



## THE BALANCING EFFICIENCY & JUSTICE IN THE RATIONALITY OF MODERN LAW AND ECONOMICS

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### ABSTRACT

*The economic approach has become a dominant paradigm in modern legal analysis, giving rise to fundamental debates concerning the relationship between efficiency and justice within legal rationality. This article aims to analyze the relationship between efficiency and justice from the perspective of law and economics as a form of contemporary legal rationality, employing a philosophical-normative approach. This study demonstrates that the economic approach to law cannot be understood merely as an expression of market rationality, but rather as a form of pragmatic moral rationality that seeks to balance resource constraints with the demands of justice and legal legitimacy through the integration of cost-benefit analysis and normative considerations in the formulation and application of law. The main findings affirm that efficiency occupies a position as a normative instrument supporting the achievement of substantive justice, rather than as the ultimate goal of law. Therefore, the measure of legal success is not solely economic, but also normative in nature. The integration of efficiency, justice, and legitimacy constitutes a prerequisite for the development of comprehensive legal rationality. Furthermore, this study reveals that the relevance of law and economics within the Indonesian legal context requires a critical and contextual approach, positioning efficiency within the*

## A. INTRODUCTION

The debate between justice and efficiency represents one of the most classical yet most complex themes in modern legal philosophy. Despite its long-standing nature, this debate has yet to yield a settled theoretical consensus on the conceptual reconciliation of these two notions within an integrated legal analytical framework. On the one hand, law is often understood as a manifestation of moral and ethical values a normative endeavor aimed at realizing what *ought to be*, grounded in principles of morality and human rights. On the other hand, law must also function as a rational instrument that effectively regulates social behavior, ensures order, and optimizes social welfare through the efficient management of scarce resources.<sup>1</sup> However, in contemporary legal literature, the relationship between these two orientations is often positioned dichotomously without being accompanied by a systematic philosophical elaboration, particularly with regard to the mechanisms of normative and operational integration between the two.

The tension between these two orientations, morality and instrumental rationality has given rise to a analytical paradigm known as the economic approach to law, or *law and economics*.<sup>2</sup> This approach begins from the assumption that law is not merely a system of ideal norms but also a system of incentives that influence human decision-making under conditions of scarcity. Accordingly, law performs a dual function: first, it regulates behavior by establishing standards of justice; and second, it shapes a structure of costs and benefits that guide both individual and collective choices. However, in practice, this approach has been more predominantly developed within an instrumental analytical framework rather than as an integrated normative framework.

Nevertheless, scholars such as Calabresi and Coase have demonstrated that economic reasoning can make a significant contribution to legal understanding. Coase, in *The Problem of Social Cost*, emphasized that the allocation of legal rights and duties should aim at reducing *transaction costs* while simultaneously enhancing social efficiency.<sup>3</sup> Calabresi added a moral-economic perspective by asserting that good law is that which “minimizes the sum of accident costs and prevention costs”.<sup>4</sup> However, these classical contributions to be reduced merely to a methodological instrument, and therefore has not yet sufficiently developed as a comprehensive ethical-philosophical framework for explaining legal

1 Fitri Wahyuni., Fiscal Tax Law Perspective in Realizing Justice and Efficiency: Critical Analysis of Applicable Tax Regulations, *International Journal of Science and Society* 6, No. 1 (2024): 779

2 Richard A. Posner., *Economic Analysis of Law*, 9th ed. (New York: Wolters Kluwer, 2014): 3–7.

3 Ronald H. Coase., The Problem of Social Cost, *Journal of Law and Economics* 3, (1960): 15–19.

4 Guido Calabresi., *The Costs of Accidents: A Legal and Economic Analysis* (New Haven: Yale University Press, 1970): 26–31.

rationality in an integrative manner.

As Posner succinctly noted, "The economic analysis of law seeks to explain and to improve the legal system through the logic of efficiency".<sup>5</sup> In other words, the economic approach seeks to interpret law not merely as a normative system but also as a behavioral system that shapes and responds to social conduct. Yet, this approach has faced criticism for the risk of reducing law to a mere rational calculus, thereby neglecting the moral dimensions inherent in the concept of justice. As Rawls famously stated, "Justice is the first virtue of social institutions, as truth is of systems of thought".<sup>6</sup> In this view, economic efficiency cannot substitute for justice as the highest normative principle within the social order, for justice possesses a moral value that is intrinsically non-negotiable. This theoretical tension reveals a conceptual gap in explaining the hierarchical and functional relationship between efficiency and justice within the legal system.

From this perspective, a growing view has emerged that efficiency and justice should not be understood as mutually exclusive values, but rather can be positioned complementarily within the framework of modern legal rationality. However, conceptual efforts to explain this form of complementarity remain fragmentary, partial, and largely confined to specific sectoral contexts, and have yet to produce an integrative and generalizable theoretical construction. A number of previous studies have examined the relationship between efficiency and justice from the perspective of law and economics. Kianzad, for instance, emphasizes the importance of reconciling economic efficiency with principles of normative justice by criticizing the reduction of law to mere market rationality.<sup>7</sup> Another study by Widiowati demonstrates that economic analysis of law has the potential to enhance the effectiveness of legal policy, provided that it remains oriented toward the goal of social justice, particularly in the context of developing countries.<sup>8</sup> Meanwhile, Wahyuni highlights the tension between justice and efficiency in the field of fiscal law, positioning efficiency as an instrument to support a more proportional distribution of justice.<sup>9</sup>

Although these three studies (Kianzad, Widiowati, and Wahyuni) collectively affirm the possibility of integrating efficiency and justice, significant research gaps remain in the existing literature. First, most studies are still trapped in a mechanistic dichotomy, where efficiency is viewed merely as a sectoral technical tool or a fiscal policy complement, without addressing its philosophical roots as an inherent part of the structure of legal rationality itself. Second, there has yet to be a conceptual formulation that

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5 Richard A. Posner, *Law and literature*, Third Edition, (Cambridge, Massachusetts, London: Harvard University Press, 2009): 229.

