

PROSIDING

SEMINAR INTERNASIONAL
FAKULTAS HUKUM UNIVERSITAS LAMPUNG

International Conference on Fundamental Rights (I-COFFEES)

Bandar Lampung, 7 September 2018



PENERBIT:

FAKULTAS HUKUM UNIVERSITAS LAMPUNG

supported by:



PROSIDING
SEMINAR INTERNASIONAL
FAKULTAS HUKUM - UNIVERSITAS LAMPUNG

“International Conference on Fundamental Rights (I-COFFEES)”

Bandar Lampung, 7 September 2018



Penerbit:
Fakultas Hukum - Universitas Lampung

PROSIDING
SEMINAR INTERNASIONAL
FAKULTAS HUKUM - UNIVERSITAS LAMPUNG

“International Conference on Fundamental Rights (I-COFFEES)”
2018

Committee:

Chairman:

Dr. Rudi Natamiharja, S.H., DEA.

Secretaries:

Rudy, S.H., LL.M., LL.D.

Ria Wierma Putri, S.H., M.Hum.

Rehulina, S.H., M.H.

Treasuries:

Nenny Dwi Ariani, S.H., M.H.

Program Commiittee Chairs:

Yunita Maya Putri, S.H., M.H.

Rohaini, S.H., M.H., Ph.D.

Dewi Septiana, S.H., M.H.

Yulia Kusuma Wardani, S.H., LL.M.

Fathoni, S.H., M.H.

Syamsir Syamsu, S.H., M.H.

Public Relation:

Dr. Yusnani Hasyim Z, S.H., M.Hum.

Dr. Nikmah Rosidah, S.H., M.H.

Desy Churul Aini, S.H., M.H.

Siti Khoiriah, S.H., M.H.

Publicity Committees:

Defri Liber Sonata, S.H., M.H.

M. Iwan Satriawan, S.H., M.H.

Dr. Erna Dewi, S.H., M.H.

Marlia Eka Putri, S.H., M.H.

Steering Committee:

Prof. Dr. Muhammad Akib, S.H., M.H.

Prof. Dr. Sanusi Husin, S.H., M.H.

Prof. Dr. Yuswanto, S.H., M.Hum.
Prof. Dr. Heryandi, S.H., M.S.
Prof. Dr. Sunarto, S.H., M.H.

Article Reviewer:

Prof. Dr. Muhammad Akib, S.H., M.H.
Dr. Tisnanta, S.H., M.H.
Dr. Muhammad Fakhri, S.H., M.H.
Dr. Nunung Rodliyah, S.H., M.H.
Dr. Wahyu Sasongko, S.H., M.H.
Dr. F.X. Sumarja, S.H., M.H.
Dr. Hamzah, S.H., M.H.
Ria Wierma Putri, S.H., M.Hum.
Bayu Sujadmiko, S.H., M.H., Ph.D.

Editor:

Prof. Dr. Heryandi, S.H., M.S.
Prof. Muhammad Akib, S.H., M.H.
Dr. Rudi Natamiharja, S.H., DEA.
Rudy, S.H., LL.M., LL.D.
M. Iwan Satriawan, S.H., M.H.

Accommodations Committee:

Yulia Neta, S.H., M.H.
Martha Riananda, S.H., M.H.
Siti Azizah, S.H., M.H.
Muhammad Farid, S.H., M.H.

Publisher:

Fakultas Hukum Universitas Lampung

Address of Publisher:

Jl. Prof. Dr. Soemantri Brojonegoro, No. 1
Bandar Lampung, 35145
Telp. 0721 704623
Fax. 0721 709911
Email: i.coffes@unila.ac.id

1st edition, Januari 2019

Hak cipta dilindungi undang-undang.

Dilarang memperbanyak karya tulis ini dalam bentuk apapun

Tanpa ijin tertulis dari penerbit

ISBN : 978-602-61528-1-7

Penal Mediation as an Alternative Model of Restorative Justice in The Criminal Justice System of Children.....	150
<i>Henny Saida Flora</i>	
Death Sentence in Hindu Perspective	162
<i>I Ketut Seregig</i>	
The Implementation of Human Rights Instruments in Criminal Victims Protection	182
<i>Ino Susanti, Waty Suwarty H. and Petrus Irawan Panjaitan</i>	
Restructuring the Corruption Law Enforcement Model that Optimizes Corporation as Corruption Subject of Criminal Act	196
<i>Sunarto D.M. and Heni Siswanto</i>	

