
Principles of Maximum Liability of Available Resources (MAR) in Regional Finance in Indonesia

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Article Info

Keywords:
Economic Social and Cultural Rights;
Maximum of Available Resources;
Regional Finance.

How to cite (APA Citation Style):

Ansar, Aspan, Z., & Razak, A. (2022). Principles Of Maximum Liability of Available Resources (Mar) In Regional Finance in Indonesia. *Jambura Law Review*. JALREV 4 (1): 139-159

Abstract

One of the major resources in the regions is financial resources which are usually translated into the Regional Revenue and Expenditure Budget (APBD). In its management, it creates uncertainty about the fulfilment 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. In this study, the authors used a normative research method by examining several regional regulations on APBD, using two approaches, namely the statutory approach and the conceptual approach. The research locations were selected in 6 regions, namely Bangka Belitung Islands Province, South Kalimantan Province, Malang City, Denpasar City, and Palu City. The author limits it only to economic, social and cultural rights in particular, the right to education, the right to health, the right to food, and the right to housing. Based on the results of the research, the authors propose that the government applies the Principle of Maximum Available Resources (MAR) in the management of regional finances, particularly in the budget for the fulfilment of economic, social and cultural rights.

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1. Introduction

Ratification of the International Covenant On Economic, Social And Cultural Rights through Law Number 11 of 2005 concerning Ratification of International Covenant On Economic, Social And Cultural Rights,¹ Makes the Indonesian state a Duty of Barrer which has absolute obligations in fulfilling ESCR, and must guarantee this fulfillment in statutory regulations by National and regional legislative efforts, the fulfillment of ESCR must be realized in any political situation, in a centralized or autonomous political structure .

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, namely²; 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 very real as a legal provision in the constitutional system of the Republic of Indonesia. The political framework for autonomy is actually a strategic 'land' to develop human rights norms because it has a closer reach to the people, therefore regional autonomy actually has a strategic position in fulfilling human rights.

Local governments are given instruments for the fulfillment of ESCR, one of which is

¹ Four things are important in the ratification above, First, that human rights are basic rights that are naturally inherent in humans, are universal and lasting, and therefore, must be protected, respected, defended, and should not be ignored, diminished, or reserved by anyone. Second, that the Indonesian 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 meeting on December 16, 1966, has ratified the International Covenant on Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights). fourth,

² Commonly known as doctrine the 'Tripartite Typology'. Look in collaborators and research assistants: Harvey, C., Nolan, A., O'Connell, R., Dutschke, M., & Rooney, E. (2010). *Budget Analysis Project*. Queen's University Belfast, School of Law Budgeting for Economic and Social Rights: A Human Rights Framework. p. 31

regional financial instruments that are used and utilized maximally to achieve state goals.³ With this instrument, the regional government, apart from providing order and security, also ensures protection and the realization of social justice.

However, in practice, 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 public spending. There are 11 districts whose APBD is used up only for employee salaries. And in 2017 the Directorate General (Ditjen) for Fiscal Balance, the Ministry of Finance noted, there are still 131 regions that use their APBD funds for personnel spending, these areas, the ratio of personnel spending to total APDB expenditure, districts / cities Average ratio of personnel expenditure to total expenditure amounted to 43.59%, even in some region's personnel expenditure reached 65% of the total regional expenditure.

The amount of personnel expenditure in regional financial management is not directly proportional to development expenditure, the average "Capital Expenditure on Regional Expenditure" in 70 districts / cities only increased by 2%. This means that the quality of average capital expenditures in 70 regions has increased although not significantly 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 above causes the fulfillment of human rights through regional finance in Indonesia to experience a big challenge, the biggest challenge is the absence of regional finance laws that guarantee 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

³ See Article 23 of the 1945 Constitution of the Republic of Indonesia

uncertainty in the full fulfillment of human rights, but if it continues, it is certainly a threat to humanity and human rights itself.

2. Problem Statement

From the above, in this study, the authors formulate legal problems, namely; First, in the fulfilment 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?

3. Methods

The article is compiled systematically using normative methods. Data tracing is carried out independently through literature and web searches and searching for article journals whose studies focus on the principle of maximum liability. The data are analysed qualitatively and comparatively using a statute approach.

