



Legal Economic Analysis Related to the State Concept of the Welfare Law

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Abstract. The purpose of this essay is to identify how economic analysis of law and its link to the notion of welfare state legislation as embraced by the Indonesian State. This is a normative juridical research that is based on primary, secondary, and tertiary sources that are studied qualitatively by presenting the outcomes of the data employed descriptively. The study's findings include an economic analysis of the legislation that emphasizes efficiency in allocating and utilizing resources in order to be efficient and successful. Assume that this theory is linked to the notion of a welfare state based on utilitarianism's teachings. In such instance, efficiency may be defined as an attempt to produce welfare or prosperity for as many persons as feasible at the expense of minor individual interests. Posner's viewpoint portrayed an economic view of the law that gave rise to a behavioural law or economy. The two habits were subsequently synthesized till they fused into the law and economic behaviors. Transaction costs are then incorporated into legal contracts. Transaction costs began as economic concepts and evolved into legal norms. This behavioral theory is used in a plural society when transaction costs cannot be avoided. As a result, the rule of law is essential for maintaining legal clarity and a feeling of social fairness in society. These laws might take the shape of contracts or legislation governing ownership and property rights. Of course, all of this is aimed at improving social welfare.

Keywords: Law · Legal economic · Welfare law

1 Introduction

According to the Preamble to the 1945 Constitution, Indonesia is a welfare state that strives for social welfare, order, justice, and legal certainty for all Indonesians [1]. According to the Preamble of the 1945 Constitution, the Indonesian Nation seeks to defend the whole Indonesian Nation and all Indonesian blood, promote public welfare, educate the Nation life, and contribute in achieving a global order based on independence, everlasting peace, and social justice. The definition of a welfare state is “a type of responsive society with a democratic welfare system backed by the government that is built on a new basis and provides guarantees for collective social care to its citizens” [2]. Indonesia is also a state of law (*rechtsstaat*, government of law), not a power state

(machtsstaat), where the body can exert arbitrary authority. Law is important in Indonesia. The State shall act in accordance with and in accordance with the appropriate legislation, as stated in Article 1 paragraph (3) of the 1945 Constitution [3]. Many political, economic, social, and cultural elements contribute to the reliability of law enforcement in society. One aspect that has a considerable impact on the law enforcement process in society is the economics. The legal and economic parts of the law enforcement process can have an impact, both favorable and bad.

In understanding legal aspects in economics, two different disciplines are faced simultaneously, namely law and economics. Law science is normative, ideally a crystallization of value systems, culture, ideology, habitual reflection, and decisions of public authorities. While economics can be said to be a science that studies how with means of satisfying little needs, humans can fulfil unlimited needs. Social scientists have conducted research on the relationship of law with economics since the 18th century, and the research results generally conclude there is a correlation. Or such a relationship between the two. Law and economy are closely related [4], especially in the corporate economy and macroeconomics, whose scope includes business interactions among business actors. This interaction requires legal rules that all parties must follow. In the context of what is mentioned above, it is the domain of law graduates who compile the rule of law. Meanwhile, it describes the mechanism of economic forces that work naturally to become the domains of economists.

The principles of the welfare state and the principles of the rule of law have transformed Indonesia into a welfare law state, which requires that every aspect of the economy as a basis for welfare and every aspect of the law as a basis for legality can be applied harmoniously and harmoniously throughout society [5], so that the State or government is not only a guardian of security or public order, but also has the responsibility to realize social justice. The existence of laws that are formed and interpreted to achieve community welfare, so that the law is used as a foundation and foundation for the right to carry out development in order to improve the welfare of the community itself, demonstrates the role and position of economic aspects in law enforcement in the concept of a welfare law state. The economy's function is to act as a tool for enforcing the law in society, allowing law enforcement to be carried out effectively and efficiently in accordance with the law's aims of justice, benefit, and legal certainty. The economic position is critical in law because it can provide an alternative to law enforcement, considering that in a conservative view, the law tends to be applied physically [7].

The problem in practice is that law and economy do not always work in harmony and harmony because, in certain situations, economic factors negatively influence the application of law and vice versa. Therefore, the existence of the law can hurt economic development in society. The condition that is not harmonious between law and economy has impacted law enforcement and economic stability in Indonesia. Therefore, law enforcement must pay attention to various aspects, not only from the legal aspect alone but also from the economic aspect and other related aspects.