Environmental & Natural Resource

Considering Affected People Rights as a Human Rights in the Land Acquisition for Public Interests.....	210
<i>Ade Arif Firmansyah, HS. Tisnanta, and Malicia Evendia</i>	
Land Law Position in Indonesia: the Persfpective of Government Regulation No. 47/2015	220
<i>Adhimaz Kondang Pribadi</i>	
In Making of a Responsive and Sustainable Environmental Budgeting in Province of Lampung	239
<i>Marlia Eka Putri A.T and Fathoni</i>	

Good Governance & Public Service

Authority of Civil State Apparatus (ASN) Doctor Post Revoking The Registration Certificate	246
<i>Apriyanto</i>	
The Effectiveness of the Regulation of Minister of Health Number 33 in 2015 Concerning the Planning of Health Human Resources Need	256
<i>Defi Fitri Agustiani</i>	
The Provincial Government Authority in Conducting Programmed Immunization.....	268
<i>Miravianti</i>	
The Regional Government Authority in Provisioning Regional Regulation of Non-Smoking Area	283
<i>Rika Tri Okviyanti</i>	
Analysis of Public Service Survey in West Lampung	292
<i>Robi Cahyadi K, Rudy, Rudi Wijaya and Chaidir Ali</i>	

In Making of a Responsive And Sustainable Environmental Budgeting in Province of Lampung

Marlia Eka Putri A.T. and Fathoni

Abstract

Basically, the management of regional finance is a subsystem of state finances management. The 1945 Constitution of the Unitary State of the Republic of Indonesia regulates it in Article 23C, for the management of state finances is must be held professionally, openly and responsibly. These three principles lead to the realization of good governance, both in government (central) and local government. This principle then evolves with the ongoing regional autonomy development, when the region has been given the authority to manage its regional finances, but still have to follow every rules in State Finance Act No.17 of 2003. In relation to environmental management, it can be traced from Article 45 of The Environmental Protection and Management Act No.32 of 2009 that give mandates to make an environment-based budgeting in order to create an environmental protection and management programs. The Regional Budget (*APBD*) of Lampung Province in 2017 has increased from Rp 6,8 Trillion to Rp 7,75 Trillion in the 2018. Budget allocation for the environment needs to be studied, both amount and budget, following the environmental-based budget indicators. This research is about to discuss about local budget which compiled in Regional Budget (*APBD*) of Lampung Province, whether it responsive and have paradigm of sustainable environment. The discussion in this study will use legal research methodology that is patterned normologis, so that law is understood as a set of norms of written regulation. Thus, it will be seen if the Provincial Government of Lampung Regional Regulation which has been running in the current year has meet the environmental responsive budget indicators. The reasearch is being approached with legislation methode and other relevant documents that apply in the area of regional finance as legal material for later being analyzed by the *Environmental Impact Assessment* (EIA) method and responsive law theory. The results of the research will be attempted to synchronize Regional Budget Establishment in Lampung Province with Responsive Budget Indicators and Sustainable Environmental Indicators.

Keywords: budget, sustainable, environment, government, Lampung

A. Introduction

The provisions of Law Number 32 of 2009 of Environmental Protection and Management (UUPPLH-2009) provide obligations to the government and regional governments to allocate an adequate budget for the environment as stipulated in Article 45 of the UUPPLH-2009. In fact, the Government is obliged to allocate an adequate budget for special environmental allocation funds to be given to regions that have good environmental protection and management performance.

The Budget for Environmental Functions in the regions is still below 1% of the total *APBD*. The budget allocation for environmental functions in the regions is still low, which results in low environmental management capacity so that it can hamper the achievement of national priority targets in the environmental field. Many models are used by the government to encourage local governments to meet environmental budget allocations.

