

THE PRINCIPLE OF THE MAXIMUM AVAILABLE RESOURCES (MAR) OBLIGATION IN REGIONAL FINANCE IN INDONESIA

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Abstract

One of the major resources in the regions is financial resources sourced from the Regional Revenue and Expenditure Budget (APBD). In its management, it creates uncertainty about the fulfillment of human rights in regional financial management. This is because one of them is the regional financial regulation which causes the budget allocation for the issue of Economic, Social and Cultural Rights to be very inadequate. Therefore, this paper proposes that the government applies the Principle of Maximum of Available Resources (MAR) in the management of regional finances, especially in the budget for fulfillment of economic, social and cultural rights. In this research, the author uses a normative legal methodology by examining several regional financial law products (regional regulations on regional revenue and expenditure budgets) by utilizing two approaches, namely the statutory approach and the conceptual approach. In this research, the author limits it only to the right to social and cultural affairs in particular, the right to education, the right to health, the right to food, the right to housing. To discuss this matter, the authors chose 4 areas as research objects, namely Province of Kepulauan Bangka Belitung, Province of South Kalimantan, Malang City, Denpasar City and Palu City.

Keywords: *Human Rights; Indonesia; Maximum of Available Resources (MAR); Regional Finance; State Budget*

INTRODUCTION

Ratification of the International Covenant On Economic, Social And Cultural Rights through Law No. 11 of 2005¹,

¹ Four things are important in the passage of this law. First, that human rights are basic rights inherent by nature, are universal and eternal. therefore, it must be protected, respected, defended, and must not be ignored, reduced or taken away by anyone. Second, that the In-

doneasian people, as part of the international community, respect, value and uphold the principles and objectives of the United Nations Charter and the Universal Declaration of Human Rights. third, that the General Assembly of the United Nations, in its session on December 16, 1966, has ratified the International Covenant on Economic, Social and Cultural Rights. Fourth, that the above international instruments are basically not contradicting Pancasila and the 1945 Constitution of the Republic of Indonesia, in accordance with the nature of the Republic of Indonesia as a constitutional state that upholds human dignity, guarantee equal position before the law and the ideals of the Indonesian nation.

Making Indonesia a Duty of Barrer which has absolute obligations in fulfilling economic, social and cultural rights, and must guarantee fulfillment in statutory regulations by means of national and regional legislation, fulfillment of economic, social and cultural rights must be realized in various political conditions whatever, and political structures that are centralized or autonomous.

The relationship between autonomy and human rights is related to material values in a country of law and democracy. Meanwhile, the relationship between human rights and finance is closely related, both philosophically and strategically. Philosophically, the consequence of Indonesia as a rule of law is that the fulfillment of human rights is the responsibility of the state in three ways, namely; protect, respect and fulfill. Meanwhile, the fulfillment of human rights requires substantial financial resources. The strategic role of the budget will have an impact on the fulfillment of human rights in the context of redistribution of income, provision of public goods and services, and means of protection and social justice.

Regional autonomy is something that is certain as a legal provision in the constitutional system of the Republic of Indonesia. The political framework for

autonomy is actually a strategic part of developing human rights norms because it is closer to the people, therefore regional autonomy actually has a strategic position in fulfilling human rights.

Local governments are given instruments to fulfill the economic, social and cultural rights, one of which is regional financial instruments that are used and utilized maximally to achieve state goals². With this instrument, the regional government not only guarantees order and security, but also guarantees protection and the realization of social justice.

However, the fact is that Regional financial management seems to have been greatly simplified by local governments. The Minister of Finance was disappointed with the implementation of the Regional Revenue and Expenditure Budget (APBD) management which emphasized personnel spending rather than spending for public service purposes. There are 11 districts whose APBD has been used up only for employee salaries. And in 2017 the Directorate General of Fiscal Balance noted that there were still 131 regions that used their APBD funds only for regional personnel expenditures. the ratio of personnel expenditure to total district / municipal APDB expenditure which shows the aver-

² Article 23 of the 1945 Constitution of the Republic of Indonesia

age ratio of personnel expenditure to total regional expenditure of 43.59%, in fact some regions have personnel expenditure reaching 65% of total regional expenditure.