4. Analysis and Discussion

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

Position of Budget in Fulfilling Human Rights

In the context of Economic, Social and Cultural Rights, the obligation to fulfill the full, social and cultural rights and at the same time obliging the state to allocate a budget in its fulfillment is implied in Article 2 paragraph (1) of the ICESCR;

Each State Party to the present Covenant undertakes to take steps, either alone or through international assistance and cooperation, in particular technical and economic assistance and to the extent possible, to achieve progressively the full realization of the rights recognized in the present Covenant by means of use all adequate measures, including the establishment of legislative measures.

There are several legal consequences of the article above that cause the fulfillment of these obligations.⁴First, under the mandate of international law, upholding and fulfilling human rights becomes an obligation. Two principles of the agreement, namely *Pacta sunt servanda* and Good Faith, are important principles to ensure the

⁴ 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*, 100, 65-71. <https://doi.org/10.7176/JLPG/100-06> p.66

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 set.

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

Third, there is another important framework⁵ that outlines the obligation for countries to comply with ESCR: the so-called 'tripartite typology'.⁶ According to this tripartite typology, states parties have 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 eco-social rights through budgetary resources can be understood as a legal requirement that is mandatory for the state. the failure of a country to fulfill its rights can be compared to its failure to take appropriate action, including budget-related manners. Therefore, the use of budget measures is one of the legal requirements imposed on state parties.⁷

Fourth, the fulfillment of human rights, especially ESCR by the state, requires enormous resources, it can be said that without resources (one of which is financial), it can be ascertained that citizens' ESCR cannot be fulfilled, so that the provision of a number of budgets for fulfillment The human rights above are mandatory.

Fifth, national law also emphasizes the importance of allocations for the fulfillment of human rights, for example; The 1945 Constitution of the Republic of Indonesia in Article 31⁸ , the 1945 Constitution of the Republic of Indonesia in Article 34,⁹ the

⁵ for example, International Commission of Jurists (ICJ), Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 26 January 1997

⁶ Koch, I. (2009). *Human Rights as Indivisible Rights: The Protection of Socio-Economic Demands under the European Convention on Human Rights*. Brill | Nijhoff. p. 14- 17

⁷ Bui, H. (2015). *Human Rights Budgeting: Making Governments Accountable for Economic, Social and Cultural Rights*. Human Rights Law Review, 2(1), 109–132. p. 118

⁸ 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 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"

⁹ Article 34 paragraph (3) "The state is responsible for the provision of adequate health service facilities and public service facilities"

1945 Constitution of the Republic of Indonesia in Article 28 I.¹⁰ 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 invite.¹¹ Each year this obligation must be manifested in a regional regulation concerning the Regional Revenue and Expenditure Budget (APBD).

The five points above emphasize the importance of the position of the government budget in fulfilling the *Ekosob* Rights. In Indonesian financial law, the position of regional budgets (APBD)¹² has an important role in achieving full fulfillment of economic, social and cultural rights, because regional expenditures are prioritized to carry 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 for the government's human rights performance.

¹⁰ Article 28 I paragraph (4) and (5). "Protection, advancement, enforcement and fulfillment of human rights are the responsibility of the state, especially the government; and in order 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."

¹¹ There are 7 (seven) laws that specifically require the provision of a budget for the fulfillment of human rights. The first is Law Number 39 of 2009 concerning Human Rights which clearly states that children with disabilities, the elderly, have the right to education and training at state expense. Second, law Number 20 of 2003 concerning the National Education System which requires a 20 percent budget for education both at the regional and central levels. Third, Law Number 18 Year 2012 concerning Food in Article 18 states 4 government obligations in terms of food fulfillment, one of which is the obligation to make budget allocations. Fourth, Law no. 29 of 2009 concerning Environmental Protection and Management, 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 Number 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 Number 36 of 2009 concerning Health which requires the budget for the fulfillment of health affairs of 5% for the central government and 10% for local governments. Seventh Law Number 23 of 2002 concerning Child Protection in article 53 there are 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,

¹² Law Number 17 of 2003 concerning State Finance, Regional Revenue and Expenditure Budget (APBD) is an annual regional 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 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

So, to see in detail how the regions are committed to fulfilling the ESCR, and how to allocate and distribute the human rights budget, we can see it in the APBD document.

