

# Comparative Study of the Legal Basis of Relocating the National Capital of Indonesia and South Korea in Fulfilling the SDGs Goals

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**Abstract.** The paper aims to criticize Indonesia and South Korea's policy to relocate their national capital to achieve SDGs point 11 regarding sustainable cities and communities. In this paper, policies in Indonesia and South Korea will be analyzed to realize the SDGs by establishing particular institutions and incorporating the goals of the SDGs into national laws. Furthermore, an analysis of the public rejection of the National Capital Law in the two countries that have been submitted for judicial review in the Constitutional Court will be carried out. The research method used in this study is normative research with a statutory approach, case studies, and comparative laws. This research, a comparative study, focuses on the judiciary system in Indonesia and South Korea, which has similarities in the jurisdiction of the Constitutional Court. The result of this study is that Indonesia and South Korea, in achieving SDGs point 11, only show an increase in one indicator. The dynamics of relocating the national capital through the decision of the Constitutional Court will affect the achievement of SDGs in both countries. In the future, every policy in law-making must involve the broader community as a manifestation of a democratic state.

## 1 Introduction

Sustainable Development Goals (SDGs) are sustainable development agreements based on human rights and equality. The SDG's aim is to promote social, economic and environmental development. The 2020 Programme for Sustainable Development, adopted by all United Nations Member States in 2015, provide a clear roadmap for peace and prosperity for people and the planet, now and into the future. At the core of the programme are 17 Sustainable Development Goals (SDGs) which are an urgent call for action by all developed and developing countries in a global community. The SDGs recognize that eradicating poverty and other form of deprivations must be accompanied by strategies that promote health and education, reduce inequality and promote economic growth. While simultaneously addressing climate change and protecting our oceans and forests [1].

SDGs or sustainable development goals have three main principles, namely universal, integrated and inclusive and ensure that no one is left behind. SDGs have goals and 169 targets agreed by world countries in 2015 and are expected to be achieved by 2030. One of the 11<sup>th</sup> SDGs goal is sustainable cities and settlements or sustainable cities and communities. Goal number 11 of the 17 SDGs is sustainable cities and settlements, such as making cities and human settlements inclusive, safe, resilient and sustainable. Creating safe and sustainable cities is a key goal. It also involves investing in public

transport, creating green spaces for the public and improving inclusive urban planning and arrangement [2].

In order to implement the SDG goals of realizing sustainable cities and settlements. Indonesia and South Korea plan to move the nation's capital. In the Academic Paper of the National Capital Draft Law, three goals / objectives of the National Capital City and five points of support for the achievement of goals / objectives contained in the National Capital City Master Plan Document. The three goals of National Capital of Indonesia namely 1) the National Capital as a sustainable city in the world; 2) The national capital as a city driving Indonesia's economy in the future; 3) The capital of the country as a city that becomes a symbol of national identity. Five things are the norm for regulating the National Capital as a policy choice, namely 1) effective and efficient government; 2) liveable cities; 3) smart infrastructure and connectivity; 4) priority sectors for the future and 5) collaboration of three cities [3].

Planning to relocate the National Capital both in Indonesia and in South Korea has pros and cons in the community. Firstly, The relocation of the National Capital (*Ibu Kota Negara/IKN*) Indonesia from Jakarta to Penajam Paser Utara, Kalimantan Timur. The idea of moving the National Capital was first sparked by President Soekarno on July 17, 1957. Then in the 1990s there was also a discourse on moving the National Capital to Jonggol during the time of President Susilo Bambang Yudhoyono. Then the transfer of the National Capital was

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seriously carried out by President Joko Widodo on April 29, 2019 [4].

Those who are pro-relocation of the national capital argue that the relocation of *IKN* is carried out for economic equality, so that there is not too high a gap where 57% of population growth with national GDP growth of 59% is on the island of Java [5]. In addition, there is a decrease in the carrying capacity of the environment. In addition, there is a decrease in the carrying capacity of the environment, such as a crisis in the availability of clean water and the threat of floods, earthquakes, and land subsidence [6]. This is what causes the *DKI (Daerah Khusus Ibukota/Special Area of Capital)* Jakarta area to be inefficient and ineffective as the capital city of a country that can compete with other capitals.

