

Implementation of Minimum Core Obligation Principle In Regional Financial Management In Indonesia

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Abstract

The principle of minimum core obligations is an answer to the challenges of the local government in fulfilling economic, social and cultural rights. It functions as a guarantor of the basic needs of the people and as a first step for government in carrying out the progressive obligations that are required by the International Covenant on Economic, Social and Cultural Rights. Due to the meagre budget for fulfilling economic, social and cultural rights in the regions, we propose that the concept of minimum core obligations be introduced into law in the management of regional finances in Indonesia. This research is a normative legal research with conceptual and statutory approaches, and it uses stratified sampling of the regions in the target area to select five regions for the conduct of the study, including Province of Bangka Belitung Islands, Province of South Kalimantan Province, Denpasar City, Malang City and Palu City. This study focuses on economic, social and cultural rights, especially the rights to education, health, housing and food.

Keywords: Economic, Social and Cultural rights; Minimum Core Obligation; Regional Budget.

Introduction

The main obligation of a state is to allocate resources for the well-being of its citizens. This makes it obligatory for a state to prepare a budget for the full fulfillment of economic, social and cultural rights, as stated in Article 2 Paragraph (1) of the International Covenant on Economic, Social and Cultural Rights (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.

The obligation to prepare a proper budget to fulfill economic, social and cultural rights is a serious challenge for several countries. Responding to this challenge, the minimum core obligations concept provides guidance to states on how this obligation can be achieved. This concept is one of the state practices that use human rights as a standard in allocating resources in the national budget to ensure the fulfillment of state duties regarding fulfilling economic, social and cultural rights.

The allocation of budgetary and human rights resources is inseparable from the fulfillment of the mentioned rights. The Office of the High Commissioner for Human Rights of the United Nations affirms the above relationship: “the budget is a fundamental government tool for policy implementation and the best way to ascertain whether national development priorities on paper are the real thing in practice.”¹

Experts also share this view, recognizing that public budgets can affect all aspects of a country, including social security, health, education, and so on. In addition, civil society recognizes that the national budget reflects the government's true social and economic policy priorities and that it is the most important economic policy instrument produced by any government.²

Indonesia ratified the International Covenant on Economic, Social and Cultural Rights through Law Number 11 of 2005,³ making the state a duty bearer with absolute obligation to fully fulfill economic, social and cultural rights. This fulfillment must be realized in the form of concrete steps, by making the best use of resources including budget and policy resources.

Several laws in Indonesia explicitly require the preparation of the State Revenue and Expenditure Budget (APBN)/Regional Revenue and Expenditure Budget (APBD) for the purpose of fulfilling economic, social and cultural rights.⁴ This demonstrates the commitment of Indonesia to the obligations of local governments to fulfill the mentioned rights. However, the APBD seems to have

been greatly simplified by the local government. Therefore, the government's obligation to fulfill human rights is like a fire that is far from having the capacity to bake. The finance minister was disappointed with the budget management, especially the APBD, which emphasized personnel spending rather than public spending.⁵ There are 11 districts whose APBDs are used up only for employee salaries.⁶ Also, in 2017, the Directorate General (Ditjen) for Fiscal Balance, Ministry of Finance noted that there are still 131 regions that use their APBD funds for mainly personnel expenditures. The average personnel expenditure of districts/cities is about 43.59% of total expenditure.⁷

According to the Indonesian Forum for Budget Transparency (FITRA), personnel expenditure increases significantly each year in the APBD; some regions even have personnel expenditures reaching 65% of total regional expenditures.⁸ The amount of personnel expenditure in APBD management is not proportional to development spending (capital expenditure). It was found that the average trend of "capital expenditure in regional expenditure" in 70 districts / cities only increased by 2% in 2016. This means that the level of capital expenditure is average. The average in 70 regions increased, although it was not significant and is still under the provisions of the capital expenditure regulation, because it is below 30%.⁹

The ratio of capital expenditure to total regional expenditure is a measure of the quality of the regional budget, because if the capital expenditure is considerable, the benefits can be felt by the community through the financing of physical and non-physical development. The greater the proportion of capital expenditure to regional expenditure, the more the effect it will have on economic growth. Conversely, the lower the proportion, the less the effect on economic growth. The state of regional financial management is certainly a threat to the fulfillment of citizens' human rights. In the education sector, there is a gap between the poor and the rich.¹⁰ One of the reasons for this is the problem of the minimal education budget.¹¹ In the health sector,¹² the low quality of Indonesian health services is caused by, among others, lack of health personnel¹³ and lack of health facilities.¹⁴ The same thing is experienced regarding the right to housing¹⁵, which is still difficult to reach by low-income people. The low budget for education manpower has affected the quality of the workforce; the average level of manpower development in Indonesia is at 60.81 out of 100.¹⁶

Hilal Elver, one of the Special Rapporteurs on the Right to Food, stated that "According to the World Food Program, one third of the population in Indonesia cannot afford to buy a balanced diet that meets minimum nutritional needs.¹⁷ High food prices are one of the factors that contribute to malnutrition¹⁸ in Indonesia¹⁹". Recommendations²⁰ to help ameliorate the problem of lack of access to food include providing sufficient budgetary allocation for public food security and the use of legal instruments and international human rights principles. Also, government should ensure that local work practices respect human rights in accordance with their responsibilities embodied in the UN Guiding Principles on human rights.

