. The LKN development is causing anxiety for people especially their indigenous communities in East Kalimantan. As a result of development, the LKN has become a polyemic of the potential for producing traditional values as a result of the modernization and integration of indigenous peoples' soils. The economic life of the East Kalimantan people is very diverse, starting with small and medium-size industries, plantations, agriculture, fisheries, mining, and services. One of the key issues facing up to this day is the conflict of natural resources forestry and Dayak tribal areas. For the Dayak people, forests serve as a source of

<sup>12</sup> Yofi Permatasari, 2022, Kajian Hukum terhadap Upaya Pemindahan Ibu Kota Negara Berdasar pada Sistem Konstitusional Indonesia, *Jurnal Pendidikan dan Konseling*, Vol 4. No 5, Hlm. 4.

<sup>13</sup> Manda Kumoro Saraswati, 2022, Pemindahan Ibu Kota Negara Ke Provinsi Kalimantan Timur Berdasarkan Analisis Swot, *Jurnal Ilmu Sosial dan Pendidikan (JISIP)*, Vol.6, No.2, Hlm.9.

<sup>14</sup> Putusan Mahkamah Konstitusi 25/PUU-XX/2022.

livelihoods and are thought to be the heart of Borneo and therefore need to be preserved together. Because of such close ties, the indigenous dayak people want to keep and secure the forest, but in its development as the existence of marginalized indigenous peoples.<sup>15</sup>

The potential marginalized of the people and the increasing familiarity with local cultural values are becoming a general concern of the people and indigenous peoples. In a report by bappenas on the move of the capital there was the thought that indigenous peoples' lives were very vulnerable to rapid change, one of which was with the icn transfer plan. Forest-based economic life and natural resources need to be maintained, to preserve the cultural values of local people, and its welfare will be well preserved. This is necessary when relocation is established.<sup>16</sup>

Then the problem with the indigenous people is fear of the loss of some cultures such as the long house used to be a gathering place for all time; Then the old graves that were regarded as sacred places; Some tourist sites, such as the stone wall, have not been fully developed; As well as cultural activities such as the ketinting river RACES, the loom sulams and beads, and so forth that had been regularly held. For example, kukar district, formerly the center of Indonesia's oldest Hindu empire, has been done temple research by the flood armasin reserve hall. But the activity is not continuing because it has grown into a compact population.<sup>17</sup>

Although under article 21 of law no. 3 in 2022 on the ikn in principle has established that the management of space and land in the ikn region will observe and provide protection for traditional indigenous rights. However, the law has not yet comely regulated the procedures and ordinances of indigenous land rights recognition and the evidence of varying land ownership. This creates anxiety for indigenous people asa result of the potential for loss of soil due to the development of the LKN.

When relocation remains, forest-based economic life and the utilization of natural resources will need to be maintained, to preserve both identity and livelihoods, and to have the best interests of the other tribes. People are also worried about pressure moving the capital at the rate of migration. This fear is also felt by the people because the education in east kalimantan, which is less competitive than the quality of Indonesian education.

### **What Governments Need to Do to Fulfill the Constitutional Rights of Citizens in the Ikn Constitution:**

- 1.The need for a follow up on the implementation of the icn law would have to uphold the constitutional rights of citizens to achieve public welfare.<sup>18</sup>
2. Restore the capital's transfer in accordance with the terms of the law code. Then by looking at the right needs and momentum, as well as the appropriate norms made by absorbing participation. It can be done with judicial review review review or even legislative review review.
- 3.The implementation of the move of the capital must be based on a clear consideration as to how the prevention of negative effects will be on the LKN development environment that will be potentially polluting and damaging to the environment.
4. By representing cultural identity in the construction of the icn, examples in the use of power symbols/ornaments on buildings, the development of cultural value zones, the preservation of cultural themes through museums or parks.

<sup>15</sup> Hairunnisa, 2022, Analisis Komunikasi Politik Dalam Percepatan Pembangunan Ibu Kota Nusantara (Ikn) Menuju Kota Berkelanjutan, *Journal of Government and Politics (JGOP)*, Vol. 4 No. 1, Hlm.8.

<sup>16</sup> Hana Dwi Djayanti, 2022, Potensi Konflik Sosial Dalam Pemindahan Ibukota Negara Republik Indonesia, *Jurnal Damai dan Resolusi Konflik*, Vol.8 No.1.Hlm.12-13.

<sup>17</sup> Wijaya, A, 2012, *Ensiklopedi Suku-suku Asli Di Kalimantan Timur*. Yayasan Bioma: Samarinda.

<sup>18</sup> Hairunnisa, Op., Cit, Hlm 9.

5. Understanding the cultural diversity and socioeconomic conditions of the local people should be prepared to provide knowledge for the ASN to be moved, in order to bring about the unification of the justice of society so that the benefits of the development of the IKN can be enjoyed by all.
6. For sustainable livelihoods of local people, local cultural and humanitarian interaction with technological use and creative innovation, such as businesses and production tools, food management managed by local communities, smart development, craft sales platforms, and so on. That goal is for independent economic activities, the maintenance of dignified culture, the opportunities of cross-generation enterprises.

## **Conclusion**

The establishment of the Law No. 3 of 2022 on the State Capital (the IKN) creates pollutants in society. In the process of its development there are several elements that are not met and therefore malformed and materialized. The LKN act is conducted hastily on a short period of time, and one of the constitutional rights is that it minimizes civic participation and is done in a closed and undemocratic way in the establishment of a quo law. It is not consistent with what is governed in section 96 of the 2011 statute 12 that governs the importance of public participation in the planning and drafting of the law. Then the IKN act was considered a material flaw because it was judged contrary to the 1945 constitution. One is under article 5 of the IKN (4) the IKN law that the head of authority is the minister's level, in which the President's appointment and termination was carried out by the President after consulting with the parliament. However, the rupiah's exchange rate against the dollar was still small, he said. This clearly sets out a violation of article 18 verses (4) the Bill No. 1945 that governed the democratically elected head of provincial government. In the first semester of 2008, the company's net profit in the first half of 2008 fell to Rp2.1 trillion from Rp2.1 trillion in the same period a year earlier. The IKN law has not yet complemented the procedures and ordinances of the indigenous land rights recognition with diverse evidence of land ownership. This created anxiety as to how the constitutional rights of indigenous peoples associated with the potential for soil loss because of the function of the LKN development. On the basis of the LKN consideration the proposed lawsuit was filed against MK, but application of lawsuit 25/PUU-XX/2022 Constitutional Court considered that the 3rd year 2022 act on the state capital was in accordance with constitutional regulation.

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