

# Increasing Economic Performance Through the Rule of Law in Indonesia: Law and Economics Perspective

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**ABSTRACT**--In the globalisation era, laws are forced and challenged to be able to adapt. Not only from economists, but lawyers also are hungry for the primacy of efficiency and start to duplicate the way most economists think, such as, in explicating efficiency and progressiveness of the rule of law. From law and economics perspectives, the rule of law shall provide clarification in order to improve its practices. The general theory is that law is best viewed as a social tool that promotes economic efficiency. With economic approach, efficiency is an ideal model that guides legal practice. In terms of the rule of law, law and economics considers how efficient rules produce the quality of law. This writing has answered three issues: first, how rationality affects people's behaviour within legal situations. Second, how collective behaviour should have effect on legal rules. Third, understanding and planning strategic actions in the legal context. Since all economic activities regulated by the law, therefore, Indonesian laws need to promote economic efficiency in at least two ways: structure the law in order to remove impediments that encourages private bargaining; and structure the law to minimise the harm caused by failures in private bargaining.

**Keywords:** law and economics, efficiency, rule of law

## I. INTRODUCTION

Like many sciences in their early life, the field of law and economics or as it is more commonly called, "economic analysis of law", had much force and little form when hundreds of scholars began developing this interdisciplinary field of legal studies. The field of economic analysis of law may be said to have begun with Bentham who focused on social welfare. As utilitarian, he emphasised his analysis on human behaviour in the face of legal incentives and evaluated its outcomes mainly on torts, criminal law, and some important analysis of property law and legal process. His works were left essentially unimproved until the 1960s when the substance of economic analysis of law was re-inspired by four important contributions: Coase's article on externalities and legal liability, Becker's article on crime and law enforcement, Calabresi's articles and book on accident law, and Posner's general text book on *Economic*

*Analysis of Law* and his establishment of the *Journal of Legal Studies*. These indicate that research and development in economic analysis of law has been active since the 1970s and its study keeps on receiving academic recognition as a major discipline in jurisprudence as well as an independent program study at universities around the world.

In the intervening years, legal theories has accepted many economics concepts, such as incentive effects, opportunity costs, transaction costs, free-riding, regulatory capture, and so forth. More recently, economists have realised that effective property and contract rights are fundamental to economic growth and its development. Many economists have also become aware of the importance of the rule of law that plays a vital role in economic performance. For a nation, the formulation and regulation of the rule of law determine its economic performance final result. This realisation has opened economics to legal concepts.

These two developments-the greater use of economics to examine the law and vice versa- have brought the two fields of law and economics closer together. In its origin, the core of economic analysis of law is defined by the law rather by some predetermined field of economics. Even in the central areas of economic analysis of law-such as the economic analysis of property rights, contracts, torts, corporate and tax law, they are well-constructed by the foundation of jurisprudence. The jurisprudence itself, like any other inter-dependant science, had convicted that economics is a powerful tool for analysing a vast range of legal questions, especially its various principles can be used to law by approaching them to concrete legal problems.

In terms of the rule of law, the economic approach to law generally seeks to answer two basic questions. Namely, what are the effects of legal rules on the behaviour of relevant actors? And are these effects of legal rules socially desirable? The approach employed in law and economics that is commonly used in economic analysis of law: the behaviour of individuals and

collective is described assuming that they are rational and forward looking, and the idea of welfare economics is adopted to assess social desirability.

## II. RESEARCH METHOD

The basic assumption of economics, even in law activities that involves social interactions is that people are rational and forward looking. Meaning that people always demand and use any available resources to meet their needs. In fact, what we want exceeds with what available no matter how wealthy or poor we are as individuals or even as a nation. The people's infinite need of satisfaction is a predictable consequence of the gap between desirability and resources availability. The need to satisfy themselves often refers as profit maximisation in both non-monetary and or monetary satisfaction. This demand and need to maximise profit is an observable trait of human behaviour in economics, while law generally regulate and justify human behaviour to maximise society's wealth.

