

## Economic Analysis of Law: Strengthening the Legal Framework for Development

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### Abstract

In the context of development, an adequate legal framework plays a crucial role in creating a conducive and attractive business climate for investors, both domestic and international. The existence of a clear and consistent law gives confidence to economic actors that their rights will be recognized, protected and defended. By using the Economic Analysis of Law approach, efficiency is an ideal guide in designing legal policies. However, there are challenges and complexities associated with strengthening the legal framework for development. Some of the problems that often arise include the weakness of the justice system, corruption, legal uncertainty, and unequal access to justice. This research will try to see how legal economic analysis can be used as a tool to strengthen a country's legal framework in a development context. This study applies a normative juridical approach in order to analyze and interpret applicable law and understand the relevant legal norms. The results show that law plays a very important role in economic development. The law provides a clear and reliable framework for economic actors, protects property rights, and guarantees the protection of economic contracts and transactions. The Economic Analysis of Law (EAL) approach and the role of law in economic development are interrelated and influence each other. Through the Analysis of Law approach, an analysis based on legal values, benefits and efficiency can make an important contribution in strengthening the legal framework for more effective and efficient development.

### Keywords

Law, Economics, Development, Economic Analysis of Law

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## 1. Introduction

Legal economic analysis is a multidisciplinary approach that combines economic principles with law to understand the complex interactions between the legal system and economic activity (Stigler, 2021). In the era of globalization and rapid economic growth, it is important for a country to have a strong and effective legal framework to facilitate sustainable development. Through a legal economic analysis approach, one can understand the impact of legal policies on the level of economic growth, investment, innovation, and financial stability of a country (Bashtannyk et al., 2021). In the context of development, an adequate legal framework plays a crucial role in creating a conducive and attractive business climate for investors, both domestic and international. The existence of a clear and consistent law gives confidence to economic actors that their rights will be recognized, protected and can be defended. This encourages long-term investment, infrastructure development, and sustainable economic sector growth (Hausman et al., 2016; Lloyd & Lee, 2018).

By using the Economic Analysis of Law approach, efficiency is an ideal guide in designing legal policies. The Legal and Economic Approach pays attention to how efficient legal regulations reflect the quality of the law itself (Darmawan, 2020). Efficiency is considered important because it has an impact on the effectiveness of legal regulations, while the effectiveness of legal regulations contributes to their quality. Good legal quality is characterized by clarity in legal regulations, so that legal subjects can understand how these regulations must be applied to improve market conditions generated by law (Prasetya et al., 2023). "Market conditions" here are not limited to trade transactions alone, but cover all aspects of human social life, including their role as legal subjects who carry out legal actions in the context of legal activities.

However, there are challenges and complexities associated with strengthening the legal framework for development. Some of the problems that often arise include the weakness of the justice system, corruption, legal uncertainty, and unequal access to justice (Lesmana, 2023). The Economic Approach to Criminal Law and Corruption issues, known as the Economic Analysis of Law (EAL), is not something new, because the relationship and interpretation between Law and Economics is not something that is maintained with an egocentric side of science (Richter & Richter, 2015). Both, law and economics are sciences that unite and complement each other. Law is always interpreted as a regulation that provides direction for human behavior while economics is a scientific discipline that emphasizes the direction of needs for human behavior, so that all legal issues will always come into contact with human economic life (Roy, 2018).

In addition, in facing technological developments and global economic dynamics, law must be able to adapt and accommodate rapid changes. This research will try to see how legal economic analysis can be used as a tool to strengthen a country's legal framework in a development context. This study will analyze the relationship between sound legal policies and economic aspects such as growth, investment, efficiency, and income distribution. Apart from that, it will also discuss crucial issues that arise in the implementation of legal policies, as well as ways to increase the effectiveness and efficiency of the legal system in achieving development goals.

## **2. Economic Analysis of Law**

Economic Analysis of Law which is defined as an economic analysis of law or economic analysis of law. Legal issues remain as constellation objects (arranged, built, associated) with basic economic concepts, reasons and economic considerations. The aim is to be able to position the nature of legal issues so that the flexibility of legal analysis (not economic analysis) becomes more elaborate (Krecke, 2015). Economic Analysis of Law basically refers to a field of study that studies the application of economics methods to address legal problems that arise in people's everyday lives. Economic Analysis of Law is the application of economic principles as a rational choice for analyzing legal issues (Soetopo, 2019; Paces, 2016). This theory comes from the flow of utilitarianism which prioritizes the principle of benefits. Economic Analysis of Law was born in the United States which adheres to the common law system where judges play an important role in determining what constitutes law (Pardolesi, 2015).