The amount of personnel expenditure in regional financial management is not directly proportional to development expenditure, the average capital expenditure against regional expenditure in 70 districts / cities has only increased by 2%. This means that the quality of average capital expenditures in 70 regions has increased although it is not significant and is still under the provisions of the capital expenditure regulation which amounts to 30%. The ratio of capital expenditure to regional expenditure is a measure to see the quality of regional expenditure, because the benefits can be felt by the community to finance physical or non-physical development. The greater the proportion of capital expenditure to regional expenditure, the better the effect it will have on economic growth. Conversely, the lower the rational number, the worse the effect on economic growth.

The above matters make the fulfillment of human rights through regional finance in Indonesia experiencing a big challenge. The biggest challenge is that there is no regional finance law that guar-

antees the full fulfillment of human rights, besides that it is supported by the opportunistic attitudes and behavior of legislative and executive officials in regional financial management. This has an impact on legal uncertainty in the full fulfillment of human rights, but if it continues, it is certainly a threat to humanity and human rights itself.

From the above, the importance of the commitment of local governments to implement International Covenant On Economic, Social And Cultural Rights. Article 2 paragraph 1 of this Convenan has clearly guided participating countries to implement the Maximum of Available Resources (MAR) by allocating the maximum possible resources for the fulfillment of Economic, Social and Cultural Rights. So that in this study, the authors formulate legal problems, namely; First, in the fulfillment of human rights, what is the position of the Principle of Maximum Available Resources (MAR) in the management of regional finances. Second, how is the implementation of the Maximum Available Resources (MAR) Liability Principle in regional financial management in Indonesia?

The Legal Position of the Principle of Maximum Available Resources (MAR) in financial management in Indonesia.

Position of the Budget in Fulfilling Human Rights

In the context of fulfilling Economic, Social and Cultural Rights in full as well as requiring the state to allocate a budget in its fulfillment, it is implied in Article 2 paragraph (1) of the ICESCR.

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

There are several legal consequences of the article above that cause the fulfillment of these obligations.³ First, under international law orders, upholding and fulfilling human rights becomes an obligation. The two principles of the agreement, namely *Pacta sun servanda* and Good

Faith, are the most important principles in the realization of the fulfillment of human rights. The two principles above oblige the state to implement the principles of fulfilling human rights honestly and obeying the standards of fulfilling human rights that have been determined.

Second, the consequence of the word "undertakes" Article 2 paragraph (1) above, based on the first reason, the Indonesian state is obliged to fully realize the rights of Economic, Social and Cultural Rights by means of one of which is by providing resources, especially financial resources.

Third, there is another important framework⁴ that outlines the obligations of the state to fulfill economic, social and cultural rights which is called a tripartite typology⁵. According to this tripartite typology, states parties carry out three levels of duties: the obligation to respect, protect and to fulfill. Based on this framework and in particular the obligation to fulfill, the fulfillment of economic, social and cultural rights through budgetary resources can be understood as a mandatory legal requirement for the state. the failure of a country to fulfill its rights can be

³ Ansar. (2020). Legal Analysis of the Implementation of the Principle of Progressive Realization Obligations in Regional Financial Management In Indonesia. *Journal of Law, Policy and Globalization*. Vol.100, p.66

⁴ International Commission of Jurists (ICJ), Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 26 January 1997.

⁵ Koch, I. (2009). *Human rights as indivisible rights: the protection of socio-economic demands under the European Convention on Human Rights*. Brill. p.14- 17

compared to its failure to take appropriate action, including budget-related manners. Therefore, the use of budgetary measures is a legal requirement imposed on state parties.

Fourth, the fulfillment of human rights, especially the economic, social and cultural rights by the state requires enormous resources, it can almost be said that without financial resources it can be ascertained that the economic, social and cultural rights of citizens cannot be fulfilled, so that the provision of a number of budgets for the fulfillment of human rights above becomes mandatory.⁶

Fifth, national law also emphasizes the importance of allocating a budget for the fulfillment of human rights, for example; The 1945 Constitution in Article 31⁷, Article 34⁸, Article 28I⁹. In addition, the obligation to allocate regional budgets in the fulfillment of economic, social and

cultural rights in Indonesia is spread out in several provisions of the Law.¹⁰ Each year this obligation must be manifested in a regional regulation on the Regional Revenue and Expenditure Budget (APBD).