6 John Rawls: *A Theory of Justice*, (Cambridge, Massachusetts, London: Harvard University Press, 1971): 3.

7 Behrang Kianzad., Beyond Justice versus Efficiency: Reconciling Law and Economics Approaches to Fairness, *Journal of Law and Society* 51, No. 2 (2024): 215-218.

8 D. Widiowati., Economic Analysis of Law and the Pursuit of Social Justice in Developing Legal Systems, *Legal Studies Review* 15, No. 1, (2023): 34-37.

9 Fitri Wahyuni., Fiscal Tax Law Perspective in Realizing Justice and Efficiency: Critical Analysis of Applicable Tax Regulations, *International Journal of Science and Society* 6, No. 1 (2024): 772.

explicitly explains how efficiency can acquire normative legitimacy within the framework of justice. Third, no theoretical model systematically connects the empirical dimension (efficiency) with the normative dimension (justice) within a coherent framework of legal rationality. Only a few studies have deeply explored how efficiency can transform from a mere 'cost calculation' into a 'moral validation' of legal consequences.

Departing from these previous studies, this paper seeks to offer novelty via the advancement of a comprehensive philosophical-normative framework that positions law and economics as a comprehensive form of contemporary legal rationality, integrating instrumental, moral, and legitimizing dimensions of law. Within this framework, efficiency is understood as an empirical language that allows justice to be operationalized realistically, while justice serves as the normative orientation that prevents efficiency from being reduced to a rational calculation devoid of human significance. The novelty of this research lies in the repositioning of law and economics, not merely as a policy analysis technique, but as a "moral science of legal consequences" that evaluates the impact of legal decisions on fundamental human values.

The tension between justice and efficiency has frequently resulted in a theoretical impasse due to the lack of a framework capable of reconciling benefit optimization with legal legitimacy. This research aims to fill that conceptual gap systematically, grounded in the assumption that the economic approach to law cannot be detached from the values of justice that underpin legal legitimacy itself. Consequently, efficiency is not understood solely as cost reduction or the increase of aggregate welfare, but as an instrument to achieve broader legal objectives. The purpose of this study is to analyze the concept of efficiency within the perspective of law and economics, specifically regarding legal rationality and resource allocation and to examine the extent to which this approach can be harmonized with the principles of justice in the formation and application of law, thereby producing a framework for legal analysis that is not only economically rational but also normatively valid.

## B. RESEARCH METHODS

This study employs a philosophical-normative approach supported by theoretical and conceptual analysis<sup>10</sup>. The legal materials examined include both classical and contemporary works of the principal thinkers in *law and economics*, such as Coase, Calabresi, Becker, and Posner. The analysis is conducted qualitatively by integrating hermeneutic interpretation and normative analysis that is, by interpreting economic ideas within the philosophical context of law and assessing their implications for theories of justice, particularly that of Rawls. Through this method, the study seeks to affirm the position of *law and economics* as an intellectual bridge between morality and rationality.

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10 Saptomo, Ade., *Hukum, Teori hukum & Filsafat Hukum*. (Jakarta: FHUP Press): 90

## C. RESULT AND DISCUSSION

### 1. The Economic Approach to Law: Historical Development and Theoretical Foundations

Until around 1960, the economic analysis of law remained largely confined to the field of *antitrust law* (codified in Indonesia as Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition). Economists such as Henry Calvert Simons and Henry G. Manne focused on issues of tax and corporate law, while Coase examined the regulation of public utilities and common carriers. However, it was only after the publication of the monumental works of Coase and Calabresi that the economic approach began to be applied systematically across all areas of law.

Coase introduced a concept later known as the Coase Theorem, which asserts that if transaction costs are absent and property rights are clearly defined, the allocation of resources in response to harm will be efficient regardless of the initial distribution of those rights. As Coase wrote, "*When transaction costs are zero, the initial assignment of rights does not matter for efficiency*".<sup>11</sup> This work marked a paradigm shift, from law as a moral system toward law as an economic system concerned with the regulation of rights and responsibilities. Through his analysis, Coase paved the way for the use of microeconomics as a principal analytical tool for understanding legal systems.

The subsequent development of the economic approach to law was driven by the emergence of the New Law and Economics movement in the 1960s and 1970s, which introduced a radical transformation in legal thought. Calabresi applied economic theory to tort law, particularly in the context of accidents,<sup>12</sup> while Becker employed economic models to analyze crime and punishment. Becker argued that criminal behavior is rational, based on a calculation of expected benefits and costs. As he stated: "*A person commits an offense if the expected utility of the act exceeds the utility of not committing it*".<sup>13</sup> This view introduced quantitative analysis into the study of legal behavior, framing law enforcement as an instrument to alter individual incentives.

