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The Eroding Legislative Oversight: The Governance Implications of State Asset Transfers Under Indonesia's National Capital Law

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Abstract: The enactment of Law Number 3 of 2022 concerning the National Capital (IKN Law) introduced fundamental changes to the legal framework governing state financial management in Indonesia, particularly regarding the authority over the transfer of state-owned assets (*Barang Milik Negara*, BMN). One of the most significant changes is the elimination of the requirement for prior approval by the House of Representatives (DPR) in asset transfer decisions, which had previously functioned as a key legislative check on executive financial decisions. This paper employs normative legal research through doctrinal and statutory analysis to examine the legal shift in DPR's authority and its broader implications. The findings reveal that the shift reflects a strategic policy move to facilitate asset-based financing for the accelerated development of Indonesia's new capital city, designed as the so-called a super priority national project. The government aims to optimize BMN utilization for infrastructure financing by simplifying the approval process. Nevertheless, this regulatory change raises critical legal concerns. First, it generates normative tension between the IKN Law and existing statutory regimes, notably the State Treasury Law. Second, it reduces institutional oversight, potentially undermining transparency and public accountability in BMN transfers. Third, revenues from asset transfers are not automatically earmarked for the National Capital project but remain subject to the state budget allocation process, thus introducing fiscal uncertainty.

Keywords: Asset Optimization; transfer of state property; Legislative Permission

1. Introduction

State-owned assets (*Barang Milik Negara*, or BMN) were initially procured to support the functions and duties of government ministries and agencies. Once acquired, these assets serve as essential infrastructure to fulfill core government responsibilities, including protection, public service delivery, empowerment, and welfare enhancement. Thus, unlike assets in commercial entities, BMN are not primarily intended to generate direct financial returns and often entail future liabilities in the form of maintenance obligations.[1]

Law Number 1 of 2004 on the State Treasury (State Treasury Law) explicitly prohibits using BMN as collateral or mortgage for loans. This prohibition underscores the legal and fiscal significance of BMN within the Indonesian legal framework. Furthermore, Article 45 (1) of the same law affirms that BMN deemed necessary for public administration may not be transferred. This principle forms the legal basis for the restrictive regime on BMN transfer, requiring approval from the DPR for transfers involving land, buildings, or other valuable BMN.

The enactment of Law Number 3 of 2022 on the National Capital (as amended by Law Number 21 of 2023) marked a turning point in the governance of public finance and asset management in Indonesia. This law departs significantly from existing statutory norms by eliminating the requirement for DPR approval in the transfer of BMN, particularly under Article 29, which merely requires the government to report such transfers as part of financial accountability mechanisms, thus not as a condition precedent.

This legislative shift introduces potential complexity and legal uncertainty due to the dual regime that now governs BMN transfers. First, the scope of BMN affected by the IKN Law is not limited to those within the new capital's geographic boundaries but may also include assets outside the designated capital area. Second, the IKN Law does not expressly amend or revoke the provisions in the State Treasury Law or Law Number 17 of 2014 on the People's Consultative Assembly, DPR, Regional Representatives Council, and Regional Legislative Council, also known as the MD3 Law,[2] instead stipulating that conflicting laws are simply "declared inapplicable" without repeal—thereby leaving both legal mechanisms formally intact.

These developments raise critical legal and constitutional questions. What is the rationale behind this reallocation of authority over BMN transfers? What legal urgency justifies the shift in legislative oversight within a statute concerning the relocation of the capital? Understanding the motivation behind such regulatory

[1] See Government Regulation Number 71 of 2010 concerning Government Accounting Standards. In government accounting, one of the characteristics is investment in the form of assets that do not directly generate income

[2] The provisions of the Treasury Law requiring DPR approval are consistent with the provisions of the MD3 Law. According to Article 72 of the aquo statute, the DPR is required to approve the transfer of BMN within its power in accordance with legislative restrictions.

transformation is essential to evaluating the legitimacy of the new framework and its implications for institutional checks and balances.

Moreover, the shift in authority prescribed in the IKN Law has broader legal consequences. It may affect legislative coherence, asset governance accountability, and legal clarity concerning the use of BMN for capital financing. Given these implications, this research seeks to critically examine the reallocation of DPR's authority over BMN transfers following the enactment of the IKN Law. Due to the broad scope of BMN categories,[3] this study is limited to assets whose transfer or management requires inter-institutional coordination between the executive and legislative branches—namely, land, buildings, and other high-value assets subject to DPR approval under the pre-existing framework.

2. Methodology

This study employs a normative legal research approach, emphasizing doctrinal and statutory analysis to assess the changing legal framework that governs the management and transfer of BMN. Normative legal research involves the systematic examination of legal norms by analyzing primary and secondary legal sources, such as statutes and legal doctrines.[4] Data collection is conducted through a systematic documentary study, classifying legal materials into primary sources—comprising a hierarchy of regulations from the 1945 Constitution to technical ministerial decrees, including the Academic Draft (*Naskah Akademik*) of the IKN Law—and secondary sources, such as legal doctrines, scholarly journals, and previous research relevant to the discourse.

To address normative conflicts and institutional oversight, the author utilizes vertical and horizontal synchronization techniques, applying legal maxims to resolve regulatory overlaps or legal vacuums. This prescriptive analysis evaluates inter-institutional control mechanisms through a functional lens, ensuring that BMN management adheres to the principles of good governance. Consequently, this methodology transcends mere textual description by offering juridical solutions to regulatory disharmony and proposing a reinforced oversight structure to mitigate the risk of state asset misappropriation.

3. The Rationale Behind the Shift in DPR's Authority over the Transfer of BMN After the Enactment of the IKN Law

The concept of "authority shift" in this study refers to the reallocation of approval authority for the transfer of BMN, which previously resided with the legislative branch (DPR) and is now exercised by the President and Minister of Finance. According to the Indonesian Dictionary (KBBI), the term "*pergeseran*"

[3] Siregar, Doli D. and Achmad Herry, *Manajemen Aset Strategi Penataan Konsep Pembangunan Berkelanjutan Secara Nasional Dalam Konteks Kepala Daerah Sebagai CEO's Pada Era Globalisasi & Otonomi Daerah*, first printing (Gramedia Pustaka Utama, 2004), 179–84.
[4] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu TInjauan Singkat*, 1st ed, (Rajawali Pers, 2022), 13.

implies a movement or transition.[5] In the legal context, it signifies a structural change in the institutional arrangement for asset governance—particularly, the delegation of strategic oversight functions from the legislature to the executive.