The five points above emphasize the importance of the position of the government budget in fulfilling economic, social and cultural rights. In Indonesian financial law, the position of the regional budget (APBD)¹¹ has an important role in achiev-

¹⁰ There are 7 (seven) laws that specifically require the provision of a budget for the fulfillment of human rights. The first is Law No. 39 of 2009 which clearly states that children with disabilities, the elderly, have the right to education and training at state expense. Second, Law No. 20 of 2003 which requires a 20 percent budget for education both at the regional and central levels. Third, Law No. 18 of 2012 in Article 18 states 4 government obligations in fulfilling food, one of which is the obligation to make budget allocations. Fourth, Law No. 29 of 2009 there are two articles that emphasize the obligations of the government and local governments in allocating budgets; Article 45 concerning the obligation to finance environmental protection and management activities; and environmentally friendly development programs. Fifth, Law No. 24 of 2007 concerning Disaster Management, which emphasizes in Article 6 that the government's obligation in disaster management is one of which is the allocation of disaster management budget in the form of ready-to-use funds. The sixth Law No. 36 of 2009 which requires the budget for the fulfillment of health affairs of 5% for the central government and 10% for local governments. The seven Laws Number 23 of 2002 in article 53 contains 2 responsibilities of the government in child protection, namely; responsible for providing education costs and / or free assistance or special services for children from underprivileged families, neglected children, and children who live in remote areas and providing funds for implementing child protection.

¹¹ Law No. 17 of 2003 is the regional Annual Financial Plan approved by the Regional People's Representative Council. In Article 298 Regional Expenditures are prioritized for funding Compulsory Government Affairs related to Basic Services which are stipulated with a minimum service standard. (2) Regional expenditure as referred to in paragraph (1) shall be guided by technical standards and regional unit price standards in accordance with the provisions of laws and regulations. (3) Regional spending for funding of Government Affairs which becomes the authority of the Region other than

⁶ Bui, H. (2015). Human Rights Budgeting: Making Governments Accountable for Economic, Social and Cultural Rights. *Human Rights Law Review*, 2, 109-132.

⁷ Article 31 paragraph (2) "Every citizen is obliged to attend basic education and the state is obliged to finance it". Article 31 paragraph (4), "The state prioritizes the education budget budget of at least twenty percent of the state revenue and expenditure budget as well as from the regional income and expenditure budget to meet the needs of the provision of national education."

⁸ Article 34 paragraph (3) "The state is responsible for the provision of proper health service facilities and public service facilities".

⁹ Article 28 I paragraph (4) and (5). "Protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government; and to uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in statutory regulations. "

ing the full fulfillment of economic, social and cultural rights, because Regional Expenditures are prioritized for carrying out government affairs. Regional expenditure is also a means of information for the public regarding the implementation of development which can also be used as a means of control and accountability of the government's human rights performance. So, to see in detail how the regions are committed to the fulfillment of economic, social and cultural rights, and how to allocate and distribute human rights budgets, we can see them in the APBD document.¹²

The Position of The Principle of Maximum Available Resources (MAR) in Regional Financial Management

To determine the steps to fulfill economic, social and cultural rights, the state must be guided by a number of principles for fulfilling human rights, especially the fulfillment of human rights in budget management. There are several principles, one of which is; The Principle of Maximum Of Available Resources (MAR), that the government must do all it

can to mobilize resources at home and abroad in order to have available funds to progressively realize the fulfillment of economic, social and cultural rights.¹³ States should prioritize the allocation of the resources necessary to ensure the satisfaction of the minimum essential level of economic, social and cultural rights. The obligation of MAR means that as long as the fuller realization of economic, social and cultural rights requires that more government resources be devoted to it, the government should make all possible efforts to raise as much domestic income as possible, of course, without damaging the long term.

Over the years the CESCR, through its general comments (especially the General Comment No. 3 of 1990) on the nature of the obligations of States Parties, has established some useful guidelines for how to interpret obligations on governments to use the "maximum available resources" to realize the rights in the ICESCR. The following are, in short form, the main points that the Committee has reiterated which has direct or potential influence on the government budget:¹⁴

those referred to in paragraph (1) shall be guided by the analysis of regional expenditure standards and standard unit prices in accordance with the provisions of laws and regulations.