The Economic Analysis of Law is more synonymous with the forms of analysis in Law and Economics, generally containing detailed examination of the elements or structure of law and economics. It is typically based on the elaboration and interpretation of law and legal science through a process of merging synergistic elements (Travain, 2022). In economics, the level of supply can be influenced by prices, where if the price is high, the supply will decrease, and vice versa. If economic principles are used to analyze the law, then the offer as an act of delict and the price as a sanction. So that if the sanction for an offense is high, the level of offense will decrease. Prasetya et al. (2023) says that people will comply with legal provisions if they estimate that they can get greater benefits than violating them, and vice versa. Like the economy, the legal system is also about rational behavior. The law seeks to influence behavior through sanctions, such as imprisonment or punitive damages. The coercive aspect of law assumes that people know about the consequences (Małecka, 2017; Ani, 2023). Furthermore, how these micro-economic concepts are applied to legal issues, including in the design of laws and regulations.

## **3. The Link Between Law and Economic Development**

Economic Analysis of Law is looking at aspects of efficiency in determining a choice in human life. The concepts of choice and rationality result in people having to incur costs because they have to leave one option to pursue another that they think is better (Castiglione et al., 2015). Samarndi et al. (2015) an economic approach to evaluating law and policy, that law should not only be seen as a technical argument, law is an instrument to promote social interest goals. In order to know that law has this objective, judges and other lawmakers must have a method of evaluating law that has an impact on the value of social interests. Economics predicts the impact of policies on efficiency (Badgett et al., 2019). Efficiency is always relevant for policy making, because it is always better to encourage any policy that has low costs than high costs. So what is meant by an approach from the aspect of efficiency (economic) in looking at law is in an effort to minimize the costs of the operation (rules) of law that have been prepared by jurists so as not to cause high economic costs, are inefficient and irrational and that is a demand for the development of various types of regulations (laws) related to the economic field (Ohnesorge, 2019; Al-Qudah et al., 2022).

Regarding the role of law in the economic development of a country, basically it cannot be separated from discussions about the economic approach to law or vice versa, the legal approach to the economy, which is commonly known as legal economic analysis. An economic approach to law means the use of economic considerations to solve problems, and the use of analytical technical tools or concepts commonly used by economists (Ahmed et al., 2020). The economic law approach is characterized by and uses transnational and interdisciplinary approaches, specializing in integrally the relations between national and regional and international economic and social issues. Regulations in the fields of economic law must be aligned with the directions and policies of development economic politics and development legal politics as well as internal and transdisciplinary community development politics in a holistic and systematic manner (Richter & Richter, 2015). So that it can be said that the scope of the field of economic law (economic law) is a broad field of law and is related to private interests and public interests at once. For this reason, an economic approach to law will be one way to avoid being left behind by law in economic traffic within and between countries and other countries both nationally, regionally and internationally (Lesmana, 2023).

The Economic Analysis of Law approach uses values, benefits, and efficiency in accordance with the principles of benefit which ultimately aims to maximize people's welfare. This approach aims to evaluate the law by referring to external methods, namely by considering the legal costs and benefits associated (Roy, 2018; Silvestri, 2019). In this case, the focus is to maximize the benefits and minimize the costs incurred. By using this approach, legal economic analysis will consider the effects of legal regulations on various parties involved, including the general public. In conducting a legal evaluation, factors such as social, economic and environmental impacts will be taken into account (Malcai, 2017). The ultimate goal is to achieve maximum social welfare by taking into account the benefits received by the community and minimizing the costs borne. By using this approach, legal regulations can be evaluated critically to ensure that the policies adopted achieve the goals of benefit and efficiency. By considering value, benefits, and efficiency, this approach can assist in formulating legal policies that are more effective, fair, and sustainable in an effort to improve the welfare of society as a whole (Ohnesorge, 2019; Samargandi et al., 2015).