The UN Guidelines in the ICESCR's general comments emphasize the importance of the principle of minimum core obligation in solving the above problems. This paper will answer several legal issues arising from the minimum core obligations concept in Indonesia. First, what is the position of the minimum core obligation principle in regional financial management in Indonesia? Second, has the regional budget met the minimum core obligation principle, and what steps should be taken by the Indonesian state for the full fulfillment of economic, social and cultural rights?

Methods of Research

This research is a normative legal research using the statutory and conceptual approaches. The legal materials used in this research, among others, include legal regulations, international conventions, research reports, journal articles, and books. To strengthen this paper, we used stratified sampling²¹, which involves categorizing regions in Indonesia according to the size of their budget (APBD) before sampling; five regions were selected. This paper used the regional budgets from 2018-2020 for the sampling. We limited the research to economic, social and cultural rights, especially the budget for education, health, housing and food. We used human rights budgeting as an indicator to determine whether the APBD has fulfilled economic, social and cultural rights in Indonesia.

Results and Discussion

The Legal Position of the Minimum Core Obligation Principle and Its Implementation in Regional Financial Management in Indonesia.

1. Principle of Minimum Core Obligations (Minimum Core)

To respect, protect and fulfill human rights, the government must take positive steps. Steps mean concrete actions using the maximum available resources. These steps must be taken:

- a) Ensure the "minimum essence level" or "minimum core" of each entitlement.
- b) Increase the availability, accessibility, acceptance and quality of goods and services.
- c) Increase the awareness of people's rights and reduce inequality as soon as possible.²²

The government has a duty to ensure the satisfaction of the minimum essential level of each right, which is commonly referred to as the minimum core. The minimum core is intended to protect people's right to an adequate standard of living, which is related and depend on other rights. The minimum core is intended to ensure that a person can live with human dignity. The failure of the government to provide

the minimum core is a violation of the Covenant unless the government can demonstrate that "every effort has been made to use all resources at disposition" to prioritize achieving that minimum level.

The minimum core concept seeks to establish minimum legal content for uncertain economic and social rights claims²³. The minimum core obligations have become one of the most important articulations paving the way for the fulfillment of socio-economic rights. Tasioulas emphasized that these obligations are a subset of obligations required for the fulfillment of economic, social and cultural rights. This idea is important because it aims to avoid complacency of states in realizing socio-economic rights based on the rhetorical basis of "progressive realization"²⁴. The minimum core principle establishes a foundation based on which the state/government cannot justify failure to fulfill the most essential level of socio-economic rights.

The ESCR-Committee affirmed its position on the obligation of state parties to ensure the fulfillment of the minimum essentials of citizens through its General Comment No. 3: Characteristics of the Obligations of State Members of the United Nations Committee on Economic, Social and Cultural Rights (1994), which states as follows:

Based on the many experiences gained by the Committee, as well as by the institution that preceded it, through more than a decade of examining the reports of member States, the Committee is of the opinion that the minimum core obligation to ensure the fulfillment of, at least, the lowest level of each of these Rights is the obligation of all member countries. Thus, for example, a member State where many people have difficulty getting basic food, basic health care, basic housing or basic education is, prima facie, failing to fulfill its obligations as outlined by the Covenant. If the Covenant is understood in the sense that it is not necessary to fulfill these core obligations, then such an understanding clearly negates its philosophical basis. In the same sense, it should also be noted that all examinations of whether a country has fulfilled its minimum core obligations or not must take into account the country's limited resources. Article 2 (1) obliges each member country to take the necessary steps "with all the resources at its disposal". In order to link its failure to meet its minimum obligations with limited resources, a member country must be able to demonstrate that all efforts have been made to use all its available resources to fulfill, as a matter of priority, these minimum obligations.

There are five important points in the comments above. The first is that the minimum core obligation is the tool/standard used by participating countries in fulfilling human rights, especially economic, social and cultural rights. The sentence "...the Committee is of the opinion that the minimum basic obligation is to ensure fulfillment..." indicates that every state uses the standard of minimum core obligations in the fulfillment of human rights. Second, since the mandate of

Article 2, Paragraph (1) of the ICESCR is the progressive fulfillment of rights, "...at least, the lowest level of each of the rights is the obligation of all member States". Third, the state can be said to have failed in fulfilling the rights stated in the ICESCR if many citizens do not enjoy such rights or if many people have difficulty obtaining basic foodstuffs, basic healthcare, basic housing, and basic education. Fourth, there are several participating countries that refuse to use the minimum core obligations as a standard, on the basis of which they can be said to have ignored the spirit of the ICESCR. In this regard, the following statement is instructive: "If the Covenant is understood in the sense that it is not necessary to fulfill these core obligations, then such an understanding clearly negates its philosophical basis. Fifth, the general comments above also clearly distinguish between the unwillingness of a country to fulfill its obligations and its inability to fulfill them due to the limited resources available to it: "In order to link its failure to fulfill its minimum obligations with limited resources, a member state must be able to demonstrate that every effort has been made to use all the resources at its disposal to fulfill, as a matter of priority, these minimum obligations.