¹² To fully understand several regional spending regulations in Indonesia, namely Law No. 23 of 2014, Law No. 17 of 2003, Government Regulation No. 12 of 2019, and Minister of Home Affairs Regulation No. 13 of 2006.

¹³ <https://www.right-to-education.org/monitoring/content/glossary-maximum-available-resources>. The Right to Education Glossary: maximum available resources. Accessed on 1 May 2020

¹⁴ Ann Blyberg, (2008). The Scottish Human Rights Commission (SHRC), Human Rights Budgeting and Budget Analysis. p. 11

- a) MAR means that the government must do everything possible to mobilize resources in the country. Budget revenue will clearly be a key element in this national “resource”. Governments should also do all it can to obtain international assistance where national resources are inadequate for realizing economic, social and cultural rights.
- b) MAR also means that the government must give priority to economic, social and cultural rights in the use of resources. The implication for the government budget is that allocations and expenditures in areas related to economic, social and cultural rights should be given such priority.
- c) Government spending must be efficient. Wasteful spending is a failure to maximize the use of available resources. This efficiency criterion logically applies to revenue collection as well.
- d) Government spending must also be effective; that is, the impact of spending must be such as to actually help realize economic, social and cultural rights.
- e) Because corruption is an inefficient use of resources, failure to prevent corruption is also a failure to comply with MAR. Corruption is often seen through monitoring revenues, allocations and expenditures in the budget.
- f) Funds allocated in the budget for socio-economic and cultural rights may not be diverted to non-economic, social and cultural areas, and funds allocated for economic, social and cultural rights must also be fully disbursed.
- g) If the government takes steps that are deliberately backward affecting economic, social and cultural rights, it has the burden of proving that it has used MAR to avoid taking those steps.
- The MAR principle is also defined as the idea that a country spends as much of its budget as possible to make rights manifest. This includes ensuring:
- a) Existing resources are used effectively and without discrimination.
- b) efforts to generate adequate and equitable additional resources.
- c) Resources are not only financial, but also human, natural, technology etc.
- Magdalena Sepúlveda Carmona In her report to the United Nations, the UN Special Rapporteur on Extreme Poverty and Human Rights, stated that:
- States should devote "the maximum available resources" to ensure the progres-

sive realization of all economic, social and cultural rights as efficiently and effectively as possible, even during times of severe resource constraints, whether caused by adjustment processes, economic recession or other factors. This principle should guide the decisions and priorities of States in generating, mobilizing and allocating resources to enable the realization of human rights.

The obligation to maximize resources for the full fulfillment of economic, social and cultural rights has been emphasized in Article 2 Paragraph (1) of the ICESCR. There are several important things in the Article, namely; First, participating countries promised to take steps. The conception of taking steps is the first element which affirms that the state will be responsible for all actions or inaction in the effort to protect and fulfill human rights. Second, for the maximum available resources, efforts to maximize the availability of resources are an important element in understanding that the state has an obligation to prioritize its programs and make optimal use of its resource allocation. This conception is a conception that connects the allocation of budgetary resources with the state's obligations in human rights.

Whereas the third and fourth is to achieve progressively the full realization and all appropriate means including in particular the adoption of legislative steps. This is a conception that is almost the same as the legal construction stipulated in article 28I paragraph (4) and (5) of the 1945 Constitution. The human rights law as well as the legal construction in the 1945 Constitution, namely to utilize the authority and legal means, both the formation of new institutions and laws, review of legislation or policies, or also the ratification of international legal rules. It can be concluded that neither the 1945 Constitution nor the Human Rights Law recognize the concept of the first and second state obligations, namely in the form of taking steps and efforts to maximize resources.

In the economic, social and cultural rights set MAR obligations means that governments must give priority because of the economic, social and cultural rights in the use of their resources. For government budgets, this means that allocations and expenditures should be directed to areas where economic, social and cultural rights are priorities. In order to determine whether the government gives economic, social and cultural rights such priority, it is useful to consider the share of the budg-

et used for fields related to economic, social and cultural rights, especially when this share is compared with other needs. It is also useful to compare this share in countries with similar situations. In order to assess whether the government is complying with its MAR obligations, it is also necessary to look at the composition of funds directed to fields related to economic, social and cultural rights. Priority should be given in these areas to fulfill And to see to what extent a government places economic, social and cultural rights as priority, using the following indicators in assessing the government's compliance with its obligations:

- a) Comparing expenditures related to economic, social and cultural rights vs expenditures for fields not related to economic, social and cultural rights.
- b) Comparing spending in a region (on education and health) with expenditure in the same region by countries at comparable levels of development.
- c) Compare allocations and expenditure with international indicators, such as the UN development program indicator that 5 percent of GDP should be used for human expenditure (which for poor countries is defined as basic

education, basic health care, and beverages.¹⁵

Magdalena Sepulveda, Independent Expert on Human Rights Issues and Extreme Poverty, has drawn the following conclusions regarding the government's obligation to use the maximum available resources to realize the fulfillment of economic, social and cultural rights:

- a) The government must mobilize state resources according to its best ability.
- b) Government spending must be efficient (efficiency criteria can also be applied to the collection of state revenue).
- c) Government spending must be effective.
- d) Failure to eradicate corruption is failure to comply with obligations.
- e) Funds allocated in the budget for economic, social and cultural rights may not be diverted to areas of non-economic, social and cultural rights.
- f) Funds allocated for economic, social and cultural rights must be fully disbursed for that purpose.
- g) Governments implementing regressive measures, such as cutting spend-

¹⁵ UNDP. (1991). UNDP Human Development Report, Financing Human Development, <http://hdr.undp.org/en/reports/global/hdr1991/chapters/>. Quoted from Radhika Balakrishnan, Diane Elson, James Heintz, Nicholas Lusiani. Center for Women Global Leadership, Maximum Available Resource. Analytical report, Rutgers The state University of New Jersey, June 2011. p. 3

ing on economic, social and cultural rights, must demonstrate that they are using the maximum available resources to avoid taking such steps.

- h) Governments should do all they can to obtain international assistance when national resources are insufficient to realize the fulfillment of economic, social and cultural rights.

Apart from the above indicators, it is important that the budget management be effective in implementing MAR. Inefficiency in budget management Economic, social and cultural rights, means failure to use the maximum available resources. Funds can be wasted in several ways, including:

- a) The government may pay more than it should for goods and services, or it may get poor quality for the funds spent.
- b) occurs when the government purchases unnecessary goods or goods that are useless to meet priority needs.
- c) Governments can decide that certain goods and services are needed to solve a problem, while good research shows that other goods and services are more appropriate.
- d) When a department or agency receives its funding towards the end of

the fiscal year, it can spend it quickly, without sufficient thought.¹⁶

The principle of MAR is actually contained in the Indonesian constitution, there are at least two articles in the 1945 Constitution which emphasize the obligation of resources to be aimed at the greatest prosperity of the people. First is in the 1945 Constitution Chapter on Finance which emphasizes the budget to be managed openly and responsibly for the greatest prosperity of the people.¹⁷ Second, in chapter XIV of the national economy and social welfare, which emphasizes the management of natural resources for the maximum welfare of the people.

In terms of financial law, the Indonesian Constitution is in line with the MAR principles. There are at least two articles in the 1945 Constitution which emphasize the obligation of resources to be aimed at the greatest possible prosperity of the people. In technical law, orders to carry out MAR obligations are described in various regulations. The command to make maximum use of resources is interpreted in the language of priority,

¹⁶ Ann Blyberg and Helena Hofbauer, Article 2 and Governments' Budgets, the Maximum Of Its Available Resources, www.internationalbudget.org/publications/ESCRArticle2/, February 2014

¹⁷ Article 33 paragraph (3): (3) The land and water and natural resources contained therein shall be controlled by the state and used for the maximum welfare of the people.

namely; Whereas regional budgets must be prioritized for more important affairs or Mandatory Government Affairs related to Basic Services which are determined with minimum service standards.

Implementation of Maximum of Available Resources (MAR) In Regional Financial Management

The fiscal decentralized system in Indonesia made major changes to regional financial management, these major changes occurred in all sectors, one of which was the sizeable revenue sector. However, this large revenue does not affect budget allocations for the economic, social and cultural sector. The author uses the above principles to answer whether regional financial management in Indonesia has made efforts to fulfill human rights in full.

This paper will also explain the following: First, whether the regional government budget resources have met the MAR principle by looking at or comparing Regional expenditures related to economic, social and cultural rights (compulsory affairs)¹⁸ with Regional Expenditures

for fields not related to social and cultural economy. Second, whether the allocated budget has been carried out effectively and efficiently.

