

## **Reorientation of Indonesian Criminal Policy Based on the Economic Analysis Of Law Approach**

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### **Abstract**

*Indonesia's criminal policy seems to only focus on criminalizing action that are considered morally wrong which overrides one of the objectives of the implementation of criminal law, namely the recovery of the consequences of a criminal act and criminal policy in Indonesia does not seem to care about the consequences arising from handling cases and the consequences of punishment. Hundreds of thousands of people which of course human resources, places and also very large costs. This paper discusses the idea of economic analysis of law in criminal law policy. This paper also discusses the reorientation of Indonesia criminal policies based on economic analysis of law. The research method used is normative juridical, qualitative research method that takes a normative critical attitude from human insight or existence and criticizes legal practice and legal dogmatics. This writing uses document studies, especially researching the laws and regulations as well as relevant books and journals*

**Keywords:** *Reorientation; Criminal Policy; Indonesia; Economic analysis Law.*

### **INTRODUCTION**

Observing the dynamics of Indonesia's criminal policy from time to time, it is not an exaggeration to say that legal moralist (Thaysen, 2015) very influential in various aspects. Indonesian criminal policy seems to only focus on criminalizing acts that are considered morally wrong and overrides one of the objectives of the criminal law, namely recovering the consequences of a criminal act. (Suhariato, 2016) and the realization of social welfare (Arief, 1992).

This can be seen from the policies of lawmakers in prohibiting an act and regulating criminal sanctions for those who commit such prohibited acts. Research shows that in the last few years, at least from 1998 to 2014 for example, there were as many as 716 (Akbari, 2015) new criminal acts regulated in various laws and regulations. All these new crimes carry a threat of imprisonment with a case handling mechanism in accordance with standard procedures in criminal procedural law.

The State of Indonesia is a State of Law, this is regulated in article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, affirmation The contents of this constitution mean that all aspects of life in society, state and government must be based on

law (Asmadi, Adi, Kodiyat, & Koto, 2021). Such a policy seems to ignore the consequences of handling cases and the consequences of the sentencing of hundreds of thousands of people, which of course requires enormous human resources, space and costs. Whereas criminal policy should also focus on efforts to realize social welfare (*social welfare*). This means that criminal policy does not only need to be oriented towards punishing people who commit a crime, but also needs to consider whether the policy can produce welfare for victims of criminal acts in particular, the people and the state in general.

In fact, in many legal cases, the scarcity of human resources and the budgetary costs of law enforcement, especially in criminal law, are often the main reasons for the ineffectiveness of law enforcement in Indonesia. Whereas on the other hand, the budget provided by the state for handling criminal and sentencing cases is already very large and even continues to be added from time to time.

Starting from this, Indonesian criminal policy needs to be seen again as an integral part of all efforts to protect the community (social defense) and as an effort to realize the welfare of the community. (*social welfare*) (Arief, 2005). Therefore, a new approach in criminal policy is important to be able to integrate variables of economic analysis (economic analysis of law) as a matter of priority. Because in reality, criminal issues are no longer just a matter of morality but also include quite complex economic issues.

Economic analysis of law on Indonesian criminal policy is basically an analysis that departs from the importance of calculating profit and loss (*cost and benefit analysis*) (Sugianto, 2013) in every criminal policy that is enforced. This approach will be the basis of a scientific approach so that the implementation of criminal and sentencing can be planned and calculated with a mature economic approach regarding their benefits.

In addition, economic analysis of law is also intended to overcome the scarcity and scarcity in the implementation of a criminal policy. Not only from the aspect of limited resources, but also with this analysis it is hoped that the implementation of a criminal policy can be truly profitable so that in turn it can realize social welfare.

This paper intends to present an alternative idea about an economic analysis of law that can be implemented in Indonesia's criminal policy in the future. Through this economic analysis of law approach, it is hoped that criminal policy will not only create cost efficiency in law enforcement, but also be able to achieve success in reducing crime and protecting the community effectively and efficiently.

## **RESEARCH METHOD**

Metode penelitian yang digunakan dalam penulisan ini adalah metode penelitian hukum yuridis normative. Normative juridical research is research that is used to examine the application of legal rules or norms (Koto & Lubis, 2020). The normative juridical approach method is an approach that seeks to synchronize the applicable legal provisions in the legal protection of norms or other legal regulations with their relation to the application of these legal regulations in practice in the field. The approach taken is based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. This method is also known as the library approach, namely by studying books, laws and regulations and other documents related to this writing.