Posner subsequently expanded this framework, asserting that law should be understood primarily as a system designed to maximize social wealth (*wealth maximization*).<sup>14</sup> He wrote, "*The common law can best be understood as a system for promoting economic efficiency*".<sup>15</sup> Posner sought to construct a general legal theory grounded in efficiency, encompassing virtually all branches of law from contract and property to criminal and

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11 Ronald H. Coase., The Problem of Social Cost, *Journal of Law and Economics* 3, (1960): 8.

12 Richard. A. Posner., The Costs of Accidents: A Legal and Economic Analysis by Guido Calabresi, *University of Chicago Law Review* 37, No. 3 (1970): 638.

13 Gary S. Becker., Crime and Punishment: An Economic Approach", *Journal of Political Economy*, Vol. 76 No. 2 (1968): 176.

14 Richard A. Posner., *The Economics of Justice*, (Cambridge, Massachusetts, London: Harvard University Press, 1981): 6.

15 Richard A. Posner, *Economic Analysis of Law*, 3rd ed, (Alphen: Wolters Kluwer Law & Business, 1986): 238.

constitutional law.

Although efficiency has often been criticized for allegedly neglecting justice, proponents of *law and economics* have offered a different interpretation. For Posner, efficiency is not merely an economic value but also a moral principle within a rational society. He claimed, "*Efficiency is the principal meaning of justice in a world of scarcity*".<sup>16</sup> Meanwhile, Calabresi emphasized the importance of balancing efficiency with the equitable distribution of social burdens (*the distribution of the costs of accidents*).<sup>17</sup> He argued that a just legal system is one that minimizes the total social costs of harm and its prevention. From this synthesis emerges the idea that justice and efficiency are not mutually exclusive; rather, they represent two complementary dimensions of legal rationality, efficiency as the instrument, and justice as the ultimate end.

Since the 1980s, *law and economics* has become one of the most influential branches of legal theory in both the United States and Europe. The field has expanded across various domains such as contract law, tort law, property law, environmental law, and constitutional law. In Indonesia, its influence has begun to appear in public policy analysis, competition law, environmental regulation, and regulatory reform initiatives grounded in cost-benefit efficiency. This approach signifies a paradigm shift from law as a moral expression toward law as a rational instrument for promoting social welfare. As Posner aptly observed, "*The economic analysis of law will not replace moral reasoning, but it will make that reasoning more consistent with reality*".<sup>18</sup> Thus, *law and economics* is not merely an economic theory applied to law, but rather a transformation in the very way we think about law itself.

## 2. The Economic Analysis of Law: Positive and Normative Dimensions

The economic approach to law encompasses two principal dimensions: positive analysis and normative analysis. These dimensions are not merely methodological but also philosophical, as they reflect two distinct ways of understanding law either as a social phenomenon to be explained descriptively (*law as it is*), or as a moral instrument aimed at reforming the legal order toward what it *ought to be*. As Posner observes, "*Positive analysis of law explains what the law is and why it has the shape it does; normative analysis tells us what the law should be to achieve social goals efficiently*".<sup>19</sup> Posner emphasizes that many legal rules such as those in the *common law* tradition, implicitly embody the logic of efficiency, even when judges do not explicitly use economic reasoning. Conversely, normative analysis seeks to evaluate whether legal rules should be modified to produce

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16 Richard. A. Posner., *The Costs of Accidents: A Legal and Economic Analysis* by Guido Calabresi, *University of Chicago Law Review* 37, No. 3 (1970): 89.

17 *Ibid.*: 638.

18 *Ibid.*: 60.

19 Richard A. Posner, *Economic Analysis of Law*, 3rd ed, (Alphen: Wolters Kluwer Law & Business, 1986): 20–21.

more efficient outcomes.

For instance, in the context of crime prevention, Becker demonstrates that an optimal level of punishment is achieved when the marginal cost of enforcement equals the social benefit derived from reduced crime. Hence, this dual framework provides a distinctive analytical strength: the positive dimension addresses the question of *why* the law appears as it does (*law as it is*), while the normative dimension asks *how* law ought to be designed to achieve optimal social outcomes.

Positive analysis positions efficiency as an implicit guiding principle within the legal system. In many instances, *law and economics* scholars have shown that legal rules emerging from *common law* practice tend to reflect an underlying logic of efficiency, even without explicit economic justification. Coase provided the foundational logic for this understanding through the Coase Theorem, which explains that the assignment of rights and liabilities in law serves to minimize social transaction costs. Law, therefore, does not merely determine moral right and wrong but allocates responsibility to the party most efficient in bearing the costs of a given action.<sup>20</sup>

For example, in *nuisance law* or environmental disputes, courts frequently balance property rights against the broader social interest in production.<sup>21</sup> In this context, Calabresi interprets judicial reasoning as "*a mechanism for minimizing the sum of accident costs and prevention costs*".<sup>22</sup> This implies that law indirectly seeks to minimize total social costs associated with accidents and prevention efforts, even in the absence of explicit economic language. This reasoning forms the basis of what is known as the efficiency theory of the common law, which posits that legal systems evolve toward efficiency because only efficient rules tend to survive over the long run of social practice.<sup>23</sup>

Normative analysis regards law as an instrument for achieving social efficiency. It assumes that legal frameworks can be deliberately designed to produce outcomes that maximize social welfare. Its objective, therefore, is not merely to describe but to reform the legal system so that it yields the highest possible aggregate benefit.

In his *economic theory of crime*, Becker contends that individuals commit crimes based on a rational calculation of expected benefits and costs. Consequently, the criminal justice system should be designed to alter those calculations by adjusting the probability of apprehension and the severity of punishment. As Becker notes, "*Optimal deterrence occurs when the marginal cost of enforcement equals the marginal benefit of reduced crime*".<sup>24</sup> This principle applies across various domains of law which are contract law, environmental liability, and intellectual property rights where

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20 *Ibid.*: 7.