#### **4. Methods**

This study applies a normative juridical approach in order to analyze and interpret applicable law and understand the relevant legal norms. This method refers to legal aspects stipulated in statutory regulations, government regulations, policies, and court decisions relating to issues of Economic Analysis of Law and development. In this study, secondary data sources were used to support the analysis carried out. Secondary data sources that will be used include scientific journals, books, articles, research reports, laws, government regulations, court decisions, and policy documents relevant to the research topic. It is hoped that the use of secondary data sources will provide a broader context and support an in-depth understanding of the legal and development issues being researched. Thus, through a normative juridical approach and with the support of relevant secondary data, this study aims to contribute to strengthening the legal framework for more effective and efficient development.

## **5. The Role of Law in Economic Development**

The role of law in economic development is very important and inseparable. Law has a central role in creating a conducive environment for sustainable economic growth. The law provides the necessary legal certainty for economic actors. Through statutory regulations, the law establishes rules and procedures that must be followed in doing business, protects property rights, and ensures protection of contracts and economic transactions (Muhlizi, 2017). The existence of clear and reliable laws gives confidence to economic actors to invest, innovate and do business, thus driving economic growth. Law also plays a role in creating a fair and just business climate (Trinandityo, 2021; Silvestri, 2019). The law prohibits monopolistic practices, abuse of dominant position, and acts of unfair competition. Thus, the law encourages the creation of healthy competition, economic efficiency, and innovation. The law also protects consumers from fraud, fraud, or harmful business practices, thus creating consumer trust and satisfaction which are important for sustainable economic development (Prasetya et al., 2023).

In addition, law has a role in regulating the relationship between the government and the private sector. The law provides a framework for economic policy, regulation of certain sectors, and incentives for investment (Darmawan, 2020). In terms of international trade, trade law regulates the rights and obligations of countries, protects intellectual property rights, and facilitates the flow of goods and services between countries. Furthermore, law also plays a role in environmental protection and sustainable development. Environmental laws govern natural resource management, environmental protection, and corporate responsibility for environmental impacts. With strong and effective laws, economic development can take place while maintaining a balance between economic growth, environmental protection, and social welfare (Mustamin, 2022; Yunita, 2021). Law has a vital role in economic development by providing legal certainty, creating a fair business climate, regulating relations between the government and the private sector, protecting consumers and the environment, and facilitating international trade. Strong and effective laws are an important foundation in achieving economic growth that is inclusive, sustainable and pro-people's welfare.

## **6. Conclusion**

Law plays a very important role in economic development. The law provides a clear and reliable framework for economic actors, protects property rights, and guarantees the protection of economic contracts and transactions. The Economic Analysis of Law (EAL) approach and the role of law in economic development are interrelated and influence each other. Through the Analysis of Law approach, an analysis based on legal values, benefits and efficiency can make an important contribution in strengthening the legal framework for more effective and efficient development. This approach allows legal evaluation with reference to costs and benefits, and the ultimate goal is to improve people's welfare. The existence of strong and effective laws creates the legal certainty needed to attract investment, promote economic growth, and create jobs. The law also plays a role in creating a fair business climate, regulating fair competition, and protecting consumers. In addition, the law regulates the relationship between the government and the private sector, facilitates international trade, protects the environment and promotes sustainable development. With strong and effective laws, the state can create an environment that is

conducive to economic growth that is sustainable, just and in favor of the welfare of society at large. Therefore, it is important for the state to strengthen its legal framework in order to support sustainable and equitable economic development.