If lawmakers ask, "How will a sanction affect human behaviour?", then economists may consider legal sanctions look like prices. People presumably respond to these sanctions as much as they respond to prices. Therefore, economics in this case provides a scientific theory to predict the effects of legal sanctions on behaviour. Therefore, it can be said that economics provides a behavioural theory to predict how people respond to law. The use of this theory and its fundamental concepts help us to understand in evaluating law. The approach enables lawmakers to understand a broader domain of the law as the enterprise of subjecting human behaviour. If law indeed is the enterprise of subjecting human behaviour to the governance of rules, it is *sine qua non* of the successful working of law that people should have knowledge of law and should have confidence in it.[1]. How law can do its duty to achieve all its purposes without knowing an economic fact that the poor is ruled by a system which he neither understand nor trusts. In a country like ours which is governed by the rule of law, it is essential that the law must become community property to maximize overall social utility.[2].

Posner describes such ability that law can provide is the economic conception of justice. In Indonesia, this conception can be blended equally with the doctrine of the *Rechtsstaat* which protects individual rights as well as upholds sovereignty.[3]. In various ways, but essentially with the same object, the idea of *Rechtsstaat* has been put forward by Friedmann. He clarified that the term of *Rechtsstaat* implying the limitation of the state power by the rule of law, is closely associated, if not actually identified, with the rise of individualism. The spiritual

revolution of the Renaissance and Reformation and the economic emergence of a prosperous, trading middle class, developed parallel claims of the individual to legal recognition. He also sees that the struggle between individual right and authority of the community has been a basic theme of political as well as legal theory. The struggle is largely, but not always, parallel to that between absolutism and democracy; to a certain extent it is also parallel to the issue of nationalism versus internationalism.[4].

For Indonesia in this case, nationalism refers to Indonesia's economic growth and stability through the rule of law, and internationalism relates to the nation's adequacy to accommodate and to compete in the era of globalisation as applied to the world economy. Globalisation is understood here to mean major increases in worldwide trade and exchanges in an increasingly open, integrated, and borderless international economy.[5]. At this stage, the desire and struggle had made economics became one of the most useful parts of behavioural science to law by understanding the economic nature of human being as economic actor and nation's human capital. For the nation, it gives the nation a thoroughly convincing roadmap for nation's economic success.

## III. FINDINGS AND DISCUSSION

### 3.1 The Nature of Economic Reasoning

In the globalisation era, laws are forced and challenged to be able to adapt. Not only from economists, but lawyers also are hungry for the primacy of efficiency and start to duplicate the way most economists think, such as, in explicating efficiency and progressiveness of the rule of law. Many of them start to realise that the existence of the law –ideally– should be efficient, effectively applied, and growing progressively. Law and jurisprudence do not recognise these economic concepts as vast as economics does. Therefore, if there is any lawyers start to link between these two, then it is the time to notice what the economics has to offer. These economic concepts are like legal doctrines, related and complemented each other, and most importantly, neither one of them can solve a single problem holistically.

It can be said that the movement of law and economics applies economic theory and method to the practice of law. It claims the tools of economic reasoning offer the best possibility for justified and consistent legal practices. It is one of the dominant theories of jurisprudence.

The law and economics movement provides a general theory of law as well as conceptual tools for the clarification and improvement of its practices. The

general theory is that law is best viewed as a social tool that promotes economic efficiency. With economic approach, efficiency is an ideal model that guides legal practice. In terms of the rule of law, law and economics considers how efficient rules produce the quality of law. It is simply because efficiency derives effectiveness, effectiveness produces quality, and quality defines clarity. Clarity in law helps us to understand how the rule of law should be applied to improve market conditions in return. Unlike the time, long time ago when rules were applied by the rulers who were uncertain about the effect to the citizen who forced to comply whatever they were and wherever the law might have led them to. With the help from economics, law as we know it today never have to be that way ever again. Law and economics offers an efficient framework to model effective legal outcome, and common purposes to widely unify disparate areas of legal activities.