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

To determine the steps to fulfill ESCR, the state must be guided by a number of principles for the fulfillment of human rights, particularly the fulfillment of human rights in budget management. There are several principles, one of which is; Principle of Liability Maximum of Available Resources (MAR), that the government must do all it can to mobilize resources at home and abroad in order to have the funds available to progressively realize the fulfillment of the rights, rights, social, social and cultural rights. States should prioritize the allocation of the resources necessary to ensure the satisfaction of the minimum essential level of ESCR.¹³ MAR obligations mean that as long as the fuller realization of ESCR requires that more government resources be dedicated 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 ESCR Committee, through its general comments (especially its general comment No. 3 (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" for realizing rights under the ICESCR The following are, in brief, the main points that the Committee has reaffirmed that has direct or potential influence on the government budget:¹⁴

- 1) 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 must also do all it can to obtain international assistance where national resources are insufficient to realize ESCR.

¹³ Right to Education. (n.d.). *Glossary: Maximum available resources | Monitoring Guide*. Retrieved February 21, 2022, from <https://www.right-to-education.org/monitoring/content/glossary-maximum-available-resources>

¹⁴ Blyberg, A. (2015). *Human Rights Budgeting and Budget Analysis*. <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.scottishhumanrights.com%2Fmedia%2F1706%2Fhuman-rights-budgeting-and-budget-analysis-oct-2015-vfinal.doc&wdOrigin=BROWSELINK>. Pg 11.

- 2) MAR also means that the government must give priority to ESCR in the use of resources. The implication for the government budget is that allocations and expenditures in areas related to ESCR should be given such priority.
- 3) 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.
- 4) Government spending must also be effective; that is, the impact of spending must be such to actually help realize ESCR.
- 5) Since 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.
- 6) Funds allocated in the budget for ESCR may not be diverted to non-ESCR areas, and funds allocated for ESCR rights must also be fully disbursed.
- 7) If the government takes steps that are deliberately retrogressive affecting the ESCR, 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 confirming;¹⁵

- 1) Existing resources are used effectively and without discrimination.
- 2) Efforts to generate additional resources are adequate and equitable.
- 3) 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 progressive realization of all economic, social and cultural rights as efficiently and effectively, perhaps, even during times of severe resource constraints, whether caused by an adjustment process, an 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 the rights of, social, cultural and cultural rights has been emphasized in Article 2 Paragraph (1) of the ICESCR. There are several important things in that Article, namely; First, participating countries promised to take steps. The conception of taking steps is the first element that affirms that the state will be responsible for all actions or not in an effort to protect and fulfill human rights. Second, for the maximum available resources, maximizing the availability of resources is an important element in understanding

¹⁵ The Scottish Human Rights Commission. (2019). *Human Rights Budget Work: What, Why, How?* (Briefing Paper 5: Human Rights Standards and the Budget). <https://www.scottishhumanrights.com/media/1913/hrbw-paper-5-vfinal.pdf> p. 66

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

The CESCR has said that MAR obligations mean that governments must give "priority because of" ESC rights in the use of their resources. For government budgets, this means that allocations and expenditures should be directed to ESC-related areas as priority. In order to determine whether the government gives such "priority due" ESC rights, it is useful to consider the share of the budget that is used for areas related to ESC rights, particularly when this part is compared to 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 ESC-related areas. Priority must be given in these areas to fulfill.