More specific minimum core obligations are outlined in several General Comments. With regard to the right to education, the ESCR Committee stated that the core obligation include the provision of basic education.²⁵ With regard to the right to the highest attainable standard of health, the ESCR Committee stated that at least the core obligations are minimum essential food and freedom from hunger; basic housing, sanitation, and adequate water supplies; and essential medicines.²⁶ Equally important are reproductive and maternal (prenatal and postnatal) healthcare and children's health; immunization; prevention, treatment and control of disease; and education and access to appropriate information and training for health workers.²⁷ Note that this General Comment covers other more procedural aspects under the core obligations.²⁸

With regard to the right to food, the Committee maintains that violations of the ICESCR occur when a country fails to ensure satisfaction at least to the minimum essential level necessary to be free from hunger.²⁹ Two observations flow from this: First, it is clear that the full realization of the right to food is more than just freedom from hunger. Second, the General Comment says that when states fail to ensure satisfaction with the minimum level of rights due to alleged resource constraints, "States must demonstrate that all efforts are made to use all available resources in order to fulfill, as a matter of priority, its minimum obligations". This requirement is also found in the above quote from the ESCR committee.

The above seems to place minimum core obligations over other obligations with regard to resource priorities. Failure to meet the basic needs and minimum standards for human existence with dignity would be a violation of the obligations of the state. The state bears a substantial judicial burden to demonstrate that every effort has been made to meet minimum obligations as a priority. This can be said to imply that core obligations must be taken as priority in budget allocations.³⁰

2. Core Minimum Obligation Principle in Regional Financial Management in Indonesia

In the regional financial management system in Indonesia, the minimum core is translated into several forms of policies, namely the allocation of a certain amount (percentage) of budget to certain aspects and the application of Minimum Service Standards (SPM) in public services. The regional government must allocate 20%³¹ and 10%³² of its budget to the education and health sectors respectively. Meanwhile, SPM embodies the principles of equity and justice. It is important to accelerate the realization of community welfare or people's welfare in a strategic environment of globalization by using the principles of equity and justice; one way of achieving this is through the establishment and application of SPM.

SPM³³ is a provision regarding the type and quality of basic services, which are mandatory regional affairs to which every citizen is entitled to a minimum. In accordance with the mandate of Article 11 Paragraph (4) and Article 14 Paragraph (3) of Law No. 32 of 2004, SPM is applied to compulsory regional affairs, especially those related to basic services, both for provincial regions and regency/city regions. For other government affairs, the regions can develop and apply performance standards/indicators.

SPM is no longer interpreted contextually as norms, standards, procedures and criteria. The definition of SPM textually does not change, i.e., SPM is a provision regarding the type and quality of basic services that every citizen is entitled to at a minimum, but there are fundamental changes in the regulations regarding types and quality of basic services, criteria for determining SPM, and the SPM implementation mechanism. Regulations regarding types of basic services are determined firmly and clearly in government regulations and are not further delegated to other laws and regulations.

In its application, SPM must guarantee public access to basic services from the regional government in accordance with the measures set by the central government. Therefore, both in planning and budgeting, it is mandatory to pay attention to the principles of SPM, namely simple, concrete, easy to measure, open, affordable, accountable and having a deadline for achievement. In addition, it is necessary to understand that SPM is different from technical standards, because technical standards are a supporting factor for achieving SPM. The implementation of this government regulation is intended to:³⁴

- 1) Guarantee the community's right to receive a basic service from the regional government with a certain quality.
- 2) Become a tool to determine the amount of budget needed to provide a basic service, so that the SPM can be the basis for determining regional financing needs.
- 3) Become the basis for determining a more fair and transparent financial balance and/or other assistance.
- 4) Become the basis for determining the performance management-based budget. SPM can be used as the basis for local budget allocations with

more measurable objectives. SPM can be a tool to increase the accountability of the local government to the community. On the other hand, the public can measure the extent to which the regional government can fulfill its obligations in providing public services.

- 5) Clarify the main tasks of the regional government and encourage the establishment of effective checks and balances.
- 6) Encourage transparency and public participation in the process of implementing regional government.

The central government fosters and supervises the implementation of SPM by regional governments. The governor as the representative of the central government in the region fosters and supervises the implementation of SPM by the regency/city regional government in his working area. Meanwhile, the community can supervise the implementation of SPM by the regional government. Guidance and supervision of the application of SPM by the regional government is carried out in accordance with statutory regulations.

The determination of SPM is carried out based on the criteria of goods and/or services that are basic necessities and easily standardized; every citizen is entitled to enjoy these basic necessities. For the SPM application mechanism, it is no longer determined based on the SPM indicator and the deadline for achievement but prioritizes the application of the SPM based on the following:³⁵

- 1) Empirical data collection by still referring normatively according to technical standards.
- 2) Calculation of basic service fulfillment needs.
- 3) Preparation of basic service fulfillment plans.
- 4) Implementation of fulfillment of basic services, all of which are carried out by the regional government and not by the relevant ministries.

Another important paradigm shift regarding MSS is in the context of regional spending. It is clearly determined that regional expenditure is prioritized for funding the implementation of SPM. Due to these priorities and the implementation of SPM, the constitutional rights of the community are guaranteed, so the performance of the regional government is not the main priority, let alone the performance of the ministries, but the main priority is the fulfillment of the basic needs of citizens.