Legal interests and economic interests that are not always harmonious must receive attention in solving problems that occur in society. This condition can also be seen in Richard Posner's opinion that law enforcement cannot be done only by using a normative approach but needs to be done with various approaches, primarily an economic approach.

This is consistent with Richard Posner's expression that "the law and economics that has emerged since 1960 - is the application of economics to the legal system across the board: to common law fields". (The application of economics to the legal system in all disciplines in general that has evolved since 1960 is the application of economics to the legal system across the board: to standard law fields.") [8].

The role of law can also be seen in terms of value (value), utility and efficiency. Economic principles can be used as an approach to studying legal problems. As stated by Posner that "economics is a powerful tool for analyzing a vast range of legal questions, but that most lawyers and law students-even very bright ones-have difficulty. They were connecting economic principles to concrete legal problems". (Economics is a useful instrument for studying a wide range [9] of legal issues, but many attorneys and law students, even the brightest, struggle to connect economic concepts to particular legal concerns.

Posner stated, "The new law and economics began with Guido Calabresi's first article on torts and Ronald Coase's article on social cost. These were the first modern attempts to apply economic analysis systematically to areas of law that do not regulate avowedly economic relationships [10]". (A new legal and economic examination, beginning with the first essay by Guido Calabresi and ending with Ronald Coase's work on societal costs.) This was the first contemporary attempt to apply rigorous economic analysis to unregulated areas of law).

Many experts agree that the Law and Economics method, which began with Bentham's (1789, 1827, 1830) teachings, offers a medium path between certainty and justice by putting forward the key teachings of benefit, which became known as utilitarian. In the framework of social welfare, Bentham's writings methodically investigate how humans act in the face of the law and collectively evaluate its consequences and cause-and-effect linkages. Law, in this case, is categorized as an incentive to stimulate/motivate changes in human behaviour towards law, not just as commands or prohibitions, and it should be taught by legal science in general [11].

Based on the description above, the economic and legal aspects have an inseparable interactive relationship. Economic and legal aspects can interact positively or negatively according to each problem object. This then raises questions of a fundamental nature, such as how the relationship between law and economics is in solving a problem concretely, including questions related to law enforcement efforts in the concept of a welfare law state. Questions like this require a deep enough study to find more comprehensive answers. This article aims to determine how the economic analysis of law and its relationship to the concept of a welfare state law as adopted by the Indonesian State.

2 Method

This is known as normative legal research. The approach technique used to explore research difficulties is thus a philosophical and conceptual approach. Primary data acquired through documentation studies is the type and source of data utilized as study material. Secondary data is gathered through examining scientific literature as well as legislation and regulations pertaining to the research topic. Following the collection of the necessary data, both primary and secondary data will be processed and then analyzed

descriptively and qualitatively, namely descriptions based on the quality that prevails in reality as a symptom of primary data linked to secondary data theories relating to the creation of this journal.

3 Result and Discussion

3.1 Economic Analysis of Law

The economic approach to the law was pioneered by Ronald H. Coase, who published on Social Costs (The Problem of Social Cost), and Guido Calabresi, who investigated Acts against the law (torts) in the early 1960s. Economic analysis is used methodically to solve legal difficulties that do not include economic issues. Furthermore, once Posner released his book *Economic Analysis of Law* in 1986 [12], this method became a legal science theory.

According to Posner, economics is a science of choice made by actors rationally, related to efforts to fulfil self-interest in the world and associated with limited resources. Posner claims in this instance that “Economics is the science of rational decision-making in a world where resources are limited in relation to human demands. So conceived, economics’ mission is to study the ramifications of presuming that man is a rational maximizer of his life’s goals, his satisfactions - what we shall refer to as his “self-interest” [13].” (Economics is the study of rational decision-making in the face of limited resources and human interests. The objective of economics is to study the implications of the premise that people usually want to rationally optimize their life goals, particularly those related to their enjoyment or what we term “interests” [14].

Posner further states that “the concept of man as a rational maximizer, of his self-interest, implies that people respond to incentive—that if a person’s surroundings change in such a way that he could increase his satisfactions by altering his behaviour, he will do so [15]”. (The assumption that humans would always strive to maximize their self-interest logically implies that individuals will respond to any incentive that comes their way—that is, if a person’s environment changes in such a way that he may increase his enjoyment by modifying his behavior, he will do so.)

