



## Depiction of Public Interest Theory Based on Welfare Economic Concept in Indonesia Regulation

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### Abstract

*The theory of public interest has become a long debate, and the philosophical meaning is commonly discussed in various research. Generally, it is equated with the needs or interests of the wider community. Public interest has become an interchangeable term in various concepts, from individual needs as intended in natural law to the development of the latest theory of Utilitarianism. The state as the holder of sovereignty and authority has the obligation to carry out the public interest. However, the meaning of this concept is limited in Indonesia, as stated in several laws, one example is the public interest that is always associated with land regulation. It is undeniable through a conventional concept that the subject of land is understood as an asset that has economic value. However, with the development of the economic concept of existing assets, it is found that the concept of public interest is lagging. Therefore, this research has two main objectives: (1) to provide an overview for the elaboration of the concept of interests that are limited by existing laws and regulations in Indonesia, and (2) to take the essence of the economy for the benefit of the public.*

### I. Introduction

The concept of general welfare has been recognized by the Indonesia government in the 1945 Constitution, where the state council is expected to regulate and prioritize the well-being of the people (welfare state) ([Library of Lemhanas RI, n.d.](#)). The concept of welfare within the scope of a nation is defined as prioritizing the interests of the people, without neglecting individual exigency. Through the opinion of experts, this definition is termed the public interest ([Wiering, 2017](#)).

It is understood in a state of law, that constitution is a fundamental rule and embodies the principal values, as well as the basic norms for regulating the performance of institutions that have enormous power. The convergence of these institutions to achieve common goals in one unified entity is regarded as the State ([Asshiddiqie, 2002](#)). The factors listed in the constitution in general are the foundation of a state (both the form and system of government), the institutions, power, or authority, as well as the rights and obligations of the government and citizens. In Indonesia, the 1945 constitution is always associated with three main purposes, namely for political, economic, and social precepts ([Jundiani, 2015](#)). In a study, Jimly Asshiddiqie ([Asshiddiqie, 2013](#)) emphasized that a constitution should not only be regarded as a political precept. However, with the rapid evolution of economic globalization (known as the Industrial Revolution 4.0 or 5.0, Artificial Intelligence, free trading, etc), the understanding of the constitution as an economic and social precept (such as in economic democracy welfare state) is important, and has become the basis of integration, enabling them to influence each other.

The basis of the country's economy is contained in the opening of paragraph IV of the 1945 Constitution of the Republic of Indonesia "...the State Government that is providing protection to all the residents and Indonesia indigenes is expected to promote public welfare..." The government should be committed to advancing the welfare of the people through the national economy with the precept of economic democracy. This is proven in the existing Article 33 of the 1945 Constitution:

1. The economy is structured as a joint effort based on the principle of kinship.
2. The national economy is carried out based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmentally friendly, independence, and by maintaining a balance of progress and national unity.

From the elaboration of the previous paragraph, it is found that the economic welfare of the community is a "public interest" that should be the focus of the Government. But the reality of public interest is always associated with [Land Procurement for the public interest Law number 2 of 2012](#). A general perspective adopted is that, the government has interpreted and limited public interest within the scope of legislation in the agrarian sector, especially in the field of "development" ([Muwahid, 2015](#)). Furthermore, in article 10 [of Land Procurement for public purposes Law number 2 of 2012](#), the scope of "development" is being explained. In this research, the scope of public interest is elaborated, and then returned to its initial meaning as intended in the 1945 Constitution. The ultimate goal of this research is to provide in-depth knowledge for the government, or relevant stakeholders in establishing regulations in the economy. This is because the activities of the community in the economic field are dynamic and are developing rapidly. Therefore, the findings that led to this research are regarded as the basis of scientific study for the development of the concept of public interest in welfare economics. Based on these explanations, the problems observed were expressed in the following inquiries: 1) Is the public interest part of the concept of welfare economics?; 2) Does Indonesian legislation reflect the welfare economy, based on public interest?

The interesting part of this article is that, it is presented in accordance with reference to the problems observed. This includes the method used, namely the normative juridical model. In addition, three main approaches are also included, namely the conceptual, statute, and case, then analysis of the existing problems through two main theories, such as the Welfare Economics and Public Interest, and concluding.

The analysis used is a normative juridical method, which is used to evaluate data that refers to legal norms contained in legislation and court decisions ([Dworkin, 1973](#)). A qualitative study which describes a form of systematic empirical inquiry was used ([Shanks, 2002](#)). The context systematic means “planned, ordered, and public”, following rules agreed upon by members of the qualitative research community. While empirical denotes that this type of inquiry is grounded in the world of experience. Then, inquiry shows how other research made attempts to explain the experience pertaining to the subject in question. This study used three approaches which are conceptual, statute, and case. The conceptual approach encompasses the views and doctrines developed in the science of law to build legal arguments in solving the problems encountered ([Marzuki, 2014](#)). The two main concepts proposed were economic welfare ([Felber, 2014](#)) and public interest ([Wiering & Winnubst, 2017](#)) ([Michael G. Kitay, 1985](#)).

The statute approach is carried out by examining regulations relating to legal issues, public interest, and welfare economists as written in the constitution. One of the focuses of the discussion is consistency between the 1945 Constitution of the Republic of Indonesia and The Basic Agrarian Rules Law Number 5 of 1960. In the case approach, issues relating to the public interest are examined, as well as welfare economic activities that depend on court decisions and permanent power, as stated in Testing of Law Number 20 Year 2002 concerning Electricity ([Constitutional Court of the Republic of Indonesia, 2004](#)), Law Number 22 of 2001 concerning Oil and Gas ([CHAKIM, 2011](#)), and Law Number 7 of 2004 concerning Water Resources, all on the 1945 Constitution ([Republican Constitutional Court Indonesia, 2005](#)).