Furthermore, considering the meaning of regional government according to Law No. 23 of 2014, which covers not only regencies and cities but also provincial regions, SPM must of course also be interpreted as not only the responsibility of the district/city regional government but also the responsibility of the provincial government. Also, this is correct considering that in the province there is also a provincial regional revenue and expenditure budget to carry out compulsory government affairs related to basic services, including education, health, public works and spatial planning, public housing and residential areas, peace, public order, and community and social protection. Apart from that, the stipulation and

implementation of SPM for provincial regions is important considering that there are mandatory governmental affairs related to basic services that are no longer the authority of regencies/cities.

Implementation of the Minimum Core Obligation Principle in Regional Financial Management

Regarding the obligation to take concrete steps, one of the concrete steps is carrying out the minimum core obligations. It has been explained in the previous section that regardless of the debate, the government is obliged to ensure the fulfillment of the minimum essential level of human rights. The state/government can be said to have failed if it believes that it is not necessary to fulfill the minimum core obligations.

The budget is very important when analyzing the realization of economic, social and cultural rights. The national budget is the main political document that reflects the country's policy priorities as well as the level of public resources. Therefore, analyzing it is relevant to efforts directed towards realization of the minimum core obligations, including the most efficient use of available resources. Underfunded programs, significant gaps in the use of public funds for certain groups and regions, or a significant reduction in funding for certain sectors can be alternative solutions for a state to realize economic, social and cultural rights with minimum core obligations.

It should be point out that the regulations are not very supportive in affirming the provision of a budget for the fulfillment of human rights, especially budget progressiveness and the determination of minimum core obligations. It is increasingly difficult when budgeting is submitted to the regions and regional interest groups who have no interest in fulfilling human rights. This paper asserts that if any local government does not agree that the implementation of the minimum core obligations with the aim of fulfilling economic, social and cultural rights is an obligation, then a country can be said to be failing in fulfilling human rights as a whole. In terms of implementing the minimum core budget obligations, an adequate indicative ceiling is required. The indicative ceiling is proportional to regional capacity.

Budget allocation involving the minimum core obligations have actually been implemented in the Indonesian budgeting system, especially in the education and health budget, but not for other rights such as labor, food, housing, etc. For these rights, the law only states that it is obligatory to provide budgetary allocations for them. However, it does not specify a minimum core. The fact that the state does not stipulate this minimum obligation with certainty is a failure of local government policies in fulfilling their human rights obligations.

The table below shows the development of the housing budget over the last three years. In several selected regions, only 1 % was budgeted for the food and housing sectors. Certain regions even allocated 0 % to fulfilling these economic, social and cultural rights. However, the opposite scenario is observed regarding the budget

allocation for supporting regional government affairs. The allocations to these supporting functions in the regions are high. This paper uses the budget allocations to the regional secretariat (regional head / deputy regional head and regional secretariat) and the DPRD Secretariat as examples. Looking at the budget allocations to the two supporting functions above, on average, they get a very large proportion each year, especially the DPRD, even though the utilization of the DPRD budget is only used for a portion of the people. The average annual budget of the DPRD Secretariat is 2-6%.

Area	Table 1: Budget Development For Housing							
	2017		2018		2019		2020	
	Budget	%	Budget	%	Budget	%	Budget	%
Denpasar City	26.219.936 .140	1,1 0	35.080.754. 594	1	37.558.206.4 30	2		
Palu City			86.625.705. 245	6	48.620.436.0 35	3	72.905.084.5 70	3
Malang City			95.784.669. 100	4	98.711.815.7 40,03	4	40.118.824.3 43,42	1
Bangka Belitung Archipelago Province			30.005.729. 555	1. 4	21.864.669.0 94,00	1	29.692.321.3 56,00	1
South Kalimantan Province			46.682.355. 000	0	38.452.482.0 00,00	1	37.635.680.7 50,00	0

Using the Province of Bangka Belitung Islands as example, from 2018-2020, for food and housing affairs, only a very small portion of the budget was received, 0-1%. However, the DPRD Secretariat received a fairly large proportion, 4-6%, of the total budget. This situation occurs in almost all areas studied by this paper. This allocation is not unfair but at the same time violates human rights because it does not make the fulfillment of human rights a priority. For more details, see the table below:

Area	Table 2. Budget Development For Regional Secretariat ³⁶							
	2017		2018		2019		2020	
	Budget	%	Budget	%	Budget	%	Budget	%
Denpasar City	79.014.500 .662	4	81.643.773. 252	3,4 4	94.511.376. 938	4		
Palu City			39.772.704. 094	3	37.421.620. 024	3	38.903.969. 125	2
Malang City			20.581.779.1 00	1	22.924.011. 394	1	28.175.210. 200	1
Bangka Belitung Archipelago Province			127.598.209 .056	5	113.530.027 .702	4	111.464.326 .159	4
South Kalimantan Province			91.628.365. 740	2	110.328.800 .000	1,5 7	127.486.770 .508	1,6 8

The principle of minimum core obligations explained above is not new to regional financial management in Indonesia, and in practice, this principle has

been applied to certain rights in Indonesian regional budget regulations through budget allocations and minimum service standards. Therefore, only slight adjustments to the regulations and their implementation are required. However, the problem is that there is no firmness and sustainability of the above principle; it is carried out partially and inconsistently.