On the other hand, those who oppose the relocation of *IKN* to East Kalimantan consider that it cannot overcome the overall problems experienced in *DKI* Jakarta because it is an urban problem, not a national capital problem. The problems that occur in Jakarta are caused by centralization, so these problems should be fixed instead of moving the *IKN*. Moving *IKN* will not solve the problems that exist in Jakarta. Furthermore, the relocation of *IKN* should be a mutual agreement through a participatory and transparent process with strong arguments, so that it does not leave problems in *DKI* Jakarta [7].

Secondly, the idea of moving the capital from Seoul to Sejong was first proposed by former President Roh Moo-hyun in 2003. Roh sought to share the wealth and influence that had become concentrated in Seoul with other parts of the country, encourage regional development and reduce some of the chronic overcrowding that continues to plague the present capital. Another major consideration has been security to get better protection behind a series of natural barriers, including rivers and mountain ranges. Furthermore, Seoul also literally means 'capital', so there is also opposition in that historic and symbolic level as the city is in the middle of peninsula and could be the capital of a united Korea in the future. Nevertheless, the original plan has hit a series of roadblocks that have slowed progress. Subsequent presidents had less enthusiasm for the project, business leaders have also resisted the idea [8].

Although there were pros and cons in the community about moving the national capital. On January 18, 2022, the Plenary Session of the House of Representatives in Indonesia passed the Draft Law on the National Capital City into Law. South Korea enacted a Special Law on the Development of the New Administrative Capital of South Korea to move Capital City from Seoul to Chungcheong Province on January 16, 2004. People who disagree on the relocation of the national capital in both Indonesia and South Korea submit an application for judicial review to the Constitutional Court which essentially declares the Law on the National Capital to be contrary to the constitution.

Although Indonesia and South Korea have different systems of government, but the judicial system in the constitution is divided into two institutions, namely the supreme court and the constitutional court. In Article 101 South Korea Constitution said "Judicial power shall be

vested in courts and composed of judges" and in Article 111 regulate the jurisdiction of the Constitutional Court. While in Indonesia, Article 24 paragraph (2) of the 1945 Constitution states that judicial power is exercised by a Supreme Court and subordinate judicial bodies within the general court, military and administrative courts and by a Constitutional Court. Furthermore, Article 24 paragraph (2) of the 1945 Constitution also stipulates the authority of the Constitutional Court specifically.

The Constitutional Court is required to be the guardian of the Constitution under the constitution of Indonesia and South Korea. In order to secure protection and guarantee the citizens' fundamental rights, this obligation was accomplished in the form of authorization for judicial review through the Constitutional Court [9].

People in Indonesia who believed that the *IKN* Law had violated their constitutional rights applied for judicial review by the Constitutional Court. Numerous social groups submitted this judicial review petition 9 (nine) times, each focusing on either formal legal challenges to the law-making process or substantive legal challenges to the law's violation of the 1945 Constitution. Even though the Constitutional Court ultimately refused to approve all of the judicial review, the government will still implement the *IKN* Law with revision. On December 15, 2022, the government proposed an amendment to the *IKN* Law, and the House of Representatives will discuss the correction of the *IKN* Law.

The society in South Korea rejected The Special Act on the Construction of the New Administrative Capital of South Korea. As a result, a case was filed with the Constitutional Court on October 21, 2004, alleging that changing the capital city and the right to pay taxes violated the people's right to a referendum. With 168 other applicants, Choi Chui submits a judicial review to Case Number 2004Hun-Ma554. The second application was Chung Myung, who presented case No. 2004Hun-Ma566 with Lim Soo and 299 new participants. When the South Korean government applied Special Law on the Construction of the New Administrative Capital, the Constitutional Court of South Korea decided that the relocation of the South Korean Capital Law contradicted the Constitution. Until now, South Korea has been unsuccessful in relocating the national capital.

