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BETWEEN VALUATION AND MONETIZATION OF EFFICIENCY IN ECONOMIC ANALYSIS OF LAW: IS IT POSSIBLE?

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Abstract:
This paper aims to show the basic idea of efficiency in economic analysis of law (EAL) and at the same time promote its efficacy by using the optics of its studies that use 'economic eyes' while providing justice as a legal goal. Starting with the points of utility from Bentham's thought which was then conceptualized as an economic concept of justice because in EAL, law and justice view society as an economic entity. Three models were raised, then the analysis of efficiency became an economic tool to be used to achieve the goal of maximizing welfare. The goal is to get answers to whether it is possible to valuate and monetize all aspects of efficiency in order to get benefits. Each model is constructed with different assumptions and scenarios but still under one framework, namely how efficiency works according to EAL in order to maximize the widest social utility. As a result, it becomes inefficient when faced with circumstances that are contrary to the basic principles of EAL so that it cannot be monetized. There are circumstances where valuations are difficult or even impossible to monetize at decent values, especially against certain costs and benefits. These results show that the difficulty in quantifying some aspects tends to replace one's subjective values.

Keywords:
Valuation, monetization, efficiency, economic analysis of law

1. Introduction

Economic Analysis of Law (EAL) in the history of the development of jurisprudence is one of the frameworks of thought born from the utilitarian school of Jeremy Bentham. Utility becomes an objective principle and standard for deciding which laws are good and which are not. The utility of this point must be understood as the only dimension that directs an action, namely, to produce benefits by preventing or reducing uselessness such as mischief and evil, thus making this principle a teaching of censorial jurisprudence (Bix, 2019).

One of the essences of Bentham's thought is that the most important quality of human beings is their feelings, that is, their ability to feel good, that is, pleasure (Acharya, 2019). Therefore it must be pursued and maximized (maximization) by reducing the bad, or the opposite of the pleasure. This paper does not focus on the construction of utility theory, but merely positions it as the embryo of the birth of EAL which also looks at the direction of law to maximization, especially wealth maximization.

Bentham's maximization is often packaged in the axiom of the greatest number of the greatest happiness, if left behind some of the most basic assumptions in it can produce a subjective understanding, because it is seen from the element of happiness alone. There are at least 4 (four) assumptions, namely:

a. the good of a society is the sum of the happiness of the individuals in that society;

b. the purpose of morality is promotion of the good of society;
c. a moral principle is ideal if and only if universal conformity to it would maximize the good of society;
d. universal conformity to the principle of utility ("act always so as to maximize total net balance of pleasure and pains") would maximize the good of society (Jeremy Bentham and John Stuart Mill, 2003).

This teaching of morality leads to the essence of justice, where everyone counts only 1 (one) and no more than 1 (one), and no one's pleasure is greater than another's pleasure (Guidi, 2018). The value, or even disvalue, of pleasure depends only on its intensity and duration, and can be directed precisely through laws that are then set forth in felicific calculus (Jeremy Bentham, 2018).

EAL has a similar, but not the same, dimension, namely emphasizing the importance of economic efficiency to law so that laws are created and applied for the main purpose, which is to increase social utility as widely as possible (maximizing overall social utility) (Warburton, 2020). Economic efficiency cannot be separated from human rationality, which is always directed to increasing welfare (wealth maximization) as the goal of every human being in action (Tor, 2021).

EAL is an analysis that uses different scientific concepts, namely economics and law, especially capturing human behavior. Given the focus of legal arrangements governing human actions, in which humans are the object of such arrangements, economics can expand on studies that legal science cannot do by pivoting on human rationality. Modern utilitarian ethics is behind the construction of EAL which can be done in normative research that focuses on formulating formulas to achieve efficiency. Normative analysis asks how the law can be improved to better achieve the goal of efficiency (Polinsky, 2019).