Area	Tabel 3. Development of Regional House Representative (DPRD)							
	2017		2018		2019		2020	
	Budget	%	Budget	%	Budget	%	Budget	%
Denpasar City	70.039.911 .900	3,4 1	98.862.055. 704	4,1 6	97.535.007. 588	4,1 0		
Palu City			47.004.449. 731	3	47.337.790. 293	3	48.539.658. 223	2
Malang City			95.921.831. 200	5	105.960.475 .466	5	98.741.639. 200	4
Bangka Belitung Archipelago Province			140.134.181 .900	6	146.047.946 .682	5	129.461.281 .937	4
South Kalimantan Province			148.632.610 .715	2	195.619.256 .620	3	198.397.400 .120	3

We emphasize incorporating the principle of minimum core obligations into regional financial management regulations. It is our opinion that there are five issues that greatly affect the inclusion of these principles in local financial management regulations. First, the ratification of the International Covenant on Economic, Social and Cultural Rights through Law No. 11 of 2005³⁷ makes Indonesia a duty bearer. Therefore, it has absolute obligation to fulfill economic, social and cultural rights, and it must guarantee compliance with these laws and regulations by means of national and regional legislations; the fulfillment of economic, social and cultural rights must manifest in every political situation, including centralized and autonomous political structure.

Second, the government, especially the regional government, should be prevented from ignoring it. Indonesia's challenge in the era of decentralization is the potential for major economic, social and cultural rights violations, either deliberately or because of neglect. Third, a huge impact of the above on the development of human rights law in Indonesia is the strengthening of the justiciability of economic, social and cultural rights. There is an assumption that economic, social and cultural rights are positive rights and, thus, cannot be prosecuted in court (non-justiciable). In contrast, civil and political rights are negative rights and, thus, can be prosecuted in court. Apart from distinguishing them into positive and negative aspects, an ideological distinction is also made. Economic, social and cultural rights are said to be ideological, while civil and political rights are non-ideological. This means that economic, social and cultural rights can only be applied to a certain economic system, while civil and political rights can be applied to any economic system or any government. This article

asserts that the government, especially the local government, is obliged and responsible for fulfilling economic, social and cultural rights and there are legal consequences if action is not taken to fulfill them.

Fourth, a huge impact of the above on the fulfillment of human rights in Indonesia is the obligation of 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. The fifth is accountability. The government can be held accountable for non-fulfillment 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. Also, fundamentally, the public can file criminal and civil charges against the local government due to negligence or deliberate lack of fulfillment of economic, social and cultural rights.

Conclusion

The regional budget is an inseparable part of the state's efforts to fulfill human rights obligation. International and national provisions have obliged and guided the state to fulfill these rights by implementing the principles of resource management. The minimum core obligation principle guides the country/region in fulfilling the above rights. The state's obligation to guarantee the needs and determine the essential level of people's needs, which is the essential level of human rights for citizens, is the first step in determining the next obligation, namely budget progressiveness.

Obliging states/regions to implement the minimum core obligation principle in budget management has a huge influence on budget politics. First, it prevents the state from neglecting the fulfillment of economic, social and cultural Rights. Second, it strengthens the justiciability of economy, social and cultural rights. Third, it ensures that the government, especially the regional government, allocates maximum resources in fulfilling human rights. Fourth, the government can be held accountable for non-fulfillment of human rights.***

References

- Ansar. Legal Analysis of the Implementation of the Principle of Progressive Realization Obligations in Regional Financial Management In Indonesia. *Journal of Law, Policy and Globalization* ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.100, 2020.
- FITRA dan The Ford Foundation. Laporan Analisis Anggaran Daerah 2016 Hasil Penelitian di 70 Kabupaten/Kota

- Human Rights Budget Work: what, Why, How: Briefing Why Paper 6: The Budget Process and Human Rights Procedural Principles, Published September 2019.
- Hien Bui, Human Rights Budgeting: Making Governments Accountable for Economic, Social and Cultural Rights, (2015) QMHRR 2(1), ISSN 2059-8092.
- Ida Elisabeth Koch, Human Rights as Indivisible Rights The Protection of Socio-Economic Demands under the European Convention on Human Rights (Martinus Nijhoff Publishers 2009).
- Katharine G. Youngt, The Minimum Core of Economic and Social Rights: A Concept in Search of Content, Article.
- Queen's University Belfast, School of Law, Budget Analysis Project, Budgeting for Economic and Social Rights: A Human Rights Framework.
- Office of the United Nations High Commissioner for Human Rights, 'Human Rights Budget Monitoring, Analysis and Advocacy (2010), OHCHR, 4, para 1.
- 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.

Laws and Regulations

The 1945 Constitution of the Republic of Indonesia

Universal Declaration of Human Rights

Law No. 39 of 1999

Law No. 17 of 2003

Law No. 20 of 2003

Law No. 24 of 2007

Law No. 36 of 2009

Law No. 18 of 2012

Law No. 23 of 2014

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

General Comment No. 13 (1999): The Right to Enjoy Education; General Comment 14 (1999): The Right to the Highest Affordable Standard of Health, International Covenant on Economic, Social and Cultural Rights; General Comment No. 12: Right to Adequate Food

General Comment No. 3: Characteristics of the Obligations of States to Members of the United Nations Committee on Economic, Social and Cultural Rights (1994).