From a public finance perspective, BMN is an integral component of state assets,[6] falling under the broader domain of fiscal management. This domain encompasses macroeconomic policy, budgeting, treasury functions, taxation, customs, and financial oversight.[7] Accordingly, the regulation of BMN cannot be separated from the architecture of national financial legislation.

3.1. Historical and Legal Dynamics of BMN Transfer Regulation

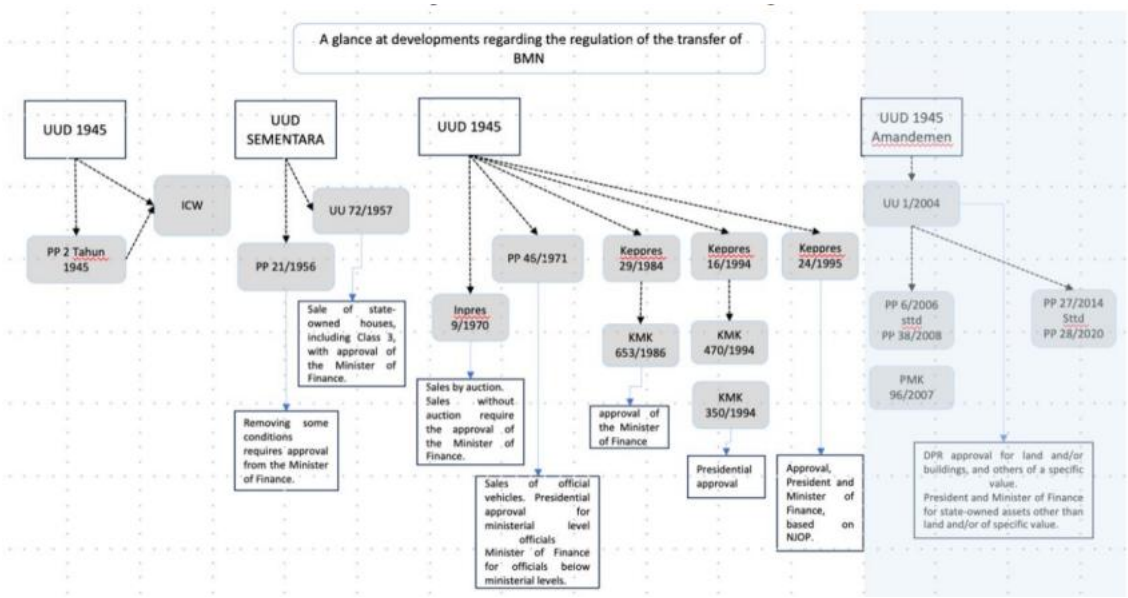
Before the enactment of modern financial statutes, BMN management was governed by the Dutch colonial regulation, notably the *Indonesische Comptabiliteitswet* (ICW),[8] codified in Staatsblad 1925 Number 448, originally enacted on April 23, 1864.[9] The continued use of ICW during the early post-independence period was legitimized by Article II of the Transitional Provisions of the 1945 Constitution and Government Regulation Number 2 of 1945. The existence of ICW became a way to fulfill the mandate of Article 23, paragraph (4) of the 1945 Constitution, while the draft law on state finance was still being drafted.[10]

The ICW primarily emphasized administrative procedures and lacked detailed provisions on asset transfers. Although it outlined general prohibitions against using immovable assets that were still necessary for state functions or as collateral, it did not regulate DPR involvement in asset disposal decisions. This reflected a broader colonial financial regime in which legislative input was minimal, even though institutions like the *Volksraad* (proto legislature) existed.[11]

[5] Anton M. Moeliono;, *Kamus Besar Bahasa Indonesia* (Balai Pustaka, 1988), Jakarta.
[6] Riawan Tjandra, *Hukum Keuangan Negara Pengertian, Ruang Lingkup, Pengelolaan, Dan Penyelesaian Kerugian Negara* (PT Kanisius, 2023), 24.
[7] Hadiyanto, *Hukum Keuangan Negara Di Indonesia Dalam Teori Dan Praktik*, *1st ed* (Rajawali Pers, 2022), 29.
[8] Hadiyanto. 2009. Strategic Asset Management: Kontribusi Pengelolaan Aset Negara dalam Mewujudkan APBN yang Efektif dan Optimal hlm. 274. In Anggito Abimanyu and Andie Megantara, eds., *Era Baru Kebijakan Fiskal: Pemikiran, Konsep, Dan Implementasi* (Jakarta: Penerbit Buku Kompas, 2009).
[9] Gunawan Widjaja, *Pengelolaan Harta Kekayaan Negara: Suatu TInjauan Yuridis*, *1st ed*. (Raja Grafindo Persada, 2002), 12.
[10] Julianda Rosyadi, *Membongkar Warisan Kolonial Di Bidang Hukum Keuangan Negara: Penyusunan Undang-Undang Keuangan Negara 1945-2004* (Kementerian Pendidikan dan Kebudayaan, 2018), 38.
[11] Siswo Suyanto, "Lahirnya Undang-Undang Bidang Keuangan Negara: Suatu Proses Perjalanan Panjang," *KEUANGAN NEGARA INDONESIA*, n.d., accessed March 23, 2025, http://www.keuanganpublik.com/2010/11/lahirnya-uu-bid-kn-suatu-proses.html.

During this transitional period, various regulations were enacted to manage asset transfers, as shown in the chart below.

Chart 1. Development of BMN Transfer Regulations



Source: processed by the author

In light of the above, it is argued that none of these instruments created a formal role for the DPR in BMN transfers. This situation remained until the introduction of the State Treasury Law, which established a new approach by legally requiring DPR approval for transferring high-value BMN, especially those involving buildings and land.

This reform was closely linked to Indonesia's post-1998 political transformation, during which legislative institutions gained greater authority, including fiscal oversight. The push toward a stronger DPR was supported by the second amendment to the 1945 Constitution and further institutionalized through the 1999–2004 National Development Guidelines (GBHN) and Law Number 25 of 2000 on National Development Programs.

Consequently, the transfer of BMN became subject to legislative approval—an essential democratic check introduced during a period of institutional recalibration aimed at fostering greater transparency, accountability, and checks and balances between the executive and legislature.

3.2. The Regulation and Role of the DPR in the Transfer of BMN

Although the 1945 Constitution of the Republic of Indonesia does not explicitly mention the management of BMN, constitutional authority over BMN can be inferred from Chapter VIII on state finance, particularly Article 23(1) and Article 23C. These provisions frame BMN as a fiscal instrument whose acquisition, maintenance, and utilization must align with the national

budget (APBN), thus linking asset governance to both the expenditure and revenue sides of state finance.