## **DISCUSS AND ANALYSIS**

### **The Idea of Economic Analysis of Law in Criminal Law Policy**

In the 1960s and 1970s, scholars began to think about the correlation between criminal law and economics. The idea started from matters related to business and civil. In subsequent developments, figures such as Ronald Coase and Guido Calabresi are seen as successful in linking 2 (two) different disciplines to address phenomena and events in people's lives,

namely legal and economic events. Guido Calabresi for example, he wrote a book that in detail analyzes the costs incurred as a result of an accident in a book entitled "*The Costs of Accidents-A Legal and Economic Analysis*" (Calabresi, 1970). Meanwhile, Ronald Coase analyzes the limitations of a person or an organization so that they can make decisions or take legal actions that are most beneficial to them.

From these two initial thoughts, it is known that the link between law and economics is very close. Even in their analysis, it can be seen that economic factors have a major influence on community legal actions. Likewise, economic factors also need to be taken into account by legal policy makers for all costs arising from a legal event. In this matter, Richard A. Posner seems to agree with Guido Calabresi, namely encouraging lawmakers to formulate appropriate policies both legally and economically to minimize the occurrence of legal cases (in this case accidents) as well as economic considerations for those who suffer as a result of such an act.

Another revolutionary idea about economic considerations in criminal policy formulation also came from Gary S. Becker. According to him, the imposition of imprisonment on a criminal is a failure of the state in providing compensation to victims (Becker & Landes, 1974). Becker further shows how unfair this criminal policy model is because the victim in fact has to bear the costs of handling cases up to the application of sanctions to the perpetrators. In more detail, he stated the reason that the victim, through the tax money he paid, had actually financed all legal operations, from disclosing cases to operating costs in prison (Becker & Landes, 1974). Therefore, he strongly encourages economic variables such as money resources and human resources to be used as the main thinking base for policy makers in formulating and enforcing criminal law (Becker & Landes, 1974).

If we look at the characteristics of his thinking, the idea of economic analysis of law is in line with the ideas of utilitarianism popularized by Jeremy Bentham. In the legal context, related to the thoughts of Jeremy Bentham mentioned above, of course a human being as a rational being will act according to the calculations that are most profitable and happy for him. Therefore, it is natural that in economic analysis (economic analysis of law), a good criminal policy is a policy that is able to provide incentives and disincentives according to economic calculations. A person will obey the law if obedience brings benefits and vice versa, his attitude of disobedience will cause enormous losses.

In short, Robert Cooter and Thomas S. Ulen state, the economic analysis of law in criminal policy will ultimately make "sanctions look like prices, and presumably, people respond to these sanctions much as they respond to prices". The existence of this price calculation is expected to influence people rationally not to do prohibited acts because these actions have a very high price, namely the threat of very heavy sanctions, namely punishment.

So far, it seems that the views of experts on economic analysis of law, especially in criminal law, want to emphasize the efficiency of handling cases even before the act is carried out (preventive approach), namely by making the best formulation of an act that is threatened with criminal sanctions. The best formulation is based on economic calculations so that people can rationally decide to obey the criminal law. However, furthermore, the scope of the idea of economic analysis of law in criminal law can be studied based on economic approaches including Cost-Benefit Analysis, Behavioral Analysis, Efficiency Analysis and Fairness Justice Analysis.

### 1.1. Cost-Benefit Analysis

A British economist Alfred Marshall in the 1980s proposed a neo-classical economic formula on how to make intelligent decisions in a way known as cost-benefit analysis. He succeeded in expanding the discipline of economics from what was previously only limited to

market studies to shifting towards observing human behavior. Marshal succeeded in showing consumer behavior in buying an item, namely someone will buy an item if the marginal benefit is greater than the marginal cost (Marshall, 2015). Marshal's findings then developed into the realm of public law, especially in decision-making and public policy. Marsallian's cost-benefit analysis has become a new standard where a public policy must provide and produce the maximum benefit for the public interest (Dreze & Stern, 1987). In 2010 the United States closed 32 solitary confinement units (separate long-term cells for convicts) in the state of Mississippi and in several other states such as in Illinois and so on. The closure is claimed to have saved a budget of \$6 million (Pinkston & Hirschhorn, 2022).