## II. Literature Review

### A. Theory of Welfare Economics

Etymologically, the term “economics” is denoted from the Greek: *oikos* or *oikonomia*, which implies management of household affairs (classical economic theory). However, in the modern context, the term “*Oeconomic*” refers to business principles and methods of achieving goals with the lowest possible cost. In addition, there is an understanding that defines it as a science that disputes between needs and the means of meeting needs. The problem that becomes the starting point in economics is the gap between unlimited human needs, while the objects and services that fulfill those needs are scarce or limited.

Economics views human beings as individuals, who are not able to carry out their activities without the involvement of others, for example family. The

family is the first interaction group constituted by humans and proves their existence as social beings. Humans as social beings have three main reasons, namely: 1) the behavior is essentially innate, 2) it is the basic human needs that make them become social creatures, and 3) humans living in society is for mental and intellectual development ([Hossain & Ali, 2014](#)). Furthermore, as social beings, they depend on others, including on meeting the needs of clothing, food, and shelter. However, there should be adjustments to the demands of each person for humans to coexist. Arrangements regarding the adjustment of each individual should be accommodated by the state as an organization of power.

Adam Smith 1776 wrote about a "Liberal Economy," in "An Inquiry into the Nature and Cause of the Wealth of Nations" and despite the imperfections of the theory, it opened a new understanding of economics and was known as "the father of economics." Smith proposed the principles of exchange rates for commodities, supply and demand related to free markets, and emphasized the exchange rates and relative prices that should be observed ([Ahiakpor, 1999](#)). In the development of modern economics, developing Smith's analysis points to money as a measure of value.

Economics is not a simple science, because human actions are more complex than what other living creatures do to survive. The reason is because economics is more complex and it explains human actions with less predictability compared to other sciences, such as chemistry, biology, or mathematics (exact). For humans, it creates unique and specific mechanisms to facilitate actions, such as markets, means of exchange, agreements, etc ([Ahiakpor, 1999](#)). The influence of economics on humans is certainly inseparable from their activities as social beings ([Dedi Hantono, 2018](#)).

It is time for the world to adopt an economic system that prioritizes the welfare of every human regardless of social status, race, and background. Today's economic gaps are leading to various hardships in different fields, such as indebted housing, unemployment and underemployment, climate change, energy usage, and pollution, food shortages, consumption inequalities, the crisis of meaning, values, and democracy ([Felber & Die, 2014](#)). One of the causes of the crisis is based on an economic system that makes money a major commodity. Therefore, a system is created where the strong is able to defeat the weak, as well as the rich has the ability to get rid of the poor ([Elliott, 2010](#)).

The structure of the economic system should be able to form paradigms and even values that exist in every human to get the best results without having to harm others. Aristotle, as quoted by Christian Felber, stated emphatically, that an economy that aims to collect money without limits, actually contradicts the basic objectives, such as achieving "the common good" (das Gute) ([Felber & Die, 2014](#)). Marcus Cicero, one of the greatest classical philosophers, stated that the common welfare of all people is the highest law. The medieval philosopher,

Thomas Aquinas also emphasized that the highest goal of political (and also economic) order is the common good (*bonum commune*) ([Wattimena, 2013](#)).

Arthur Cecil Pigou, a leading neo-classical economist at Cambridge University. Who was the originator of welfare economics and the book entitled “The Economics of Welfare” (Shailes, n.d.). Where the definition of welfare economics is being stated clearly as part of social welfare “which is directly or indirectly in relation to the benchmarks of money ([A. C. Pigou, 1932](#)). Two conditions are being set up for maximizing welfare ([A. C. Pigou, 1932](#)):

1. With the distribution of taste and income, an increase in national profit ultimately represents growth in welfare,
2. To maximize welfare, the distribution of national income is equally important.

The welfare economic paradigm needs to be pursued in order to improve the well-being of the community as a whole. Welfare improvement is justified when it benefits at least one and should not be worse than this in a society ([IRSHAD, 2016](#)). Experts have foretold the demise of welfare economics, however, there are strong reasons for this opportunity to return to society ([Baujard, 2013](#)).

Likewise, as it is the mandate of the Indonesian nation, economic welfare is one of the elements that is the goal and responsibility of the state. This is stated in the preamble to The 1945 Constitution, and as a commitment to economic welfare, it is also described in the body, namely Chapter XIV Article 33 concerning the national economy and social welfare. Therefore, one of the characteristics of achieving social welfare according to Bung Karno in the book entitled “The Birth of Pancasila” is the absence of poverty ([Sukarno, 1964](#)). Bung Karno further stated that economic-based democracy is a tool that should be used to achieve this feature (economic and social welfare) ([Sukarno, 1964](#)). To ensure it is achieved, the founders of the nation emphasized it in article 34, concerning the poor and neglected children who are cared for by the state.

Next is the welfare economic system put forward by Christian Felber, which stated that humans have dignity and values that are equal to those of others. To clarify the meaning of welfare economics, the following number of definitions were proposed.

1. Economic welfare is a study of the definition and size of social well-being which offers a theoretical framework used in the public economy to help in collective decisions making, design of general policies, and in making social evaluations ([Baujard, 2013](#)).
2. One basic principle of the economy of public welfare is that the economy should be able to provide prosperity for all people, without exception, and not just a small number of individuals, as is the case today ([Wattimena, 2013](#)).



3. Welfare economics is a branch that uses microeconomic techniques to evaluate welfare at the aggregate level (the whole economy) ([Michael G. Kitay, 1985](#))

There are three welfare economic arrangements according to Felber.