In general, BMN is considered a form of public asset[12]— defined under the State Treasury Law as "any item purchased or acquired at the expense of the APBN or derived from other lawful sources." From the expenditure perspective, the BMN acquisition is financed by the state budget and includes obligations for future maintenance and asset protection. On the revenue side, BMN can generate non-tax state revenues (PNBP)[13] through utilization (e.g., leasing or partnerships) or outright transfer (e.g., sale, grant, or capital injection). As such, BMN plays a strategic role in fiscal sustainability,[14] serving not only as an instrument of public service but also as a potential source of income. Efficient asset management can reduce expenditure needs for new procurements while contributing to the fiscal base through monetization strategies.[15]

The legal foundation for BMN governance derives, *inter alia*, from Articles 23, 23A, and 23C of the 1945 Constitution. While Articles 23 and 23A lay out general principles of state finance—including taxation and budgeting—Article 23C mandates the enactment of further legislation to elaborate and operationalize these principles.[16] This provision effectively authorizes the legislature to craft detailed financial laws and establishes a constitutional basis for regulatory innovation in asset governance.

Significantly, Article 23C embodies the principle of open legal policy, meaning that the 1945 Constitution delegates regulatory discretion to lawmakers without prescribing specific institutional arrangements.[17] According to constitutional jurisprudence,[18] particularly as interpreted by the Constitutional Court, such discretion must still adhere to fundamental constitutional values, including legal certainty, justice, and democratic legitimacy. In the context of BMN transfers, this means that the 1945 Constitution does not mandate a fixed role for the DPR. Instead, it is the prerogative of the legislature to determine the extent of legislative involvement, provided that the resulting legal framework complies with the 1945 Constitution and respects democratic accountability.

[12] Novie Rarung et al., *Pemanfaatan Aset Publik: Konsep dan Kebijakan*, Cetakan Pertama (CV. Bintang Semesta Media, 2023), 29.
[13] *Ibid*, 107.
[14] Hadiyanto, *Op. Cit.*, 29.
[15] Yasdin Yasir et al., "Determinan Optimalisasi Pemanfaatan Aset Kementerian Keuangan Pada Satuan Kerja Wilayah Sulawesi Selatan," *BALANCA: Jurnal Ekonomi dan Bisnis Islam* 2, no. 1 (2020): 24-25, https://doi.org/10.35905/balanca.v2i1.1394.
[16] Explanation by the Minister of Finance representing the Government regarding the State Finance Bill, the State Treasury Bill, and the State Financial Audit and Accountability Bill, delivered during the DPR-RI Plenary Session on October 23, 2000
[17] Mardian Wibowo, *Kebijakan Hukum Terbuka Dalam Putusan Mahkamah Konstitusi: Konsep Dan Kajian Dalam Pembatasan Kebebasan Pembentuk Undang-Undang*, *1st ed* (Rajawali Pers, 2019), P. 99-100.
[18] *Ibid.*, 378.

That said, the doctrine of open legal policy is not absolute. Drawing on doctrinal analysis,[19] the Constitutional Court has identified three key limits to this discretion: a) The regulation must not conflict with any explicit provision of the 1945 Constitution; b) It must not negate constitutional principles (e.g., checks and balances, separation of powers); c) It must not violate the sovereignty of the people, as exercised through representative institutions.

The formal involvement of the DPR in BMN transfers began with the enactment of the State Treasury Law. This marked a significant paradigm shift in Indonesian financial governance, embedding parliamentary approval as a statutory requirement for transferring certain types of BMN. The law stipulates that BMN in the form of land and/or buildings and other assets above a specified threshold may only be transferred with prior approval from the DPR.

However, this requirement is not absolute. The law also provides exceptions, especially for transfers involving assets below a certain value, or those deemed surplus, damaged, or obsolete. These exceptions are detailed in Article 46(1) of the State Treasury Law and its implementing regulations, such as Government Regulation Number 27 of 2014.

A key point of evolution is the shift in the asset transfer cycle. Before the State Treasury Law, asset disposal followed a sequence of deletion followed by transfer. Under the new regime, this sequence is reversed: the transfer occurs first, followed by deletion from state asset registers. This change underscores the new emphasis on asset monetization as a fiscal tool, rather than as a purely administrative process.

The legislative history of the State Treasury Law is also noteworthy. The bill was submitted by the President on September 29, 2000, through Letter Number R-23/PU/IX/2000,[20] shortly after the second constitutional amendment. Its passage reflects the broader trend of democratization and the empowerment of the legislature,[21] particularly concerning budgetary and fiscal oversight.[22] During this period (1999–2004), the DPR transitioned from being a so-called "rubber stamp" to a more assertive and autonomous body—a phenomenon often referred to as the rise of a legislative superbody.[23]

This transformation was part of a larger political and legal restructuring following the fall of the New Order regime in 1998. In the

[19] *Ibid*.

[20] The President filed three bills under Letter Number R-23/PU/IX/2000: the State Finance Bill, the State Treasury Bill, and the State Financial Accountability Audit Bill.

[21] Arifin P. Soeria Atmadja, *Keuangan publik dalam perspektif hukum: teori, kritik, dan praktik*, 3rd ed. (Rajawali Pers, 2013), 72.

[22] Siswo Suyanto presented in the hearing of the Constitutional Court Decision Number 35/PUU-XI/2013 as a state financial expert.

[23] Yuwanto Yuwanto, "Parlemen Dan Demokrasi: Peran Dewan Perawakilan Rakyat Dalam Transisi Demokrasi Di Indonesia," *JIIP: Jurnal Ilmiah Ilmu Pemerintahan* 2, no. 2 (2018): 43, https://doi.org/10.14710/jiip.v2i2.2121.

context of public finance, the DPR's expanded role served as a critical institutional check to ensure transparency, legitimacy, and accountability in managing state resources, including BMN.

3.3. The Shift in DPR's Authority Over BMN Transfers under the IKN Law

The government's initiative to relocate the national capital has been in development since 2017, spearheaded by the National Development Planning Agency through comprehensive feasibility studies. However, the formal announcement of this policy was made by the President during the State Address on August 16, 2019.[24] The relocation is envisioned not merely as a physical move of the administrative center but as a strategic national policy aimed at achieving long-term economic goals, including equitable development, improved investment flows, and regional integration.

From a legal perspective, the IKN Law was enacted to fill a regulatory gap by providing a dedicated legal framework for governing the new capital. In addition to its provisions on spatial planning and institutional structure, the law also includes specific regulations concerning the management of BMN. These provisions were deemed necessary to address two categories of assets: i) BMN located within the jurisdiction of the new capital; ii) BMN previously used by central government ministries and agencies in Jakarta, which the relocation will impact.

