CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 25/PUU-XX/2022

Concerning

Formal Examination of the State Capital Law

Petitioner	:	**Abdullah Hehamahua, et al.**
Type of Case	:	Formal Examination of Law Number 3 of 2022 concerning the State Capital (Law 3/2022) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
Subject Matter	:	Formal Examination of Law 3/2022 against the 1945 Constitution
Verdict	:	**In the Provisional Decision:** To dismiss the Petitioners' provisional petition **In the Subject Matter of the Petition:** To dismiss the Petitioners' petition in its entirety
Date of Decision	:	Wednesday, July 20, 2022

Overview of Decision :

Whereas the Petitioners are individual Indonesian citizens from various professions who qualify themselves as voters and are also taxpayers.

Regarding the authority of the Court, because the Petitioners petition for a Formal Examination of Law 3/2022 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition;

Regarding the deadline for the Petitioners' petition, because the submission of the petition has not passed the 45-day deadline since Law 3/2022 was promulgated, the Petitioners' petition may proceed to the examination stage of the subject matter of the petition.

Regarding the legal standing of the Petitioners, the Petitioners are Indonesian citizens from various professions who believe that their constitutional rights have been prejudiced due to the promulgation of Law 3/2022 where the Petitioners think that the formation of Law 3/2022 has violated the constitutional rights of the Petitioners as guaranteed in the 1945 Constitution.

Furthermore, the Court considers the legal standing of the Petitioners. The Court is of the opinion that in the formal examination at the Constitutional Court, in several legal considerations of the Decision of the Court, the Court has affirmed its opinion that any petitioner who has legal standing in the petition for formal examination shall be the party that has relationship interests with the substance of the formal examination being petitioned for examination. In this regard, Law 3/2022, which is being petitioned for examination by the Petitioners, is the Law on the State Capital, namely the law that stipulates the position or location, structure and development of the area of the State Capital of the Republic of Indonesia. In reasonable reasoning, the law that stipulates all provisions relating to the capital city of the country is a law that basically affects the interests of all Indonesian citizens or a law that will have an impact on the aspects of people's lives and the fulfilment of the constitution rights of every citizen. In this regard, the Petitioners have explained as individual Indonesian Citizens who have a relationship interests between their respective professions and the

various activities carried out by the Petitioners and the formation process of Law 3/2022 which is being petitioned for a formal examination.

Based on the description above, regardless of whether or not the argument regarding the existence of an unconstitutional issue in relation to the formation procedure of Law 3/2022, as argued by the Petitioners in the subject matter of the petition, is proven, the Court is of the opinion that the Petitioners have been able to describe their standings and activities which have relationship interests with Law 3/2022 and they have also described specifically and potential causal relationships (*causal verband*) between their perceived loss of constitutional rights and the formation process of Law 3/2022 which, according to the Petitioners, was in contrary to the 1945 Constitution. Therefore, if this petition is granted, the loss of constitutional rights will not occur. Therefore, the Petitioners have the legal standings to act as Petitioners in the formal examination of the *a quo* Law 3/2022.

Meanwhile, regarding the provisional petition and the subject matter of the petition, the Court in its consideration declared as follows:

In the Provisional Decision

The Court is of the opinion, whereas the Petitioners submitted a provisional petition which in principal petitions for the Court to impose a Provisional Decision by ordering the Government to postpone all actions/policies and postpone the issuance of all derivative regulations, *in casu* the Implementing Regulation of Law 3/2022 until there is a final decision on the subject matter of the *a quo* petition, due to the reasons, according to the Petitioners, to avoid a bigger impact, and to maintain legal certainty protection for the rights of the Petitioners who were violated in the formation process of Law 3/2022.

Regarding the Petitioners' provisional petition, it is important for the Court to emphasize that the judicial examination is not adversarial in nature and is not a matter of *interpartes* in nature as well as it is not a dispute of interests of the parties, but rather the examination to determine the applicability of a general law that applies to all citizens. Therefore, regarding the *a quo* provision petition, it must be considered separately and casuistically as long as it is relevant and urgent to do so. However, after the Court has carefully examined the reasons for the provisional petition submitted by the Petitioners, such matter is more closely related to the content of Law 3/2022 so that it would not be appropriate if it were used as the reason for the provisional petition in the formal examination. Moreover, the Court did not find any strong reason to postpone the promulgation of the *a quo* Law. In addition, the Court has also given a short time limit to decide on a formal examination case as considered in Paragraph **[3.9]** above. Therefore, the Petitioners' provisional petition is legally unjustifiable.