## References

- Ahmed, Z., Asghar, M. M., Malik, M. N., & Nawaz, K. (2020). Moving towards a sustainable environment: the dynamic linkage between natural resources, human capital, urbanization, economic growth, and ecological footprint in China. *Resources Policy*, 67, 101677.
- Al-Qudah, A. A., Al-Okaily, M., & Alqudah, H. (2022). The relationship between social entrepreneurship and sustainable development from economic growth perspective: 15 'RCEP' countries. *Journal of Sustainable Finance & Investment*, 12(1), 44-61.
- Ani, A. (2023). Analysis of Delayed Notification of Acquisition of Shares by Business Players Using the Cost Benefit Analysis and Regulatory Impact Analysis Methods. *Jurnal Indonesia Sosial Sains*, 4(04), 349-369.
- Badgett, M. L., Waaldijk, K., & van der Meulen Rodgers, Y. (2019). The relationship between LGBT inclusion and economic development: Macro-level evidence. *World Development*, 120, 1-14.
- Bashtannyk, A., Akimova, L. M., Kveliashvili, I. M., Yevdokymov, V. O., Kotviakovskiy, Y. O., & Akimov, O. O. (2021). Legal bases and features of public administration in the budget sphere in Ukraine and foreign countries. *Ad Alta: Journal of interdisciplinary research*, (11 (1)), 63-68.
- Castiglione, C., Infante, D., & Smirnova, J. (2015). Environment and economic growth: is the rule of law the go-between? The case of high-income countries. *Energy, Sustainability and Society*, 5, 1-7.
- Darmawan, A. (2020). Politik Hukum Omnibus Law Dalam Konteks Pembangunan Ekonomi Indonesia. *Indonesian Journal of Law and Policy Studies*, 1(1), 13-24.
- Hausman, D., McPherson, M., & Satz, D. (2016). *Economic analysis, moral philosophy, and public policy*. Cambridge University Press.
- Krecke, E. (2015). Posnerian economic analysis of law and Kelsenian legal positivism: How similar are they?. *Posnerian Economic Analysis of Law and Kelsenian Legal Positivism: How Similar are They?*, 167-194.
- Lesmana, C. T. (2023). Implementasi Economic Analysis of Law dalam Pembaharuan Hukum Pidana Indonesia. *Jurnal Pendidikan dan Konseling (JPDK)*, 5(1), 4436-4448.
- Lloyd, P., & Lee, C. (2018). A review of the recent literature on the institutional economics analysis of the long-run performance of nations. *Journal of Economic Surveys*, 32(1), 1-22.
- Malcai, O. (2017). The Alternative Futures of Law and Economics: Comments on Guido Calabresi's The Future of Law and Economics. *Jerusalem Review of Legal Studies*, 16(1), 83-100.
- Mafecka, M. (2017). Posner versus Kelsen: the challenges for scientific analysis of law. *European Journal of Law and Economics*, 43, 495-516.
- Muhlizi, A. F. (2017). Penataan regulasi dalam mendukung pembangunan ekonomi nasional. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 6(3), 349-368.

- Mustamin, M. (2022). Analysis of the Role of Law in Economic Development. *Journal Social Society*, 2(1), 42-54.
- Ohnesorge, J. K. (2019). The rule of law, economic development, and the developmental states of northeast Asia. *Law and development in East and Southeast Asia*, 91.
- Paccos, A. M. (2016). *A law and economics perspective on normative analysis*. Cheltenham: Edward Elgar Publishing.
- Pardolesi, R. (2015). Law and Economics in Italy: some Thoughts about the Academic and Judicial Reception of Eal. *Law and Economics in Italy: some Thoughts about the Academic and Judicial Reception of Eal.*, 89-120.
- Prasetya, A., Sigalingging, Y. E., & Santoso, A. P. A. (2023). Peran Hukum Dalam Pembangunan Dengan Pendekatan Economic Analysis Of Law. *JISIP (Jurnal Ilmu Sosial dan Pendidikan)*, 7(1).
- Richter, R., & Richter, R. (2015). The Role of Law in the New Institutional Economics in Comparison with the Economic Analysis of Law. *Essays on New Institutional Economics*, 77-96.
- Roy, S. B. (2018). The use of economic analysis of law in the context of environmental regulations. *Global Jurist*, 18(2).
- Samargandi, N., Fidrmuc, J., & Ghosh, S. (2015). Is the relationship between financial development and economic growth monotonic? Evidence from a sample of middle-income countries. *World development*, 68, 66-81.
- Silvestri, P. (2019). On the (Methodological) Future of Law and Economics. The Uneasy Burden of Value Judgments and Normativity. *Global Jurist*, 19(3).
- Soetopo, M. G. (2019). Integrating Law and Economics in Indonesia. *Law Review*, 18(3), 369-384.
- Stigler, G. J. (2021). *The theory of economic regulation*. London: Routledge.
- Travain, L. A. L. (2022). A Análise Econômica do Direito (AED) aplicada à mediação e à conciliação The Economic Analysis of Law (EAL) applied to mediation and conciliation. *Revista do Tribunal do Trabalho da 2a Região*, 76.
- Trinandityo, A. (2021). Optimisme dan Skeptisisme Peran Hukum Dalam Pembangunan Ekonomi di Indonesia. *JISIP (Jurnal Ilmu Sosial dan Pendidikan)*, 5(2).
- Yunita, A. (2021). The improvement of civil consciousness of law for the endorsement of law and economic development in Indonesia. *JCH (Jurnal Cendekia Hukum)*, 6(2), 318-328.