General Comment No. 11 (1999): Action plan for basic education (Article 14 of the International Covenant on Economic, Social and Cultural Rights)

General Comment No. 12: The Right to Adequate Food, United Nations Committee on Economic, Social and Cultural Rights E / C. 12/1999/5

- General Comment 15: Right to Water, United Nations Committee for Economic, Social and Cultural Rights, E / C.12 / 2002/11 26 November 2002.
- General Comment 15: Right to Water, United Nations Committee for Economic, Social and Cultural Rights, E / C.12 / 2002/11 26 November 2002.
- The Right to Work: General Comment 18, Adopted 24 November 2005, Article 6 of the International Covenant on Economic, Social and Cultural Rights.
- General Comment No. 12: Right to adequate foodstuff, United Nations Committee for Economic, Social and Cultural Rights. E / C.12 / 1999/5 Committee on Economic, Social and Cultural Rights.
- Government Regulation No. 12 Year 2019
- Government Regulation No. 02 of 2018
- Regional Regulation No. 7 of 2017 concerning the 2018 Regional Budget of Malang City.
- Regional Regulation No. 6 of 2018 concerning the Malang City Regional Revenue and Expenditure Budget in 2019.
- Regional Regulation No. 10 of 2019 concerning the 2020 Malang City Regional Revenue and Expenditure Budget.
- Regional Regulation No. 15 of 2017 concerning the Regional Revenue and Expenditure Budget of the Province of Bangka Belitung Islands in 2018.
- Regional Regulation No. 10 of 2018 concerning the Regional Revenue and Expenditure Budget of the Province of Bangka Belitung Islands in 2019.
- Regional Regulation No. 13 of 2019 concerning the Regional Revenue and Expenditure Budget of the Province of Bangka Belitung Islands in 2020.
- Regional Regulation No. 15 of 2017 concerning the Regional Budget of South Kalimantan Province in 2018
- Regional Regulation No. 18 of 2018 concerning the 2019 South Kalimantan Province Regional Revenue and Expenditure Budget
- Regional Regulation No. 09 of 2016 concerning the Denpasar City Regional Revenue and Expenditure Budget in 2017
- Regional Regulation No. 06 of 2018 concerning the Denpasar City Regional Revenue and Expenditure Budget in 2019
- Denpasar Mayor Regulation No. 3 of 2018 concerning the Elaboration of Changes to the 2018 Revenue and Expenditure Budget
- Regional Regulation No. 15 of 2017 concerning the Regional Budget of Palu City in 2018
- Regional Regulation No. 6 of 2018 concerning the 2019 Regional Budget of Palu City
- Regional Regulation No. 13 of 2019 concerning the Palu City Regional Revenue and Expenditure Budget in 2020

Endnotes

¹Office of the United Nations High Commissioner for Human Rights, 'Human Rights Budget Monitoring, Analysis and Advocacy (2010), OHCHR, 4, para 1.

²Hien Bui, Human Rights Budgeting: Making Governments Accountable for Economic, Social and Cultural Rights, (2015) *QMHR* 2(1), ISSN 2059-8092. p. 118.

³Four things are important in the ratification above. First, that human rights are basic rights that are naturally inherent in humans, are universal and enduring, and therefore, must be protected, respected, defended, and should not be ignored, diminished, or seized by anyone. Second, that the Indonesian nation, as part of the international community, respects, values and upholds 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 not in conflict with Pancasila and the 1945 Constitution of the Republic of Indonesia, in accordance with the nature of the Republic of Indonesia as a legal state that upholds human dignity and guarantees the equal position of all citizens in law, and the will of the nation.

⁴There are seven laws that specifically require the provision of a budget for the fulfillment of human rights: First, Law No. 39/2009, 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; Article 18 states four government obligations in terms of food fulfillment, 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 central and local governments in allocating budgets: Article 45 concerns the obligation to finance environmental protection and management activities and environmentally friendly development programs. Fifth, Law No. 24 of 2007, which emphasizes in Article 6 the government's obligations in disaster management, one of which is the provision of disaster management allocation in the form of ready-to-use funds. Sixth, Law No. 36 of 2009, which requires a budget allocation of 5% for the fulfillment of health affairs for the central government and 10% for local governments. Seventh, Law No. 23 of 2002. In Article 53, there are two government responsibilities in child protection, namely 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.

⁵ <http://bisnis.liputan6.com/read/3182154/menkeu-sindir-daerah-yang-banyak-pakai-apbd-buat-belanja-pegawai>. Accessed on Monday, December 9, 2017

⁶ <https://news.detik.com/berita/d-2119849/ya-ampun-70-lebih-apbd-di-11-kabupatenkota-ini-habis-untuk-gaji-pns?n991102605=&n991102605> Accessed on Monday, December 9, 2017

⁷ <https://finance.detik.com/berita-ekonomi-bisnis/d-3427718/ini-daftar-daerah-dengan-apbd-yang-banyak-habis-untuk-gaji-pns>. Accessed on Monday, December 9, 2017

⁸FITRA dan *The Ford Foundation*. Regional Budget Analysis Report in 2016 and Research Results in 70 Districts / Cities. p. 22

⁹FITRA. *Op.citp.* 16

¹⁰Based on the Global Education Monitoring (GEM) Report, UNESCO 2016, there are only two countries out of 90 low-income countries where school-age children can access education up to high school level. In the rest, high school education can only be accessed by school age children who on average come from the upper economic class. Indonesia is included in a group with a fairly high education gap. School-age children who come from lower-average economies can only access education up to primary school or do not even graduate from junior high school.