In the Subject Matter of the Petition

In the subject matter of the petition, the Petitioners submitted a petition for a formal examination of Law 3/2022 because, according to the Petitioners, the formation process of Law 3/2022 was in contrary to Article 1 paragraph (2), Article 1 paragraph (3), Article 22A, Article 27 paragraph (1), Article 28C paragraph (2) of the 1945 Constitution. In its legal considerations regarding the subject matter of the petition, the Court answered all of the arguments of the Petitioners as follows:

1. Contrary to the principle of clarity of purpose

Regarding the *a quo* argument of the Petitioners, first, the Court will affirm that the meaning of the “principle of clarity of purpose” as stipulated in Law 12/2011 is that every formation of legislation must have a clear objective to be achieved [*vide* Elucidation of Article 5 letter a of Law 12/2011]. Even though Law Number 12 of 2011 was last modified by Law Number 13 of 2022 (hereinafter shall be referred to as Law 13/2022) but the definition of the principle of clarity of purpose is still formulated the same [*vide* Article 5 letter a of Law 13/2022]. Without the Court intending to assess the constitutionality of the norms of Law 3/2022, but regarding the fulfilment of the formal requirements for the formation of legislation, it cannot be separated from the principle of clarity of purpose. Regarding this, Law 3/2022 has stated the purpose of the establishment of the *a quo* Law

as stipulated in Article 2 which states that: “The Capital of the Country has a vision as a global city for all that is developed and managed with the aim of:

a. become a sustainable city in the world;
b. become Indonesia’s future economic driver; and
c. become a symbol of national identity that represents the diversity of the Indonesian nation, based on Pancasila and the 1945 Constitution of the Republic of Indonesia”.

In relation to these objectives, it is also explained in the General Elucidation of Law 3/2022 which states that: "The development and management of the Capital of the Country has a vision of a National Capital as a global city for all with the main aim of realizing an ideal city that can be a role model for the development and management of cities in Indonesia and the world. The big vision aims to realize the Capital of the Country as:

a. a global sustainable city, which create comfort, harmony with nature, resilience through the efficient use of resources and low carbon;
b. Indonesia's future economic driver, which provides the economic opportunities for all through potential development, innovation, and technology; as well as
c. a symbol of the national identity, representing harmony in diversity in accordance with *Bhinneka Tunggal Ika*” [*vide* General Elucidation of Law 3/2022].

Furthermore, also in relation to the purpose of the formation of Law 3/2022 in the Elucidation of Article 2 letter a of the *a quo* Law, the meaning of “global sustainable city” is a city that manages resources effectively and provides services effectively in the efficient use of water and energy resources, sustainable waste management, integrated transportation modes, liveable and healthy environment, and synergistic natural and developed environment, which also establishes the Capital of the Country as a forest city to ensure environmental sustainability with a minimum of 75% (seventy five percent) of green areas, and the plan for the Capital of the Country shall be integrated with the concept of a sustainable master plan to balance the natural ecology, developed areas, and existing social systems in harmony. Similarly, the Elucidation of Article 2 letter b of Law 3/2022 which relates to the goal of “Indonesia's future economic driver” is explained as being a progressive, innovative, and competitive city in terms of technology, architecture, urban planning, and social aspects. That means, the State Capital determines to be the superhub economic strategy related to the spatial strategy to go beyond its current potential, to ensure productive synergies between the workforce, infrastructure, resources and networks, and to maximize job opportunities for all citizen within the city. Finally, regarding the purpose of establishing Law 3/2022 as a “symbol of national identity”, it is explained that it means a city that embodies the identity, social character, unity and greatness of the nation that reflects the uniqueness of Indonesia [*vide* Elucidation of Article 2 letter a, letter b, and letter c of Law 3/2022].