1) Regional financial management that is contrary to the MAR Principles

For the first indicator, the authors choose functions that are not related to mandatory affairs related to basic services, namely; Regional Secretariat budget management and Regional Legislative Budget to compare with the government budget allocated for economic, social and cultural affairs.

¹⁸ Government Regulation No. 12 of 2019. The PP has emphasized the distribution of Regional expenditure to several Affairs. First, for compulsory government affairs related to basic services, the regions must prioritize their spending for the fulfillment of these affairs. Second, for compulsory government affairs that are not related to basic regional services, the regions must allocate according to regional needs. And third for Government Affairs. Regional expenditure options are allocated in accord-

Table. 1

ance with regional priorities and the potential of the Region.

Region Name	The Development Of The Budget Of The Regional Community Council							
	2017		2018		2019		2020	
	Budget	%	Budget	%	Budget	%	Budget	%
Denpasar	70.039.911.900	4	98.862.055.704	4	97.535.007.588	4		
Palu			47.004.449.731	3	47.337.790.293	3	48.539.658.223	2
Malang			95.921.831.200	5	105.960.475.466	5	98.741.639.200	4
Province Of Kepu- lauan			140.134.181.900	6	146.047.946.682	5	129.461.281.937	4
Province Of South Borneo			148.632.610.715	2	195.619.256.620	3	198.397.400.120	3

If we look at the budget allocation for Government Affairs Supporting Functions of regional government, the allocation of the budget in the regions gets a very adequate budget. The table 1 explains that the average annual rate, especially for the legislative body, gets a very large portion, even though the utilization of the legis-

lative institution's budget is only used for part of the people. On average each year the Secretariat of the legislative body receives a budget of 2-6%. Meanwhile, the regional secretarial budgets also receive a fairly large budget, amounting to 2-4% of the total budget.

Table.2

Region Name	Budget Development at the Regional Secretariat							
	2017		2018		2019		2020	
	Budget	%	Budget	%	Budget	%	Budget	%
Denpasar	79.014.500.662	4	81.643.773.252	4	94.511.376.938	4		
Palu			39.772.704.094	3	37.421.620.024	3	38.903.969.125	2
Malang			20.581.779.100	1	22.924.011.394	1	28.175.210.200	1
Province Of Kepulauan Bangka Beli- tung			127.598.209.056	5	113.530.027.702	4	111.464.326.159	4
Province Of South Bor- neo			91.628.365.740	2	110.328.800.000	2	127.486.770.508	1,68

The province of Kepulauan Bangka Belitung, from 2018-2020, for food, housing, social affairs only received a very small portion, namely 0-1%, while the best proportion to the allocation of the DPRD Secretariat received a fairly large budget, namely 4-6% of the total budget. This allocation is not only unfair but at the same time does not make the fulfillment of Ham a priority. The above allocation is, of course, contrary to the MAR principle, which emphasizes the allocation of the maximum budget for the fulfillment of economic, social and cultural rights and makes it a priority in budget allocation.

2) Inefficient and ineffective regional budget management

Previously it has been emphasized that, ineffectiveness and ineffectiveness in the budget is the same as failure to maximize the use of available resources, whereas failure to implement the available resources to fulfill the full economic, social and cultural rights means failure to implement the agreement.

The author describes the pattern of inefficiency and ineffectiveness of regional budgets in Indonesia as follows; (a). budget inefficiency occurs because local governments budget very high costs for apparatus costs while at the same time budgeting far less

on program spending, (b). Budget inefficiency occurs because local governments budget very high costs for (unnecessary) inputs and vice versa, very low budgeting for certain required inputs, (c). It seems that local governments are budgeting unnecessary and repetitive items.