The closeness between rationality and efficiency is often debated whether it is possible to rationalize everything by valuation or monetizing it. Or in other words, whether efficiency can always be assessed (value) and monetized (monetize). To find the answer, 3 (three) different assumptions were raised, all three of which contained problem formulations both in qualitative models and quantitative models. The three models are:

Model #1

There are 2 (two) adults, legally capable, living in an apartment and living next to each other, both of whom are owners of their respective apartment units. One of them works as an amateur musician drummer, who often rehearses in a day ignoring the noise that disturbs his next-door neighbor. Regardless of time, despite frequent reminders by his neighbors, the musician continued to practice playing the drums so that at some point his neighbors felt very disturbed and yearned for silence, a calm that is now scarce. The musician is also quite well known by neighbors as a very unfriendly figure. For one reason or another, the musician's neighbor was unable to move into another apartment.

Let's say the musician's neighbor has a net worth of Rp10.000, - and let's say again, he is willing to set aside half of it to get the silence and tranquility he craves. In this model, the most important direction is not to whom he will pay Rp5,000, - in order to get calm, nor the efforts that the musician's neighbor can make to calm the musician, but the focus is directed to the costs that the musician's neighbor is willing to pay (WTP)) and the cost he wants to get, if it turns out that the musician's neighbor must still listen to the musician's practice which for him is very disturbing (willing to accept (WTA)) (Taylor, 2017). If the WTP of the musician's neighbor is Rp5.000,-, will his WTA also remain the same or less or even more than Rp5.000, - to exceed his net worth. Starting from this position, the question of efficiency in EAL is asked, how much WTP is efficient for the musician's neighbor?

Model #2

There is a manufacturing plant for oxygen gas products which costs Rp100.000,-/6 m3 oxygen cylinder. Let's say that the probability of a work accident resulting from a malfunction of a production machine to a worker that causes permanent defects (does not lose life) and repairs to the machine is 1/1.000.000. Consider again, the cost incurred to resolve the accident amounted to Rp150.000.000,- to repair the machine and provide compensation to workers. Thus, the cost to resolve the accident both for engine repair and for workers is 1/1.000.000 x Rp150.000.000,- = Rp150,-. Apart from the projected profit revenue and the consideration of going concern for the company, with these costs raised, the question of efficiency in the EAL is raised, what can a manufacturing plant do to make this charge Rp150,- efficient?

Model #3

There is a professional who also works part-time in a company. In carrying out his profession in his own office, he is seized by time from Monday to Friday. While he was also offered a part-time job at a company from Thursday to

Friday, and he accepted and agreed. Thus, the professional works in his own office for 3 (three) days every week and works for another company for 2 (two) days every week.
Let's say he earns income from his own profession of Rp50.000.000,-/month and from the company where he works part-time of Rp5.000.000,-/month.
Along the way, he could not divide his time into the company because he was too busy with his professional activities so that free time for him was very expensive, and, because of certain considerations, which were discussed in the discussion, the company retained it. Assumptions were not developed as to whether the company took appropriate steps for the professional to keep working Thursday-Friday. The valuation of the marginal cost and marginal benefit of the parties that is the focus of this model will answer some questions about efficiency in EAL such as, is the company's effort to retain the professional efficiency? Because there is a variety of busy time that becomes an obstacle, the availability of time for the professional to spend on the company becomes scarce. If the professional can spare his time, can it be said to be efficient?

2. Method

This paper uses Economic Analysis of Law as a method that is closer to the basic concepts of economics in relation to law (Sugianto, 2017). The flexibility of analysis is carried out while still pivoting on human rationality involving choice (rational choice). The actions that result from the best choices made by humans incur costs, which are always human considerations. The approach used is a conceptual and theoretical approach related to the Economic Analysis of Law.