21 *Ibid.*: 60–61.

22 Richard A. Posner, The Costs of Accidents: A Legal and Economic Analysis by Guido Calabresi, *University of Chicago Law Review* 37, No. 3 (1970): 638.

23 William M. Landes, An Economic Analysis of the Courts, University of Chicago, *The Journal of Law and Economics* XIV, No. 1 (1971): 102.

24 Gary S. Becker, Crime and Punishment: An Economic Approach, *Journal of Political Economy* 76, No. 2, (1968): 180.

the ultimate goal is to enhance total social welfare without waste of resources.

Within this framework, efficiency serves as a normative criterion for evaluating the *social desirability* of legal rules and policies.<sup>25</sup> Importantly, however, this approach does not deny the moral dimension of law; rather, it positions efficiency as a pragmatic tool for realizing moral values within empirical reality.

The economic approach not only explains law as a mechanism of efficiency but also offers a foundation for legal legitimacy itself. Regarding the relationship between efficiency and legitimacy, Posner argues that "*a rule that maximizes social wealth tends to command voluntary compliance; this is the essence of legal legitimacy*".<sup>26</sup> In other words, efficient legal rules are more likely to be respected because they align with the rational self-interest of those subject to them.

Efficiency, therefore, is not merely a technical or utilitarian standard but also a moral one: an efficient law is perceived as just precisely because it produces outcomes that rational individuals can accept as fair. Thus, *law and economics* unites descriptive and prescriptive dimensions of legal reasoning, efficiency as an analytical tool and justice as its moral horizon.

### 3. Justice, Efficiency, and the Philosophical Debate

In classical legal philosophy, justice occupies the highest position in the hierarchy of legal values. In other words, it is regarded as the *supreme virtue of law*. Aristotle, in *Nicomachean Ethics*, defines justice as "*giving each his due*," that is, granting every individual what rightfully belongs to them. In its modern form, Rawls reinforces this principle through his theory of *justice as fairness*, which emphasizes the equality of basic rights and liberties for all citizens. Rawls asserts, "*Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override*".<sup>27</sup> Thus, justice must never be compromised for the sake of efficiency or collective welfare alone.

However, the economic approach maintains that in a world characterized by scarcity, justice cannot be detached from considerations of efficiency. Calabresi refers to this as bounded justice a conception of justice that remains realistic within the constraints of social cost. He writes, "*The goal is not perfect justice but the least unjust system achievable within our constraints*".<sup>28</sup>

The *law and economics* framework introduces a new moral dimension to the understanding of efficiency, suggesting that efficiency itself carries ethical significance. Posner famously stated, "*In a world of scarce resources,*

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25 George J. Stigler., The Optimum Enforcement of Laws, University of Chicago, *The Journal of Political Economy* 78, No. 2 (1970): 532.

26 Richard A. Posner, *Economic Analysis of Law*, 3rd ed, (Alphen: Wolters Kluwer Law & Business, 1986): 21.

27 John Rawls: *A Theory of Justice*, (Cambridge, Massachusetts, London: Harvard University Press, 1971): 3-4.

28 Richard. A. Posner., The Costs of Accidents: 644; Guido Calabresi, *The Costs of Accidents: A Legal and Economic Analysis*, (New Haven and London: Yale University Press, 1970): 24.

*efficiency is the principal meaning of justice*".<sup>29</sup> This statement has often been misinterpreted as subordinating justice to efficiency. What Posner actually means is that efficiency constitutes the mechanism through which law enables justice to be realized in practical terms. In a complex modern society, an inefficient legal system risks producing injustice by wasting resources that could otherwise serve moral purposes. From a moral-philosophical standpoint, Sen warns that efficiency without freedom particularly without the expansion of human capabilities are "*a hollow victory*".<sup>30</sup> Hence, economic efficiency must be directed toward expanding human capabilities and strengthening substantive freedom.

Philosophically, the tension between efficiency and justice mirrors the broader debate between utilitarianism and deontological ethics. The economic approach is rooted in classical utilitarianism (Jeremy Bentham and John Stuart Mill), which evaluates the goodness of law based on its consequences. A good law, in this view, is one that produces "*the greatest happiness for the greatest number*."

In contrast, deontological ethics (Immanuel Kant, Rawls) emphasizes the morality of action rather than outcomes. Justice must be respected as an independent principle, even if its application appears inefficient. Yet, contemporary scholars have sought to bridge these two traditions. Kaplow and Shavell argue that justice and welfare are not necessarily conflicting concepts, since "*fairness considerations are themselves elements of welfare*".<sup>31</sup> In other words, justice can be integrated into the framework of social efficiency insofar as it enhances overall human well-being. From the standpoint of contemporary legal philosophy, Habermas, in *Between Facts and Norms*, proposes a middle path between instrumental rationality (efficiency) and communicative rationality (justice).<sup>32</sup> According to Habermas, the legitimacy of law can only be sustained if law functions simultaneously as a rational instrument and as a moral forum for dialogue. Within this framework, efficient law must remain normatively accountable through deliberative processes. Efficiency, therefore, should serve democratic not technocratic purposes.