Richard A. Posner analyses economics from the standpoint of legal science, concluding that “statutory or constitutional disciplines, as opposed to common law fields, are less likely to enhance efficiency” (various kinds of laws or different constitutions in the field of law need to be directed to increase efficiency). “The term efficiency, as used in this text, means the allocation of resources that maximizes value [16].” (In this situation, efficiency is demonstrating that the allocation of resources maximizes their worth.)

Understanding the purpose of law in society is critical when studying the role of law in economic growth. Following that, it is solely related to the role of legislation in economic growth, as discussed in this paper’s research. According to Satjipto Rahardjo, legislation serves as a safeguard for human interests, hence it must be enforced. ⁹ Furthermore, Ronny Hanitidjo [17] believes that the major job of law is to carry out integration, which includes decreasing disputes and smoothing the process of social interaction. ¹⁰ Internal functions The law itself has a significant impact on human life, particularly economic life. In this context, Thomas Aquinas underlined that the duty of law is to pursue the good of all

people. The role here is to serve as a framework for regulating rules, offering guidelines for punishments, and instruments for branding social life. Its topic content encompasses all aspects of human existence, including their economic lives [11]. As a result, the fundamental responsibility of the law in the economic sector is to continually maintain and construct protections to guarantee that economic progress does not compromise the weak's rights and interests. Only in this way will the law be able to maintain its strategic role in economic growth [12]. The function of legislation in economic growth is critical in resolving difficulties and, more significantly, in establishing the groundwork for future development. 9 Ibid, p. 40. 10 Legal Studies in Society, Ronny Hanitidjo Soemitro, Alumni, Bandung, 1982, p. 10. Loc. Cit. 12 Gunarto Suhardi Loc. Cit. Jonker Sihombing, Loc. Cit.

The enactment of Articles 33 and 34 of the Republic of Indonesia's 1945 Constitution, Chapter XIV, covering the National Economy and Social Welfare, can also be considered as the foundation of the welfare state. The economy is designed as a collective effort to produce people's prosperity, alluding to the notion of a national economic system as a collaborative effort of all components of the Indonesian people.

The welfare state is a social welfare system in which the state or government distributes a percentage of public cash to guarantee that its residents' fundamental needs are met. The welfare state is inextricably linked to social policy. This policy involves policies and government initiatives in many countries to enhance residents' well-being, primarily through social protection, which includes social security (in the form of social assistance and social insurance) and social safety nets.

According to Edi Suharto, the fundamental concept of a welfare state dates back to the 18th century, when Jeremy Bentham (1748–1832) called for the government to insure the greatest happiness (or welfare) of the largest number of its citizens. Bentham refers to happiness or well-being as 'utility.' Based on the utilitarianism concept he developed, Bentham claimed that everything that can contribute to higher happiness is good. Something that produces pain, on the other hand, is horrible. The essential notion of a welfare state, according to Edi Suharto, dates back to the 18th century, when Jeremy Bentham (1748–1832) argued for the government to secure the greatest happiness (or welfare) of the greatest number of its residents. Bentham describes the idea of happiness or well-being as 'utility.' Bentham maintained that anything that can lead to more happiness is desirable, based on the utilitarianism principle he formulated. On the other hand, something that causes pain is dreadful.

Posner has so established efficiency, also known as "the wealth maximization theory of justice." Positive and normative features may be found in Economic Analysis of Law. Although Posner stresses that his work focuses on positive analysis [18], the normative aspect also exists as a theory of how the law should be, which Posner believes should encourage efficiency [19]. The Economic Analysis of Law's normative component contends that "social wealth maximization" is a good objective. As a result, the government should establish a framework to safeguard these rights.

Posner defines economic legal analysis as a legal philosophy. However, when he states that "the most prevalent definition of justice is efficiency," that economic analysis may also be viewed as a theory of justice. In this regard, Posner contends that "when people describe as unfair condemning a person without a trial, seizing property with

appropriate recompense, etc., they imply that the action wastes resources, and waste should be regarded immoral in a world of finite resources.” Posner views economic efficiency as an ethical idea, and while recognizing that “there is more to justice than economics,” Posner nevertheless contends that “efficiency is a sufficient concept of justice that may credibly be ascribed to judges, at least in common law adjudication [20].”