Meanwhile, regarding the purpose of establishing the State Capital before it was stated in Law 3/2022, it has been mentioned or included in the 2020-2024 National Medium-Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional* or RPJMN), which in principal has outlined the 2005-2025 National Long-Term Development Plan (*vide* the Statement of Government page 19-20) and the Vision of Indonesia 2033 which explicitly mentions the relocation of the epicentre of the Country to Kalimantan (*vide* PK-20 evidence), which in principal states that the establishment of the State Capital is included as one of the Strategic Priority Project plans (Major Project) of the 2020-2024 RPJMN (*vide* Attachment I to Presidential Regulation Number 18 of 2020 concerning the 2020-2024 National Medium-Term Development Plan, hereinafter shall be referred to as Perpres 18/2020). One of the reasons for the establishment of the State Capital is to increase the development of eastern Indonesia for regional equity. In addition, the State Capital Bill was also included in the regional development agenda to reduce disparities between the regions in Indonesia [*vide* Chapter IX of the Implementation Rules of the

Regulatory Framework Section of Attachment I to Presidential Regulation 18/2020 on page 273 = IX.7]. Furthermore, regarding the argument of the Petitioners that the State Capital Bill does not have a legislative plan, it is also important for the Court to first explain the meaning of legislative plan in Law 12/2011 which cannot be separated from the definition of the National Legislation Program (*Prolegnas*), which is a planning instrument for the Law formation program drawn up in a planned, integrated, and systematic manner [*vide* Article 1 point 9 of Law 12/2011]. In this regard, Law 12/2011 requires the preparation of Laws to be carried out in the National Legislation Program which is the priority scale of the Law formation program in the context of realizing a national legal system [*vide* Article 16 and Article 17 of Law 12/2011]. The National Legislation Program contains the Law formation program with the title of the bills, regulated materials, and their relations to other laws and regulations [*vide* Article 19 paragraph (1) of Law 12/2011]. By referring to Attachment I to Presidential Decree 18/2020, it is stated that in principal the establishment of the State Capital needs a legal basis. As a follow-up, the Government proposed to the DPR to include the Bill on the State Capital in the National Legislation Program which was later promulgated into Law 3/2022 as the basis for the implementation of the relocation of the State Capital. Regarding the inclusion of the State Capital Bill into the National Legislation Program, the DPR explained that the State Capital Bill has been included in the 2020-2024 mid-term National Legislation Program based on the Decree of the Indonesian Parliament Number 46/DPR RI/I/2019-2020 concerning the National Legislation Program for the 2020-2024 Bills as set forth on December 17, 2019 [*vide* Attachment 1 to the statement of DPR (House of Representatives)] as stated in number 131. Furthermore, every year it is always included in the annual priority National Legislation Program, namely in 2020 it is included in the Priority National Legislation Program as stated in Number 46 [*vide* Attachment 2 to the Decree of the DPR RI Number 1/DPR RI/II/2019-2020 set forth on January 22, 2020 concerning the National Legislation Program for the Priority Bills 2020 = PK-1.Government]; in 2021 it was re-submitted as a Priority National Legislation Program as stated in number 28 [*vide* Attachment 3 of the Decree of the DPR RI Number 1/DPR RI/IV/2020-2021 concerning the National Legislation Program for the 2021 Priority Bills as set forth on March 23, 2021 and the National Legislation Program for the 2020-2024 Amendment of Bills = PK-25.Government]. When there is a discussion on the evaluation of the 2021 Priority National Legislation Program, the State Capital Bill was still be prioritized as stated in number 29 [*vide* Attachment 4 to the Decree of the DPR RI Number 9/DPR RI/I/2021-2022 concerning the National Legislation Program for the 2021 Priority Bills which was set forth on September 30, 2021 and the National Legislation Program for the 2020-2024 Second Amendment of Bills]; and at the time of the annual priority discussion of 2022, the State Capital Bill was re-inserted in the 2022 Priority National Legislation Program as stated in Number 33 [*vide* Attachment 5 to the Decree of the DPR RI Number 8/DPR RI/II/2021-2022 concerning the National Legislation Program of the 2022 priority Bills as set forth on December 7, 2021 and the National Legislation Program for the 2020-2024 Third Amendment of Bills = PK-25.Government]. The entire process of submitting this annual Priority National Legislation Program is also carried out in accordance with the provisions of Law 12/2011, which is submitted before the stipulation of the Bills on State Revenue and Expenditure Budget (State Budget Bill) [*vide* Article 20 paragraph (5) of Law 12/2011]. This is intended so that the formation of a law shall obtain clarity in terms of budgeting, not only in relation to the budget for the formation of laws, but also the impact of these laws on state finances, therefore the proposed Bill must be discussed and stipulated in the National Legislation Program before the State Budget Bill is promulgated.