### 3.2 Some Fundamental Economic Concepts

Experts in law and economics have a slight different use of fundamental economics concepts. Posner emphasises on value, utility, and efficiency, while Cooter and Ulen explore more on microeconomic theories such as supply-demand, market equilibrium, game theory, profits and growth, and so on. Most Pejovich's law and economics explication are based on game theory, scarcity and transaction costs, resources, and trade. Regardless of these differences, they are aiming at the same target which is to understand the compass of the law.

In order to answer two basic questions as mentioned earlier, in this case concerning Indonesia's economic performance through the rule of law, I shall employ some fundamental economics concepts which broaden the fields of law and behavioural economics. Namely: the concept of rationality, choice, value, efficiency, utility, and game theory.

The concept of rationality is the main framework analysis in understanding human behaviour. The basic assumption is people are *rational maximiser* of their satisfaction, their activities involve choice. They are able to calculate (based on their rationality) what to choose in order to achieve the best outcome and it can be said that these decisions to be rational. Because of most people are rational, and rationality requires maximisation, an economic actor can rank alternatives that become their next-best alternative choices.

Another common way of understanding this conception of rational behaviour is by recognising that people choose alternatives that are the most well-suited to fulfilling their needs. Here is another economic fact, most people want far more than their current resources allow them to have. This is scarcity: people wanting more than

can be satisfied with available resources. Scarcity forces people to make the most valuable choices. This emphasises that had people not made the "right" choice they did, they would have then chosen the next best alternative. The definition of "right" choice is varying from one individual to another, again, based on their rationality and needs. Having said this, the right choices in economic activities are closely-related to the most valuable ends.

As rational maximisers, people tend to accomplish their objectives in the most efficient way. Economists have several distinct definitions of efficiency. For simplicity's sake, I have also adopted *Pareto efficiency* theory of economics which generally concerns the satisfaction of individual preferences as one of the most applied efficiency concept in the field of law and economics. Garner splits *Pareto efficiency* into two kinds, first kind is *Pareto superiority* as 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 the second kind that is *Pareto optimality*: an economic situation in which no person can be made better off without making someone else worse off.[6].

There is a vital connection between efficiency and utility. For most economic actors, utility reflects beneficiary and meritorious of economic goods. If a person believes that his act was successfully efficient, at the same time he/she concluded the result to be satisfactory. Again, a satisfactory result signifies both in monetary and or non-monetary outcome.

The utility concept is used in different sense for economists and for utilitarian. According to Posner, utility in economics is commonly used to distinguished an uncertain cost or benefit from a certain one. Utility also commonly called as an expected utility, in this sense is tangled with the concept of risk. Utility in the sense used by philosophers of utilitarianism, meaning happiness.[7].

Game theory basically is the study of how people behave in situations where one's action may affect the reaction of others. These situations are like games in that people must decide upon strategy. Game theory has far wider applications, some economics experts say to be the theory of coordination. Wessels describes that game theory extends the tools of economic analysis to any situation where humans have to coordinate their actions with one another, whether in the family, in the workplace, in social groups or among nations. He extends his view toward game theory that an important feature of game theory is that people are rational in making their choices (that is, their preferences are well ordered). A second key feature is that a person has to take into account the

reaction of others.[8]. At this point, I trust that people need a dominant strategy that is a strategy better than other's strategy regardless of what the others in the game do. It drives people come to cooperate with each other in a positive-sum game.

By knowing these fundamental concepts can help us to view an economic performance through the rule of law. First, how rationality affects people's behaviour within legal situations. Second, how collective behaviour should have an effect on legal rules. Third, understanding and planning strategic actions in the legal context.

### 3.3 The Importance of the Rule of Law

#### A. Some History

I consider some history what seem to me to be important historical journey for the rule of law as we know it today.

##### a. Chapter 39 and 40 of Magna Carta 1215.

39. No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will be proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

40. To one will we sell, to no one deny delay right or justice.

##### b. *Habeas corpus* as the challenge to unlawful detention.

##### c. The ending of torture.

In England, Act of Union 1707, in France, torture was ended in 1789. Some parts of Italy between 1786 and 1859; in Netherlands it was ended sometime between 1787 and 1798. Denmark eliminated the practice in 1771.