In both countries, the idea of relocating capitals cities and settlements that are inclusive, safe, resilient, and sustainable cities and in line with the SDGs goals has been met with resistance from community. The refusal was carried out legally by applying for a judicial review of the law of the national capital to be cancelled because it contradicted the constitution. For this reason, this paper will discuss the relocation of the national capital as a manifestation of the Sustainable Development Goal points 11 and the achievement of the targets of Indonesia and South Korea. In addition, it will be reviewed the basis of the community's rejection of the relocation of the national capital by submitting a judicial review to the Constitutional Court. From the decision of the Constitutional Court of the two countries, an equation can be drawn that the legal basis for moving the national capital was originally the idea of the ruler (in this case the President) but was rejected due to lack of public

participation in law-making decisions. In a democratic country, the legal product in the form of the National Capital Law is not only the will of the ruler to legitimize his power but must come from the aspirations of the people.

## 2 Method

This study employs normative legal research methodologies, which include research on legal principles, legal systematics, legal synchronization, and legal comparisons, which are undertaken by evaluating secondary data or library materials. Another description is "normative legal research," which is a method of scientific inquiry to discover the truth based on rational scientific norms, such as laws and regulations.

The research approaches used are the statute approach, case approach, and comparative approach [9]. The statutory approach is used in this study by referring to written regulations in Indonesia, namely Law No. 3 of 2022 concerning National Capital (*IKN*). As for South Korea, it uses the Special Law on the Development of the New Administrative Capital Center of South Korea and the Special Law on the Development of Multi-City Administrative Centers in the Yeongi and Gongju areas.

The case approach is carried out by inventorying and analysing the decisions of the Constitutional Court in Indonesia and South Korea, namely the Decision of the Indonesian Constitutional Court, based on Decision Number 39/PUU-XX/2022, 40/PUU-XX/2022, 47/PUU-XX/2022, 48/PUU-XX/2022, 53/PUU-XX/2022, 54/PUU-XX/2022 with the Court's decision not to accept, then Case Number 25/PUU-XX/2022, 34/PUU-XX/2022, 49/PUU-XX/2022 in the form of rejection. Meanwhile, the South Korean Constitutional Court Decision, based on the 2004Hun-Ma554 Decision, stated that the Special Law for the Construction of the New Administrative Centre of South Korea was unconstitutional, thus cancelling the planning for the relocation of South Korea's *IKN* from Seoul to Chungcheong Province, and the 2005Hun-Ma579 Decision rejected the test demands, because the Construction of the Multi-City Administrative centre was not included to relocate South Korea's *IKN*.

This study also uses a comparative approach in the judicial system of Indonesia and South Korea. Indonesia and South Korea have government structures determined by the Constitution of the Republic of Korea and Indonesia. Both Countries have government structures divided into Executive, judicial, and legislative branches. There are differences in the system of government where South Korea adheres to a mixed Presidential system of government. Based on the 1987 Constitution of South Korea Article 66 paragraph 1: The position of the President other than as Head of State as well as Head of Government and Supreme Commander of the Army. The Prime Minister and the State Council assist the President in carrying out the government. While in Indonesia, based on Article 4 of the 1945 Constitution, the President is the head of state and head of government in the presidential

system. The President holds executive power and is the Supreme Commander of the Indonesian National Army.

In this study, the comparison of laws to be used is in the field of judicial (judiciary). There are similarities in the judicial systems in Indonesia and South Korea, judicial power is established in the judiciary (Supreme Court) and the Constitutional Court. In the South Korean Constitution judicial power is contained in Article 101 of the Courts and Article 111 of the Constitutional Court. While in Indonesia, the Supreme Court and the Constitutional Court are state institutions formed based on Article 24 paragraph (2) of the 1945 Constitution which states "judicial power is exercised by a Supreme Court and judicial bodies subordinate to it in the general judicial environment, religious court environment, military court environment, state administrative court environment and by the Constitutional Court. The authority of the Supreme Court is specifically contained in Article 24 A paragraph (1) of the 1945 Constitution and the authority of the Constitutional Court in Indonesia is contained in Article 24 paragraph (2) of the 1945 Constitution.

The authority of the Indonesian Constitutional Court is to adjudicate at the first and last instance whose decisions are final, namely: 1). examine the Law against the 1945 Constitution; 2) Decide disputes over the authority of state institutions whose authority is granted by the Constitution; 3). Decide on the dissolution of political parties; 4) Decide disputes about election results. Based on Article 111 of the South Korean Constitution, the duties and authorities of the Constitutional Court of South Korea are broader than the authority of the Constitutional Court in Indonesia which does not have a mechanism for constitutional complain, namely 1) the constitutionality of a law upon the request of the courts; 2) impeachment; 3) dissolution of a political party; 4) competence disputes between State agencies and local government and between local government; 5) constitutional complaint as prescribed by Act.