www.edunews.id/edunews/unesco-kesenjangan-pendidikan-di-indonesia-masih-tinggi. Accessed on March 17, 2017

- ¹¹GEM Report senior policy analyst revealed that the lack of funding for education is chronically hampering progress in education. Education assistance must increase six times to fill the financing gap in order to achieve quality primary and secondary education by 2030. Education funding in 2014 was actually seven percent below its peak level in 2010. www.edunews.id/edunews/unesco-kesenjangan-pendidikan-di-indonesia-masih-tinggi. Accessed on March 17, 2017.
- ¹²Indonesia ranks 101 out of 149 countries in the 2017 global health index, behind Malaysia, Thailand, Laos and Vietnam. Indonesia also seems to be in a bad position. In the latest global health index, Indonesia is in 101st position out of 149 countries according to the 2017 Legatum Prosperity Index report.
- ¹³According to data from the Indonesian Ministry of Health, there are currently 876,984 health workers in Indonesia, consisting of doctors, nurses, midwives and other health workers. From the data, it is found that the ratio of doctors to the population of Indonesia is 1:2500. This shows that services in Indonesia, especially in the field of doctor services, are poor because the ideal ratio of doctors to people should be 1:1000 or less. This is coupled with the problem of uneven spread of health workers in Indonesia, who are only concentrated in densely populated areas and do not reach other areas, especially eastern Indonesia, where the number of health workers is very far from other areas in Indonesia. <https://www.kompasiana.com/andre458/58502f050323bd8d24ddd2a/rendahnya-mutu-pelayanan-kesehatan-penduduk-di-indonesia>. Accessed March 17, 2019.
- ¹⁴According to data from the Center for Statistics, Indonesia has a total of 55,543 health facilities, consisting of hospitals, Puskesmas, Posyandu, and other health facilities. The distribution of health facilities in Indonesia is very uneven. Most of the health facilities are only concentrated in certain areas, such as the islands of Java and Sumatra, while the eastern part of Indonesia only has few health facilities, for example Maluku Province only has 43 hospital Units, while other provinces have more than 100 hospital units. Serious attention is required from the government to overcome this gap.
- ¹⁵The Ministry of Public Works and Public Housing (PUPR) prepared a housing development budget of IDR 17.57 trillion in 2019. The ideal minimum for housing subsidies should be 1% of the total national budget. The 2019 State Budget is 2439 Trillion, so the subsidy for housing is only 0.1%.
- ¹⁶<https://www.cnnindonesia.com/ekonomi/20181119203209-532-347790/pemda-diminta-sisihkan-anggaran-untuk-pelatihan-tenaga-kerja>
- ¹⁷Global Hunger Index - Global Hunger Index published by the International Food Policy Research Institute (IFPRI). Indonesia's position decreased from medium hunger level at 19.1 to 22.1 in 2016 and 22 in 2017.
- ¹⁸Indonesia is one of the countries with acute and chronic malnutrition. The percentage of toddlers suffering from stunting in 2017 (29.6%) increased compared to the previous two years; those suffering from wasting were as high as 9.5 %, and 17.8 % were underweight (malnutrition).
- ¹⁹The Global Hunger Index (GHI) is a tool for measuring and tracking hunger comprehensively at the global, regional and national levels. GHI is designed to increase awareness and understanding regarding the fight against hunger, and it calls for global attention to eliminate hunger. GHI is measured using 4 indicators, namely under-five mortality rate, the level of malnutrition in the population, stunting in toddlers, and losing weight in toddlers. GHI uses a scale of 0-100, where 0 is the best score (no hunger) and 100 is the worst. Indonesia's GHI in 2018 of 21.9 is included in the category of serious hunger problems. At the ASEAN level, Indonesia's position is worse than those of Philippines, Myanmar, Vietnam, Malaysia and Thailand. www.globalhungerindex.org/indonesia.html, accessed on 17 March 2019
- ²⁰ <https://www.komnasham.go.id/index.php/news/2018/4/19/519/tujuh-rekomendasi-pelapor-khusus-hak-atas-pangan.html>, accessed on 30 July 2018