However, financial reasons are not the only main reason for closing the solitary confinement, but there are cost-benefit analysis reasons that are far more important. The major disadvantage is the impact of detention in the solitary confinement. Psychologists found a number of complaints from inmates such as depression, irrational anger that resulted in inmates often committing crimes in detention. Not infrequently even after they leave, the bad effects continue to occur and in the end often do something that is detrimental to the community at large (Corcoran, 2022).

In Indonesia itself, the principle of cost-benefit analysis seems to be starting to be considered in criminal policy. Research from Choky Rida Ramadhan reveals that the principle of cost-benefit analysis has actually begun to be used in the preparation of restorative justice policies for children. Unfortunately, this effort has not been successful because of the limited expertise and technical support to carry out the cost-benefit analysis (Ramadhan, 2021).

## 1.2. Behavior Analysis

Behavioral Analysis is an approach in economic analysis of law that combines three sciences, namely economics, law and psychology. The existence of psychology in this approach is a response to the utility theory proposed by John von Newman and Oskar Morgenstern. The development of research on how humans make decisions in psychology, ultimately affects the perspective of economics and of course law itself.

According to Thomas S. Ulen (Ulen, 2014), In behavioral analysis, humans are seen as rational actors who always make decisions for all choices in their lives based on two arguments. First, rationally, humans are always selfish. Second, before other people, humans will always determine and take a decision that will benefit themselves first. Therefore, in this review, humans are always seen as entities who throughout their lives always try to maximize their needs rationally (Simandjuntak, 1981). Here, humans are bound by the rationality of reason as the basis of all attitudes and actions of a human being to achieve something he wants or which is his goal. The existence of a bond of rationality and reason in every human action indicates that in general the use of human reason can be learned.

Studying the bond of rationality and reason in every action, behavioral analysis within the framework of economic analysis of law places humans as homo economicus. This term implies that economically it means that humans can conduct business on the basis of economic calculations. Among the principles in the law of economics is that all activities must be calculated on the basis of profit and loss, profit if input is greater than output, loss if otherwise. In general, the characteristics of homo economicus contained in humans are as follows:

- a. Always act rationally by considering the sacrifices with the results obtained.
- b. Have an infinite sense of dissatisfaction
- c. Always trying to get the best by upholding religious norms, customs, and norms that apply in society
- d. Acting based on self-interest to meet their needs efficiently

- e. Tend to choose an activity / activity that is closest to achieving the desired goal.

Based on the human characteristics as *homo economicus*, it is very natural if someone takes an action that is rationally carried out to seek profit both quantitatively and qualitatively, including personal gain which sometimes conflicts with agreed norms in society. By using the behavioral analysis approach, legal policy makers can study human economic behavior so that they can project which potential actions are prohibited in an appropriate legal policy formulation.

In addition, many studies using this behavioral analysis approach have finally revealed and at the same time invalidated assumptions about the effectiveness of legal institutions that have long been believed by many people. Research conducted by Langan P.A. and D. Levin in 1994 in America, for example, showed that imprisonment did not always have a deterrent effect on perpetrators of crime. They reveal data that as many as 60% of convicts in the United States are caught again by law enforcement for committing crimes again within three years of their release. The results of this research at least provide an illustration that behavioral analysis within the framework of economic analysis of law can also be an alternative approach in determining the right type of punishment for a particular criminal case.

### 1.3. Efficiency Analysis

Efficiency Analysis is closely related to the goals and means used to achieve goals in economic calculations. If the means to be achieved require more costs than the goals to be achieved, then it is included in an inefficient calculation. And vice versa, the lower the use of costs than the goal to be achieved, then it is included in the efficient calculation.

In the context of criminal law, Richard Posner makes the analogy of criminal acts and criminal sanctions such as the calculation of efficiency in the economy as stated above. For Posner, a criminal act is an inefficient act. According to him, the act has harmed the perpetrator because it is threatened with criminal sanctions, and has also harmed other parties, ranging from victims, the general public to the state. So that the existence of criminal law is intended as a prevention so that inefficiency does not occur.

However, the implementation of criminal law itself needs to be carefully considered in relation to efficiency analysis. Efficiency in the application of criminal law is closely related to two things that need to be considered; first, whether the actions to be dealt with by criminal law do not require much money to deal with them so that the benefits to be gained from them are greater; and secondly, whether the criminal sanctions imposed are greater or heavier than the profits obtained by the perpetrator from the crime he committed.

### 1.4. Fairness Justice Analysis

Fairness justice analysis as an approach in economic analysis of law seems to need to depart from the theory put forward by Rawls. Because justice as fairness is based on the doctrine of contract law which views that rational individuals choose to bind themselves to situations that require the realization of justice (*justice as fairness*).