According to the IKN Law's academic manuscript, the development of IKN is integrated into Indonesia's national strategic plan. It is designated as a "National Strategic Area" under Presidential Regulation Number 64 of 2022 on the Spatial Planning of the National Strategic Area for IKN (2022–2024). Furthermore, the IKN project is included in: Mid-Term National Development Planning (RPJMN) Period 2020–2024 as a major strategic infrastructure initiative; Long-Term National Development Planning (RPJPN) Period 2025–2045 and Mid-Term National Development Planning (RPJMN) Period 2025–2029, through Law Number 59 of 2024 and Presidential Regulation Number 12 of 2025, respectively.

The project's designation as a super-priority national program justifies a series of exceptional policy and regulatory measures, including the relaxation of institutional and procedural constraints in asset governance. Notably, the Constitutional Court has acknowledged in Decision No. 81/PUU-VII/2010 that "special status" for a region or project must be flexible, pragmatic, and based on demonstrable needs.[25]

[24] Kementerian Sekretariat Negara, "Presiden Jokowi Tegaskan Rencana Pemindahan Ibu Kota Di Hadapan Anggota Dewan | Sekretariat Negara," accessed April 12, 2025, https://www.setneg.go.id/view/index/presiden_jokowi_tegaskan_rencana_pemindahan_ibu_kota_di_hadapan_anggota_dewan.

[25] See Constitutional Court Decision Number 81/PUU-VIII/2010 p. 39

In line with this special treatment, the IKN Law eliminates the requirement for DPR approval in BMN transfers related to the IKN project. Article 29 of the IKN Law vests the authority to approve transfers solely in the executive. The academic manuscript of the IKN Law provides the following justifications: First, asset optimization is a key strategy for financing the IKN project. BMN is treated not merely as a public good but as a fiscal resource to support infrastructure development. Second, the approval mechanism under the State Treasury Law is considered time-consuming and potentially obstructive to project acceleration. Thus, a streamlined process is introduced through the IKN Law. This reform was further supported by an asset audit conducted by the Ministry of Finance, which recommended: (1) Raising the threshold for executive approval authority; and (2) Eliminating the DPR's approval requirement for BMN transfers related to IKN development.[26]

Furthermore, the public satisfaction index for President Joko Widodo's performance shows that infrastructure development is a major contributor to good public perceptions. According to a survey performed by the Indonesian Political Indicators (IPI) institute, the majority of the public values infrastructure development as a tangible and immediately influential component of government performance.[27] Similarly, Aichiro[28] indicated that the relocation of the new capital received broad public support; however, this support was abstract when tied to financial concerns. The majority of the population preferred that the state's money be used to fund other priority programs rather than the creation of the new capital.

Compared to other countries, fundraising by an asset approach is a relatively recent practice.[29] Australia has implemented the asset recycling program,[30] whereby public assets are monetized through sales or lease agreements, with proceeds reinvested into new infrastructure.[31] Despite criticism,[32] this model has supported major infrastructure upgrades in New

[26] Kementerian Keuangan Ditjen Kekayaan Negara, *Laporan Tahunan DJKN Tahun 2021* (Kementerian Keuangan, 2021), p. 46, https://ppiddjkn.kemenkeu.go.id/storage/20250307-7989.pdf.

[27] "Survei Indikator, Tingkat Kepuasan Kinerja Jokowi Capai Level Tertinggi Bulan Ini | tempo.co," *Tempo*, April 30, 2023, https://www.tempo.co/politik/survei-indikator-tingkat-kepuasan-kinerja-jokowi-capai-level-tertinggi-bulan-ini-193028.

[28] Prabowo, Aichiro Suryo and Pepinsky, Thomas B. 2025. *From White Elephant to White Whale: The Economics and Politics of Nusantara*. Available at SSRN: https://ssrn.com/abstract=5283748 or http://dx.doi.org/10.2139/ssrn.5283748.

[29] Raghu Dharmapuri Tirumala and Piyush Tiwari, "Unlocking Value Through Asset Recycling," in *Advances in Infrastructure Finance*, ed. Raghu Dharmapuri Tirumala and Piyush Tiwari (Springer Nature, 2023), p. 6, https://doi.org/10.1007/978-981-99-0440-2_8.

[30] David Richardson, *Privatisation of State and Territory Assets and New Infrastructure*, March 1, 2015,1,. https://australiainstitute.org.au/report/privatisation-of-state-and-territory-assets-and-new-infrastructure/.

[31] Senate Economics References Committee, *Privatisation of State and Territory Assets and New Infrastructure*, Report (Parliament of Australia, 2015), p. 27, Australia, https://apo.org.au/node/53989.

[32] David Richardson, *Privatisation of State and Territory Assets and New Infrastructure*, March 1, 2015, p. 8–9, https://australiainstitute.org.au/report/privatisation-of-state-and-territory-assets-and-new-infrastructure/. According to Richardson's study, the Australian government's asset recycling program from 2014 to 2019 resulted in a reduction in service quality for users and the general public. Furthermore, infrastructure financing through government loans is regarded more affordable than the asset recycling scheme.

South Wales and Victoria.[33] The United States, through the Metropolitan Transportation Authority in New York, has also utilized asset monetization strategies to manage public debt and finance new projects.[34]

In Indonesia, similar approaches have been piloted, although mostly with state-separated assets (e.g., shares in SOEs), rather than the BMN itself. A significant example is the disposal of 40% of shares in PT Jasamarga Jalan Layang Cikampek, which was utilized to raise finance for toll road expansion.[35] Hence, the IKN Law's asset governance model reflects a shift toward fiscal innovation, where BMN is leveraged as an asset class for public investment. This reconfiguration of DPR's role—essentially a deregulatory move—is rooted in the perceived need for speed, efficiency, and fiscal agility.

In summary, the legislative shift in DPR's authority over BMN transfers, as provided under the IKN Law, is driven by two principal considerations: a) The need to regulate BMN management in a way that facilitates asset optimization as an alternative financing source for the IKN project; and b) The need to simplify and accelerate approval mechanisms, thereby removing procedural hurdles posed by DPR involvement under the State Treasury Law.

4. Legal Implications of the Shift in BMN Transfer Regulation Under the IKN Law

The enactment of the IKN Law has introduced a structural transformation in the legal regime governing state asset management in Indonesia, particularly concerning the transfer and utilization of BMN. While the regulatory intention was to accelerate infrastructure development by streamlining asset transfer procedures, the resulting legal changes have created significant implications—normative, institutional, and fiscal—which cannot be viewed in isolation from broader principles of democratic governance and constitutional accountability.