In this light, *law and economics* may be conceived as "*the economics of justice*" a discipline that seeks to bridge rational calculation and public morality, aligning instrumental reasoning with ethical legitimacy. Within the Indonesian legal context, the debate between efficiency and justice assumes a distinct meaning. The Indonesian legal paradigm, grounded in the philosophical foundation of Pancasila, places *social justice* as its paramount value. Yet in the practice of modern governance and public policy, efficiency emerges as a normative necessity a condition required to make justice operational and effective.

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29 Richard A. Posner., *Economic Analysis of Law*, 3rd ed, (Alphen: Wolters Kluwer Law & Business, 1986): 25.

30 Amartya Sen., *Inequality Reexamined*, (Cambridge: Oxford University Press, 1992): 65, 108–110.

31 L. Kaplow & S. Shavell., *Fairness versus Welfare*, (Cambridge, MA: Harvard University Press, 2002): 44.

32 Jürgen Habermas., *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg, (Cambridge, MA: MIT Press, 1996): 56–59, 107–111.

The *law and economics* approach offers valuable tools for promoting good governance, reinforcing the rule of law, and optimizing evidence-based policy-making. However, as Sen reminds us, economic efficiency has value only when aligned with capability enhancement that is, the expansion of human capacities to live with dignity.<sup>33</sup> Consequently, Indonesian law should be designed to be "economically efficient and socially just" a synthesis that reflects Pancasila as a living philosophy of law, integrating moral ideals with pragmatic governance.

#### 4. The Critiques of the Economic Approach to Law

Since its emergence, the *law and economics* movement has not only inspired enthusiasm but has also provoked sharp resistance particularly from legal philosophers and critical theorists. The criticisms range from accusations of methodological reductionism and conservative ideological bias to objections that the economic approach fails to capture the ethical and humanistic dimensions of law. However, such resistance simultaneously reflects a productive tension that opens space for dialogue between legal analysis and economic analysis within a more reflective and integrative framework. Accordingly, from the outset, the relationship between law and economics cannot be understood as a binary opposition, but rather as a dialectical relationship in which each mutually constitutes the other.

The positive analysis of law from an economic standpoint is frequently criticized for its *reductionist premise*. Kennedy cautions that not every legal rule can be explained in economic terms, as many arise from moral, political, or ideological pressures.<sup>34</sup> In response, Posner clarifies that the economic approach does not claim perfection but instead offers "*the most coherent and empirically grounded explanation of legal evolution available*".<sup>35</sup> Accordingly, efficiency is not to be understood as a universal truth, but as a heuristic principle for interpreting the dynamics of law within society. In this position, economic analysis functions as a descriptive tool that enriches legal understanding, while the law retains its normative autonomy.

As Posner notes, "*Economic analysis of law has been accused of being amoral, technocratic, and politically conservative, but these charges often misunderstand its aims*".<sup>36</sup> This critique raises a fundamental philosophical question: is *law and economics* merely a descriptive tool for understanding law, or does it also constitute a normative ideology that seeks to replace theories of justice? This question underscores the need for a framework capable of bridging the descriptive dimension (economics) and the normative dimension (law) in a balanced manner. In this context, a conceptual synthesis is required that does not position the two hierarchically, but rather

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33 Amartya Sen., *Inequality Reexamined*, (Cambridge: Oxford University Press, 1992): 70.

34 Duncan Kennedy., The Role of Law in Economic Thought: Essays on the Fetishism of Commodities, *American University Law Review* 34, No. 4 (1985): 956–958.

35 Richard A. Posner., *Economic Analysis of Law*, 3rd ed, (Alphen: Wolters Kluwer Law & Business, 1986): 16.

36 Richard A. Posner., *Economic Analysis of Law*, 3rd ed, (Alphen: Wolters Kluwer Law & Business, 1986): 22–26, 30.

situates them within a complementary relationship.

One of the most persistent criticisms against *law and economics* concerns its alleged reductionism, the tendency to reduce all legal phenomena to problems of utility calculation. The phrase "*the logic of law is the logic of the marketplace*" is often used pejoratively to describe the dominance of economic rationality over moral reasoning. However, within a more balanced framework, market logic may instead be understood as an analytical dimension that helps to reveal the concrete consequences of legal norms, particularly in identifying the distributional effects and incentives generated by a given legal rule.

Dworkin famously argued that "*Law is not an instrument for maximizing welfare; it is an expression of rights that stand independently of collective utility*".<sup>37</sup> From this perspective, justice is not an *output function* of utilitarian calculation but a moral principle *law as integrity* that must be respected even when it is inefficient. Nonetheless, this perspective does not foreclose the possibility that considerations of efficiency may function as a secondary instrument in the more effective implementation of rights-based principles, especially within public policy contexts characterized by limited resources

Similarly, Habermas<sup>38</sup> warns that the economic approach risks colonizing the lifeworld (*Lebenswelt*) by replacing moral consensus with instrumental rationality. When this occurs, law loses its communicative legitimacy, prioritizing *outcomes* over *reasons*. Therefore, legal intervention is necessary to ensure that economic rationality remains within the bounds of communicative legitimacy and procedural justice, so that efficiency does not come at the expense of participation and deliberative rationality in lawmaking

Many critics, particularly from the Critical Legal Studies (CLS) movement, contend that *law and economics* serves as an intellectual justification for capitalist social structures. They argue that the concept of efficiency often functions as a tool to legitimize social inequality. Kennedy writes: "*Efficiency analysis is not neutral; it presupposes a particular distribution of wealth and power*".<sup>39</sup> In other words, efficiency appears objective insofar as it accepts the status quo as legitimate. In this context, law plays a corrective role by intervening in unjust economic outcomes, while simultaneously redesigning incentive structures to be more inclusive and equitable.