Table. 3

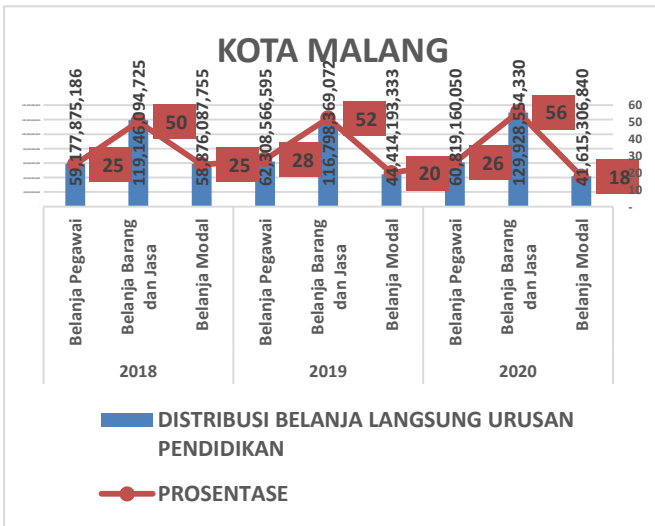


Table. 4

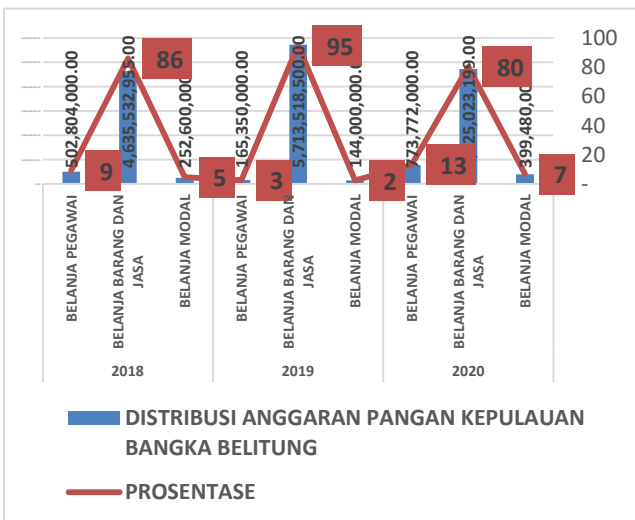
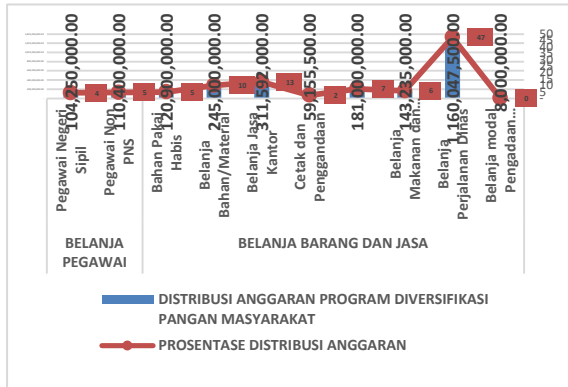


Table. 5

For this case, the author takes several examples of the ineffectiveness of the distribution of the education budget in Malang¹⁹ City and the Food budget in the Province of Kepulauan Bangka Belitung Islands. For the last three years; capital expenditure (which should have been a larger share) in the education sector receives a very small share. Meanwhile, the personnel expenditure budget gets a large portion. And the tendency of capital expenditures to decrease every year and vice versa in personnel spending each year has increased (see the graph above). The same pattern occurs in the Food budget in the Province of Kepulauan Bangka Belitung.

¹⁹ See, Regional Regulation No. 7 of 2017 concerning the Malang City Regional Revenue and Expenditure Budget in 2018, Regional Regulation No. 6 of 2018 concerning the Malang City Regional Revenue and Expenditure Budget in 2019 and Regional Regulation Number 10 of 2019 concerning the 2020 Malang City Regional Revenue and Expenditure Budget.



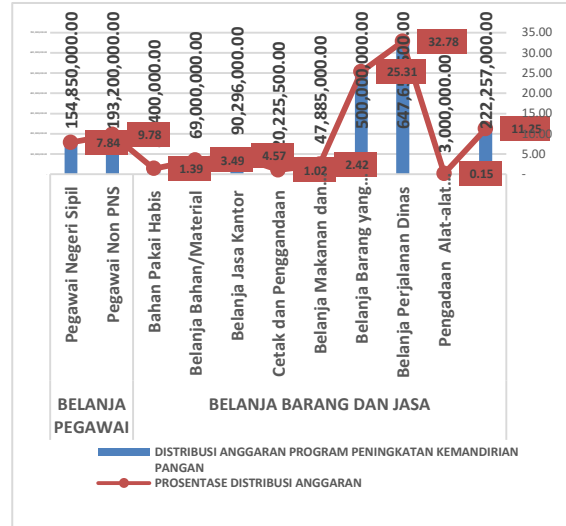
Another example is the management of the food budget in The Province of South Kalimantan in 2019.²⁰ Budget Management in the Food Self-Sufficiency Improvement Program and the food diversification program for the people of The Province of South Kalimantan in 2019. Both of these programs, there is an ineffective distribution of the budget, greater program spending is used for apparatus spending, while capital expenditure only gets a very small ration, below 10%, even for food diversification programs capital expenditure is only 0%.