This research will examine the role of constitutional court in Indonesian Constitution and South Korea Constitution. It will also analyze the decision of Constitutional Court regarding National Capital Law.

Furthermore, data collection used in normative legal research is secondary. Secondary data consists of primary, secondary, and tertiary legal materials [10]. Primary legal materials are in the form of laws and judges' decisions on the issue of relocating *IKN* from Indonesia and South Korea; secondary legal materials rely on books containing legal explanations and types of problems when showing the existence of development theories and SDG goals regarding urban and residential development in a country (broadly related to the relocation of *IKN* from Indonesia and South Korea). Meanwhile, tertiary legal materials refer to dictionaries on the law of *IKN* development planning and the historical context of the legal basis for its formation. The various secondary data are processed and then analysed to find answers to the problem formulation in this study.

### 3 Discussion and analysis

#### 3.1 Relocation of the national capital for the 2020 Sustainable Development Goals

Several countries have moved their capitals for various reasons. The relocation of the national capital was proposed by the country's leaders based on the unfavorable situation in the old state capital and the lack of economic equality in other regions. This relocation of national capital was proposed by the authorities due to the unfavorable situation in the location of the old State Capital and the lack of economic equality in various regions. Peter Hall classifies 7 (seven) types of Capital Cities [10]:

1. Multi-function capitals have a combination of high national-level functions such as London, Paris, Madrid, Stockholm, Moskow and Tokyo.
2. Global Capitals have a specialization in playing super-national roles in politics, business or both for example London, Tokyo.
3. Political capitals that establish central governments, commercial cities and another function remain in older namely The Haque, Bonn, Washington, Ottawa, Canberra, Brasilia.
4. Former capitals that lost their role as the seat of government but still retained other historical functions such as Berlin, Leningrad, Philadelphia, Rio de Janeiro.
5. Ex-Imperial capitals which lost their role as empires and can also perform as an important commercial and cultural functions for their former imperial territories namely London, Madrid, Lisbon, Vienna).
6. Provincial capitals which exist within federal states and overlap with cities used to served as de facto capitals (sometimes on join basis but have now lost that role) but still serve their surrounding territories such as Milan, Turin, Stuttgart.
7. Super-Capital city which functions as centres for international organizations. It might or might not be national capitals namely Brussels, Strasbourg.

*IKN* will be built with the aim of achieving Indonesia's target as a developed country according to Indonesia's vision 2045. Built with national identity, *IKN* will change the development orientation to become Indonesia centric, as well as accelerate Indonesia's Economic Transformation [11].

The new *IKN* must demonstrate the sustainability of social, economic and environmental aspects. Therefore, the new *IKN* development concept minimizes intervention in nature, integrates green and blue spaces and maintains the existence of Kalimantan's forests (City in the Forest). Then, *IKN* is a smart and modern city with international standards. The new *IKN* has become a compact city that relies on information and communication technology to achieve the Sustainable Development Goals (SDGs) [12].

Meanwhile, the plan to relocate the capital of Seoul to Chengchoen was based on the reasons of the cronic over-population and Seoul's security concern as the

northern suburbs of South Korea are only 30 kilometers from the Demilitarized Zone that separates South Korea from the North Korea. According to these reasons, the type of capital cities in Political capitals. The relocation of the national capital as one of the strategies in achieving the SDGs goals both in Indonesia and in South Korea must be based on planning in achieving SDGs number 11 on sustainable cities and settlements.

Regional development planning will overcome various inequalities between regions so that there are no negative impacts on metropolitan, medium, and small cities. Development planning can solve multiple urban problems that are multidimensional, multi-sectoral, along with some increasingly complex problems (in the form of a combination of several issues) [13]. Even so, every development plan should have a program with flexible planning so that the development becomes creative, dynamic, and sustainable because growth in an area must be flexible. Furthermore, the planning compilers must have the expertise to read the current development in the regional context, nationally and even globally.