One of the environmental-based budget orientations is the plan to enact environmental taxes. The results of the research by Dahliana Hasan, et al., For example, revealed that environmental issues are one of the important issues discussed internationally. Various forums both at national and international levels have been formed to discuss environmental issues. The importance of this environmental issue is inseparable from the desire of various parties to save the earth from destruction and pollution that has occurred. Several activities related to environmental preservation such as the launching of 1,000,000 tree planting programs have been carried out in Indonesia. The activity is intended to increase public awareness of the importance of environmental management.¹ The application of environmental tax does not contradict and the authority can be given by forming this provision in the UUPPLH. Economic instruments in the Company Law need to be held as the Government's obligation to take policies in the field of taxation as incentives and disincentives for environmental management.²

The implementation of the environment-based budget is certainly not merely interpreted as a fiscal policy in the form of the authority of the state (central government and regional government) to attract environmental taxes from taxpayers. Environmental-based budgeting can also be seen from indicators that show that the budget (*APBN* and *APBD*) has

¹ Dahliana Hasan, dkk. "Tinjauan Terhadap Rencana Penerapan Pajak Lingkungan Sebagai Instrumen Perlindungan Lingkungan Hidup Di Indonesia", *Jurnal Mimbar Hukum Volume 20, Nomor 3, Oktober 2008*, pp. 411 – 588.

² Koesnadi Hardjasoemantri, 2005, *Hukum Tata Lingkungan*, Gadjah Mada University Press, Yogyakarta, p.378.

indeed been spent on environmental interests. In this study, it will be more focused on the preparation of the *APBD* in Lampung Province as the field of study.

The drafting of the *APBD* is indeed bound by the provisions of the law that change every year, most recently by the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 33 of 2017 of Guidelines for Preparation of Regional Revenue and Expenditure Budget for 2018. This is done so that each *APBD* drafting follows the synchronized guidelines with the Government Work Plan (RKP) Year 2018 which is the elaboration of the fourth year of the implementation of the Presidential Regulation Number 2 of 2015 of The National Medium Term Development Plan (RPJMN) 2015-2019 which contains targets, policy directions and development strategies.

The *APBD* drafting guidelines are compiled and implemented using Thematic, Holistic, Integrative and Spatial approaches, as well as *money follows budget policies the program* by ensuring that only truly useful programs are allocated and not just because of the function of the functions of state institutions and regional governments. Even though the regional government runs the government based on the principle of regional autonomy, the achievement of national development priorities requires the coordination of all stakeholders, through the integration of national priorities / priority programs / priority activities carried out on a regional basis, including in Lampung Province.

The provincial and district / city governments must support the achievement of these national development priorities in accordance with the potential and conditions of each region, given the success of achieving national development priorities is highly dependent on policy synchronization between the provincial government and the government and between district / city governments and the government and the provincial government as outlined in the Regional Government Work Plan (RKPD). The synchronization of the policies of the Regional Government and the government is further outlined in the draft *APBD* General Policy (KUA) and the draft of the Temporary Budget Priority and Ceiling (PPAS) which are mutually agreed between the Regional Government and the Regional People's Legislative Assembly (DPRD) as the basis for the drafting of the Regional Regulation on *APBD* 2018 Fiscal Year.

Basically regional financial management is a subsystem of the implementation of state finances. The Republic of Indonesia Constitution regulates it in Article 23C, namely that the management of state finances is carried out professionally, openly and responsibly. These

three principles lead to the realization of *good governance*, both in the government (central) and local government. This principle then develops as regional autonomy continues, when regions are given the authority to regulate their regional finances, even though they are still subject to Law Number 17 of 2003 concerning State Finance. Regarding environmental management, it can be traced from Article 45 of Law Number 32 of 2009 concerning Environmental Protection and Management which mandates an environment-based budget, namely to finance environmental protection and management activities and development programs that are environmentally sound. The 2017 Lampung Province Regional Budget (*APBD*) of Rp. 6.8 Trillion increased to Rp. 7.75 Trillion in 2018. Budget allocations for the environment need to be assessed, both in terms of magnitude and budget, following environmental budget indicators.

Based on the explanation above, this study would like to discuss the regional budget prepared in the Lampung Province Regional Budget (*APBD*), whether responsive and sustainable environmental paradigm.

1.2. Research Issues

Based on the description above, the proposed research questions are:

- a. Does the 2018 Regional Budgetting of Lampung Province meet these indicators in its making?
- b. How are the ideal of environmental-based budgeting indicators for being implemented in Lampung Province?

1.3. Research Objectives

The purpose of this research is to compile answers to research questions proposed using legal research methods.

The theoretical benefit of this research is to apply the theory of state / regional finance that is associated with sustainable environmental theory. The practical aim of this research is to analyze the 2018 of Regional Budgetting of Lampung Province, whether it is oriented and paradigmatic about environmental conservation.

1.4. Framework

The framework of this research thinking departs from the paradoxical nature of development which often leads to environmental damage. Development sometimes becomes an antinomy of environmental sustainability. The antithesis of this is sustainable

development which presupposes that development remains paradigmatic in environmental sustainability.