And to see how far a government places the ESCR as a priority, use the following indicators in assessing the government's compliance with this obligation:

- a) Comparing spending on economic, social and cultural rights (ESCR) vs. expenditures for areas not related to ESCR.
- b) Comparing spending in a region (eg, education, health) with spending in the same area by countries at comparable levels of development.
- c) Compare allocations and expenditure with international indicators, such as the UNDP indicator that 5 percent of GDP should be spent on human

expenditure (which for poor countries is defined as basic education, primary health care and basic water.¹⁶

Magdalena Sepulveda, Independent Expert on the issue of Human Rights and Extreme Poverty has drawn the following conclusions with respect to the government's obligation to use the 'maximum available resources' to achieve ESCR:

- a) The government must mobilize resources within the country to its best ability.
- b) Public spending must be efficient (the 'efficiency criterion' can also be applied to revenue collection).
- c) Government spending must be effective.
- d) Failure to eradicate corruption is failure to comply with obligations.
- e) Funds allocated in the budget for ESCR may not be diverted to non-ESCR areas.
- f) The funds allocated for the ESCR must be fully spent for that purpose.
- g) Governments implementing regressive measures, such as spending cuts on ESCRs, must demonstrate that they are using the maximum available resources to avoid taking such steps.
- h) Governments should do all they can to get international assistance where national resources are not sufficient to achieve ESCR.¹⁷

Apart from the above indicators, it is important that the effectiveness of budget management in implementing MAR. Inefficiency in budget management, ESC rights funds mean 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 that are spent.
- b) occurs when the government purchases unnecessary goods or goods that are useless to meet priority needs. (See the case study on Maximum Use of Available Resources: Expenditures on nonessential items.)
- 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.

¹⁶ UNDP. (1991). UNDP Human Development Report, Financing Human Development. <http://hdr.undp.org/en/reports/global/hdr1991/chapters/>. Adapted in Balakrishnan, R., Elson, D., Heintz, J., & Lusiani, N. (2011). *Maximum Available Resources & Human Rights: Analytical Report*. Center for Women's Global Leadership. <https://www.cwgl.rutgers.edu/docman/economic-and-social-rights-publications/362-maximumavailableresources-pdf/file> p. 3

¹⁷ Sepulveda, M. "The Nature of Obligations under the International Covenant on Economic Social and Cultural Rights," *Intersentia*. Adapted in Balakrishnan, R., Elson, D., Heintz, J., & Lusiani, N. (2011). *Maximum Available Resources & Human Rights: Analytical Report*. Center for Women's Global Leadership. <https://www.cwgl.rutgers.edu/docman/economic-and-social-rights-publications/362-maximumavailableresources-pdf/file> p. 4

d) When a department or agency receives its funding towards the end of the fiscal year, it can spend it quickly, without sufficient thought.¹⁸

The principle of MAR is actually not foreign to the Indonesian constitution, there are at least two articles in the 1945 Constitution of the Republic of Indonesia which emphasize the obligation of resources to be at the greatest prosperity of the people. The first is in the 1945 Constitution of the Republic of Indonesia Chapter on Finance which emphasizes the budget to be managed openly and responsibly for the greatest prosperity of the people.¹⁹ Second is, CHAPTER XIV NATIONAL ECONOMY AND SOCIAL WELFARE, which emphasizes the management of natural resources to the greatest possible extent.

In terms of financial law, the Indonesian Constitution is in line with the principles of MAR. There are at least two articles in the 1945 Constitution of the Republic of Indonesia which emphasize the obligation of resources to be at the greatest possible prosperity of the people. The first is in the 1945 Constitution of the Republic of Indonesia Chapter on Finance which emphasizes the budget to be managed openly and responsibly for the greatest prosperity of the people. The second is, CHAPTER XIV National Economy and Social Welfare, which emphasizes the management of natural resources for the maximum welfare of the people.²⁰ In technical law, orders to carry out MAR obligations are described in various regulations. The command to utilize the number of resources is interpreted in the language of priority, 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.²¹

¹⁸ International Budget Partnership. (n.d.). Article 2 and Governments' Budgets - Publications - International Budget Partnership. Retrieved February 24, 2022, from <https://internationalbudget.org/publications/ESCRArticle2/>

¹⁹ Article 23 (1): The state revenue and expenditure budget as a form of state financial management shall be stipulated annually by law and implemented openly and responsibly for the greatest prosperity of the people.

²⁰ Article 33 (3): (3) The land and water and natural resources contained therein shall be controlled by the state and used for the greatest welfare of the people.

²¹ Article 298: (1) Regional expenditures are prioritized for funding. Mandatory Government Affairs related to Basic Services which are stipulated with minimum service standards.