1. The system of public welfare rejects the conflict between social and economic values ([Wattimena, 2013](#)). Economics has a value that is embedded in society, therefore, it should be in line with the values that are developed in the community. Some values are needed for the development of the economy, which are mutual cooperation, kinship, and help.
2. Democratic society lives by the constitution, which rests on the basic presupposition, that the state exists to serve the needs of its citizens, and that the dignity and worth of every person deserves the highest attention, above all ([Wattimena, 2013](#)). In accordance with the concept of the welfare state, which is also contained in the opening of the Constitution of the Republic of Indonesia. The state should guarantee the welfare of its people and advance the public interest rather than that of individuals. Therefore, there should be clear restrictions on the definition of public interest in a country.
3. A matter of measurement of the economic success of a society ([Wattimena, 2013](#)). Felber stated that money had been a measure of the success of a society. Starting from the thought that when the poor get a lot of money then, the relative business both in terms of clothing, food and housing is easy to manage. However, this does not apply to rich people who have unlimited assets. Then there should be other factors that determine the success of a nation.

The failure of Pigou's opinion vs. Felber's ideas on welfare economics

1. The failure of Pigou's opinion ([Shailes, n.d.](#)).
  - i. Pigou emphasized maximizing welfare, but did not clarify the idea of maximization.
  - ii. The welfare economy is closely related to ethics, which Pigou did not explain. Welfare economics is basically a normative study in which value assessments and interpersonal comparisons are made.
2. Felber's idea of the welfare economy provides a detailed explanation of the conception ([Wattimena, 2013](#)).
  - i. The company should live as it was founded by humans and uphold the social values that are developed in society.
  - ii. Giving awards to companies that increase the effectiveness of the community and the environment in the form of tax reduction and others.

- iii. Establishment of a democratic bank, as well as no administrative fees, interest, and illegal investment prohibition.
- iv. International cooperation with currencies. A country's currency should not be made an international currency.
- v. The economy should grow by paying attention to the preservation of nature, for example, joint ownership of land. Therefore, there is no desire to own more land than others. Then an increase in land value and exploitation without regard to natural conditions is liable not to occur
- vi. The main objective of the economy is no longer about growth but rather how to improve public welfare.
- vii. When economic growth is no longer a measure, people do not work too hard to maintain their dignity. This has an impact on reduced working hours while the time for family is increased.
- viii. The politics needed in the welfare economy system is democratic. Where the community holds the highest sovereignty and liable to change the nets of government.
- ix. All the above concepts should be bound by agreement and clear legal rules
- x. The welfare economy depends on value. Then the social value contained in the society should be preserved. Felber made an example which includes, the ability to have feelings, speak, and listen to others, to think not only with one's thoughts, but by taking the perspective of others, and the love and care for nature
- xi. Finally, the economy of public welfare depends on the leader, who determines the vision and mission of a country concerned.

## **B. Public Interest on Legislation in Indonesia**

To create a just and prosperous society based on Pancasila and the 1945 Constitution, the government needs to carry out development in all aspects of community settings. One of the government's efforts in the framework of national development is the advancement of the public interest. The constitutional foundation of the 1945 Constitution as explained in Article 33 paragraphs 1-4, includes:

1. Economic activities in Indonesia initiate unity and are based on the principle of kinship
2. Each production sector that is important for the country and society, and becomes the main source of income for the community is fully regulated by the state

3. Natural resources, earth, and water are fully controlled by the state and used as much as possible for the benefit of many people.
4. The principle of economic democracy becomes the precept of the existing national economic system in Indonesia, which consists of the regulations on: environmentally sound, independent, fair, sustainable, balanced progress, and national economic unity

Article 33 paragraph (3) of the 1945 Constitution constitutes the basis for the formation of national agrarian politics, and law which contains orders for the state. This implies that natural resources, earth, and water are fully controlled by the state and used as much as possible for the benefit of many people, as a concrete manifestation of Article 33 paragraph (3) of the 1945 Constitution, [\*The Basic Agrarian Rules Law Number 5 of 1960\*](#). In Article 2 paragraph (1) of the Basic Agrarian Law, it is stated that: "On the basis of the provisions in Article 33 paragraph (3) of the Constitution and matters as referred to in Article 1, the earth, water, and natural resources are at the highest level controlled by the State.

In the applicable laws and regulations, concerning public interests, other than those above are regulated in:

1. Decree of the People's Consultative Assembly Number IX/MPR/2001, concerning Agrarian Reform and Natural Resource Management.
2. Law Number 86 of 1958 concerning the Nationalization of Dutch Companies.
3. Law Number 20 of 1961 concerning Revocation of Land Rights and Objects Above.
4. Law Number 1 of 1973 concerning the Indonesian Continental Platform.
5. Law Number 16 of 1985 concerning Flats.
6. Law Number 5 of 1992 concerning Cultural Property.
7. Law Number 15 of 1997 concerning Transmigration.
8. Law Number 21 of 1997 concerning the Fees for the Acquisition of Rights to Land and Buildings.
9. Law Number 41 of 1999 concerning Forestry.
10. Law Number 20 of 2000 concerning Amendment to Law Number 21 of 1997 regarding the Obligation of Acquisition of Land and Building Rights.
11. Law Number 22 of 2001 concerning Oil and Gas.
12. Law Number 28 of 2002 concerning Buildings.
13. Law Number 7 of 2004 concerning Water Resources.
14. Law Number 32 of 2004 concerning Regional Government.
15. Law Number 38 of 2004 concerning Roads



16. Law Number 38 of 2004 concerning Roads.
17. Law Number 41 of 2004 concerning Endowments.
18. Law Number 24 of 2007 concerning Disaster Management.
19. Law Number 25 of 2007 concerning Investment.
20. Law Number 26 of 2007 concerning Spatial Planning.
21. Law Number 14 of 2008 concerning Openness of Public Information.
22. Law Number 43 of 2008 concerning State Territories.
23. Law Number 4 of 2009 concerning Mineral and Coal Mining.
24. Law Number 25 of 2009 concerning Public Services.
25. Law Number 4 of 2011 concerning Geospatial Information.
26. Law Number 2 of 2012 concerning Land Procurement for Development of Public Interest.