Moreover, in their statement, the Government and the DPR explained that the relocation of the State Capital to a location outside of Java is expected to accelerate the reduction of inequality and increase the regional economic growth outside of Java, especially the Eastern Region of Indonesia. In addition, the existence of Law 3/2022 is as a means to fulfil the needs of the Indonesian people, as well as to realize a safe, modern, sustainable,

and resilient State Capital and to be a role model for the development and structuring of other regions in Indonesia and this is also part of the efforts to realize the goals of the state, as well as an effort to realize one of the ideals in the vision of Indonesia 2045 [*vide* Summary of the Court Hearing Number 25/PUU-XX/2022, April 21, 2022].

Based on the aforementioned legal facts, it turns out that the planning for the development of the State Capital is part of the national development planning system program that has been listed in the Attachment to Presidential Regulation 18/2020 and has also been stated in the 2020-2024 mid-term National Legislation Program and has been prioritized every year since 2020 so that further emphasizes that the development of the State Capital has a clear objective as regulated in Article 5 letter a of Law 12/2011. Regardless of the arguments of the Petitioners which state that the plan for the development of the State Capital is as if it were "infiltrated" in the 2020-2025 RPJMN, the Court is of the opinion that the evidence presented by the Petitioners is not sufficient to prove that the *a quo* argument is true, especially to be able to break the arguments or legal facts as well as the evidence presented by the Government and the DPR. Therefore, the Court is of the opinion that in order to thoroughly see the purpose and clarity of a law, it is necessary to look at the overall norms of the law, which furthermore, if deemed to be detrimental to the constitutional rights or deviate from the purpose of the establishment of legislation, it can be subjected to a material examination of the norms of the relevant law to the Constitutional Court. Therefore, in fact, the inclusion of the intent and purpose of drafting the law in Law 3/2022 and being comprehensively explained in the General Elucidation as it has also been stated in Presidential Regulation 18/2020 regarding the RPJMN, the purpose of establishing Law 3/2022 in principle has fulfilled the “principle of clarity of purpose” as referred to in Article 5 letter a of Law 12/2011.

Based on the aforementioned legal considerations, the Petitioners' argument which states that the formation of Law 3/2022 has violated the “principle of clarity of purpose” as regulated in Article 5 letter a of Law 12/2011 is legally unjustifiable.

2. Contrary to the principle of conformity between types, hierarchies and content materials

Regarding the *a quo* argument, it is important for the Court to first emphasize the meaning of the principle of conformity between types, hierarchies, and content materials, whereas in the formation of legislation, we must really pay attention to the right content materials in accordance with the types and hierarchies of legislation [*vide* Elucidation of Article 5 letter c Law 12/2011]. Regarding the types and hierarchies, they must be linked to Article 7 of Law 12/2011 which states that the types and hierarchies of legislation consist of: a). the 1945 Constitution; b). Decree of the People's Consultative Assembly (Majelis Permusyawaratan Rakyat; c). Laws/Presidential Regulations in Lieu of Laws; d). Presidential Regulations; e). Presidential Decree; f). Provincial Regulations; and g). Regency/City Regional Regulation. Meanwhile, regarding the content material for each type of legislation, it is determined in Article 10 to Article 15 of Law 12/2011. In this case, specifically related to the content material that must be regulated by law, it shall contain: a) further regulations regarding the provisions of the 1945 Constitution of the Republic of Indonesia; b) an order for a Law to be regulated by a Law; c) ratification of certain international agreements; d) follow up on the decision of the Constitutional Court; and/or e) fulfilment of the legal needs in society. Meanwhile, the content material of government regulation shall contain the material for carrying out the law properly. The meaning of this is explained as the stipulation of presidential regulations to carry out statutory orders or to carry out laws as long as necessary without deviating from the material regulated in the relevant law [*vide* Article 12 of Law 12/2011 and its Elucidation]. Regarding presidential regulations, it is determined that the content shall contain the materials ordered by law, the materials for implementing presidential regulations, or the materials for carrying out the administration of government power. That means, a Presidential Regulation was formed to carry out further the regulation of the orders of the Laws or Presidential Regulations that

are explicitly or implicitly ordered to be formed [*vide* Article 13 of Law 12/2011 and its Elucidation].