#### Indonesia

SDG11 – Sustainable Cities and Communities			
Proportion of urban population living in slums (%)	30.4	2018	● ↓
Annual mean concentration of particulate matter of less than 2.5 microns in diameter (PM2.5) (µg/m <sup>3</sup> )	16.2	2019	● →
Access to improved water source, piped (% of urban population)	44.6	2020	● →
Satisfaction with public transport (%)	78.0	2021	● ↑

#### Korea

SDG11 – Sustainable Cities and Communities			
Proportion of urban population living in slums (%)	NA	NA	● ●
Annual mean concentration of particulate matter of less than 2.5 microns in diameter (PM2.5) (µg/m <sup>3</sup> )	29.8	2019	● ↑
Access to improved water source, piped (% of urban population)	73.6	2020	● ↓
Satisfaction with public transport (%)	NA	NA	● ●

**Fig. 1.** Performance by indicator: Indonesia and South Korea [14].

In the global context, The UN created SDG Index to track each country's progress by analysing the most recent published data measuring the UN indicators for all 17 SDGs. In 2022, South Korea ranked at 27 (SDG Index 77.9), while Indonesia ranked at 82 (SDG Index: 69.2) [14]. According to Figure 1, The achievement Indonesia of SDG 11 has increase in the satisfaction with public transport is significant challenges remain. Proportion of Urban population living in slums has major challenges remain score decreasing value 30.40 in year 2018. Furthermore, there were major challenges remain score in annual mean concentration of particulate matter of less than 2.5 microns in diameter and access to improved water source, piped. However, there is a decrease of proportion of urban population living in slums.

However, there is the issues with missing data in proportion of urban population living in slums and satisfaction with public transport. The first target aims to ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums" with one indicator "proportion of urban population living in slums,

informal settlements or inadequate housing”. Indonesia has proportion of urban population living in slums 30.4 %, while South Korea has no data. While the result of indicator for target annual mean concentration of particulate matter of less than 2.5 microns in diameter in Indonesia was 16.2 while South Korea was 29.8.

According to the improvement of performance indicator Indonesia was in satisfaction with public transport while South Korea was in Annual mean concentration of particulate matter of less than 2.5 microns in diameter. On the other hand, there was decreasing both countries, In Indonesia was in proportion of urban population living in slums while South Korea was in access to improve water source, piped (5 of urban population). In Indonesia there were data remain in the indicator of annual mean concentration of particular of less than 2.5 microns in diameter and access to improve water source, piped (5% of urban population).

Based on the data mentioned above, Indonesia and South Korea only show one indicator of increase in the achievement of SDGs 11 in the field of sustainable cities and communities. Changes in Indonesia and South Korea's policies in moving the nation's capital are expected to improve achievements in fulfilling the SDGs goals in the future.

Indonesia and South Korea have special institutions that implement SDGs at the national level. In Indonesia, the implementation is coordinated by the Ministry of National Development Planning/ *Bappenas*. While in South Korea the implementation is carried out by the Commission on Sustainable Development. To achieve SDGs point 11, the Ministry of National Development Planning / *Bappenas* has 11 targets by 2030, including: 1) ensuring access for all to decent, safe, affordable housing and basic services and managing slum insights. 2) Provide access to secure, affordable, accessible and sustainable information systems for all. 3) strengthen inclusive and sustainable urbanization and capacity for participation, sustainable and integrated settlement management planning in all countries. 4) reduce adverse per capita urban environmental impacts, including by paying special attention to air quality, including the handling of municipal waste. 5) Provide safe, inclusive, and accessible public spaces and green open spaces, especially for women and children, seniors, and persons with disabilities. 6) Support economic, social, and environmental relations between urban, suburban, and rural areas by strengthening national and regional development planning. 7) substantially increase the number of cities and settlements adopting and implementing integrated policies and planning on inclusion, resource efficiency, mitigation and adaptation to climate change, disaster resilience, and develop and implement holistic management of disaster risk on all fronts, in accordance with the Sendai Framework for Disaster Risk Reduction 2015-2030. 8) Provide support to least developed countries, through financial and technical assistance, in building sustainable and resilient buildings, using local materials [15].