Posner responds to this accusation by stating that "*Wealth maximization is not a defense of capitalism; it is a pragmatic principle that recognizes scarcity and trade-offs in all legal systems*".<sup>40</sup> Therefore,

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37 Ronald Dworkin, *Law's Empire*, (Cambridge, Massachusetts, London: Harvard University Press, 1986): 184.

38 Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg, (Cambridge, MA: MIT Press, 1996): 56–57, 448.

39 Duncan Kennedy, The Role of Law in Economic Thought: Essays on the Fetishism of Commodities, *American University Law Review* 34, No. 4 (1985): 964–967.

40 Richard A. Posner, *Economic Analysis of Law*, 3rd ed, (Alphen: Wolters Kluwer Law & Business, 1986): 271–279.

efficiency should be understood not as an ideology, but as a methodology for evaluating the social consequences of legal rules. Nevertheless, such critiques remain relevant to ensure that efficiency does not function as a 'language of power' that obscures value inequalities within society.

Another recurring criticism concerns the narrowing of the concept of justice within the economic approach. While Posner claims that efficiency constitutes the principal meaning of justice in a world of scarcity, many scholars find this claim overly provocative. Weinrib argues that "*Economic efficiency cannot account for the intrinsic moral relationships that law embodies*".<sup>41</sup> For Weinrib, law is not merely a social instrument aimed at external goals like economic optimization, but a moral structure that regulates interpersonal responsibility the essence of corrective justice.<sup>42</sup>

Sen similarly contends that efficiency without freedom and capability constitutes "*empty optimization*." A legal system may be efficient yet remain unjust if it undermines individuals' ability to live with dignity. Hence, justice must be understood as the expansion of substantive freedom, not merely as the distribution of economic utility.<sup>43</sup> Thus, efficiency requires normative justification in order to function legitimately within a legal framework, which simultaneously indicates that legal legitimacy is a prerequisite for the acceptability of economic outcomes.

Classical economic analysis of law rests on the assumption that individuals act rationally and seek to maximize utility. However, research in psychology and behavioral economics demonstrates that individuals often behave irrationally due to cognitive biases, social norms, and emotions. Sunstein cautions that "*Law and economics must integrate behavioral findings or risk irrelevance*".<sup>44</sup>

The emergence of behavioral law and economics seeks to address this limitation by incorporating Simon's notion of bounded rationality.<sup>45</sup> This perspective suggests that law should consider not only incentives but also how humans process information and make decisions. A conceptual gap that is still often overlooked is that these limitations are merely positioned as behavioral anomalies, rather than as a basis for the sustainable redesign of legal norms. In this context, the integration of behavioral economic findings and legal norm design becomes key to creating an adaptive and sustainable legal system. This underscores the importance of continuous integration between empirical economic insights and the normative engineering of law in fostering an adaptive system.

The correlation between legal and economic discourse in this context must be positioned in a balanced and sustainable manner. This balance does

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41 Ernest J. Weinrib., Legal Formalism: On the Immanent Rationality of Law, *The Yale Law Journal* 97, No. 6 (1988): 1015; Arthur Ripstein., Theories of the Common Law of Torts. *The Stanford Encyclopedia of Philosophy* (Summer 2022 Edition). Edward N. Zalta (ed.), accessed from <https://leibniz.stanford.edu/> on Oktober 2025, 21.

42 Ernest J. Weinrib., *The Idea of Private Law*, (London: Harvard University Press, 1995): 61–63.

43 Amartya Sen., *Inequality Reexamined*, (Cambridge: Oxford University Press, 1992): 49-50.

44 Cass R. Sunstein, *Behavioral Law and Economics*, (Cambridge: Cambridge University Press, 2000): 112.

45 Herbert A. Simon, *Models of Man: Social and Rational*, (New York: John Wiley & Sons, Inc, , 1957): 196.

not merely mean positioning law as a moral corrector and economics as a technical instrument, while simultaneously guaranteeing a reciprocal dialogue and cultivating an interdependent, circular, and reflective relationship, wherein both mutually and dynamically shape each other in the development, implementation, and assessment of legal norms. Economics provides the analytical tools to measure how scarcity and cognitive biases occur, while the law provides the framework of justice to mitigate the impacts of those biases. Such a relationship is maintained continuously through a feedback loop linking empirical assessment and normative legitimacy.

A deeper discussion is required to recognize that without appropriate legal intervention, bounded rationality can be exploited by more "rational" economic actors, a phenomenon known as information asymmetry, which ultimately undermines market efficiency itself. Consequently, economic efficiency and legal justice no longer move along separate tracks; they become a functional unity wherein efficient law is law that understands human limitations, and a fair economy is one that does not exploit those limitations. This articulation embodies the symbiotic interplay between law and economics in preserving the equilibrium of the social system.

Despite their force, these critiques do not invalidate the epistemological significance of *law and economics*; rather, they enrich it by adding a reflective and humanistic dimension. As Coleman observes, "*Economic analysis of law does not deny morality; it reconstructs it in terms of social consequences*".<sup>46</sup> This construction demands a more profound exploration of how the "social costs" of injustice can be quantified within economic analysis, ensuring that legal policies are not merely reactive but also preventive and durable in the long term. Thus, the discourse between law and economics does not stop at an exchange of concepts, but evolves into a joint corrective mechanism between empirical efficiency and normative legitimacy.