In his book entitled *Theory of Justice*, John Rawls promotes the idea of justice as fairness. According to him, no justice in the greater welfare will be realized if there are several situations of unlucky individuals. To create a satisfying life, said Rawls, it is necessary to have a cooperation scheme with profit sharing in which the cooperation involves all parties, including those who are less fortunate (Rawls, 1999).

The theory in criminal policy seems to have encouraged several parts of the process of seeking justice through the criminal justice system to open up space for conflicting individuals to agree on the justice they want. So that the search for justice in criminal cases is no longer fully dependent on the ability of the system integration built by the police, prosecutors, courts and correctional institutions (Lesmana, 2020). In this context, efforts to

seek justice can no longer rely solely on the state with formal procedures alone, but must be pursued through more competitive social relations and cooperation. (Lesmana, 2020).

Fairness justice analysis wants an analysis of justice that is produced in a balanced manner by prioritizing the perfection of fair bargaining procedures with economic considerations between individuals as stated by John Rawls below: (Lesmana, 2020)

*In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract. This original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice. Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities.*

In short, justice will be achieved through a fair agreement taken by the litigants and not given by the state. Because the justice provided by the state is not necessarily even in accordance with the free will of the justice seekers themselves (Lesmana, 2020). Of course, this is because basically everyone is an economic being who needs and will pursue interests that tend to benefit them.

### **Reorientation of Indonesian Criminal Policy Based on Economic Analysis Of Law**

Indonesia's criminal policy is faced with hard and not easy facts. A number of reforms in various aspects are expected to be accommodated in Indonesia's criminal policy in the future. This makes criminal policy often mentioned not only having to focus on one or several sides, but as if criminal policy needs to concentrate on the whole universe.

Such a situation is due to the fact that criminal law must not only regulate issues of human behavior in accordance with the conditions in the midst of society, but beyond that, criminal policy is also expected to regulate things that are sometimes irrational, such as imposing criminal law to regulate relationships. humans with God or actions that tend to be mystical and so on.

As a result, until now there are 1,601 types of criminal acts regulated outside the Criminal Code. Of this number, research shows that 716 of them are new types of crimes, of which 443 are punishable by imprisonment of more than 5 years in prison. Based on the economic of law analysis, the data shows that policy makers do not appear to be efficiently planning, formulating and enforcing a criminal provision. Because in addition to the depth of the material for the new crime, which is often questioned due to the lack of depth and research on the formulation of the offense, the result is an increase in cases which are certain to have an impact on increasing budget needs and human resource needs.

The cost and need for human resources in enforcing criminal law at various levels from the police, prosecutors, courts to correctional institutions has increased to a greater extent from year to year. In the police agency, for example, from various research reports, it is known that the institution is in fact only able to handle approximately 50% of all criminal case reports received. The police stated that the institution suffers from a budget shortfall for handling cases of more than 2 trillion rupiah annually. Coupled with the limitations (scarcity) of Polri personnel and supporting infrastructure such as computers and other high-tech equipment.

Likewise with the institutions of the Prosecutor's Office and the Supreme Court. Although the accumulation of cases in the Prosecutor's Office is not as much as in the police, the number is still quite high. So that the addition of the number of personnel and budget becomes a necessity to do. In the Supreme Court institution, arrears in handling criminal cases that must be tried by ordinary examination procedures continue to increase from year to year. Hundreds of thousands of criminal cases failed to be tried in the year in which case handling should be heard at the District Court level as a result of the lack of budget, number of judges and court personnel.

The accumulation of criminal case handling shows the inefficiency of criminal policy from the point of view of economic analysis of law. This is due to an increase in the number of cases as a result of the addition of new types of criminal acts which are not proportional to the very limited number of law enforcement officers (scarcity). The result is very fatal, namely in the form of injustice received by justice seekers. A British Prime Minister, William E Gladstone around the 1880s said that "justice delayed is justice denied". In the context of handling criminal cases in Indonesia, allowing cases to pile up without a complete settlement is tantamount to presenting injustice itself.