- ²¹Stratified sampling is a sampling technique that pays attention to the levels (strata) of population elements. Population elements are divided into several levels (stratification) based on certain characteristics. In stratified random sampling, population elements are divided into groups based on their levels. The aim is to ensure that sampling is evenly distributed across all levels and that the samples represent the characteristics of all heterogeneous population elements.
- ²²Human Rights Budget Work: What, Why, How: Briefing Paper 6: The Budget Process and Human Rights Procedural Principles, Published September 2019, p 3.
- ²³Katharine G. Youngt, The Minimum Core of Economic and Social Rights: A Concept in Search of Content, Article. p 114.
- ²⁴ Ansar. Indonesia Legal Analysis of the Implementation of the Principle of Progressive Realization Obligations in Regional Financial Management In Indonesia. *Journal of Law, Policy and Globalization* ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.100, 2020.
- ²⁵General Comment 13 (1999): Right to the Enjoyment of Education (Article 13 of the International Covenant on Economic, Social and Cultural Rights). General comment 13 on the right to education: "In General Comment 3, the Committee confirmed that the State has "a minimum core obligation. to ensure the fulfillment of, at a minimum, the minimum essential levels "of each of the rights contained in the Agreement, including" basic forms of education. " In the context of Article 13, these core obligations include the obligation: to ensure the right to access various public education institutions and programs on a non-discriminatory basis; to ensure that education is in line with the goals set out in Article 13 (1); to provide basic education for all according to Article 13 (2) a; to develop and implement a national education strategy for education that includes provisions for secondary, tertiary and fundamental education; and to ensure free choice in education without interference from the State or third parties, in accordance with "minimum educational standards" (Article 13 [3] and [4]), Paragraph 57.
- ²⁶ General Comment 14 (1999): The Right to the Highest Affordable Standard of Health (International Covenant on Economic, Social and Cultural Rights). In General Comment No. 3 Paragraph 43, the Committee affirms that the State has a primary obligation to ensure the implementation of, at least the minimum level of each of the rights contained in the Covenant including basic health care, which is essential as stated in contemporary instruments, for example: Alma-Ata Declaration Program of Action of the International Conference on Population and Development provides guidance regarding the core obligations of Article 12. Based on this, in the view of the Committee, the core obligations include the following:
- a) Ensure access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable and marginalized groups.
 - b) Ensure access to essential food which is nutritionally adequate and safe ensuring freedom from hunger for everyone.
 - c) Ensure access to basic housing and sanitation as well as adequate and healthy water supplies.
 - d) Provide drugs that from time to time have been specified in the WHO Program of Action on Essential Medicines.
 - e) Ensure that health facilities, goods and services are distributed in a balanced manner.
- ²⁷ Ibid. Para 44
- ²⁸General Comment 14 (1999): Right to the Highest Affordable Standard of Health (Article 13 of the International Covenant on Economic, Social and Cultural Rights). General Comment No. 3. Paragraph 45 of the Committee: For the avoidance of any doubt, the Committee wishes to emphasize in particular that the competent State officials and other parties concerned carry out assistance, provide international cooperation and assistance, especially technical and economic, so that the developing State can fulfill its core and other obligations, as referred to in No. 43 and No. 45.
- ²⁹General Comment No. 12: Right to adequate food, United Nations Committee on Economic, Social and Cultural Rights, E / C.12 / 1999/5 Paragraph 17: A violation of the Covenant occurs when a state fails to ensure the fulfillment of, at a minimum, the minimum staple level needed to be free

from hunger. In order to determine which action or exclusion constitutes a violation of the right to food, it is important to distinguish between a country's inability and unwillingness to comply with the provisions. If a signatory State argues that resource constraints make it impossible for it to provide access to food for those who cannot guarantee access themselves, it must prove that all efforts have been made to use all available resources to fulfill, as a priority, those minimum obligations. This follows the provisions of Article 2.1 of the Covenant, which obliges States parties to take the necessary steps with all their resources, as previously explained by the Committee in General Comment 3, Paragraph 10. Therefore, if a State claims that it is unable to carry out its obligations because of something beyond its control, the State has the burden of proving that this is the case and that it has failed in trying to get international support to ensure the availability and accessibility of the food it needs.

³⁰Queen's University Belfast, School of Law, Budget Analysis Project, Budgeting for Economic and Social Rights: A Human Rights Framework, p 51

³¹Law No. 20 of 2003

³²Law No. 36 of 2009

³³ Article 1 Number 1 of Government Regulation No. 02 of 2018 is a provision regarding the type and quality of basic services that are mandatory regional affairs to which every citizen is entitled to a minimum.

³⁴See Explanation of Government Regulation No. 02 of 2018

³⁵ Ibid

³⁶Regional Regulation No. 7 of 2017 concerning the City of Malang Regional Revenue and Expenditure Budget in 2018. Regional Regulation No. 6 of 2018 concerning Malang City Regional Revenue and Expenditure Budget in 2019. Regional regulation No. 10 of 2019 concerning Malang City Regional Revenue and Expenditure Budget in 2020. Regional Regulation No. 15 of 2017 concerning the Regional Revenue and Expenditure Budget of the Province of Bangka Belitung Islands for 2018. Regional Regulation No. 10 of 2018 concerning the Regional Revenue and Expenditure Budget of the Province of Bangka Belitung Islands for 2019. Regional Regulation No. 13 of 2019 concerning the Revenue and Expenditure Budget of the Province of Bangka Belitung Islands in 2020. Regional Regulation No. 15 of 2017 concerning the Regional Budget of South Kalimantan Province in 2018. Regional Regulation No. 18 of 2018 concerning the Regional Budget of South Kalimantan Province in 2019. Regional Regulation No. 18 of 2018 concerning the Regional Revenue and Expenditure Budget of the Province of South Kalimantan in 2019. Regional Regulation No. 09 of 2016 concerning the Regional Budget for the City of Denpasar in 2017. Regional Regulation No. 06 of 2018 concerning the Regional Budget for the City of Denpasar for 2019. Denpasar Mayor Regulation No. 3 of 2018 concerning the Elaboration of Changes to the 2018 Revenue and Expenditure Budget. Regional Regulation No. 15 of 2017 concerning the City of Palu Regional Revenue and Expenditure Budget in 2018. Regional Regulation No. 6 of 2018 concerning the Regional Budget of Palu City in 2019. Regional Regulation No. 13 of 2019 concerning the 2020 Regional Budget of Palu.

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