3.2 Concept of State Law of Welfare in Relation to Economic Analysis of Law

Indonesia’s welfare state nature is reflected in the first paragraph IV of the 1945 Indonesian Constitution, which states: “... that protects the entire Indonesian nation and all Indonesian blood, while also promoting public welfare, educating the nation’s life, and participating in the establishment of a world order based on independence, eternal peace, and justice. Social. Peter Cane expressed his thoughts on justice, ethics, and morality in general, saying, “The fundamental problem is defining what it means to be morally responsible in light of the ideas accepted as the acceptable foundation for moral judgment. To the extent that legal rules and principles of responsibility coincided with morality, they could be viewed as a reflection and reinforcement of it. To the extent that they diverged from standards of moral responsibility, they could be dismissed as immoral and unacceptable [21]”. (The most important thing is to decide what is morally responsible, according to a set of values accepted as the proper basis for moral judgments. As long as the rule of law and principles of responsibility coincide with morality, it can be seen as a mutually reinforcing reflection. When it is seen as deviating from the standard of moral responsibility [22], it is discontinued because it is immoral and unacceptable. Peter Cane sees this as a general approach to the relationship between law and morality.

Peter Cane further states, “Viewing the relationship between law and morality as being symbiotic in this way also opens up the possibility that just as we may appeal to morality to tell us what the law ought to be”. (Seeing the relationship between law and morality as symbiosis also opens up the possibility that morality can tell us how the law should be.)

As legal and economic sciences have evolved, legal theories have included several economic concepts such as incentive effects, opportunity costs, risk aversion, transaction costs, asymmetric information, open access resources, median rules, regulatory capture, and so on. Furthermore, many economists highlight the importance of laws in governing essential areas such as property law and contract law in the context of economic growth. Because of this understanding, the existence and role of legislation in regulating economic systems becomes critical. In contrast, economics is the source of legal science ideas like as litigation costs, property rules, liability rules, reliance damages, monetary and non-monetary fines, insider trading, internalized values, third-party enforcers, and so on.

Law and Economics offer several concepts as a model that becomes an economical approach to law, in this case, to examine legal practice. In this case, the economic approach to law is more towards the function of law as an enterprise capable of being an incentive. Incentive means an incentive to direct and maintain a specific action or behaviour (altering behaviour). The superiority of the concept of efficiency (primacy of economic efficiency) as an economic perspective on law can help the law not only be

a tool to achieve legal objectives but also act as a provider of justice or enforce legal certainty.

Posner's perspective depicted an economic point of view of the law that gave birth to a behavioural law or a behavioural economy. The two habits were then synthesized until they merged into the behavioural of law and economy. Transaction fees are then adopted into legal arrangements [10]. Transaction costs, which began as economic concepts, were eventually transformed into legal norms. This behavioral theory is used in a plural society when transaction costs cannot be avoided. As a result, the rule of law is essential for maintaining legal clarity and a feeling of social fairness in society. These laws might take the shape of contracts or legislation governing ownership and property rights [23]. Of course, all of this is aimed at improving social welfare.

Richard A Posner's Wealth Maximization Theory of Justice emphasizes efficiency in the allocation and utilization of resources so that they can be efficient and effective. Suppose this theory is connected with the concept of a welfare state based on utilitarianism's teachings. In that case, efficiency can be understood as an effort to create welfare or prosperity for as many citizens as possible but at the expense of the little individual interests [24].

4 Conclusion

Richard A Posner's notion in the economic analysis of the law emphasizes efficiency in allocating and utilizing resources to be efficient and successful. Assume that this theory is linked to the notion of a welfare state based on utilitarianism's teachings. In such instance, efficiency might be defined as an endeavour to promote welfare or prosperity for as many persons as feasible without sacrificing a few specific interests.

Richard A. Posner's idea of an economic analysis of law is more based on liberalism, which is oriented toward fulfilling individual human interests, so in its application in Indonesia, it is necessary to pay more attention to the socio-cultural values adhered to by the Indonesian nation itself, which is more oriented toward the values of togetherness and cooperation.

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