In relation to the delegation rules argued by the Petitioners, all matters of a strategic nature should be regulated in the content material of the law, not in the implementing regulations. Regarding the *a quo* argument, the Court will first consider the scope of delegation contained in Law 3/2022, whether it is true that the content material must be in the law, not in the implementing regulations. After the Court has carefully examined all the provisions in Law 3/2022 which consists of 44 (forty-four) articles in which the delegation of further regulations is contained (without the Court intending to assess the constitutionality of the norms of the articles of Law 3/2022).

By referring to Attachment II to Law 12/2011, in number 198 it is determined that higher legislation can delegate further regulatory authority to lower legislation. Furthermore, in number 199 it is determined that the delegation of authority can be carried out from one law to another law, from a provincial regulation to another provincial regulation, or from a regency/city regional regulation to another regency/city regional regulation. Meanwhile, at *a quo* number 200 of Attachment II, it is also determined that the delegation of regulatory authority must clearly state: a) the scope of the regulated content material; and b) the types of Legislation [*vide* Attachment II to Law 12/2011 in Chapter II on Special Matters, Letter A. DELEGATION OF AUTHORITY].

Based on the provisions on the technique of delegation in Law 12/2011, the arrangement of delegation by Law 3/2022 is in line with the technique of delegation. In this case, if the Petitioners are questioning the regulation of the Master Plan for the Capital of the Country, then the main content materials of the Master Plan for the Capital of the Country have been determined as the content materials of the *a quo* Law which include at least: a. preliminary; b. vision, objectives, basic principles, and key performance indicators; c. basic principles of development; and D. stages of development and funding schemes. The content materials of the Master Plan for the Capital of the Country have been listed in the Attachment II to Law 3/2022 which is an integral part of the *a quo* Law. Meanwhile, the legislators require further detailed arrangements of the main content materials of the *a quo* Law to be regulated by presidential regulation. Such delegation is in line with the delegation technique as referred to in Law 12/2011. This means that if all technical matters must be regulated entirely in the law, problems will arise in the future, if such matters are no longer in accordance with future developments and needs. Moreover, the process of amending a law is much more difficult than amending an implementing regulation. Therefore, regarding the arguments of the Petitioners who questioned the existence of implementing regulations that were not supposed to regulate the content of the law, without providing a basis for arguments and convincing evidence for the Court, then what the Petitioners have questioned is more of a form of concern over the implementation of Law 3/2022. In this regard, the most important thing is that the implementing regulations must not contradict the provisions that delegate them (from higher regulations). In the event that there is such a contradiction, *quod non,* the legal system for examining the legislation in Indonesia has also regulated its completion by the institution authorized to do so [*vide* Article 24A of the 1945 Constitution]. In this regard, the Court considers it important to emphasize that with the promulgation of Law Number 13 of 2022 concerning the Second Amendment to Law 12/2011 (Law 13/2022), the DPR, the President, and the DPD are given the authority to monitor and supervise the implementation of the applicable laws [*vide* Article 95A of Law 13/2022].

Based on these legal considerations, the Petitioners' argument that the formation of Law 3/2022 is in contrary to “the principle of conformity between types, hierarchies, and content materials” as stipulated in Article 5 letter c of Law 12/2011 is legally unjustifiable.