3. Economic Analysis of Law Construction

3.1. Rationals

Man as a subject of law whose actions are regulated by law must be viewed as homo economicus, that is, directing every action for profit so as to always use his rationality in making his choices (Posner, 2014). With this rationality, man will choose what feels best for himself so that his decision is truly the best decision from the available choices.
The choice has a value that is connected to desire and rationalized as something that feels important. This value is expected to always be achieved and obtained as a form of benefit after deducting costs. If it exceeds benefits and achieves at least the expectation of profit, then it is also said that humans are rational beings who maximize welfare (Sugianto, 2017).
In choosing from a myriad of available options, man ultimately sacrifices other options because he chooses what feels best for him. When these sacrifices occur, opportunity costs arise which (Wessels, 2018) become marginal unit costs which if totaled as a whole with other cost units and low cost compared to benefits, then based on inherent rationality, humans tend to do certain actions, which actions will also cause costs. This cost needs to be captured by law so that the purpose of regulating human actions, as well as shaping their behavior, can be well directed (Polinsky, 2019).With the accuracy of the direction of legal arrangements like this can produce usefulness to humans so that the law functions like economic goods. Thus, the utility on which decisions are based in certain human actions involves choices, assessment of costs and benefits, consideration of alternative uses of other options, both in the sense of happiness (in the teachings of utilitarianism) and the expectation of profit and loss based on the rationality that humans naturally have.

3.2. Efficiency

Efficiency is often connoted with the meaning of savings and an assessment of the maximum output from empowering inputs to a minimum. Efficiency in EAL is built on Pareto efficiency and Kaldor-Hicks efficiency. Pareto efficiency emphasizes the output of achieving one's satisfaction, which in full describes the state of efficiency as follows:

a. Pareto optimality: an economic situation in which no person can be made better off without making someone else worse off.
b. Pareto superiority: an economic situation in which an exchange can be made that benefits someone and injures no one. When such exchange can no longer be made, the situation becomes one of Pareto optimality (Garner, 2004).

According to Kaldor-Hicks: a situation in which all possible wealth-maximizing changes have occurred. Wealth maximization: a situation resulting from a change in the allocation of resources if the change benefits the winner (Garner, 2004). Cooter and Ulen emphasize the importance of an efficient state occurring at a time when people produce all that they can, with their resources (Robert D. Cooter and Thomas Ulen, 2011).
Each resource is available in limited quantities, even in quantity. By still referring to rationality, humans have unlimited desires and there will always be more desired than the availability of these limited resources. Whatever these resources produce, it is always assumed that they will never be enough to satisfy the desires of every human being, hence the scarcity. Economic efficiency studies how humans overcome such scarcity to maximize well-being.
In accordance with some of these concepts of efficiency, Posner complements that in addition to the use of resources in such a way by humans to obtain satisfaction, economic efficiency is also measured in aggregate between willingness to pay and what is obtained (Posner, 2014) (in model #1 called WTP and WTA).

4. Valuation and Monetization of Efficiency in EAL to Model #1

For the musician's neighbor who is homo economicus who has rationality, the valuation of WTP and WTA will be different, namely WTP<WTA so that it can be ascertained that the musician's neighbor WTA>WTP. Under these circumstances, WTP and WTA appear that both have the same goal, which is to obtain a silence, a state of tranquility that once may not be rare, but now the musician's neighbors really crave it so that it becomes scarcity. The difference is that WTP is a desire to get scarcity by direct and available means that he might be able to get if he chooses to do so, while WTA is the only option if WTP does not happen. WTA has an opportunity cost, which is a cost that arises when the existing value (in this case WTP) does not occur. This opportunity cost is what makes WTA bigger than WTP because it is to rationalize something that is not obtained.
According to common teaching, opportunity costs arise when options are available. In this case, the musician's neighbor should have had another choice but to listen to the noise and noise. But in this model it is positioned that the musician's neighbors are not given a choice, so any valuation of WTP and WTA cannot be tied efficiently. In addition, an efficient state also always involves empowering other available resources. Since in this assumption no other resources are provided other than the musician's neighbors are still faced with the position, any valuation of WTP and WTA can be said to be inefficient and cannot be monetized based on these principles.
Even if there is a WTA valuation of the musician's neighbor of Rp20.000,-, (double his net worth of Rp10.000,-), this is said to be rational in the sense of rationalizing the absence of other options (not being able to move occupancy). This kind of valuation will appear as WTA only to cover the losses suffered by the musician's neighbors because every action has a cost, which is to keep listening to the musician practice music. But with Rp20.000, - it is assumed that it can replace the calm or at least be able to restore the position of the musician's neighbor to its original position, or at least in the closest position as before as if there was no commotion. Conversely, the assumption of WTA<WTP valuation of the musician's neighbor, for example Rp3.000,-, is irrelevant because if WTP>WTA conditions occur, it can be interpreted that the musician's neighbor makes irrational decisions.
Thus, WTP<WTA or WTP>WTA valuations are both inefficient and therefore cannot be monetized. Monetization of the rationality or preference of the musician's neighbor in this model will obscure the essence of efficiency itself mixed with the assessment of damages to recover the position of the musician's neighbor who is considered to have been subjectively injured. In the event that monetization continues to be carried out on the WTA neighbor of the musician, it can be said that monetization is dominated by mere subjective judgment because it is contrary to the principles outlined in subchapters A and B.
Although monetization in this model cannot be implemented due to the unavailability of choice, legal intervention from the perspective of EAL can provide solutions to achieve efficiency. If there is a "quiet hour" setting, the musician's neighbor will be compensated from the original position (worsen off) so that it experiences a better off. Setting a "quiet hour" would at least reduce the scarcity of tranquility, and promote the efficiency of Kaldor-Hicks as outlined in B.