The pattern of ineffectiveness and inefficiency above is almost the same in all regions in Indonesia, especially those that are the object of the author's research. The above matters are both a threat and

²⁰ See, Regional Regulation No. 18 of 2018 concerning the 2019 South Kalimantan Province Regional Revenue and Expenditure Budget.

a challenge for local governments in fulfilling their full economic, social and cultural rights.

Table. 6



3) Reformulation of Regional Budget Policies In Full Fulfillment of Economic, Social And Cultural Rights

The above principles are not new in the principles of regional financial management in Indonesia and in practice these principles for certain rights have been applied in Indonesian regional budget regulations, so it needs to require some adjustments to the regulations and their application. But the problem is that there is no firmness and sustainability of the above principles, it is carried out partially and inconsistently. So that in terms of the fulfillment of human rights in regional

financial management, the authors emphasize the incorporation of these principles into regional financial management regulations and the position of these principles can be used as a test tool for regional financial management.

According to the author, there are four things that have a big impact from incorporating these principles into regional financial management regulations and the position of these principles can be used as a test tool for regional financial management. The first is to prevent the government, especially the regional government, from ignoring it. Indonesia's challenge in the era of decentralization is the potential for major violations of economic, social and cultural rights, either deliberately or because of neglect.

Second, the big impact of the above for the development of human rights law in Indonesia is to strengthen the position of Justiciable on economic, social and cultural rights. The assumption that economic, social and cultural rights are positive rights, then economic, social and cultural rights cannot be prosecuted in court (non-justiciable). In contrast to civil rights and political rights, as negative rights they can be prosecuted in court. Apart from distinguishing them in these positive and negative ways, a distinction is made ideologi-

cally. Economic, social and cultural rights are said to be ideologically charged, while civil rights and political rights are non-ideological. This means that economic, social and cultural rights can only be applied to a particular economic system, while civil rights and political rights can be applied to all systems. economy or government whatever. This article makes the government, especially the local government, in a condition that is obligatory and responsible for the fulfillment of the rights of economic, social and cultural rights and has legal consequences because if the article does not take action to fulfill it.

Third, the big impact of the above matters for the fulfillment of human rights in Indonesia is the obligation for the government, especially the local government, to allocate maximum resources in fulfilling human rights. This maximum resource is the legal consequence of the two things above. The allocation of resources is also the basis for assessing the government's commitment in fulfilling these rights.

Fourth, accountability, the government can be held accountable for actions in the fulfillment of human rights. The request for responsibility can be carried out politically by the parliament, legally

by the court and administratively by regional head reports to the people on a regular basis at the same time as the end of the fiscal year. And also fundamentally that the community can file criminal and civil charges against the regional government due to negligence or deliberate fulfillment of economic, social and cultural rights.

CONCLUSION

International provisions make the position of the regional budget an inseparable part of the state's efforts as a legal subject in the full fulfillment of human rights. International provisions have obliged and guided the state to fulfill this, by implementing several principles of resource management to fulfill human rights. In the Indonesian context, regional financial regulations at least have explicitly applied the above principles, by requiring budget allocations to fulfill social and cultural economic acumen and minimum obligations for education and health budgets. However, the rest is far from expectations and its implementation has not been supported by a firmer law. This has resulted in uncertainty about the fulfillment of economic, social and cultural rights in Indonesia, thus requiring improvements in regional financial management for the sustainability and certainty of the fulfill-

ment of human rights in the regions. The hope is how regional financial regulations can guarantee the full fulfillment of economic, social and cultural activities, namely by radically formulating constitutions related to state and regional finances. With this the ideals of the international community are to create conditions in which all people can enjoy economic, social and cultural rights.

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