Article 18 of the agrarian basic law states that “In the public interest, including the needs of the Nation, the State and the people, land rights are revokable, by providing appropriate compensation and in a manner regulated by the law”. The implementation of Article 18 is regulated in [Revocation of Rights to Land and Objects Law Number 20 of 1961](#), and its operation is based on Presidential Instruction of the Republic of Indonesia Number 9 of 1973 concerning the Implementation of Revocation of Rights to Land and Objects.

Article 1 of [Revocation of Rights to Land and Objects Law Number 20 of 1961](#) states that, for public interest including that of the Nation, the State and the people, as well as the need for development, the President is in a state of compulsion after listening to the Minister of Agrarian Affairs and Justice, who are liable to revoke the rights to land and objects.

Based on these description, it is stated that public interest according to agrarian basic law and Law Number 20 of 1961, is in the sense of designation, namely for the interests of the nation, state, the people, and the need for development. Therefore, public interest purpose should be felt by the community as a whole both directly and indirectly.

In the Elucidation of Article 49 of [State Administrative Court Law Number 9 of 2004](#), public interest is the need of the Nation, the State, the community, and for development. Then Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia in the explanation of letter C also states that, public interest is the need of the Nation and the State and the wider community. According to Arie Sukanti opinion, it is an interest that concerns the lives of many people, serves, and meets the needs of the community ([Sukanti, 2002](#)).

Understanding the public interest is one of the central issues in land acquisition, therefore, the law should provide strict limits to avoid being

interpreted by the government for other purposes. In the past, both in the Old and New Order, the term public interest was often used as a shield for entrepreneurs by using government funnels, for their interests in land acquisition to be smooth ([Konstitusi, 2012](#)). This was the first time the presidential decree broke through. [Land Procurement concerning implemetntation of development for the public interest Presidential Decree Number 55 of 1993](#) Article 1 number 3 provides a clear line of public interest, which is the whole need of the society. Article 5 paragraph (1) of the Presidential Decree provides criteria for any development that is attributable to public interest. There are three development criteria in public interest: (1) the development is carried out by the government, (2) subsequently owned by the government, and (3) not used solely for making profit. In the Presidential Decree, it is stated that there are 14 forms of development activities in the public interest.

In Article 5 paragraph (2) of the Presidential Decree, a solution is provided when there is a development that is substantially in the public interest but not outlined in the list 14. Then, the President issues a decision (*beschikking*) which states that the development is in the public interest. When the government considers that there is an important development activity (public interest) but is not included in the list 14, such as a toll road, then there is no need to replace Presidential Decree Number 55 of 1993. However, this offer was not taken by the government to accommodate only toll roads. For example the government had to issue Presidential Regulation Number 36 of 2005, by revoking Presidential Decree Number 55 of 1993.

Determination of public interest in the Presidential Decree is in line with Michael G. Kitay's method, which stated that there are two techniques for ascertaining public interest. First, general guidelines, by making provisions for public interests, such as social, public, or collective needs. These general guidelines are provided by the legislature, and in their implementation, the executive determines what are the intended forms of public interest, such as hospitals. Second, a list of provisions, by determining the public interest explicitly. However, Kitay further stated that most countries now combine the two methods in land acquisition arrangements. Besides making public statements, the public needs have also been reduced to the limitative list of activities ([Michael G. Kitay, 1985](#)).

In determining the understanding of public interest, [Land Procurement concerning implemetntation of development for the public interest Presidential Regulation Number 36 of 2005](#), in lieu of Presidential Decree Number 55 of 1993, using the same method as the Presidential Decree Number 55 of 1993. The difference between the two is the content of the provisions. The public interest is at the advantage of most sections of society. This Presidential Decree still determines the criteria of public interest, at least one, namely the development

carried out by the government or regional administration. The regulation also determines the list of public interest activities. Presidential Regulation Number 36 of 2005 amended by Presidential Regulation Number 65 of 2006, including one of which was amended, is about determining the public interest. As for changes in this Presidential Regulation, it includes criteria and a list of public interest activities. The development of public interest includes two criteria, namely (1) it should be implemented by the Government or Regional administration (2) subsequently owned or “shall be owned” by the Government or Regional administration. [Land Procurement concerning the implementation of development for the public interest Presidential Regulation Number 65 of 2006](#) also contains a list of development activities that are divided into 7, including public and toll roads.

The definition of public interest is relatively firmer and has legal certainty as further affirmed in Article 1 number 6 of Law 2 of 2012 and Presidential Regulation Number 71 of 2012 Article 1 number 6 of Public Interest. Stating that the interest of the nation, State, and society should be realized by the government and used as much as possible for the prosperity of the people. The law also changes the understanding and scope of the concept while, the development covers 18 activities. Based on Article 11 paragraph (1) of Law Number 2 of 2012, criteria for public interest are determined based on: (1) the development is carried out by the Government and (2) the land is subsequently owned by the Government or Regional administration.

According to Maria S. W. Sumardjono (agrarian law expert) there are two methods for determining the principles of public interest in matters of land, namely ([Maria Sumardjono,2008](#)):

1. General guidelines, which state that land acquisition should be based on reasons of public interest. The terms that are often used interchangeably to express the meaning of the ‘general’, are public, social, common, or collective. As for the term ‘importance’ or ‘purpose’, it is often replaced by need, necessity, interest, function, utility, or use. By its nature as a guideline, this gives the executive the freedom to declare a project, as eligible for public use by interpreting the principle.
2. Mention of public interest in a list of activities that clearly identifies its purpose, such as schools, roads, government buildings, etc., which by law are deemed beneficial to the public. All activities outside the list are regarded as void, and not to be used as a reason for land acquisition.

### C. Theory of Public Interest

Many disciplines have ascribed different meaning to public interest, therefore, elaborating the scope, and it tends to be incorporated into various arguments,

policies, and laws that are closely related to the framework of governance, political institutions, legal systems, practices, and society. This has led to several scientific disciplines possessing and developing several specialized sources of literature, such as the Journal of Psychological Science and the models of accounting practices to act in the Public Interest ([Johnston, 2017](#)). It is also found that the concept is old in existence and often used with the political philosophy of government intervention. In the works of political philosophers, such as Plato, Aristotle, Hobbes, and Rousseau, the concept of public interest is found to emerged. Therefore, both public interests and government interventions coexist in the philosophical, political, and legal fields ([Hantke-domas, 2003](#)).