5. Valuation and Monetization of Efficiency in EAL to Model #2

The orientation towards profit in this model becomes rationality from the point of view of the company, like companies in general. Based on this rationality, it can be assumed that the company has detected, calculated and

managed risks in such a way, so that with the operation of this manufacturing plant, it is assumed that the company has calculated all costs and benefits so that the orientation to get profits is achieved.
The discussion in this model is not directed to answer the company's WTP in resolving accidents, so whether the charge of Rp150, - is put to the production price or not is really irrelevant to be used in this model. Because, if Rp150, - is still charged to production costs, the company with its rationality will adjust the selling price to market prices that are still competitive with its competitors. Vice versa if the burden turns out to swell the selling price that is not in accordance with the market price, then the company will rationalize it by shrinking other components, which these components cannot be eliminated such as this Rp150, - component. Because Rp150,- already exists, it must be managed so that it becomes efficient. Efficient is not by negating/eliminating actions because every action incurs costs so that the act of eliminating production components that must be calculated will become costs. WTA valuations in this model discussion will be directed when questions in this model are answered.
When companies are faced with a choice, whether Rp150 is carried alone or carried out risk aversion by utilizing the resources available around it, then risk aversion is the most efficient choice to divert the risk (Polinsky, 2019) of accident recovery costs. In this case, call it the availability of insurance as an available resource.
At least based on the principle, the transfer of risk to a party better able to manage it will be efficient and rational taking into account opportunity costs. Maximizing these resources is said to be efficient.
In the event that the company chooses not to include insurance, it can be said that the company has given up its rationality by trying to rationalize it into a burden that is carried by itself and ignoring existing resources by trying to shoulder the potential for costs that should not be a priority for its business. Allocating risk to insurance is a form of efficiency because the cost of an accident is a component that has been calculated from the beginning in the production process. So can this kind of efficiency be monetized? This model provides options so that it is possible to monetize, only if as long as the law is available. The availability of rules that determine the maximum amount of compensation for work accidents to permanent disability (not involving life), let's call it Rp100.000.000,- then monetization efficiency is Rp100.000.000,- which is covered by insurance.
Furthermore, if after the insured receives it and the company provides more compensation, let's call it Rp100.000.000, - (which is the cost of recovering accidents detected from the beginning) then this is said to be efficient private bargaining. Because this kind of exchange has a value greater than the price (value > price). For companies, Rp100.000.000 < other values that are priorities, such as good will and long-term going concern efforts so that they are efficient to exchange. Likewise, for the worker, if he accepts it, it is in accordance with the inherent rationality of him who monetizes the company's good will and going concern equal to Rp100.000.000, - while for the company it is not necessarily monetization of Rp100.000.000, - (other values that are priorities can add monetization value from the company's perspective).
In the event of the unavailability of even regulations governing the amount of compensation, it will be efficient if the law works by not eliminating private bargaining that has been embedded and believed by the perpetrators to be a rule or at least a framework of action for others. The nature of efficiency in EAL does not take away from the essence of justice. It would be unfair if private bargaining is carried out by increasing the minimum rights of one party by imposing obligations on the other party, even with consideration of dignity.
Based on this description, the WTA of workers is Rp100.000.000 from insurance and in the event of private bargaining the total becomes Rp20.000.000,-. Efficiency in this model can be monetized through corporate decision making based on rationality by choosing the best option from all available resources (in this case risk aversion decisions), as well as for workers.