The inefficiency of criminal policy also continues, the culmination of which is in the chaotic face of Indonesian penitentiaries, from the aspect of facilities to institutional governance. Data released by the Directorate General of Corrections shows that there is a very large overcapacity in Indonesian prisons. As of September 9, 2021, the number of prisoners and convicts in Indonesia is 266,663 people, while the capacity should only be 132,107 people. This means that there has been an overcapacity in correctional facilities as many as 134,556 people or around 201%. On the other hand, the limited budget given to correctional institutions is also very limited. The Ministry of Law and Human Rights said that in 2021 the Ministry of Law and Human Rights will experience a budget shortfall of 13.2 trillion rupiah, including for financing prison programs.

Unfortunately, the already very large amount of budget allocated for criminal law enforcement is in fact not commensurate with the results obtained. The crime rate in Indonesia is still high. Indeed, the Central Statistics Agency (BPS) noted that there was a downward trend in the number of crime rates throughout 2018 to 2021, but the decline was only based on the number of cases being followed up by the police, not counting the number of people who committed crimes or other crimes. On the other hand, the Police have made quite good achievements by resolving thousands of cases through a restorative justice approach which in the perspective of economic analysis of law is much more effective and efficient in resolving a criminal case than conventional methods that lead to the imprisonment of criminals.

In this tangled problem, it seems necessary to re-direct criminal policy to its orientation which can not only be measured by moral rationality but is also relevant to the situation and needs of the nation and state. In general, experts formulate that the fundamental purpose of criminal policy is to realize social policies (Social Policy) that can give birth to social welfare and can protect the community.

The magnitude of the cost of handling criminal cases and implementing sentencing needs to be a concern so that the orientation of criminal policy does not focus more on criminalizing an act and imprisoning the perpetrator, but escapes the calculation of economic effectiveness and efficiency. Bassiouni mentioned several things that need to be noted regarding criminal policies as follows:(Luthan, 1999)

- a. There must be a balance of the means used in relation to the results to be achieved in the enforcement of a criminal provision and the execution of a sentence.
- b. Cost analysis of the results obtained in relation to the objectives to be achieved.

- c. Assessment or assessment of the goals to be sought in relation to other priorities in the allocation of human resources.
- d. The social influence of criminalization and discrimination associated with secondary influences.

The considerations of economic analysis in law (economic analysis of law) must of course be carried out at all stages of forming criminal policies, starting from the formulation stage, the application stage to the execution stage.

The scope in realizing the prevention and eradication of crime using the means of criminal law include:

- a. Policy formulation or legislative policy (formulation stage), which is a plan or program from lawmakers regarding what will be done in dealing with certain problems and how to do or implement something that has been planned or programmed. In this case, it is the stage of law enforcement in abstracto by the legislature.
- b. Judicial policy (application stage), which is an effort to apply criminal law by law enforcement officials from the police to the courts.
- c. Executive or administrative policy (execution stage), is an effort to implement criminal law in a concrete way by criminal implementing officers.

### **Legislation Formulation Stage**

Law enforcement, which starts from the crystallized legislative process from the formulation stage of a statutory regulation, turns out to require no small amount of money. This will be an irony among the people, if it turns out that the results achieved from the process cannot provide a level of welfare for the people. This means, as stated by Jeremy Bentham regarding the economic analysis of normative law, whether the legal regulations made are in accordance with the wishes of the community or not. If the laws and regulations are in accordance with the wishes of the community, then the large costs used in the formulation process are not a problem. On the other hand, if it turns out that the laws and regulations are not in accordance with the wishes of the Indonesian people (not driven by certain interests, especially foreign interests), then it is clear that this will become a separate problem for the nation which will become a ticking time bomb ready to destroy and alienate the nation. us from the ideals of the nation towards a nation with a prosperous society. It is undeniable that law enforcement efforts are only in the formulation stage of a statutory regulation and are indeed very expensive.

The orientation of criminal policy at the formulation stage needs to focus not only on aspects of morality and humanism values as a basis for argumentation to formulate an act into a criminal act, but it is also necessary to pay attention to the losses suffered by victims, society and even the state in general. Cooter and Ulen outline, in this section, criminal law needs to calculate the losses experienced by the community as a result of an act even to the costs incurred during the handling of cases and the execution of their sentencing. So the calculation of the pros and cons of prohibiting an action is not only based on purely moral considerations but also economic calculations. That is, of course, it is useless to criminalize an act and imprison the perpetrator without giving any profit to the state and nation, on the contrary, the state and society suffer losses due to the use of the state budget for law enforcement..