##### d. The Petition of Right 1628.

Clause VIII concluded:

They do therefore humbly pray your most excellent majesty that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax or such like charge without common consent by act of parliament, and that none be called to make answer or take such oath or to give attendance or be confined or otherwise molested or disquieted concerning the same or for refusal thereof. And that no freemen in any such manner as is before mentioned be imprisoned or detained. And that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come...

##### e. The Constitution of the United States of America.

It has been said that the Constitution of the United States of America was a crucial turning point in the history of the rule of law.

Article VI:

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

##### f. The Universal Declaration of Human Rights.

The Universal Declaration of Human Rights adopted by the General Assembly of United Nations in Paris on December 10, 1948. It soon became the role model which stirred the International Covenant on Economic, Social and Political Rights 1966, the International Covenant on the Elimination of All Forms of Racial Discrimination 1966, the European Convention on Human Rights 1950, the Arab Convention on Human Rights 1994, and so on.

##### g. As for Indonesia, the 1945 Constitution of the Republic of Indonesia (*Undang-Undang Dasar 1945*) guarantees equal protection of the laws. It also claims its power to provide proper relationship between government and its citizens. It has been said that the Constitution is tailored to the particular circumstances of different communities, as it will serve better the purpose for which it was designed, that is, to serve the common good.

- Section I declares form of the state and sovereignty.
- Section X protects citizens and residents rights.
- Section XA protects fundamental human rights.
- Section XIV guarantees economy and social welfare.

#### B. Law as an Autonomous Practice

Most accepted theories of jurisprudence look to reveal the crucial or definitive aspects of the foundation of law. The term of law and jurisprudence have been used diversely at different period of times. Even today, their uses are ranging from the description to the knowledge of law, to more specific explanation in answering legal problems.

In recent times, law students may find law and jurisprudence hard to articulate because of their scope of analysis range over many different subjects and lay on many other disciplines, such as sociology, politics, economics, and so on, which surprisingly be considered as having little to do with law and legal study. What comes harder is that there is still a group of legal scholars who believes that jurisprudence is the only key to solve legal problems. As much as I expect the same, it is way too hard to deny that jurisprudence as social science, like any other sciences, is best identified and well-explained

with the help from other disciplines which complemented to one another.

These issues of legalism may be brought from two of the most influential theorists, that is to say Legal Positivism and Dworkin's Law as Integrity. Despite on all what they disagree and agreed upon, both wanting the same thing aiming at the same target, which is creating law to dispense justice in social practice. Why do we have to put so much effort in separating legal and non-legal form? Attacking the same social study from another angle while what really matter is producing sufficient law that applicable in current legal practices. At the end, there is no such thing as pure legal practices, muddle with the tainted soul of politics, displaced by entrepreneurs who suffer from the law's assertiveness, and many more. Even the idea of justice and legal certainty (which are pure fabrication of jurisprudence) in Indonesia, in enforcing the eradication of corruption may seem a bit too hard to choose. Which seems to be worse, convicting a wrong person or failing to punish one? Maybe there is nothing wrong with this question in the eyes of young idealists. I suppose they will not make some sacrifice of principles, most probably their answer is "both". Everybody would love to have the law that serves that way, functioning as it is. But when rationality comes, the question of applicability arises. Troubled legal system? Limitation of law? Clash of legal doctrines?. This leads to the fact that law and jurisprudence alone cannot solve this problem without knowing another dimension of law which other disciplines may explain better.

Such fusion of horizons does not necessarily focus on law's weaknesses or searching its limitation, but to place law at the current situation to do its duty. In modern society, law may turn out to be autonomous when every single living individual becomes clear that it is not always about legal doctrines nor legal system but the foundation of a fair and just society, a guarantee of responsible government, one of the main facilitator to nation's economic performance and a vital contributor to nation's economic stability.