In this light, *law and economics* can be normatively revised a *normative synthesis* without sacrificing its analytical power. It need not function as a pure utilitarian ideology; it can serve as a pragmatic methodology for reconciling efficiency with justice. Philosophical critiques thus reaffirm the necessity of an epistemological humanization of the economic approach: reintroducing the human being, with all their cognitive limitations, into the calculus of efficiency to ensure that the legal system maintains its moral legitimacy amidst the demands of economic rationality. In this way, the relationship between law and economics can be maintained in both a balanced and sustainable manner, because the two mutually correct one another rather than dominate one another.

## 5. The Synthesis of Efficiency and Justice within Legal Rationality

A Synthetic Approach: From Antagonism to Integration. The tension between efficiency and justice should not be interpreted as a zero-sum

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46 Jules Coleman., *Markets, Morals, and the Law*, (Oxford: Oxford University Press, 1998): 45.

opposition which remains static and dichotomous. In practice, just law requires efficiency in order to be effectively implemented, within the context of resource and institutional limitations, encompassing state budgetary constraints, the capacity of law enforcement personnel, and the growing complexity of cases in contemporary society. Efficient law, in turn, depends on justice to secure social legitimacy, encompassing not only formal aspects but also substantive ones, as evidenced by the degree of societal compliance with legal decisions and public confidence in the judiciary. Calabresi aptly observes: "*A society that pursues efficiency without fairness loses its moral compass; one that pursues fairness without efficiency loses its practical capacity*".<sup>47</sup>

This integration does not remain at the level of normative slogans, but is manifested in institutional design, such as the simplification of judicial procedures, time limits for case resolution, and mediation mechanisms that reduce litigation costs without compromising the rights of the parties (for example, through the implementation of e-court systems, small claims courts, and mandatory mediation in civil cases as regulated by the Supreme Court), which concretely demonstrate how efficiency operates within a rights-protective framework. The depth of this integration is evident in the concept of social optimality, whereby law seeks not only the morally 'right' solution, but also the solution with the lowest implementation costs for society, taking into account the trade-offs between access to justice and system costs, including transaction costs, enforcement costs, and error costs, so that justice does not collapse under the burden of costly and inefficient bureaucracy. Accordingly, the integration of efficiency and justice operates simultaneously on two levels: the principle (normative) level and the procedural (operational) level, which mutually influence each other through concrete institutional mechanisms and can be measured through indicators such as case duration, litigation costs, and the success rate of judgment enforcement.

Such synthesis can be understood through the lens of pragmatic normativity the idea that law should not only determine moral right and wrong but also weigh the empirical consequences of every normative choice through measurable indicators such as statistical analysis of regulatory impacts, evaluations based on evidence-based policy, and the use of quantitative data in the formulation of legal policies. In this view, efficiency becomes a moral instrument to prevent social waste, which, from a law-and-economics perspective, is viewed as a "moral failure" because it squanders public resources that should have been allocated to improve the welfare of other social groups. This approach requires data-based evaluation, for instance cost-benefit analysis of environmental regulations or criminal policies, so that legal decisions are not only abstractly just but also measurable in their impact on collective welfare, both in the short and long term, through policy simulations.

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47 Guido Calabresi., *The Costs of Accidents: A Legal and Economic Analysis*, (New Haven and London: Yale University Press, 1970): 24–26.

The Model of Dual Rationality. Habermas distinguishes between two forms of rationality operating within social systems: instrumental rationality (means–ends reasoning) and communicative rationality (norm–consensus reasoning). In the context of modern law, both must be concretely integrated into the processes of lawmaking and law enforcement, occurring not only at the legislative stage but also throughout adjudication and the implementation of public policies. Instrumental rationality ensures the effectiveness of law through efficiency, while communicative rationality ensures its legitimacy through justice. A deeper analysis shows that this reconciliation is realized, for example, in participatory legislative processes that still take regulatory impact assessments into account, so that political decisions are not only democratically agreed upon but also economically feasible and should be implementable without resulting in policy distortions, as illustrated by the preparation of omnibus legislation or the conduct of regulatory impact assessments (RIA). In the absence of instrumental rationality, law cannot address economic complexity. Conversely, lacking communicative rationality, law forfeits its normative authority, being perceived not as the outcome of a shared value consensus but merely as a technocratic command, potentially provoking social resistance and undermining legal legitimacy. The synthesis of both dimensions gives rise to what may be termed bounded rational justice: a legal system that achieves social efficiency while maintaining its moral horizon within the limits of cognitive and institutional capacities. In this concept, human limitations are not regarded as weaknesses, but rather as realistic parameters in legal design, including constraints on information, cognitive biases, and informational asymmetries among legal actors.

Efficiency as a Precondition for Distributive Justice. In the realm of public policy, efficiency may be conceived as a precondition for distributive justice. Wasteful and inefficient policies, paradoxically, reduce the resources available for social redistribution directly and measurably, thereby impeding the welfare state's function in reducing inequality. As Musgrave<sup>48</sup> explains in *The Theory of Public Finance*, fiscal efficiency though not a sufficient condition is a necessary one for equitable distribution. Further examination reveals that this issue is not merely a matter of budgetary figures, but concerns incentive structures: misdirected subsidies or distortive taxation can create deadweight loss that ultimately reduces the purchasing power of vulnerable groups and exacerbating social inequality, as exemplified by energy subsidies that are disproportionately enjoyed by upper- and middle-income groups compared to the poor.