In addition to establishing state institutions responsible for the implementation of the SDGs, Indonesia and South Korea issued rules for the

implementation of the SDGs goals. First, Indonesia issued Presidential Regulation of the Republic of Indonesia Number 59 of 2017 concerning the Implementation of Sustainable Goals Achievement in order to fulfill commitments in the implementation of achieving the Sustainable Development Goals. Sustainable Development Goals that require the existence of the National Long-Term Development Plan and the National Medium-Term Development Plan. In order to achieve the national targets set, the Minister of National Development Planning/Head of the National Planning Agency Prepares and establishes the National Roadmap of the Sustainable Development Goals and the National Action Plan of the Sustainable Development Goals. In order to achieve the Sustainable Development Goals, the Minister of National Development Planning / Head of the National Development Planning Agency coordinates: 1) facilitation and assistance in the preparation of the Regional Action Plan of the 5-year Sustainable Development Goal, 2) monitoring, evaluation and reporting on the achievement of the Sustainable Development Goals at the national and regional levels. 3) government and other legitimate and non-binding sources of funding [16].

The Korean Government established the National Action Plan to implementary the Rio Agenda 21 in 1996 and the Presidential National Commission on Sustainable Development (PNCSD) in 2000. The PNCSD has developed sectoral strategies for sustainable development in various areas (energy, water, gender, social welfare, land, climate change, transportation, conflict management and Official Development Agenda (ODA) and integrated these sectoral strategies into national policies through effective coordination and consensus-building processes among different line ministries. The Presidential Declaration of 2005, “A National Vision for Sustainable Development” the goal of the Republic of Korea as “an advanced country while maintaining balance among economy, society and the environment.” Clearly resonates the integrative approach of the 2030 Agenda to Sustainable Development [17].

Furthermore, a series of laws and policies have been introduced to establish organizations to implement sustainable development related goals. They include Standard Guideline for the Management and Support for Implementing Organization of Local Agenda 21 (2004) and the Framework Act on Sustainable Development (FASD) (2007). The National Commission on Sustainable Development (herein the NCSD) has been established by the FASD and the NCSD prepares a report every two years which consolidates the results of the evaluation of sustainability and published it after reporting to the President. The report is also submitted to the National Assembly [17].

In development planning, it is not only the legal basis that needs to be considered, but must include the setting of a goal and the selection of important steps to achieve development goals. Development goals in Indonesia, especially regarding *IKN*, have been planned into the 2020-2024 The National Medium-Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional/RPJMN*), which is useful as a legal basis for the

development of the *Nusantara IKN*. This program in the RPJMN is very useful as the beginning of a good and correct development concept both in the landscape area, and in the East Kalimantan seascape.

Sustainable development planning can be expected to increase economic equality of the community, especially in the new capital city. The effect of improvements on income inequality in the new location of *IKN* development (such as in North Kalimantan, Kutai Kartanegara and North Penajam Paser regions) is useful for building *IKN* into urban areas in sustainable modernity in the field of digital technology.

The emergence of SDGs arises from the existence of the Global Sustainable Development Report (GSDR) derived from the desire to create a "Future We Want" and in the form of the results of the Rio+20 conference on sustainable development, where member countries laid the foundation for the Sustainable Development Agenda until 2030 and 17 points on sustainable development (SDGs). The inclusion of *IKN* in the *RPJMN* is a manifestation of the implementation of Sustainable Development Goals (SDGs), Nationally Determined Contribution (NDC), and also the 2021-2030 United Nations Decade on Restoration Ecosystem.

While Indonesia has RPJPM program, South Korea has been established five-year plan for economic development as an upper-level plan for national economic development, which counted up to 7<sup>th</sup> Plan. Replacing this, South Korea had Special Act for Balanced National Development and formulated Five Year Plan for Balanced National Development (2004-2008). Then, South Korea established Five Year Plan for Regional Development which has two major aims namely quality of life and creation of employment. According to the strategies of Indonesia and South Korea to implement SDGs aim, therefore the development of the Indonesian capital city which has begun in 2023 is expected to accelerate the achievement of SDGs point 11. While in Korea Restrictions even though the relocation of the capital of South Korea did not take place. South Korea continues to develop other cities, especially the northern region (Sejong) as an alternative city to solve problems in the national capital Seoul.