3. Contrary to the principle of enforceability

Regarding the *a quo* argument of the Petitioners, the Court is of the opinion that it is also important for the Court to first explain the meaning of “principle of enforceability” in Article 5

letter d of Law 12/2011, whereas every formation of legislation must take into account the effectiveness of these legislations in society, philosophically, sociologically, as well as juridically. In this regard, as the Court has considered in the Decision of the Constitutional Court Number 79/PUU-XVII/2019 which was declared in a plenary hearing open to the public on May 4, 2021, which is in principal related to the principle of enforceability, the articles must be studied further if, according to the Petitioners, such articles are unclear or have different interpretations or conflicting contents between one article and another so that it cannot be implemented, then in relation to the norm, it is not part of the Court's assessment in the *a quo* formal examination [*vide* the Decision of the Constitutional Court Number 79/PUU-XVII/2019 page 366-367].

Regardless of the above considerations, after the Court carefully examined the arguments and the evidence presented, it is evident that the Petitioners' argument, which states that there is an issue in the principle of enforceability in the formation of Law 3/2022, did not provide any evidence that could convince the Court. Because, after the Court examined the Academic Paper of the State Capital Bill, the needs of Law 3/2022 have been clearly outlineD, philosophically, sociologically, and juridically. In this case, sociologically, it is in principal described in the Academic Paper of the State Capital Bill. In addition, regarding the argument of the Petitioners which related the sociological aspect to the existence of the increasing trend in the transmission of Covid-19 because it stated that the legislators did not seem to give any attention to the increasing transmission of Covid-19 during the discussion of the *a quo* Law. Regarding this argument, the Petitioners did not provide arguments and evidence that could convince the Court of the correlation between the increasing transmission of Covid-19 and the discussion of the State Capital Bill. The Court is of the opinion that by observing the objectives of the establishment of Law 3/2022 as considered above as well as the description of the philosophical, sociological, and juridical aspects in the Academic Paper of the State Capital Bill, the legislators have taken into account the impact of State Capital development on the local community who already inhabited the area prior to the relocation plan of the State Capital is carried out, so that the development and management of the State Capital can take place in a measurable manner in accordance with the objectives of the development of the State Capital. Based on the legal facts revealed in the trial, the Government has carried out a comprehensive study of the relocation plan of the state capital [*vide* Summary of the Court Hearing Case Number 25/PUU-XX/2022, April 21, 2022];

Therefore, the Court is of the opinion that the argument of the Petitioners stating that the formation of Law 3/2022 has violated the "principle of enforceability" as regulated in Article 5 letter d of Law 12/2011 is legally unjustifiable.

4. Contrary to the principle of applicability and usability

Regarding the *a quo* argument of the Petitioners, it is important for the Court to first explain the meaning of the "principle of applicability and usability", whereas every legislation is made because it is really needed and useful in regulating the life of the nation and state [*vide* Elucidation of Article 5 letter e of Law 12/2011]. The Court is of the opinion that to look carefully at to what extent the State Capital is needed and also beneficial for the life of the nation and state, the first thing that must be done is to comprehensively read all documents related to the formation of Law 3/2022, as well as all parts of the *a quo* Law, starting from the consideration section that consider the philosophical and sociological basis as well as the general explanation section that describes the background of the formation of a law, whether or not such law ignores this principle. In this regard, the Petitioners did not provide any evidence that could convince the Court of the inefficiency and ineffectiveness of Law 3/2022.

Whereas if it is related to the results of a survey conducted by the Indonesian Public Opinion Discussion and Study Group (*Kelompok Diskusi dan Kajian Opini Publik Indonesia* or Kedai Kopi) as argued by the Petitioners in their petition, in principal the survey results indicate that as many as 61.9% of people do not agree that the capital city should be

relocated. The main reason of such disagreement is the potential waste of state budget. The Court is of the opinion that the survey cannot be used as a reference that Law 3/2022 has violated the principles of applicability and usability. The Court can understand the concerns of the Petitioners regarding the Covid-19 transmission, but these concerns cannot be used as an excuse for not doing or stopping the discussion of a bill. Moreover, in the midst of the Covid-19 pandemic, where everyone must comply with the health provisions or protocols set by the Government, one of the efforts that can be done is by conducting physical distancing. Therefore, the discussion of a bill can still be done online (in-network), without having to stop the entire process that has been determined. In addition, regarding the funding for the development of the State Capital, which the Petitioners fear will hamper the economic recovery of the community due to the Covid-19 pandemic, it actually has no correlation with the constitutionality issue of the formation process of Law 3/2022, in which the formation process of a law must be based on the legislation which is mandated in Article 22A of the 1945 Constitution.