In the aspect of natural law proposed by John Locke (in the book entitled *Two Treatises of Government: In The Former, The False Principles, and the Foundation of Sir Robert Filmer, and His Followers, Are Detected and Overthrown. The Latter is an Essay Concerning The True Original, Extent, and End of Civil Government*), there are several factors that are implicitly related to the public interest. These include: guarantees and protections of individual freedoms and rights handed over to the State. Therefore, the State has an obligation to protect individual freedoms and rights as a public good ([Rothbard, 1995](#)). The next question that arises is, what actually becomes a consideration or reference as public interest is the basic political decisions that differ in various countries. This is divided into four concepts, namely Utilitarian, Unitarian, Deontic, and Dialogical which reflect several political theories, such as libertarian, liberal, communitarian, social-democratic or socialist ([Wiering & Winnubst, 2017](#)).

In the view of classical Utilitarianism, this concept considers individual values and maximizes their benefits. In terms of the word “happiness”, the principle of utilitarianism is to aggregate the subjective side of each individual. However, utilitarians consider the critical view that does not rule out the possibility of personal interests conflicting with aggregated collective interests. In the research conducted by ER Alexander on behalf of the University of Wisconsin-Milwaukee, USA and APD Tel-Aviv, Israel in a SAGE Publication 2002, it stated that in determining the issue of public choice, it requires State action (interference, giving a definition from the government) that maximizes the utility of individual contribution and aggregating them into subjective preferences and objective values that are unavoidable ([Alexander, 2009](#)). The traditional utilitarian approach seeks to assert public interests from the aggregation of individual preferences in the frame of social welfare, and this forms intentionally modified utilitarianism. For example, it is a form of utilitarianism that underlies the welfare economy, as explained further by E.R. Alexander in the table below:

**Table 1.** Four conceptions of Public Interest (PI) ([Wiering & Winnubst, 2017](#))

Conception of Public Interest	Public Interest defining Process	The Substantial outcome of Public Interest
Conception of unity	Decision-making has its virtues through benchmarks, principles, legal theories, laws, and regulations that require considerable time for evolving.	The constitution plays an important role as the core of national regulations enforced by the State as an institution that has the responsibility to maintain and realize intentions and values. The content of the constitution is inseparable from political and social arguments, as well as a strong moral attachment to society.
Conception of Utilitarian	Public interest is explained by ex-post factor research which aims to find the cause of the formation of the meaning of public interest, through participatory comparative research on the impacts that arise at this time, and from impacts that do not arise from an event after the independent variables occur. Factors and impacts taken into account are cost and benefit analysis.	The outcome of this process is the conclusion about the highest happiness derived from the aggregation of individual preferences. The result is always different and tends to change depending on the independent variables that occur.
Conception of Deontic	The other format of a priori fixed interest in decision-making is the protection of rights. Both individual and group. This format should be followed by supporting adjudication processes.	In specific conditions, it has to be referred by individual substances or group rights of participants' claims.
Conception of Dialogical	Both in bargaining, conflict, dialogues, and deliberations, the contemporary stakeholders decide conclusions from the process of reaching ex post facto.	Public Interest is the best inter-subjective temporary outcome with the stakeholders involved in determining ideally from various negotiations, contravention situations, or deliberation.

In various economic discussions, public interest received the most attention, as stated in this study. The General Theory of Regulation considers the Public Interest Theory, which is one of the economic theories related to social regulation.

According to the Public Interest Theory, government regulations are used as instruments to overcome unbalanced competition, undesired market outcomes, and as a method for achieving efficiency in resource allocation. Government regulations are able to contribute to the achievement of market balance points, as one of the actions that are taken by the administration ([Hertog, 1999](#)). Government regulations are used as a method to achieve the maximum public interest ([Republik Indonesia, 2012](#)). In Indonesia, there are several opinions used as the basis for the application of the public interest, namely ([Republik Indonesia, 2012](#)):

1. The public interest is defined by the legitimate Government (State) in the form of legislation.
2. In addition to the form of statutory regulations, the form of agreement of the policy maker from the authority on a matter is also a form of public interest.

### III. Public Interest is Part of the Welfare Economy

To prove that the public interest is part of the welfare economy, there is a keyword that is "value" in the explanation below. Some notions of value;

1. According to the Black Law Dictionary, "... the needs or desires of human beings ..." ([T. L. Dictionary, n.d.](#));
2. According to Lexico Powered By Oxford, "...something (such as a principle or quality) intrinsically valuable or desirable ..." ([Lexico, n.d.](#));
3. According to the Cambridge Dictionary, "... how useful or important something is ...." ([the C. E. Dictionary, n.d.](#)).

Based on Pigou's opinion, stating that the welfare economy is capable of managing and sustaining the well-being of the society. With the general belief that economic welfare is also referred to as social well-being, the criteria of social welfare is classified into two. First, the economic measure of welfare in the society, is the value of money. There are personal expenses that should be incurred to the cost of production of an item. Second, income distribution in the society there are social expenses derived from making additional goods for an individual in the society. Social expenses cover damages or other costs incurred as a result of making an item available in a community.

Felber stated that the values contained in a society and that of an economic system should not conflict with each other. The economic conception of Felber's welfare, is composed of the most basic and common factors in a society. There are some values contained in humans as a *natuurlijke* and *recht* person, as well as a company, the legal and non-legal business entity. The company should reflect the values that exist in the society because the organization is actually founded by humans. Until the most common factors in the society become the legal order, political system, and government attention to keep the values contained in a society, these elements become the ideals and goals of a nation.