6. Valuation and Monetization of Efficiency in EAL to Model #3

In the event that the company continues to maintain the professional, the valuation of the scarcity of the professional's time becomes clear, which is as much as he gets from the results of working 2 (two) days every week a month without contribution is Rp5.000.000,-. So clearly, the company monetizes the professional's busy time in a month no more than Rp5.000.000,- for 2 (two) working days every week and not working even for reasons of busy time that can be accepted by the company.
Assuming Saturday and Sunday do not work, then if 1 (one) month is 22 (twenty-two days) of work, there are 14 (fourteen) working days of the professional in his own office which earns Rp50.000.000,- per month then every day

the professional gets Rp50.000.000,-/14 days = Rp3.571.429,- per day, while from the company he gets Rp5.000.000,- per 8 days = Rp625.000,- per day.

If at the time the company forces the worker to come to work 2 (two) days a week, then rationalization based on the calculation of wages earned (Łączek-Tarazewicz and Boike, 2020), the professional will refuse and naturally choose to focus on his own office because he will lose 8 x Rp3.571.429,- = Rp28.571.431,- in one month. Maybe for the company, the reason for maintaining it is based on lighter expenses of Rp5.000.000,- rather than spending a total of Rp28.571.431,- every month. Of course, the professional will not agree if he gets an offer to work full-time at the company because he will only get 22 x Rp625.000,- = Rp13.750.000,- compared to now he gets Rp50.000.000,- every month.

Thus, if the professional can spend his busy time with the company, then it is efficient for the .company (at least based on the calculation of income) because the company pays Rp625.000 per day while the professional can get (at least based on the assumption that he states he can get in one month) Rp3.571.429,-.

So it is based on the rationality of the professional if he often does not spend time with the company, even though in the concept of rationality there are priorities, which is certainly in line with the valuation base based on the wages obtained.

To examine further, tables were made regarding marginal Cost and Benefit (University of Minnesota, n.d.) considerations for decision making for the professional to attend work or not.

Table 1. Marginal and Benefeit (Model A)

Marginal Cost		
Gas, parking, toll	Rp50.000,-	
Opportunity cost (stay in the office)	Rp3.571.429,-	
Lunch	Rp50.000,-	
Total	Rp3.671.429,-	
Marginal Benefit		
	Valuation 1	Valuation 2
Maintain a commitment to work	Rp500.000,-	Rp2.000.000,-
Gain knowledge and experience	Rp500.000,-	Rp1.000.000,-
Socialize with colleagues and leaders	Rp500.000,-	Rp1.000.000,-
Total	Rp1.500.000,-	Rp4.000.000,-
Marginal Benefit-*Irrational*		
	Valuation 1	Valuation 2
Maintain a commitment to work	Rp500.000,-	Rp2.000.000,-
Gain knowledge and experience	Rp500.000,-	Rp1.000.000,-
Socialize with colleagues and leaders	Rp500.000,-	Rp1.000.000,-
Planting roses	*Rp2.500.000,-*	*Rp2.500.000,-*
Total	Rp4.000.000,-	Rp6.500.000,-