Whereas furthermore, it is also important for the Court to explain that the use of the State Budget as a source of funding in order to support the preparation, development, relocation and administration of the government, specifically for the State Capital, is a matter that is common and is not in contrary to the legislation, as long as this is conducted properly and has complied with the legislation. Moreover, the Court is of the opinion that Attachment II to Law 3/2022 has provided a complete picture that State Capital funding does not fully use the budget from the State Budget, but also uses a government-business partnership scheme, a business entity participation scheme whose capital is wholly or partly owned by the state including State-Owned Enterprises/purely private entities, international funding/financing support schemes, other funding schemes (creative financing), and the scheme of using State-Owned Goods (*Barang Milik Negara* or BMN), such as leases, utilization cooperation, Build-Use-Handover (*Bangun Guna Serah* or BGS), and Build-Handover-Use (*Bangun Serah Guna* or BSG) [see Attachment II to Law 3/2022 page 123-124]. In this regard, the Court needs to emphasize that all cooperation related to State Capital funding, if this is true, then such funding should not reduce the sovereignty and independence of the state in making decisions on every strategic policy of the state.

Based on the aforementioned legal considerations, the Court is of the opinion that the argument of the Petitioners which states that the formation of Law 3/2022 has violated the “principles of applicability and usability” as regulated in Article 5 letter e of Law 12/2011 is legally unjustifiable.

5. Contrary to the principle of openness

Regarding the *a quo* argument of the Petitioners, it is important for the Court to first explain the meaning of the “principle of openness” which was originally described in Article 5 letter g of Law 12/2011, whereas in the formation of legislation starting from the planning, drafting, discussing, ratifying or determining, and promulgating the laws shall be conducted in a transparent and open manners. Therefore, all levels of society have the widest opportunity to provide inputs in the formation of legislation. Regarding this, without the Court intending to assess its substance, with the promulgation of Law 13/2022 there has been a change in the meaning of the principle of openness to become that the formation of legislation, from planning, drafting, discussing, ratifying or determining, and promulgating, including monitoring and supervising, shall provide access to the public who have an interest and are directly affected to obtain information and/or to provide inputs at every stage in the formation of legislation which shall be carried out verbally and/or in writing by means of online (in-network) and/or offline (out-of-network).) [*vide* Elucidation of Article 5 letter g of Law 13/2022].

Whereas regarding the fulfilment of this principle of openness, it is important for the Court to first disclose the legal facts in the trial as follows:

1) Whereas in 2017-2019, the Government (*Bappenas*) has conducted a study on the relocation of the state capital, which was then followed up by conducting a thematic

national dialogue to obtain inputs from various stakeholders, experts, non-governmental organizations, universities and also any study institutions in relation to the preparation of the State Capital Master Plan which carried out by conducting a Strategic Environmental Study (*Kajian Lingkungan Hidup Strategis* or KLHS) [*vide* PK-1.Government].

2) Whereas the Government has received various inputs and aspirations from the public regarding the State Capital, both submitted directly to the Central Government and those submitted through the Provincial and Regency Governments in the location of the Capital of the Country and has also conducted workshops in which experts in constitutional law were invited to provide inputs from the point of view of the constitution and the law-making process. [*vide* PK-5, PK-6. Government evidence]
3) Whereas the House of Representatives has carried out several activities to gather the inputs from the public, both verbally and in writing, namely the Public Hearing Meeting (*Rapat Dengar Pendapat Umum* or RDPU) and work visits in the context of the discussion of the State Capital Bill which is one of the processes for the formation of the State Capital Law.
4) Whereas the data related to the formation process of the State Capital Law can be accessed on the website page of the House of Representatives, namely https://:www.dpr.go.id/uu/detail/kt/368.
5) Whereas in the preparation of Law 3/2022, public hearings have been carried out in which the public and academics were invited from several universities in Indonesia, including Universitas Sam Ratulangi, Universitas Indonesia, UPN Veteran Jakarta, Universitas Mulawarman, Universitas Hasanuddin, Universitas Sumatera Utara [*vide* attachments to additional statements of the Government PK-6 to PK-19, PK-24] which can be accessed via the YouTube page