In addition to the values contained in the society, the economic conception of Felber's welfare should be supported by the making of regulations / Act / laws that are in synergy with economic values in a society. One of the initiators of regulatory theory is Johannes Aleidus Den Hertog. In the dissertation entitled "Public And Private Interest In Regulation", it is stated that the regulations made by the government in the form of legal rules are instruments used to overcome losses from unfair trade competition, instability of market regulation, and unfavorable outcomes. Therefore, avoiding the conditions where the rich who is able to survive, dominates the market.

From these three opinions, a line or common thread is obtained that reflects value. The economic and social value from the perspective of Pigou, include the ideology contained in a society according to Felber and the value of balance according to John.

Every nation should have an ideology and believe in the government of the country. Indonesia has an ideology or values contained in the Pancasila and the 1945 Constitution. Some of the values used as the ideology of the Indonesian people are contained in article 33 of the 1945 Constitution, namely:

1. The principle of kinship and joint effort in developing economic activities.
2. The principle of unity and environmental insight in running the economy.
3. The controlling state does not own the earth, water, and wealth however, it is used for the prosperity of the people.
4. The principle of general welfare should be adopted by the state.

As explained in point II.3 that the public interest is the aggregation of individual preferences in the frame of social welfare. Several research stated that values in a society of a country should be the focus of the government. The values contained in a society should be reflected in every rule of a country. Therefore, general welfare is a value that is embedded in the Indonesian nation.

#### **IV. Welfare Economics Based on Public Interest in Indonesian Legislation**

A long study was conducted by Jimly Asshiddiqie on the interplay of the relationship between economics and law, in particular, the constitution. The study introduced and explained the concept of economic constitution which in its development became the discussion of several economists and general jurisprudence ([Asshiddiqie, 2013](#)). In Indonesia, the concept is still relatively new, even though it is evident from its history that the concept of constitutional economics has become a fairly old topic ([Cho, 2006](#)). What needs to be understood from the economic constitution is that, it is the basis, benchmark, and noble value in formulating economic regulations and policies in a country. For the application of a logic and legal principle, namely "*Lex Superior derogate Legi Inferior*" (there is no conflict in the hierarchy of rules). [Asshiddiqie, 2013](#) emphasized the concept that a constitution is not only seen as a political precept constitution. However, with the current development in the economic globalization, known as the Industrial Revolution 4.0 or 5.0, Artificial Intelligence, free trading, etc, the understanding of the constitution

as an economic and social constitution, such as in economic democracy welfare state is important, and has become the basis of integration, enabling them to influence each other.

The 1945 Constitution is not only related to the regulation of state institutions and government structures. However, more than that, it also has dimensions of economic regulation and social welfare as stipulated in Article 33 and 34 of the 1945 Constitution. This article is a consequence of the purpose of the establishment of the Indonesian state, which is indicated in the Preamble to the 1945 Constitution in paragraph 4. The formulation is as follows:

“Then, rather than that, to form a government that protects all Indonesian residents, indigenes, and to promote public welfare, education, and participate in carrying out the national rules based on independence, eternal peace, and social justice”

The 1945 Constitution in Article 33 in Chapter XIV with the title “Social welfare” means that the Indonesian state aspires to realize a good national economy and social welfare. Article 33 of the 1945 Constitution is the foundation of the Republic of Indonesia’s constitution in the field of economy. This article is not merely giving instructions on the structure of the economy and the authority of the state in regulating economic activities. Rather it reflects on the ideals of belief held firmly, and consistently fought for by the government ([Bagir Manan, 1995](#)).

Social welfare is closely related to the interests of the people, prioritizing the common good without ignoring individual. Article 33 of the 1945 Constitution is the basis of economic democracy and is also the highest source of law in the economic field. It is considered to play big roles with policies on economic development including the formation of legislation. However, in its realization, it has not been found to play a good role, for example, reviewing laws whether in line with the constitution or not is difficult because, the 1945 Constitution only determines the testing of rules and regulations that are under the law. Meanwhile, after the amendment to the 1945 Constitution, namely the birth of the Constitutional Court (MK) which, among others, was given authority as a result of the amendment to conduct a judicial review. The authority granted by the Constitution in examining issues is determined in Article 24 A and Article 24 C of the 1945 Constitution, namely:

1. Article 24 A paragraph (1) which reads: The Supreme Court has the authority to adjudicate at the cassation level, examine the statutory provisions under the law, and have other powers granted by the constitution.
2. Article 24 C paragraph (1) reads: The Constitutional Court has the authority to adjudicate at the first and last level. to make final decision after being reviewed against the Basic Law, to decide on a dispute over the authority of a state institution whose jurisdiction is granted by the Basic Law, to make decision upon the dissolution of political parties, and to decide on disputes over the results of general elections.

Various laws that are closely related to the national economy are submitted to the Constitutional Court to be tested for constitutionality. Among them, the Constitutional Court has reviewed the law against the 1945 Constitution, namely:

1. Judicial review of Law Number 20 of 2002 concerning Electricity against the 1945 Constitution ([Mahkamah Konstitusi Republik Indonesia, 2004](#)).
2. Judicial review of Law Number 22 of 2001 concerning Oil and Gas against the 1945 Constitution ([CHAKIM, 2011](#)).
3. Judicial review of Law Number 7 of 2004 concerning Water Resource against the 1945 Constitution ([Mahkamah Konstitusi Republik Indonesia, 2005](#)).