4.1. Normative Conflicts in BMN Transfer Approval (Antinomy)

Identifying probable antinomies inside legislation is an important part of understanding its legal ramifications. This is founded on the belief that legal standards in the form of legislation are difficult to develop without encountering antinomies.[36] The various laws enacted by the legislature and government that have been subjected to judicial review or even invalidated by the Constitutional Court demonstrate the difficulties in avoiding

[33] Nurul Fadjrina, "Terbitkan Skema KETUPI, DJKN Dorong Pembangunan Infrastruktur Publik Indonesia," Berita DJKN, Oktober 2020, https://www.djkn.kemenkeu.go.id/berita/baca/22219/Terbitkan-Skema-KETUPI-DJKN-Dorong-Pembangunan-Infrastruktur-Publik-Indonesia.html.

[34] Breydo, Lev. 2024. Infrastructure Finance for the Public Good: How Asset Recycling Can Untangle the New York MTA's $50 Billion Debt Load, Journal of Law and Mobility 7: 5-76.

[35] Oksita Putrining Yansri, "Aset Recycling dalam Proyek KPBU – Strategi untuk Pembangunan Infrastruktur yang Berkelanjutan?," KPBU, accessed May 13, 2025, https://kpbu.kemenkeu.go.id/.

[36] Mochtar, Zainal Arifin. 2015. "*Antinomi dalam Peraturan Perundang-undangan di Indonesia*". Hasanuddin Law Review 1 (3): 16-36. https://doi.org/10.20956/halrev.v1n3.112.

antinomies.[37] Linguistically, antinomy comes from the Latin *"antinomia,"* meaning conflicting norms.[38] Antinomy is a continuous conflict of norms within every legal norm. Every norm, embodied in legislation, is always subject to antinomy—it experiences conflict.[39]

One of the most immediate legal consequences of the IKN Law is the emergence of normative conflict (antinomy) within the statutory framework on BMN governance. Antinomy refers to a contradiction or inconsistency between two legal norms of equal rank or authority—here, between the State Treasury Law and the IKN Law.

Under the State Treasury Law, BMN that is essential for public administration cannot be transferred without prior approval from the DPR. Conversely, the IKN Law allows for BMN transfer without DPR approval, substituting it with a reporting obligation to the legislature post-facto. The differences are especially clear in Article 45 of the Treasury Law versus Article 29 of the IKN Law.

Table 1. Comparison of the State Treasury Law with the IKN Law

State Treasury Law	**IKN Law**
"Article 45	"Article 29
(1) BMN/D required for the implementation of state/regional government functions cannot be the transferred.	(2) The transfer of BMN as referred to in Article 28 paragraph (2) letter a with a value of up to IDR 100,000,000,000.00 (one hundred billion rupiah) is carried out with approval of the minister who carries out
(2) The transfer of BMN/D is carried out by selling, exchanging, donating, or including it as government capital after obtaining the approval of the DPR/DPRD."	government affairs in the financial sector. (3) The transfer of BMN as referred to in Article 28 paragraph (2) letter a with a value above IDR 100,000,000,000.00 (one hundred billion rupiah) is carried out with the approval of the President."

Source: processed from the State Treasury Law and the IKN Law

Table 2. Comparison of the Threshold of Authority of the President and the Minister of Finance

Authority	**IKN Law**	**State Treasury Law**
President	> Rp100,000,000,000.00 (one hundred billion rupiah)	Rp. 10,000,000,000.00 (ten billion rupiah) to with Rp. 100,000,000,000.00 (one hundred billion rupiah)
Minister	≤ Rp100,000,000,000.00 (one hundred billion rupiah)	< Rp. 10,000,000,000.00 (ten billion rupiah)

Source: processed from the State Treasury Law and the IKN Law

[37] *Ibid.*, 318–319.
[38] Zainal Arifin Mochtar dan Eddy Hiariej, *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas dan Filsafat Hukum*, *2nd Edition*. (Depok: Raja Wali Pers, 2024), 183.
[39] *Ibid*, 181.

These overlapping provisions raise questions about legal certainty and interpretive hierarchy. While the IKN Law was designed as a *lex specialis*, such a designation cannot be presumed to implicitly repeal earlier laws without formal amendment procedures.[40] Article 42 of the IKN Law states only that "inconsistent provisions shall be declared inapplicable," leaving both laws formally intact. Such a scenario presents a legal gap in the implementation of asset optimization for IKN projects. Furthermore, the IKN Law's normative framework lacks practical clarity, necessitating thorough implementing rules; yet, the accompanying Government rules (Government Regulation Number 17 of 2022) fail to establish clear standards, resulting in a lack of legal certainty.

Moreover, Indonesia's statutory drafting guidelines (Law Number 12 of 2011, Appendix II, Item 135) prohibit the use of implicit or "disguised" amendments in statutory language—underscoring the need for legislative clarity and procedural integrity. In this light, the IKN Law's approach risks violating statutory drafting norms and generating legal dualism in BMN governance.

Regarding the phenomenon of disguised amendments, this issue is consistent with the concurring opinion in Constitutional Court Decision Number 48/PUU-VIII/2010.[41] The Justice claimed that such normative conflicts are essentially contrary to the principles of sound legislation as prescribed by Law No. 12 of 2011. These behaviors specifically violate the principles of clarity of purpose, order, and legal certainty. Finally, such discrepancies generate legal uncertainty, which stands in direct contrast to the foundations of the Rule of Law (Rechtsstaat), as clearly articulated in Article 1, Paragraph (3) of the Republic of Indonesia's 1945 Constitution.

Further ambiguity arises from the scope of BMN affected by the IKN Law. Government Regulation Number 17 of 2022 (Article 100) refers to BMN "previously used by ministries/agencies in Jakarta and/or other provinces" that are "transferred for the purpose of capital relocation." However, the law does not clearly delineate which BMN falls under the IKN regime and which remains governed by the Treasury Law. This flexible and discretionary categorization creates the potential for administrative inconsistency and weakens legal predictability.