#### a. Law as a Tool to Promote Economic Efficiency

Instead following the never-ending path in the jurisprudence, I advocate that law is best understood as a tool to promote economic efficiency. Once succeeded, it can be used to maintain Indonesia's economic growth and to achieve economic success. It is important for the law to define the core aspects of proper legal practice in economic performance in order to amplify the function of law and the nation's main objectives.

But, how can the institution (of law) encourage efficient transactions? I.e. avoiding market failure from the existence of monopolies. Although the idea of

monopoly may seem unjust for most idealists, in this case law can be functioned as a tool to ensure that monopoly practices are not always bad. Law may offer a solution that monopoly practices in certain sectors are allowed when it comes to the interest of people and regarding to the national security. Another important area that law shall function to ensure economically efficient transaction is the performance of contracts. At this point, Indonesian legal system is challenged to function efficiently in order to accommodate and corporate with both national and international interest. National interest range from traditional (private) transactions which based on *adatrecht*, the national law, and the Islamic law, while international interest may need to cover the legal standing of *lexmercatoria*. From economics point of view, both sides requires one thing in common, that is the flexibility of the law and reasonably reliable legal system which protects all forms of bargaining.

Therefore, Indonesian laws need to promote economic efficiency in at least two ways: structure the law in order to remove impediments that encourages private bargaining; and structure the law to minimise the harm caused by failures in private bargaining.[9]. When private bargaining fails, the laws should be allocated to those who value them the most. By some token, the primacy of efficiency helps to harmonise the practice of law with other social practices. When such law exists, it does function as a social tool aiming at the promotion of economic efficiency that goes well with other social practices.

From the movement of law and economics, it shall be concluded to answer first basic question that it plays a major role in creating and operating the law so that the rule of law can actually distribute justice which becomes an economic standard. Of course the idea of justice according to most legal positivists differ from economics perspective, but again, the idea of economic justice help to bring clarity of purpose in legal practices. Posner proposes that the economic approaches not only encourage law to perform economic efficiency, but these approaches enable the law to be seen, grasped, and studied as a system-a system that economic analysis can illuminate, reveal as coherent, and in places improve.[10].

#### b. Some Fundamental Principles

Economic legal principles produce quality which demonstrate dimension of the law, so that they can scale both legal and economics elements in every principle. Some experts consider principles are the building blocks to the foundation of law. In terms of the rule of law in Indonesia, legal principles does not exists only to indicate their objectives and should not be viewed as buoys, but efficient legal principles should at least, first, constitute

the very ground of legal binding (effective enforcement). Second, bonding the interests and goals of the state's sovereignty and the people (equilibrium). Third, organise gap-filling (reliability). Fourth, culturing legal awareness (maximise rationality). Fifth, promoting the nature of law by regulating rule-based regulations (utility calculus).

From law and economics point of view, the rule of law should stipulate remedy, that is punishment and rewards as incentive to alter behaviour. As a consequence of being *Rechtsstaat*, Indonesia should not only focuses on enforcing the law but rewarding obedience. Remedy in the rule of law also encourages society to achieve economic efficiency and creates observance from the quality of the rule of law that government depends.

I have adopted some fundamental principles which reflect the quality of the rule of law. Bringing up the idea of a quality may seem a bit too good to be true. However, in order to model strategic action in creating efficient rules of law, I shall embark from Fuller's argument. He argued that there are eight principles of proper law making:

1. there must be rules;
2. the rules must be prospective and not retrospective;
3. the rules must be published;
4. the rules must be intelligible;
5. the rules must not be contradictory;
6. compliance with rules must be possible;
7. the rules must not be constantly changing; and
8. there must be a congruency between the rules as declared and published and the actions of officials responsible for the application and enforcement of such rules.[11].

Hart sees three main problems in most laws, that is, the problem of uncertainty, the problem of the static nature of laws, and the problem of inefficiency.[12]. Bingham suggests his basic principles of the rule of law:

1. the law must be accessible and so far as possible intelligible, clear and predictable;
2. questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion;
3. the laws of the land should apply equally to all, save to the extent that objective difference justify differentiation;
4. ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably;
5. the law must afford adequate protection of fundamental human rights;

6. means must be provided for resolving without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve;
7. adjudicative procedures provided by the State should be fair;
8. the rule of law requires compliance by the state with its obligations in international law as in national law.[13].