The judicial review of the three rules opposed the regulation of Article 33 of the Constitution of the Republic of Indonesia, based on Economic Democracy and the principle of kinship, which places possession of goods in accordance with Article 33 paragraph (3) of the 1945 Constitution in the public interest of the state. In accordance with what is written in the article, the government as the holder of the mandate and legitimacy, has the authority to regulate the necessary policies, for laws and regulations to be created as described in Article 33 of the 1945 Constitution, in accordance with the economic democracy. The meaning of being controlled by the state should be interpreted in a broad manner based on its derivation from the conception of the sovereignty of the Indonesians over earth's wealth, water, and natural resources ([CHAKIM, 2011](#)). Therefore, understanding of article 33 of the Constitution should be made as one, such that, in the material testing process of the three laws, there is a difference in interpretation. The government activities to manage the earth, water and the resources include the management process and the benefits achieved are returned to the community for the prosperity of the people. However, the government has failed to explain this sequence with many other factors, such as poor public communication between the government and the people and the lack of people's trust in the administration. Consequently, the three laws are subjected to the material testing process. These are the reasons why the public interest as a concept of economic welfare is not implementable by the government. The dilemma position for the Constitutional Court in making decisions is at least seen in the following context. When the Constitutional Court cancels the three laws, it causes various discontent from foreign investors and multilateral institutions. All forms of dissatisfaction have an economic impact which eventually spread to socio-political issues. However, when the three laws are compared to Article 33 of the 1945 Constitution, the validity seems to have a diametric or inconsistent conflict.

## V. Conclusion

This research explain and elaborate the Indonesian laws and regulations concerning public interests based on welfare economic theory. The results show that public interest is the aggregation of individual preferences in the frame of social welfare. Several research suggests that the values in a society should be the focus of the government, and should

be reflected in every country's constitution. General welfare is a value that is embedded in Indonesia, therefore, every legislation that is closely related to the national economy should be in line with Pancasila and the 1945 Constitution. The 1945 Constitution in Article 33 in Chapter XIV with the title "Social welfare" implies that the Republic of Indonesia aspires to realize the national economy and social welfare. Various laws that are closely related to the national economy are submitted to the Constitutional Court to be tested for constitutionality, including the judicial review on Law Number 20 of 2002 concerning Electricity, Law Number 22 of 2001 concerning Oil and Gas, and Judicial Review of Law Number 25 of 2007 concerning Investment against the 1945 Constitution. The validity of the three laws has diametric or inconsistent conflicts with Article 33 of the 1945 Constitution. This research is recommended for policy holders to gain an in-depth understanding in legal considerations and establishment of regulations. In addition, it helps the wider community to understand the nature of public interest, as well as the economic value embodied in it.

### References:

- A. C. Pigou. (1932). *The economics of welfare*. Retrieved from [http://files.libertyfund.org/files/1410/0316\\_Bk.pdf](http://files.libertyfund.org/files/1410/0316_Bk.pdf)
- Ahiakpor, J. C. W. (1999). Retard the Development of. *The Independent Review*, *v*, 355–383. <https://doi.org/10.2307/135704>
- Alexander, E. R. (2009). The Public Interest in Planning: From Legitimation to Substantive Plan Evaluation. *Planning Theory*, *1*(3), 226–249. <https://doi.org/10.1177/147309520200100303>
- Asshiddiqie, Jimly. (2013). Memperkenalkan Gagasan Konstitusi Ekonomi. *Jurnal Hukum Prioris Vol. 3 No. 2*. Retrieved from <https://www.trijurnal.lemlit.trisakti.ac.id/index.php/prioris/article/view/360>. ISSN: 2548-6128
- Asshiddiqie. (2002). Konstitusi Dan Konstitusionalisme Indonesia Di Masa Depan. Jakarta. Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia.
- Baujard, A. (2013). Welfare economics. *Groupe D'analyse Et De Théorie Économique Lyon - St Étienne Wp*, 1–20. Retrieved from <https://halshs.archives-ouvertes.fr/halshs-00906907>
- Chakim, M. L. (2011). Uji Materiil MK *thd* 3 UU (UU Air, UU Minerba, n UU Ketenagalistrikan) (pp. 1–10). pp. 1–10. Retrieved from <http://www.lutfichakim.com/2011/12/analisis-penafsiran-pasal-33-uud-1945.html>
- Cho, Sungjoon. (2006). Toward a New Economic Constitution: Judicial Disciplines on Trade Politics. Chicago Kent College of Law. Retrieved From <http://ssm.com/abstract=929709>

- Dictionary, the C. E. (n.d.). *the Cambridge English Dictionary*. Retrieved from <https://dictionary.cambridge.org/dictionary/english/value>
- Dictionary, T. L. (n.d.). *The Law Dictionary (Black's Law Dictionary)*. Retrieved from <https://thelawdictionary.org/value/>
- Dworkin, Ronald. (1973). *Legal Research*, Daedalus, spring.
- Elliott, J. E. (2010). Marx and schumpeter on capitalism's creative destruction: a comparative restatement. *The Quarterly Journal of Economics*, 95(1), 45–68. Retrieved from <http://www.jstor.org/stable/1885348> Accessed:
- Felber, C., & Die. (2014). *Die Gemeinwohl-Ökonomie*. Retrieved from <https://www.hanser-elibrary.com/doi/pdf/10.3139/9783552062993.fm>
- GKitay Michael. (1985), "*Land Acquisition in Developing Countries*", Policies and procedures of public sector, with survey and case studies from Korea, India, Thailand, and Equador, Oelgeschlager, Gunn&Hain, Boston. Publishers, Inc.
- Hantke-domas, M. (2003). *The Public Interest Theory of Regulation : Non-Existence or Misinterpretation ?* 165–194.
- Hantono, D., & Pramitasari, D. (2018). Aspek Perilaku Manusia Sebagai Makhluk Individu dan Sosial Pada Ruang Terbuka Publik. *Nature: National Academic Journal of Architecture*, 5(2), 85-93.
- Hertog, J. Den. (1999). General theories of regulation. *Economic Institute/ CLAV, Utrecht University*, 223–270.
- Hossain, F. M. A., & Ali, K. (2014). *Relation between Individual and Society*. (August), 130–137.
- Hutagalung, Ari Sukanti. (2002), *Penyelesaian sengketa Tanah menurut Hukum Yang Berlaku*, *Jurnal Hukum Bisnis*, Vol. 8 Maret, Jakarta.
- Irshad, C. (2016). *Five Theories of Welfare Economics*. Retrieved from <https://www.grin.com/document/336546>
- Johnston, J. (2017). The public interest : A new way of thinking for public relations ? *Public Relations Inquiry*, 6(1), 5–22. <https://doi.org/10.1177/2046147X16644006>
- Jundiani. (2015). Aktualisasi Antinomi Nilai-Nilai Filosofis Pasal 33 UUD 1945. *de Jure, Jurnal Syariah dan Hukum*. Volume 7 Nomor 2.
- Konstitusi, M. (2012). *PUTUSAN Nomor 50/PUU-X/2012*. Retrieved from [http://jdih.go.id/files/148/putusan\\_sidang\\_50\\_PUU\\_2012-telah\\_baca\\_13Feb2013.pdf](http://jdih.go.id/files/148/putusan_sidang_50_PUU_2012-telah_baca_13Feb2013.pdf)
- Land Procurement concerning implemetntation of development for the public interest Presidential Decree Number 55 of 1993 (IND.)*. <https://jdih.esdm.go.id/storage/document/Keppres%20No.%2055%20Thn%201993.pdf>