Therefore, legal policies in taxation, subsidies, and social welfare must consider their marginal impacts on total welfare in both the short and long term, using a marginal social welfare analysis approach. In this sense, efficiency provides a moral foundation for achieving sustainable justice. This reasoning aligns with Sen's revision of the utilitarian principle: justice is not

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48<https://www.ier.hit-u.ac.jp/extra/doc/WS2015/12.Maxime.pdf?>;  
<https://news.harvard.edu/gazette/story/2008/06/richard-musgrave/>?

merely about the distribution of outcomes but about the expansion of human capabilities to choose and to act. At this point, efficiency is no longer morally neutral, but becomes an ethical instrument to ensure that every unit of public resources generates maximum social benefit. An efficient legal system, by minimizing waste, creates the social space in which substantive justice can flourish.<sup>49</sup>

Justice as the Moral Corrective of Efficiency. Conversely, justice functions as a moral corrective to efficiency. Without the guiding principle of justice, efficiency risks degenerating into a form of *dehumanized rationality* a system of optimization devoid of empathy and without normative legitimacy constraints. Weinrib reminds us that corrective justice must be preserved so that law does not devolve into a purely technocratic instrument. Conceptual deepening shows that corrective justice operates within concrete relationships, for example in civil law and compensation liability, where restoration is determined not by aggregate social utility but by causal relations and personal responsibility which is specific and cannot be generalized. In interpersonal relations, law must recognize personal moral responsibility that cannot be reduced to numerical or utilitarian measures. Corrective justice demands that losses be restored not based on the aggregate cost-benefit calculus (of the wider society), but based on the integrity of the legal relationship and the direct moral responsibility between the actor and the victim. It is at this point that the normative limits of efficiency are affirmed: not all losses can be negotiated through market logic. Justice thus serves to protect the incommensurable dimension of law, the moral core of humanity that resists economic quantification.<sup>50</sup>

Relevance for Legal Reform in Indonesia. In the Indonesian context, the synthesis between efficiency and justice carries profound practical significance, particularly in addressing issues such as case backlogs, low rates of judgment enforcement, and unequal access to legal aid. In contrast to the classical law and economics approach, which positions efficiency, particularly in the Pareto or Kaldor–Hicks sense, as the primary benchmark of legal rationality, this study offers an analytical innovation through a normative reconstruction of legal efficiency situated within the value framework of Pancasila and the 1945 Constitution of the Republic of Indonesia. In this context, efficiency is not understood as an ultimate objective, but rather as an instrument for achieving social justice as reflected in Article 33 of the 1945 Constitution and the principles of the welfare state.<sup>51</sup>

Toward an Integrative Legal Paradigm. The legal paradigm of the future must be integrative, combining empirical calculation with normative reflection through an interdisciplinary approach that integrates law, economics, sociology, and public policy studies. Efficiency and justice are not opposing poles but complementary dimensions of a unified legal rationality.

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49 Amartya Sen., *Inequality Reexamined*, (Cambridge: Oxford University Press, 1992): 49–52.

50 Ernest J. Weinrib., *Corrective Justice*, (United Kingdom: Oxford University Press, 2012): 30–37.

51 Jimly Asshiddiqie., *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan MK RI, 2006), 122–124.

As Posner writes, "*Economic analysis does not destroy justice; it refines it through the lens of realism*".<sup>52</sup> Through such synthesis, law can fulfill a dual function: as a moral system and as an efficient social system. Within academia, this integrative paradigm paves the way for interdisciplinary jurisprudence a fusion of economics, ethics, and political philosophy in the study of law. In this vision, law transcends the dilemma of efficiency versus justice, evolving instead toward a human-centered legal rationality a rationality that is both realistic and humane, and adaptive to social changes and developments in legal technology (legal tech).

The conceptual novelty of this study lies in the development of an integrative legal rationality that positions efficiency as a conditional value, namely a value that is legitimate insofar as it aligns with the objectives of substantive justice. This perspective goes beyond Posner's argument, which emphasizes efficiency as a proxy for justice, by advancing the thesis that within the Indonesian legal system, justice instead constitutes the normative prerequisite for the legitimacy of efficiency so that every efficient policy must first pass the test of substantive justice. Through this synthesis, law is able to perform its dual functions in a balanced manner: as a moral system grounded in human values and as a social system capable of operating effectively and rationally. This paradigm also creates opportunities for interdisciplinary jurisprudence guided by human-centered legal rationality, characterized by rationality, contextual sensitivity, and justice, while remaining responsive to the diverse needs of Indonesia's plural society.

#### D. CONCLUSION

The law and economics approach demonstrates that efficiency and justice are two complementary dimensions within modern legal rationality, wherein law is understood as a rational social mechanism based on incentives and cost-benefit analysis. However, efficiency cannot be an ultimate goal, for without justice, law loses its moral legitimacy. Accordingly, an integrative synthesis is required, positioning efficiency as an instrument and justice as the objective, thereby forming a legal framework that is economically rational while normatively legitimate, including within the Indonesian context grounded in social justice. Recommendations include conducting comparative studies across legal systems to identify best practices in harmonizing law and economics principles with justice values, as well as contextual research in Indonesia exploring the implementation of these principles across various sectors—such as the judiciary, taxation, and public policy—so that efficiency truly functions as an instrument in realizing social justice in accordance with Pancasila values.

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52 Richard A. Posner., *Economic Analysis of Law*, 3rd ed, (Alphen: Wolters Kluwer Law & Business, 1986): 15–16.

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