The legal thought used in this study is the legal thought of state / regional finance that will be linked to the environmental law though. Of course this legal thought is compared not to be contested, but instead to look for a center path.

The compiled indicators will be used to analyze the 2018 Regional Budgetting of Lampung Province and measure compliance with the guidelines that have been given.

B. Methods

2.1. Inquiry Approach

This research question will be explained by a normative juridical approach (dogmatic legal research) conducted by reviewing the laws and regulations relating to state finance and the environment. The approach used is the EIA (Environmental Impact Assessment) approach . The category of approach through regulation, opportunity, ability, communication, interests, process and ideology is used as a analysis means to examine the administration of governance about licensing and ease of investment in the region.

Green Budget Approach will also be used to formulate the budget indicators based on the environment in Lampung Provincial Budget 2018. The budget structure contained in the budget, whether it is in sync with the indicator.

2.2. Data collection

Data collection methods that will be used in this study include:

- a. Collecting of legal documents related to research;
- b. Literature studies related to research;
- c. Correspondence method with competent elements related to research.

2.3. Data analysis method

Data processing is done by reading and classifying data systematization. Legislation is analyzed by content of analysis . Processing of legal materials will be carried out through stages of positive legal description, systematization of positive law, positive legal analysis and positive legal interpretation. Then proceed with a systematic reflection on the legal reality in its application. Analysis of legal materials and data was carried out in analytical descriptive, namely reviewing legal concepts, legal principles, legal norms and

legal systems relating to budget preparation and environmental sustainability in the regions. Judging from the dogmatic legal aspect, analysis of legal materials was carried out by means of exposure and analysis. concerning the applicable legal structure, legal systematization, legal interpretation and assessment. Methods of legal interpretation to form the construction of meaningful responsive regional budgeting and sustainable environmental paradigm in Lampung Province. Thus, a responsive legal approach is also used in analyzing the data obtained in the study

References

- Akib, Muhammad, *Hukum Lingkungan: Perspektif Global dan Nasional*, RajaGrafindo Press, Jakarta, 2014
- Bratakusumah, Deddy Supriady, *Otonomi Penyelenggaraan Pemerintahan Daerah*, Gramedia Pustaka Utama, Jakarta, 2001
- E. Fernando M. Manullang, *Menggapai Hukum Berkeadilan*, Jakarta: Penerbit Buku Kompas, 2007
- Ermaya Suradinata, *Otonomi Daerah dan Paradigma Kepemimpinan Pemerintahan dalam Politik dan Bisnis*, Jakarta: Suara Bebas, 2006
- Fauzi, Noer, *Otonomi Daerah Sumberdaya Alam-Lingkungan*, Lapera Pustaka Utama, Yogyakarta, 2001
- Fuadi, Ahmad Helmy, *Memahami Anggaran Publik*, Institute of Development and Economic Analysis, Jakarta, 2002
- Hardjasoemantri, Koesnadi, *Hukum Tata Lingkungan*, Gadjah Mada University Press, Yogyakarta, 2005
- Hart, H.L.A. *Konsep Hukum (The Concept Of Law)*, Bandung: Nusamedia, 2009.
- Hasan, Dahliana dkk. “Tinjauan Terhadap Rencana Penerapan Pajak Lingkungan Sebagai Instrumen Perlindungan Lingkungan Hidup Di Indonesia”, *Jurnal Mimbar Hukum* Volume 20, Nomor 3, Oktober 2008
- Maryatmo, R., *Dampak Moneter: Kebijakan Defisit Anggaran Pemerintah dan Peranan Asa Nalar Dalam Simulasi Model Makro-Ekonomi Indonesia*, Universitas Atma Jaya Yogyakarta, 2005
- Meuwissen, D.H.M Ilmu Hukum (Penerjemah B. Arief Sidharta), *Pro Justitia*, Jurnal Unika Parahyangan, Tahun XII No.4, Oktober 1994
- Nonet, Philippe dan Philip Selznick, *Hukum Responsif*, cet. Kedua, Bandung: Nusa Media, 2008
- Sarundajang, *Arus Balik Kekuasaan Pusat ke Daerah*, Jakarta: Sinar Harapan, 2000
- Siahaan, Nommy Horas Thombang, *Hukum Lingkungan dan Ekologi Pembangunan*, Erlangga, Jakarta, 2004