He quotes [14]:

"The Rule of Law is the foundation of a civilised society. It establishes a transparent process accessible and equal to all. It ensures adherence to principles that both liberate and protect. The IBA calls upon all countries to respect these fundamental principles. It also calls upon its members to speak out in support of the Rule of Law within their respective communities". September 2005, the Council of the International Bar Association.

"The Rule of Law concept, in essence, embodies a number of important inter-related ideas. First, there should be clear limits to the power of the state. A government exercise its authority through publicly disclosed laws that are adopted and enforced by an independent judiciary in accordance with established and accepted procedures. Secondly, no one is above the law; there is equality before the law. Thirdly, there must be protection of the rights of the individual".

"In modern society, the value of the Rule of Law is that it is essential for good governance. Governments must govern in accordance with established laws and conventions and not in an arbitrary manner. The law must set out legitimate expectations about what is acceptable behaviour and conduct of both the governed and the government. This is important: the law must apply equally to the government and individual citizens". Mr. S. Jayakumar, Deputy Prime Minister, Coordinating Minister for National Security and Minister for Law of Singapore.

Judge Hisashi Owada of International Court of Justice listed components of the rule of law: restraint on state autonomy in inter-state relations; the supremacy of the law; equality before the law; separation of powers; the independence of the judiciary; the international rule of law in relation to the individual.

Sternford Moyo, former president of the Law Society of Zimbabwe, drew attention to a declaration on the rule of law made by the International Commission of Jurists at Athens in 1955. It provided that:

1. the State is subject to the law;
2. governments should respect the rights of individuals under the Rule of Law and provide effective means for their enforcement;
3. judges should be guided by the Rule of Law, protect and enforce it without fear or favour and resist any encroachment by governments or political parties in their independence as judges;
4. lawyers of the world should preserve the independence of their profession, assert the rights of an individual under the Rule of Law and insist that every accused is accorded a fair trial.

Bingham concluded that the concept of the rule of law is not fixed for all time. Some countries do not subscribe to it fully, and some subscribe only in name, if that. Even those who do subscribe to it find it difficult to apply all its precepts quite all the time. But in a world divided by differences of nationality, race, colour, religion and wealth it is one of the greatest unifying factors, perhaps the greatest, the nearest we are likely to approach to a universal secular religion. It remains an ideal, but an ideal worth striving for, in the interests of good government and peace, at home and in the world at large.

In Indonesia, although the concept of the rule of law have been set through the Law of the Republic of Indonesia Number 12 year of 2011 concerning the Formation of Statutes, which stated basic principles in regulating the rule of law, new economic principles continue to develop.

According to it, the basic principles that the rule shall posses at least:

1. clarity of purpose;
2. institutional or accurate forming institutions;
3. correspondence between forms and content material;
4. executable;
5. efficiency and utility;
6. clarity of formulation;
7. impartiality.

Another principles like transparency, accountability, and equity are importantly emphasized in formulating and performing the law of the Republic of Indonesia Number 40 year of 2007 concerning Limited Company. This due to the increase role of business entities both nationally and internationally in promoting economic growth and development in Indonesia, resulted from the globalization insistence that requires the performance of good governance.

Still looking at Indonesia's attempt in boosting economic growth through the eradication of corruption. The principle of legal certainty, proportionality and public interest are employed in the law of Republic of Indonesia Number 20 year of 2001. To support this, a special

commission (Corruption Eradication Commission) had been established with extensive authority which stipulated in the law of Republic Indonesia Number 30 year of 2002.

In terms of economic performance at regions, the law of district autonomy has been established mainly regulates on how to pass or carry out regulations in conducting good governance with basic principles, namely: terminology clarity, recognizable, equality, legal certainty, and law enforcement.