Source: from (Microeconomics, 2020), data collected and composed by authors. Valuation 1 and 2 are estimated to show rational choice of the professional. Since cost is greater than benefit, then the professional chooses not to attend. On the other hand, when cost is less than benefit, then it is obvious that the professional chooses to attend.
There has been an irrational benefit that should not be a marginal benefit for the professional or for the company, namely planting roses. However, when planting roses is believed by the professional to produce benefits greater than costs, it is clear that rationalization of what should be inefficient based on its own standards that do not become a unit, with interaction with the company cannot be used as a direction to an efficient decision-making process. It could be, the element of planting roses is replaced with the next best alternative and other expected benefits such as gaining trust, expanding networks, and so on.
Furthermore, after the calculation of marginal costs and benefits is unraveled, it can be further examined if the professional continues to receive wages from the company, whether by coming to work or not, then he monetizes the elements contained in marginal costs not exceeding Rp625.000, - per day as benefits, because assumed as rational beings, the professional will choose something profitable for him. Here we can see his rational choice if the company keeps paying his salary.

Table 2. Marginal Cost and Benefit (Model B)-If come to work

Marginal Cost	
Gas, parking, toll	Rp50.000,-
Opportunity cost (stay in the office)	Rp0,-
Lunch	Rp50.000,-
Total	Rp100.000,-
Marginal Benefit	
Wages per day coming/not coming to work	Rp625.000,-
Maintain a commitment to work	Rp500.000,-
Gain knowledge and experience	Rp500.000,-
Socialize with colleagues and leaders	Rp500.000,-
Total	Rp2.125.000,-

Source: from (Microeconomics, 2020), data collected and composed by authors. Busy time can be eliminated so that the total benefit remains greater which makes the professional tend to keep his job by coming to work.

Table 3. Marginal Cost and Benefit (Model C)-If not coming to work

Marginal Cost	
Gas, parking, toll	Rp0,-
Opportunity cost (stay in the office)	Rp0,-
Lunch	Rp0,-
Total	Rp0,-
Marginal Benefit	
Wages per day coming/not coming to work	Rp625.000,-

Maintain a commitment to work	Rp0,-
Gain knowledge and experience	Rp0,-
Socialize with colleagues and leaders	Rp0,-
Total	Rp625.000,-

Source: from (Microeconomics, 2020), data collected and composed by authors. 0 (zero) total cost will make the professional also choose to continue to receive wages from the company by not coming to work.

The framework of marginal costs and marginal benefits directed to broader benefits will be used as the basis for decision making, whether to retain the professional or choose to let go, or even lead to another option that is also the next best alternative and expected benefit rational ones to prevent rationalization of inappropriate and forced elements must exist as in the example of planting roses to increase the benefit of Rp625.000,-.

From these three discussions, it is clear that from the perspective of EAL efficiency, everything can be valued, but not all can be monetized, especially against things that are contrary to principles such as rationality and efficiency. Quantitative models do not automatically make everything monetizable, because the accuracy of the results depends very much on the accuracy of the predictions themselves which must be intact with the principles in economics and law that work complement each other, not dominate each other in order to produce accurate answers to the questions raised.

In addition, EAL describes human interactional, something that must be captured by law then regulated so that legal objectives can be achieved. If human actions are the substance of legal arrangements, then the law needs to know human behavior. With this kind of knowledge, regulation can become an economic tool that helps the subject of law, in this case human beings who have known reactions and interactions, achieve their goals through the governance of legal arrangements.

7. Conclusion

1. Model #1, both WTP and WTA cannot be monetized because valuations are not based on the availability of choice and there is no other resource empowerment so monetization for this model is not efficient in EAL.
2. Model #2, doing insurance as a form of risk aversion is an efficient step in EAL, because it gets optimal output by transferring risk to insurance as a party who is better able to handle risks and cover accident recovery costs. Successful private bargaining has a value>price so that it is efficient when exchanged.
3. Cost and benefit analysis in model #3 leads to the decision-making process for the professional and the company. Benefit>cost conditions tend to direct decision making while explaining the rationality of whether or not to keep hiring the professional, and rationalizing well to the professional for his busy time in coming to work or not.

The difficulty in quantifying some aspects tends to replace the subjective values of a person. Analysts need to be careful about stating assumptions in their methods so that others can decide whether the analysis has produced conclusions that are consistent with the principles in the EAL, lest they simply assert their subjective views and beliefs before the analysis is carried out.

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