The IKN Law regulates several types of assets, namely BMN (consisting of BMN in the IKN and outside the IKN), the Nusantara Capital Authority-owned assets, and assets in the possession of the Nusantara Capital Authority. Regarding the extent of these regulations, there are no issues if the lex specialis regulation in the IKN Law applies to assets in the

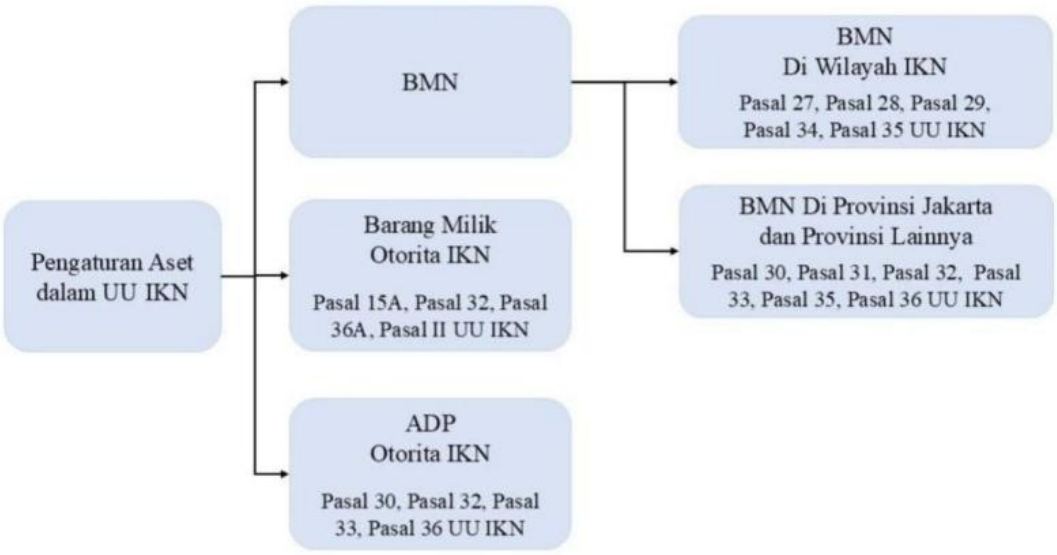
[40] Philipus M. Hadjon and Tatiek Sri Djamiati, *Argumentasi hukum (Legal argumentation/legal reasoning) langkah-langkah legal problem solving dan penyusunan legal opinion*, Cetakan kesepuluh (Gadjah Mada University Press, 2022), p. 31. In pure legal theory, the principle of lex specialis is referred to as a preferred principle used to resolve normative disagreements.

[41] See Constitutional Court Decision Number 48/PUU-VIII/2010 p. 31-32

possession of the Nusantara Capital Authority (ADP), the Nusantara Capital Authority-owned assets, and BMN located in the IKN area since the matter does have urgency.

First, the State Treasury Law only governs assets that are specifically owned by the central or regional government and does not consider factors related to the evolution of the institutional form of the IKN Authority. Second, assets with characteristics similar to the IKN Authority's ADP are not covered by the State Treasury Law and require special regulation under the IKN Law.

Chart 2. Scope of Asset Management in the IKN Law



Source: processed by the author

Based on Chart 2, the scope of assets at issue, the regulation of BMN at ministries/agencies under the IKN Law, is simultaneously subject to the State Treasury Law. This clarifies that the issue regarding the IKN Law's regulation is not *per se* related to its lex specialis regulation, but rather to legal certainty regarding the scope of assets subject to the IKN Law.

In principle, specialized asset governance (lex specialis) is not inherently problematic. The Treasury Law acknowledges the need for tailored regulations, through its implementing regulations, namely Government Regulation Number 27 of 2014, which explicitly regulates several items to be regulated specifically in separate regulations, such as Article 96,[42] Article 98,[43] and Article 103. In addition, several BMNs originate from other legitimate acquisitions, such as assets from Production Sharing Contracts (KKKS) or "miscellaneous" BMN. But, such deviations must be

[42] BMN which is managed and/or fully utilized by the Public Service Agency (BLU), the provisions are specifically regulated in government regulations in the field of BLU.
[43] BMN in the form of state housing is mandated to be regulated specifically with separate regulations.

grounded in clear legal classifications and distinctive asset characteristics, not institutional convenience.

Thus, the IKN Law's treatment of BMN governance—particularly its override of DPR approval—may be interpreted as a de facto amendment to the State Treasury Law, albeit without adhering to the proper legislative mechanisms. This approach risks undermining the doctrinal principle of lex superior derogat legi inferiori and may erode public confidence in the coherence of Indonesia's statutory system.

About the above matters, concerning the opinion that antinomies can be anticipated through the process of making regulations properly[44] and the resolution of antinomies can be resolved wisely and prudently by lawmakers in the context of positive legislation. Therefore, to alleviate these antinomies, the following can be explained.

First, lawmakers need to reformulate the scope of assets more clearly and firmly, which assets are subject to the IKN Law and which are subject to the State Treasury Law. *Second*, if lawmakers want changes to the provisions regulated in a law, it should be done by the mechanisms and techniques as regulated in Law 12 of 2011, namely by amending the State Treasury Law or using the Omnibus law scheme so that it can explicitly change the articles previously regulated in the State Treasury Law, even adding new provisions that were not previously regulated in the State Treasury Law.

4.2. Oversight Challenges and the Erosion of Accountability

The legislature is a key component of the checks-and-balances system in constitutional law, which works to stop the misuse of authority.[45] Checks and balances prevent abuse of power in each branch of government by controlling and balancing the power of the other branches.[46] The DPR's scrutiny of the state revenue and expenditure budget's implementation falls within the category of parliamentary oversight functions in the context of state finances.[47] According to the checks-and-balances principle, the DPR's supervisory role over state finances extends beyond the financial management processes; it is more political and financial than technical supervision, as Indonesian Board of Audit (the BPK) has been in charge of putting technical supervision into practice.[48]

The State Treasury Law restricts the government's ability to transfer BMN in at least two ways. First, limitations on the provisions of legislative

[44] Fence M. Wantu, "Antinomy in Law Enforcement by Judges," *OLD WEBSITE OF JURNAL MIMBAR HUKUM* 19, no. 3 (2007): p. 395, https://doi.org/10.22146/jmh.19070.
[45] Richo Wibowo and Stevanus Gunawan, "Perlindungan Hukum Terhadap Keputusan Dan Perbuatan Pemerintah, Perkembangan, Kasus, Dan Kritik," in *HUKUM ADMINISTRASI NEGARA: Konsep, Fundamental, Perkembangan Kontemporer, Dan Kasus*, *1st ed* (Rajawali Pers, 2024), 298.
[46] Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, 1st ed (Raja Grafindo Persada, 2013), 290.
[47] *Ibid*., 301.
[48] Soeria Atmadja, *Op. Cit,*. 7.

laws, such as the State Treasury Law's Article 45 paragraph (1), which forbids transferring BMN if it is still required to carry out duties and activities. Secondly, limitations on the government's power are imposed by requiring permission from the DPR to execute the BMN transfer.