Whereas based on the description of the aforementioned legal facts, it is evident that the Government and the DPR have carried out various activities to absorb the aspirations from the community, from the community leaders, Non-Governmental Organizations (NGOs), academics, constitutional law experts, and indigenous community groups. In relation to the existence of these various activities, the Court did not find any legal facts that the Petitioners has attempted to involve themselves and/or were involved pro-actively and responsively in providing inputs in the formation process of Law 3/2022, which actually for such case, without being asked for or invited, the stakeholders can still act and be pro-active to participate as part of the efforts to realize community participation.

The Court is of the opinion that the involvement of the community to be actively involved in the formation process of the law is a necessity in an effort to ensure that the law that will be formed are truly in accordance with the expectations of the community. Regarding the active involvement of the community in the formation process of the law, the responsibility for doing this in the formation process of the law is borne by the community who are potentially affected by the formation of such law, however the community as a whole should also take the shared responsibility to be actively involved, without exception to the Petitioners in the *a quo* case*,* unless the law provides otherwise. This is intended so that the negative effects that may arise due to the formation of a law can be avoided, therefore the law formed by the legislators has passed thorough verification by all levels of society as the owners of people's sovereignty as regulated in Article 1 paragraph (2) of the 1945 Constitution.

Whereas regardless of whether or not the Petitioners were actively involved in providing input regarding the formation of Law 3/2022, the Court also did not find any other series of evidence from the Petitioners that could prove that the Government and the DPR had really tried to close themselves off or were not open to the public in the formation of Law 3/2022. Regarding the 2 (two) pieces of evidence submitted by the Petitioners, namely: the screenshot of the Track Record page for the formation of Law 3/2022 on the website of DPR RI (*vide* evidence P-43) and the evidence in the form of Application Letter for

Data/Files dated May 9, 2022 regarding the formation of the State Capital Law to the Minister of National Development Planning/Head of the National Development Planning Agency, Minister of Law and Human Rights and DPR RI through the secretary General of the DPR RI [*vide* evidence P-44], they are not sufficient to prove the tendency that the Government and the DPR have violated the principle of openness as regulated in Article 5 letter g of Law 12/2011.

Based on the aforementioned considerations, the argument of the Petitioners which states that the formation of Law 3/2022 has violated the "principle of openness" is legally unjustifiable.

6. The stages of formation of Law 3/2022 are carried out with a fast track legislation pattern

Regarding the *a quo* argument of the Petitioners*,* regardless of the absence of relevant evidence submitted by the Petitioners, the Court is of the opinion that the formation process of a law does not depend on how long or fast and slow the discussion is, but the formation process of a law must follow the rules of the law-making process as regulated in the Law 12/2011 and its amendments which include the processes in the stages of planning, preparation, discussion, ratification and promulgation.

The Court is of the opinion that as long as all the processes in these stages have been fulfilled and carried out diligently and carefully by the legislators by adhering to the principles of establishing good legislations, including the principles of: clarity of purpose, appropriate form of institutions or officials, conformity between types, hierarchies, and content materials, enforceability, applicability and usability, clarity of formulation and openness [*vide* Article 5 of Law 12/2011], then regarding the time of completion and discussion that seem fast or fast track legislation, it is part of the efforts of the legislators to complete the laws in general, including in this case, Law 3/2022*,* that is, since a proposed bill is included in the mid-term National Legislation Program. Moreover, the Court is of the opinion that in relation to the time frame of the formation of a law, Law 12/2011 and its amendments to this date has not provide a definitive provision for when a bill that has been included in the National Legislation Program shall be finalized.

Based on the aforementioned legal considerations, the Court is of the opinion that the argument of the Petitioners which states that the use of the "fast track legislation" in the formation of Law 3/2022 is in contrary to the 1945 Constitution, is legally unjustifiable.

Therefore, the Court issued a decision which verdicts are as follows:

In the Provisional Decision

To dismiss the Petitioners' provisional petition

In the Subject Matter of the Petition:

To dismiss the Petitioners' petition in its entirety.