4.2. Implementation of Maximum of Available Resources (MAR) in Regional Financial Management

The fiscal decentralization system in Indonesia made major changes to regional financial management, these major changes occurred in all sectors, one of which was a fairly large revenue sector. However, this large revenue does not affect the budget allocation for the ESCR sector. The author uses the above principles to answer whether regional financial management in Indonesia has made efforts to fulfill human rights in full.

The position of MAR as an obligation and how the indicator of the implementation of MAR has been discussed at least in the above discussion. Among them is comparing expenditures related to economic, social and cultural rights with expenditures on areas not related to economic, social and cultural rights, expenditures in a region (eg, education, health) with expenditures in the same area by countries at the level development of comparable, allocation and expenditure by international indicators, such as UNDP indicators that 5 percent of GDP should be used for expenses for humans (which for poor countries defined as basic education, primary health care and basic water.

So in this paper, the authors first, whether the regional government budget resources have met the MAR principles by looking at or comparing the regional expenditures related to economic, social and cultural rights (compulsory affairs)²² with regional expenditures for sectors that are not related to ESCR. whether the allocated budget is effective and efficient.

Regional Financial Management That is Contrary to the MAR Principle

For the first indicator, the authors select functions that are not related to mandatory functions related to basic services, namely; Regional Secretariat budget management

²² Government Regulation Number 12 of 2019 concerning regional financial management. The PP has emphasized the distribution of regional expenditures 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 accordance with regional priorities and the potential of the Region

and Regional Legislative Budget to compare with the government budget allocated for ESCR affairs.

Table 1. FOR DEVELOPMENT BUDGET OF REGIONAL COMMUNITY COUNCIL								
REGIONAL NAME	2017		2018		2019		2020	
	BUDGET	%	BUDGET	%	BUDGET	%	BUDGET	%
DENPASAR CITY	70,039,911,900	4	98,862,055,704	4	97,535,007,588	4		
HAMMER CITY			47,004,449,731	3	47,337,790,293	3	48,539,658,223	2
CITY OF MALANG			95,921,831,200	5	105,960,475,466	5	98,741,639,200	4
PROVINCE OF BANGKA BELITUNG ISLANDS			140,134,181,900	6	146,047,946,682	5	129,461,281,937	4
PROVINCE OF SOUTH KALIMANTAN			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 governments, this budget allocation in the regions will get a very adequate budget. The table above explains that the annual average, especially for the legislative body, gets a very large portion, even though the utilization of the legislative institution's budget is only used for some people. The average annual budget for the Secretariat of the Legislative Council is 2-6%. Meanwhile, the regional secretariat budget also receives a fairly large budget, amounting to 2-4% of the total budget.

Table 2. DEVELOPMENT REGIONAL SECRETARIAT BUDGET								
REGIONAL NAME	2017		2018		2019		2020	
	BUDGET	%	BUDGET	%	BUDGET	%	BUDGET	%
DENPASAR CITY	79,014,500,662	4	81,643,773,252	4	94,511,376,938	4		
HAMMER CITY			39,772,704,094	3	37,421,620,024	3	38,903,969,125	2
MALANG CITY			20,581,779,100	1	22,924,011,394	1	28,175,210,200	1
PROVINCE OF BANGKA BELITUNG ISLANDS			127,598,209,056	5	113,530,027,702	4	111,464,326,159	4
PROVINCE OF SOUTH KALIMANTAN			91,628,365,740	2	110,328,800,000	2	127,486,770,508	1.68

The Province of Bangka Belitung Islands, from 2018-2020, for food, housing, social affairs only received a very small portion, namely 0-1%, while compared to the best, the DPRD Secretariat allocation 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