As social welfare in Indonesia, the state defines it as the fulfilment of conditions of material, spiritual and social needs of citizens in order to live well and be able to develop themselves so that they can perform their social function. The state is fully committed to be responsible for the implementation of social welfare which aiming at: improving the level of social welfare, quality, and survival; restoring social functions in order to achieve self-sufficiency; improving social resilience in preventing and dealing with social welfare; increasing the capacity, interests, and social responsibilities institutionally and socially sustainable; increasing the capacity and public participation in the implementation of social; and improving the quality of management of social welfare.[15]. In order to fulfil these credible commitments, the applied principles in the law of the Republic of Indonesia Number 11 year of 2009 on Social Welfare are: solidarity, justice, expediency, integrity, partnership, transparency, accountability, participation, professionalism, and sustainability.

According to Supancana, Indonesia's reformation era since late 1990's is the new era in regulatory reform. Although the process has not always been conducted in systematic ways, Indonesia has started to adopt tools in order to create efficient regulatory, such as RIA (Regulatory Impact Analysis), ROCCIPI (Rule, Opportunity, Capacity, Communication, Interest, Process and Ideology), Fishbone, MAPP (*Model Analisis Peraturan Perundang-undangan* – Laws and Regulations Model of Analysis).[16].

#### IV. CONCLUSION

It can be said that Indonesia in general, has begun to apply essential economic approaches in formulating legal policies. These are fine aspirations, and aspirations without action are worthless. As law and human evolved, we are enjoined to be doers, not viewers, or even worse, exploiters who wreck the system. For a start, it is a good start. Indonesia is starting to understand the necessities in planning strategic actions in the legal context in order to achieve economic success. Although for some people, law may –still- seem like a bunch of mystery of rules or technical argument, but it is an undeniable fact that

economics provide normative standard for evaluating law and policy. When analyzed economically, law can be transformed into instruments for achieving important social goals, and yes it is socially desirable.

I don't find it hard at all accepting an academic fact that the economic approach to law can determine the quality of law and suggests what counts as "law". It also gives a thoroughly convincing map for the nation to be capable of, not only accommodating and facilitating economics needs, but to improving its practices in the globalization era. The primacy of efficiency that economics presented provides a general framework to model effective legal outcome and common purposes to unify areas of legal activities. Indeed, it is an important part of Indonesia's plans for economic success that the country can establish predictable and stable legal regimes.

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- [3] Chapter 1, article 1; The 1945 Constitution of the Republic of Indonesia-as amended by the First Amendment of 1999, the Second Amendment of 2000, the Third Amendment of 2001 and the Fourth Amendment of 2002.
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- [5] I shall offer some common perceptions about globalisation in order to limit the understanding of its term that whether one sees globalisation as a negative or positive development. First, it must be generally accepted that globalisation has clearly changed the world system that creates opportunities and challenges. Thus, it is clear that every elements of every nations that have led to globalisation are very (or force to be) active.  
Second, globalisation has had significant impacts on all economies of the world with various effects. It effects on almost everything they have, i.e. production of goods and services, employment of labour and production process, affects investment in both physical and in human capital, etc. These effects have one thing in common which is the emergence on efficiency, productivity, and competitiveness broadly.  
Third, globalisation has led to growing competition on a global basis. Some have called this "the age of competence" which underscoring the importance of law in every national economy, because legal system and legal rules are considered to be one of the nation's products that show productivity in economic market as well as guarantying condusive investment climate and healthy economic environment. At this point, law and economics views legal rules as one of important tools to achieve nation's economic success.
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- [11] Wayne Morisson, *loc cit*, p. 156-160.
- [12] *Ibid.*, p. 130.
- [13] Tom Bingham, "The Rule of Law", p. 37-119, 2010.
- [14] *Ibid.*, p. 171-174.
- [15] Compare with Pigou's aim of welfare: To ascertain how far the free play of self-interest, acting under the existing legal system, tends to distribute the country's resources in the way most favorable to the production of a large national dividend, and how far it is feasible for State action to improve upon 'natural' tendencies.  
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