### 3.2 Legal basis for moving the National Capital of Indonesia and South Korea

In Indonesia, the position of the state capital is not stipulated in the Constitution but in the law. In the Constitution, the phrase National Capital City is only mentioned 2 (two) times, namely in Article 2 of the Constitution of the Republic of Indonesia, which states "*The People's Consultative Assembly convenes at least once every five years in the State Capital*". Furthermore, it is mentioned in Article 23 G of the Constitution of the Republic of Indonesia, which states "*The Audit Board is domiciled in the State Capital and has representatives in each province*". In South Korea, Seoul is the nation's capital city pursuant to the customary constitution.

The main function of the Constitution is to limit government powers and establish the basic rights of the people. The rights of citizens who feel aggrieved by the

birth of an article in a law can submit a judicial review to the Constitutional Court to examine the constitutionality of a law, in this case the Law on the State Capital.

In response to the citizens' strong aspiration for democracy and assurance of basic rights, the ruling party and the opposition party agreed to provide for the establishment of a Constitutional Court in the revised Constitution proclaimed on October 29, 1987. Finally on Chapter 6 Article 111 through 113, it bestowed upon constitutional Court the Adjudication on constitutionality of statutes, impeachments, dissolution of a political party, competence disputes and constitutional complaints. On August 5, 1998, as provided in Article 113-3 of the Constitution, the Constitutional Court Act was proclaimed, which outline provisions needed for the organization and management of the Constitutional Court.

On September 15, 1988, the first nine justices were appointed and the Constitutional Court came into being for the first time in the history of Korea. The current Constitution ascribes all jurisdictions regarding the Constitution to the Constitutional Court. In particular, the introduction of the constitutional complaint, a system developed in European countries such as Germany that allows a citizen to petition directly to the Court on infringement of basic rights, is a symbol of the constitutional spirit that emphasized the people's basic rights and an important even in the history of Korean constitutionalism [18].

In the process of forming participatory laws, there are two interrelated things, namely process and substance. Process is a mechanism in the formation of laws that must be carried out in a transparent manner so that the public can participate in providing inputs in regulating an issue. Substance is the material to be regulated that must be addressed to the interests of the wider community so as to produce a democratic law with a responsive character [19].

**Table 1.** Indonesian constitutional court decision on National Capital (IKN).

Case Number	Main problem	Judges legal consideration	Decision
25/PUU-XX/2022	The formal submission is not in accordance with the rules for establishing the law.	The <i>IKN</i> Law does not conflict with the 1945 Constitution.	Rejected
34/PUU-XX/2022	The formal Submission	The IKN Law does not conflict with the 1945 Constitution.	Rejected
39/PUU-XX/2022	The formal Submission. There is no public participation	Petitioners' Petition is unclear	Not accepted
40/PUU-XX/2022	The formal and material submission	The Petitioners' Petition is unclear	Not accepted
47/PUU-XX/2022	There is no community participation in formal submissions	The Petitioners' Petition is unclear	Not accepted

48/PUU-XX/2022	The formal submission is not in accordance with the rules for establishing the law.	The Petitioners' Petition is unclear	Not accepted
49/PUU-XX/2022	The formal submission is not in accordance with the rules for establishing the law.	The Petitioners' Petition is unclear	Rejected
53/PUU-XX/2022	The formal Submission. There is public participation	Applicants submitted past the submission deadline	Not accepted
54/PUU-XX/2022	The formal Submission. There is no public participation	Applicants submitted past the submission deadline	Not accepted

According to Table 1, it shows that there are 9 decisions of the Indonesian Constitutional Court, 8 requests for judicial review of Law Number 3 of 2022 concerning the State Capital are related to the mechanism or procedure for the ratification of the *IKN* Law which is not in accordance with the mechanism stipulated in the law. One application for judicial review submits a formal and material application for the contents of the *IKN* Law. The verdict stated that 3 applications for judicial review were rejected because the applicants could not prove their arguments and 6 (six) applications could be unacceptable because the applications for judicial review contained formal defects, including the time lag for filing applications. The judges of the Constitutional Court did not provide legal considerations regarding the material consideration of the petition for the right to examine.