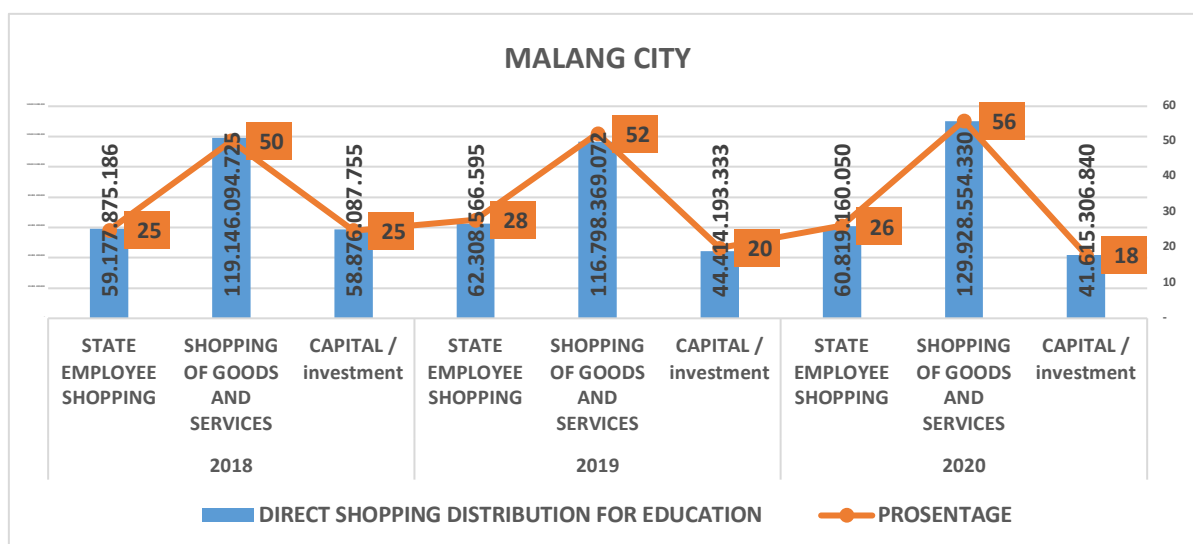
fulfillment of Ham a priority. The above allocation is, of course, Contrary to the MAR principle, which emphasizes the allocation of the maximum budget for the fulfillment of ESC rights and makes ESC rights a priority in budget allocation.

Regional Budget Management Inefficient and Ineffective Previously

It has been emphasized that ineffective and ineffective actions in the budget are the same as failure to maximize the use of available resources, whereas failure to implement available resources to fulfill the full fulfillment of ESC rights means failure to carry out the agreement.

The author describes the pattern of inefficiency and ineffectiveness of local 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 expenditure, (b). Budget inefficiency occurs because local governments budget very high costs for certain (unnecessary) inputs and vice versa, very low budgeting for certain inputs needed, (c). The impression is that local governments are budgeting unnecessary and repetitive items.

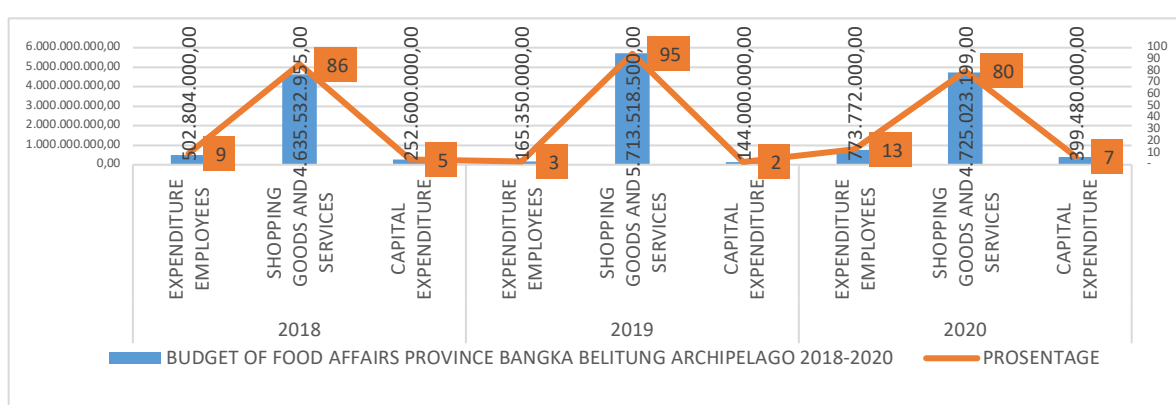
For this case, the author takes several examples of the ineffectiveness of the distribution of the education budget and the Food budget. in Malang City, South