However, the passage of the IKN Law resulted in the legislative responsibility of overseeing the transfer of BMN being eliminated. The issue is that, in addition to approving the transfer, Article 27 of the IKN Law authorizes the government to identify and take an inventory of BMN whose management is subject to the IKN Law. This means that the executive branch will play the primary supervision role in choosing which BMN will be administered under the IKN Law. Therefore, the government has the authority to approve the transfer.

This situation implies that the executive branch wields dual authority, encompassing the entire spectrum of asset management from identification and inventory to the execution and final approval of asset transfers. Framed within the Principal-Agent theory,[49] this concentration of power—coupled with inherent uncertainties—creates a fertile ground for opportunism and self-interest. Such a structure inevitably leads to non-transparent transactions and information asymmetry, wherein the 'principal' (the public or their representatives) loses the capacity to oversee potential abuses of power or detect moral hazard.

The withdrawal of DPR approval from the BMN transfer process has far-reaching consequences for institutional oversight and public accountability**,** core tenets of democratic governance. Under the principle of checks and balances, the legislature plays a vital role in scrutinizing executive actions in financial matters. This role includes ex ante authorization of significant asset transfers, not merely ex post reporting. By eliminating DPR approval, the IKN Law significantly reduces the preventive function of legislative oversight and concentrates authority within the executive branch.

The absence of DPR approval also results in a lack of transparency, as parliamentary supervision frequently encourages transparency in government acts. However, accountability and openness are fundamental ideas in asset governance policy,[50] and they are pertinent to agency theory.[51]

[49] Diaswati Mardiasmo et al., "Asset Management and Governance — An Analysis of Fleet Management Process Issues in an Asset-Intensive Organization," *2008 First International Conference on Infrastructure Systems and Services: Building Networks for a Brighter Future (INFRA)*, November 2008, 5, https://doi.org/10.1109/INFRA.2008.5439593. As stated in this article, the notion of opportunism and self-interest is a dominant assumption in agency theory

[50] Mardiasmo et al., "Asset Management and Governance — An Analysis of Fleet Management Process Issues in an Asset-Intensive Organization." The principle put forward by Diaswati Mardiasmo et al., is also stated in the general explanation of the State Finance Law that accountability and openness as well as three other principles (professionalism, proportionality, and financial audit by a free and independent auditing body), are a reflection of the application of good principles in state financial management

[51] *Ibid*., 2.

As Bovens[52] argues, "political responsibility is an extremely crucial sort of accountability within democracies." Accountability is exercised across the chain of principal-agent relationships.

The issue to be addressed is, with the elimination of the DPR approval procedure, does the IKN Law provide an adequate substitute mechanism to uphold the idea of accountability?

Article 29, paragraph (4) of the IKN Law states that "the implementation of the transfer of BMN shall be reported to the DPR by the state financial accountability framework." This provision can be interpreted as an attempt to establish an alternate supervision mechanism for the DPR, which was previously carried out in advance but is now moved to the back after the transfer is completed. In the budget cycle, this is referred to as a posteriori supervision, which is mainly focused on holding the government accountable for the implementation of policies.[53] In the APBN cycle, accountability is the final stage in APBN management.[54]

While Article 29 paragraph (4) of the IKN Law requires post-transfer reporting to the DPR, this mechanism is not equivalent to legislative approval. It represents an a posteriori form of control, occurring after executive decisions have already been executed. This model lacks corrective capacity, especially when the implementing officials or agencies are no longer the same actors involved during initial authorization.[55]

In terms of accountability theory, as articulated by Bovens,[56] true political accountability requires an institutional relationship in which: an actor (e.g., the executive) is obliged to explain and justify its conduct; and a forum (e.g., DPR) has the authority to question, evaluate, and, if necessary, impose consequences. However, when compared to Bovens' viewpoint, the provisions of Article 29 paragraph (4) of the IKN Law do not yet reflect responsibility because accountability encompasses not only ex post supervision but also prevention and anticipation.[57]

The reporting mechanism under the IKN Law does not fulfill these conditions, as it lacks meaningful review or reversal powers. In effect, it reduces the DPR's role to that of a passive recipient of information rather

[52] Mark Bovens, "Analysing and Assessing Accountability: A Conceptual Framework," *European Law Journal* 13, no. 4 (2007): 455, https://doi.org/10.1111/j.1468-0386.2007.00378.x.
[53] Siswo Suyanto, "Hubungan Kelembagaan Antara DPR Dengan BPK Dalam Pengawasan Parlementer Di Bidang Keuangan Negara: Sebuah Analisis Kritik," *Keuangan Negara Indonesia*, 2011, http://www.keuanganpublik.com/2011/10/hubungan-kelembagaan-antara-dpr-dengan_5936.html.
[54] Hadiyanto, *Op. Cit.*, 301.
[55] Siswo Suyanto, "Hubungan Kelembagaan Antara DPR Dengan BPK Dalam Pengawasan Parlementer Di Bidang Keuangan Negara: Sebuah Analisis Kritik," *Keuangan Negara Indonesia*, 2011, http://www.keuanganpublik.com/2011/10/hubungan-kelembagaan-antara-dpr-dengan_5936.html Paper presented at a Workshop organized by BAKN-DPR with the theme "Optimizing the Role and Function of BAKN in Parliamentary Oversight of State Finance," October 25, 2011.
[56] Mark Bovens, *Ibid*., 450.
[57] *Ibid*., 453.

than an active guardian of fiscal responsibility. Within this context, any significant shift in the governance of state asset transfers must be anchored by rigorous oversight to mitigate the risks of moral hazard, non-transparent transactions, and the misappropriation of state resources.

To address these vulnerabilities, institutional instruments must be strengthened through intensive audits by the Audit Board of Indonesia (BPK) and the optimization of the Government Internal Control System. These measures are critical for the early detection of procedural irregularities or unreasonable asset valuations. Nevertheless, such post-audit reinforcements and internal controls cannot serve as a substitute for the crucial role of parliamentary approval. Ex-ante legislative consent remains the premier preventive instrument, serving as a political and legal filter that ensures asset transfers are conducted in the broader public interest rather than being subject to the unilateral discretion of the executive.

4.3. Simplification vs. Optimization: The Fiscal Use of BMN for IKN Financing

The issuance of the IKN Law enhances the role of Property Managers in managing BMN, as outlined in Article 27 of the IKN Law, which requires ministries/agencies to transfer BMN under their control to the Minister of Finance for use in the framework of the IKN transfer. Utilization is regulated to meet organizational needs by ministerial/institutional agencies, consistent with their duties and main functions after the transfer of the IKN, or to fulfill the budgetary function through the utilization or transfer of BMN to generate income for funding IKN development.