**Table 2.** South Korea constitutional court decision.

Case Number	Main problem	Judges' legal consideration	Decision
2004Hun-Ma554	Considered to have violated the people's right to vote on moving the capital city and the right to pay taxes.	The creation of South Korea's New Administrative Capital violates a fundamental right	The law is cancelled or contradict the Constitution
2005Hun-Ma579	Proposals against the Law on Multi-City Administrative Centers in the Yeongi and Gongju regions.	Considering that based on the Law on the Multi-City Administrative Center in the Yeongi and Gongju regions it is not related to the transfer of the State Capital of South Korea.	Rejected

Table 2 shows that the Constitutional Court Decision in South Korea is divided into two parts. The first part is the Special Law Regarding the Establishment of the New

Administrative Capital of South Korea. The second part is the Law on Multi-City Administrative Centers in the Yeongi and Gongju regions. The first part of the decision was annulled by the Constitutional Court of South Korea as the Law on the New South Korean Administrative Capital was declared unconstitutional. The second part was annulled because the Law on the Multi-City Administrative Center in the Yeongi and Gongju areas was not related to the relocation of the South Korean National Capital.

The issue of people submit judicial review to the Constitutional Court in Indonesia and South Korea regarding relocation national capital is the lack of public participation in the stages of forming statutory regulations, namely the stages of planning, drafting, discussing, ratifying and enacting. A law should be formed by involving broad community participation by providing access to information and communication between the government, the people's representative assembly and the community. Community participation in determining state policy is a manifestation of a democratic society.

In order to accomplish the capital relocation, the process of constructing a comprehensive legal framework should be based on a participatory and accommodating planning process. The Indonesian *IKN* Law has been declared to be in line with the Constitution by Indonesian Constitutional Court. However, the Indonesian People's Representative Council has made a revision to the *IKN* Law draft and it has been included in the 2023 National Legislation Program. On the other hand, the Government of South Korea has made a new policy by passing the Special Law on the Construction of Multi-City Administrative Centers in Yeongi and Gongju counties. The new law was again proposed for judicial review but declared constitutional by South Korea's Constitutional Court. The establishment of the new cities of Yeongi and Gongju as Multi-City Administrative Centers will reduce the urgency of moving the capital of South Korea. The dynamics of establishment a new national capital in Indonesia and South Korea will affect the achievement of SDGs point 11 in both countries.

## 4 Conclusion

Sustainable development in the SDGs aims to promote social, economic and environmental development. In order to implement SDG 11 goal of realizing sustainable cities and settlements, Indonesia and South Korea plan to move the national capital because the current national capital cannot solve the problems of congestion, economic inequality, flooding and state security and other city problems. UN created an SDG Index to monitor the achievement of SDGs in each country. In achieving SDG point 11, Indonesia and South Korea only showed an increase in one indicator, namely Satisfaction with public transport (Indonesia) and Annual Mean Concentration of particular matter (South Korea). The relocation of national capitals in both countries is expected to trigger an increase in the achievement of SDGs.

However, the Law on the National Capital, both in Indonesia and in South Korea has been rejected by the public and then submitted for judicial review to the Constitutional Court. The Law on the National Capital in Indonesia was declared in accordance with the Constitution Law by the Constitutional Court of Indonesia, while the Constitutional Court of South Korea which declared the Special Law on the Establishment of a New Administrative Capital of South Korea was unconstitutional. From these Constitutional Court decisions, the planning to move the national capital was carried out by the President without involving broad participation from the community, resulting in rejection.

In realizing the SDGs, the dynamics of Constitutional Court rulings in both countries do not discourage both countries from realizing sustainable cities and settlements. In Indonesia, despite the Constitutional Court's decision declaring it annulled, Indonesia has revised the National Capital Law which will then be discussed in parliament for ratification. While in South Korea, there is an alternative solution in realizing a sustainable city by building the cities of Yeongi and Gongju to reduce the burden on Seoul as the capital of the country. For this reason, broad participation of the public in the formation of laws is an obligation in realizing a democratic state. So that the National Capital Law can accommodate the wishes of the wider community, especially the affected communities.

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