Picture 1. Development of the distribution of the Malang city education budget 2018-2020²³

²³ processed based on Regional Regulation Number 7 of 2017 concerning the City of Malang Regional Income and Expenditure Budget in 2018, Regional Regulation Number 6 of 2018 concerning the

Kalimantan Province and Bangka Belitung Province in 2018-2019. For the last three years; Capital expenditure (which should have been a larger portion) in the education sector in Malang City received a very small portion. Meanwhile, the personnel expenditure budget gets a large portion. And the tendency of capital expenditures to decrease every year and vice versa in personnel expenditure each year has increased (see Figure above). The same pattern occurs in the Food budget in the Province of Bangka Belitung Islands. Each year the capital expenditure budget receives a small portion.



Picture 2. Development of the Distribution of the Province Bangka Belitung Food Budget 2018-2020²⁴

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

Malang City Regional Revenue and Expenditure Budget in 2019 and Regional Regulation Number 10 of 2019 concerning the Malang City Regional Revenue and Expenditure Budget 2020 year

²⁴ Processed based on Regional Regulation Number 15 of 2017 concerning the Regional Revenue and Expenditure Budget of the Province of Bangka Belitung Islands in 2018, Regional Regulation Number 10 of 2018 concerning the Regional Revenue and Expenditure Budget of the Province of Bangka Belitung Islands in 2019 and Regional Regulation Number 13 of 2019 concerning Budget Regional Revenue and Expenditure of Bangka Belitung Islands Province in 2020.



Picture 3. Distribution of Budget for community food diversification Program Province of South Kalimantan 2019²⁵

The patterns of ineffectiveness and inefficiency above are 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 a challenge for local governments in fulfilling the full Economic, Social and Cultural Rights.



Picture 4. Budget Distribution of Food Independence Improvement Program Province of South Kalimantan 2019²⁶

²⁵ Processed based on Regional Regulation Number 18 of 2018 concerning the Province of South Kalimantan Regional Revenue and Expenditure Budget in 2019

²⁶ Processed based on Regional Regulation Number 18 of 2018 concerning the Province of South Kalimantan Regional Revenue and Expenditure Budget in 2019

4.3. Reformulation of Regional Budget Policies in Indonesia in full fulfilment 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 that it needs a little adjustment to the regulations and their application. However, 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 fulfilment 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 the inclusion 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. The first is to prevent the government, especially local governments, 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 major impact of the above for the development of human rights law in Indonesia is to strengthen the position of Justiciability towards Ecos, Social and Social Rights. The assumption that the ESC 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 ideologically. ECOSOB RIGHTS are said to have ideological content, while civil rights and political rights are non-ideological. This means that ECOSOB RIGHTS can only be applied to a particular economic system, while civil rights and political rights can be applied to any economic system or government. This article makes the government,

Third, the big impact of the above for the fulfilment of human rights in Indonesia is the obligation for the government, especially local governments, 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 fulfilment of human rights. The request for responsibility can be carried out politically by the parliament, legally by the court and administratively by the 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 to the local government due to Negligence or deliberate fulfilment of the right to, social and cultural affairs.

5. Conclusion

International provisions make the position of regional budgets an integral part of the efforts of the state as a legal subject in the full fulfilment of human rights. international provisions have obliged and guided the state to fulfil this, by implementing several principles of resource management to fulfil human rights.

In the Indonesian context, regional financial regulations have at least explicitly applied the above principles, by requiring budget allocations to fulfil the rights of, social, social and cultural issues and minimum obligations for the education and health budget. but the rest is far from expectations and its implementation has not been supported by a firmer law. This has been in uncertainty about the fulfilment of Economic, Social and Cultural Rights in Indonesia. So, it requires improvements in the field of regional financial management for sustainability and certainty in the fulfilment of human rights in the regions.

The hope is how regional financial regulations can guarantee the full fulfilment of economic, social and cultural rights, namely by radically formulating the constitution related to state and regional finances. With this the aspiration of the international community, namely to create conditions in which all people can enjoy their economic, social and cultural rights, can be realized.

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