- Land Procurement concerning implemetntation of development for the public interest Presidential Regulation Number 36 of 2005 (IND.).* [http://perundangan.pertanian.go.id/admin/p\\_presiden/Perpres-36-05.pdf](http://perundangan.pertanian.go.id/admin/p_presiden/Perpres-36-05.pdf)
- Land Procurement concerning implemetntation of development for the public interest Presidential Regulation Number 65 of 2006 (IND.).* <https://jdih.esdm.go.id/storage/document/Perpres%20No.%2065%20Thn%202006.pdf>
- Land Procurement for the public interest law number 2 of 2012, (DPR) (IND.).* <https://jdih.esdm.go.id/storage/document/UU%20No.%202%20Thn%202012.pdf>
- Lexico. (n.d.). *Lexico Powered By Oxford.* Retrieved from <https://www.lexico.com/en/definition/value>
- M, Wiering., & Winnubst, M. (2017). Environmental Science & Policy The conception of public interest in Dutch fl ood risk management : Untouchable or transforming? *Environmental Science and Policy*, 73, 12-19. <https://doi.org/10.1016/j.envsci.2017.03.002>
- Magnar, K., Junaenah, I., & Taufik, G. A. (2004). Tafsir MK Atas Pasal 33 Uud 1945 : ( Studi Atas Putusan MK Mengenai Judicial. *Jurnal Konstitusi*, 7, 1-180. Retrieved from <https://media.neliti.com/media/publications/109597-ID-tafsir-mk-atas-pasal-33-uud-1945-studi-a.pdf>
- Mahkamah Konstitusi Republik Indonesia. (2004). *Putusan 001-021-022/PUU-I/2003.* Retrieved from <https://mkri.id/public/content/persidangan/putusan/Putusan001PUUI2003>
- Mahkamah Konstitusi Republik Indonesia. (2005). *Putusan 008/PUU-III/2005.*
- Manan Bagir. (1995). *Pertumbuhan dan Perkembangan Konstitusi Suatu Negara*, Bandung. Mandar Maju.
- Marzuki, Peter Mahmud. (2014). *Penelitian Hukum*. Jakarta. Pranada Media Group.
- Muwahid. (2015). *Implikasi Yuridis Kekaburan Makna Kepentingan Umum Dalam Undang-Undang Pengadaan Tanah Bagi Kepentingan Umum*. Al-Hikmah Junral Studi Keislaman. Volume5.
- Perpustakaan Lemhanas RI. (n.d.). *Page 16- Perpustakaan Lemhannas RI (p.16).* p.16. Retrieved from <http://lib.lemhannas.go.id/public/media/catalog/0010-121500000011655/swf/4270/files/basic-html/page16.html>
- Revocation of Rights to Land and Objects Law Number 20 of 1961, (DPR) (IND.).* <https://www.atrbpn.go.id/Publikasi/Peraturan-Perundangan/Undang-Undang/undang-undang-nomor-20-tahun-1961-918>
- Rothbard, M. N. (1995). *Economic Thought Before Adam Smith (Volume I)*. Edward Elgar Publishing Ltd.



- S.W. Maria Sumardjono. (2008). Tanah dalam Perspektif Hak Ekonomi, Sosial, Budaya. Penerbit Buku Kompas.
- Shailes, K. (n.d.). *Pigovian Welfare Economics (With Evaluation)*. Retrieved from <http://www.economicdiscussion.net/welfare-economics/pigovian-welfare-economics-with-evaluation/21051>
- Shank, G. (2002). *Qualitative Research. A Personal Skills Aproach*. New Jersey. Merril Prentice Hal.
- State Administrative Court Law Number 9 of 2004, (DPR) (IND.)*. <https://jdih.kemenkeu.go.id/fulltext/2004/9TAHUN2004UU.html>
- Sukarno. (1964). *Camkan Pancasila: Pancasila Dasar Falsafah Negara*. Jakarta. Departemen Penerangan RI.
- Sukarno. (1964). *Dibawah Bendera Revolusi, Jilid Pertama*. Jakarta. Panitya.
- The Basic Agrarian Rules Law Number 5 of 1960, (DPR) (IND.)*. <http://www.jdih.kemenkeu.go.id/fullText/1960/5TAHUN~1960UU.HTM>
- Wattimena, R. A. . (2013). *Pemikiran christian felber tentang ekonomi kesejahteraan publik. Respons Jurnal Etika Dan Sosial, 8, 213–256*. Retrieved from <http://ejournal.atmajaya.ac.id/index.php/response/article/view/752>
- Wiering, M., & Winnubst, M. (2017). *Environmental Science & Policy The conception of public interest in Dutch fl ood risk management : Untouchable or transforming? Environmental Science and Policy, 73, 12–19*. <https://doi.org/10.1016/j.envsci.2017.03.002>