Criminal policy in the formulation stage as far as possible not to formulate a crime whose victims and losses are not clear. Furthermore, criminal policy also needs to calculate so that the total cost of punishment is not greater than the amount of losses that arise as a result of an act. In short, at this stage of formulation, criminal policy must consider the priority scale



of the interests of regulating which actions are to be formulated as a criminal act and the types of criminal sanctions that are threatened with consideration of advantages and disadvantages seen from the perspective of the victim, society and the state.

Criminal policy at the formulation stage in the perspective of economic analysis of law needs to seriously consider the principle that criminal law must nevertheless be placed as the *ultimum remedium*. Therefore, from the formulation stage, do not orient criminal law as a means of revenge, in other words, criminal law should not be formulated emotionally so as to ignore aspects of efficiency and effectiveness.

### **Legislation Application Stage**

The application stage, which is the stage of applying criminal law by law enforcement officers from the police, prosecutors to the court level, is part of the performance of the sub-systems in the criminal justice system.

In simple terms it can be said that the criminal justice system is a crime prevention tool in which there are interrelated sub-systems. In other words, the criminal justice system can be described briefly as a system that aims to "tackling crime", one of the community's efforts to control the occurrence of crime so that it is within the limits of tolerance that can be accepted.

When viewed from an economic point of view, the operationalization of the criminal justice system clearly requires significant costs. Especially if what is being handled is a criminal act whose investigation is very complicated, especially in the investigation and investigation carried out by the Police or other institutions authorized to do so by law.

The sub-system in the criminal justice system is expected to be able to maximize the criminal justice process with an economic analysis law approach.

### **Legislation Execution Stage**

Execution stage, namely the stage of concrete implementation of criminal law by criminal implementing officers. In this stage, the criminal implementing apparatus is tasked with enforcing criminal laws and regulations that have been made by lawmakers through the application of the criminal provisions stipulated in court decisions.

It is not enough to go to the previous two stages, namely the formulation stage and the application stage of laws and regulations, in fact criminal law enforcement also requires very expensive costs in the execution stage.

One solution that needs to be considered in order to deal with this problem is not to make prisons the *prima donna* of judges in making decisions. This means that a new breakthrough is needed in imposing this crime, for example by actually taking advantage of other sanctions, such as fines.

It is necessary to pay attention to the economic view of the law related to the issue of sanctions, namely as follows: a) Sanctions are seen as prices; b) With a high price (sanctions) which in fact are not imprisonment, for the upper middle class (economic crimes involve a lot of middle and upper classes), it is more effective than imprisonment. This is because of their fear of loss rather than imprisonment; c) If the price (sanction) rises, then individuals will reduce their consumption of the good; d) While in law, if the price (sanctions) rises, then the policy will not depend on the individual, but will depend on others in law enforcement officers, namely the police, prosecutors, and judges.

Not all actions need to be punished, especially if the benefits obtained are not too large compared to the costs paid. This determination aims to achieve maximum profit (wealth maximization) so as to produce social welfare. Policymakers and lawmakers need to analyze more broadly by considering it from an economic perspective. Thus, the determination and enforcement of criminal law can be more effective and useful for the community. After

determining that an action is appropriate and should be regulated as a crime, further economic analysis is used to determine the most effective criminal policy.

## **CLOSURE**

### **Conclusion**

Economic analysis of law, especially in criminal law, wants to emphasize the efficiency of handling cases even before the act is carried out (preventive approach), namely by making the best formulation for an act that is threatened with criminal sanctions. The best formulation is based on economic calculations so that people can rationally decide to obey the criminal law. However, furthermore, the scope of the idea of economic analysis of law in criminal law can be studied based on economic approaches including Cost-Benefit Analysis, Behavioral Analysis, Efficiency Analysis and Fairness Justice Analysis..

Indonesian criminal policy prioritizes the basis of legal moralist arguments so that it focuses too much on efforts to criminalize acts that are considered morally wrong by overriding one of the objectives of the implementation of criminal law, namely the recovery of the consequences of a criminal act and the realization of social welfare. This paper intends to present an alternative idea about an economic analysis of law that can be implemented in Indonesia's criminal policy in the future.

### **Suggest**

The government needs to think about the application of criminal law that emphasizes the economic analysis of law approach in Indonesia, which does not only use detention facilities in prisons. The search for alternative criminal sanctions is the embodiment of criminal law policies to be more effective in the context of achieving the aspired sentencing goals

It is hoped that the renewal of the Criminal Law Through the economic analysis of law approach, it is hoped that criminal policy will not only create cost efficiency in law enforcement, but also be able to achieve success in reducing crime and protecting the community effectively and efficiently.

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