In the context of IKN development, BMN optimization can be viewed as the usage of assets in the budgetary function by optimizing goods to create income that can be utilized to fund IKN development. According to Siregar,[58] optimization is a work process that seeks to maximize an asset's physical potential, location, value, quantity/volume, legal, and economic characteristics. The process is divided into numerous interconnected and linked stages: asset inventory, legal audit, asset value, asset optimization, and the creation of an asset management information system for monitoring and controlling assets.[59]

The IKN Law does not govern how BMN will be optimized; it only governs the transfer method, which entails selecting a corporate organization via appointment or tender. Provisions linked to optimization are controlled under the implementing rules of the IKN Law, namely Government Regulation 17 of 2022, which provides facilities for the development and implementation of BMN optimization.

[58] Siregar, Doli D. and Achmad Herry, *Op. Cit.*, 519.
[59] Hasan Basri, "Kajian Hukum Terhadap Pengelolaan Aset Daerah," *RE USAM: Jurnal Ilmu Hukum* 9, no. 1 (2021): 90–92, https://doi.org/10.29103/reusam.v9i1.4869.

Although this facility is new to the BMN management regime, it has already been used in government-to-business (PPP) partnerships known as Project Development Facilities (PDFs). Data reveals that some successfully transacted PPP projects received PDF facilities during the preparation and implementation of their transactions.[60]

The concern is whether simplifying the approval process will maximize BMN as a financial source for the development of the new capital city? Partial simplification of the process could hasten the transfer of BMN; however, further efforts are needed to optimize assets to the point of financing the building of the new capital city.

While simplification of asset transfer procedures under the IKN Law is intended to facilitate the optimization of BMN for development financing, it does not automatically guarantee that the proceeds from such transfers will be used to fund the IKN project. Under the principle of universality in public finance,[61] all state revenues—including those from asset transfers—must be deposited into the State General Treasury and can only be used following appropriation by the APBN. This is reinforced by the non-affectation rule, which prohibits earmarking revenues for specific expenditures unless explicitly authorized by law.[62]

Therefore, despite the IKN Law's objective of using BMN monetization to finance capital relocation, the actual allocation of proceeds depends on political negotiations within the budgeting process, involving the President, DPR, and DPD. This disconnect introduces fiscal uncertainty into the very model that was meant to offer a reliable alternative source of funding.

This is highlighted by the terms of Article 122 of Government Regulation 17 of 2022, which requires that the proceeds of the sale of BMN be deposited in full into the state treasury as revenue. According to Article 1 number 57 of Government Regulation 17 of 2022, the state treasury is "a place to hold state funds determined by the Minister as the State Treasurer, to accommodate all state receipts and cover all state expenditures." As a result, once revenue enters the state treasury, it is spent by the State Budget, which is initially submitted by the President and reviewed with the DPR, taking into account the DPD's considerations.

Thus, while Government-to-Business cooperation schemes (e.g., through *Project Development Facilities*) may enhance asset monetization, the IKN Law and its implementing regulations do not yet provide a comprehensive and enforceable strategy for ensuring that proceeds are channeled to IKN development, as they could also be used to fund other government programs. If this happens, the original goal of the transfer of

[60] RI Kementerian Keuangan, "Daftar Proyek KPBU," KPBU, accessed May 1, 2025, https://kpbu.kemenkeu.go.id/.
[61] H. Bohari, *Hukum anggaran negara* (Raja Grafindo Persada, 1995), 20.
[62] M Subagio, *Hukum Keuangan Negara R.I*, 1 cetakan 2 (Rajawali Pers, 1991), 67–76.

authority for approval of the transfers, which was to fund the IKN's development, will be compromised. This is especially true when it comes to the asset recycling program, in which the transfer of BMN is used to acquire other assets.

Regarding fiscal uncertainty, the proposal to classify proceeds from asset alienation as Non-Tax State Revenue with an earmarking provision faces significant legal and structural hurdles. First, from a legislative standpoint, Non-Tax State Revenue management falls under a distinct legal domain governed by the Non-Tax State Revenue Law and its implementing regulations. Consequently, in accordance with standard legislative drafting principles, any alteration to revenue regimes should be addressed through amendments to specific sectoral financial laws rather than being inserted into regulations primarily governing BMN.

Second, such a scheme potentially contravenes the principle of universality in state financial management, specifically the non-affectation rule. This principle dictates that all state revenues must serve general budgetary purposes and cannot be strictly tied to specific expenditures. This mandate is consistently upheld in Government Regulation 17 of 2022, which requires all proceeds from BMN sales to be remitted directly to the State Treasury as general revenue.

As a strategic alternative, this study recommends that the government prioritize asset utilization schemes over alienation (outright sale). Unlike the rigid nature of asset transfers, utilization frameworks—specifically Limited Cooperation for Infrastructure Provision as regulated under Presidential Regulation Number 32 of 2020 concerning Infrastructure Financing Through Limited Management Rights *jo.* as amended by Presidential Regulation Number 66 of 2024—offer greater fiscal flexibility. Under this framework, generated revenues can be prioritized for the development of new infrastructure, whether similar to the managed asset or other prioritized public works. Therefore, to optimize BMN in support of IKN development, the execution of utilization schemes should take precedence, as they provide a more robust legal basis for reinvesting asset proceeds into national infrastructure priorities.

5. Conclusion

This study concludes that the National Capital (IKN) Law shift aims to accelerate development through asset-based financing. However, it introduces critical governance challenges. First, the normative inconsistencies between the IKN Law and the State Treasury Law undermine legal certainty. Resolving these antinomies requires a systematic approach, specifically a definitive reformulation of asset scopes and the use of formal amendment mechanisms to ensure statutory modifications are explicitly integrated into the national legal framework.

Second, the exclusion of the House of Representatives from the approval process destabilizes the institutional balance of power and erodes transparency. Although post-audit mechanisms by the Board of Audit and internal controls are essential for *ex-post* detection, they remain insufficient substitutes for *ex-ante* legislative oversight and consent, which serves as an indispensable legal filter to safeguard public resources from unchecked executive discretion.

Third, there is no fiscal guarantee that proceeds from asset transfers will be directly earmarked for this purpose due to the principle of budgetary universality. To ensure that state asset optimization effectively supports IKN development, the government should prioritize asset utilization schemes over outright alienation. Consequently, the government must formulate a Strategic Asset Management Plan that encompasses a thorough asset inventory, accurate and impartial appraisals, and a comprehensive, transparent procedural framework.

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