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Revisiting Article 33(3) of the Constitution of the Republic of Indonesia Through the Perspective of Law and Economics

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ABSTRACT

This paper explores the connection between Article 33(3) of the 1945 Constitution of Indonesia, the welfare state theory, and the Kaldor-Hicks efficiency principle in the management of natural resources, particularly in the oil and gas sectors, using a normative juridical method. Since independence, Indonesia has been founded on the rule of law, ensuring justice, equality, and protection for its citizens. Article 33(3) establishes the philosophical and economic foundation of Indonesia's welfare state by mandating that vital sectors and natural resources be controlled by the state for the people's prosperity. However, globalization and excessive state monopolization have created inefficiency, corruption, and slow growth. Integrating the welfare state theory, which emphasizes public welfare, with the Kaldor-Hicks principle, which values policies that increase overall societal well-being even if some are disadvantaged, provides a more balanced framework. Allowing private participation under strict state supervision can enhance efficiency and innovation while maintaining constitutional integrity. The term "state control" should be understood as a regulatory and supervisory function rather than absolute ownership, ensuring accountability, transparency, and fairness. Thus, effective governance requires the state to act as both facilitator and regulator, balancing social justice and economic efficiency. This combination of welfare and efficiency theories, analyzed through a normative juridical approach, supports a constitutional model that promotes equitable and sustainable national prosperity.
Keywords: Article 33(3) of the 1945 Constitution, Welfare State Theory, efficiency theory

INTRODUCTION

Since Indonesia became an independent state, the founding fathers agreed that the nation will be based on law, which is understood as a Constitution that reflects protection for its people. The Constitutional system of Indonesia stated that Indonesia's government is based on law, not merely on power (Murthada, M.,2022). Emphasizing that Indonesia's sovereignty must be exercised within a framework that consists of justice, equality, and protection for all its citizens. The existence of comprehensive regulations on the protection of society shows that the 1945 Constitution increasingly provides guarantees and protection for Indonesian citizens. This also proves Indonesia's commitment to regulate and protect its citizens in a better way than before by actively working to regulate and safeguard its people's rights and welfare (Affandi, H., 2019).

The normative reality stated that the government should follow Article 33(3) from the 1945 Constitution and the welfare theory. In the Article 33(3) of the 1945 Constitutional forms the philosophical and economic backbone of Indonesia's welfare

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state model by stating that the economy shall be organized as a common endeavor based on the principle of kinship, sectors of production that are important to the state and affect the livelihood of many people shall be controlled by the state, and land, waters, and natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people. This explains that sectors of production that are important and affect the livelihood of many people shall be controlled by the government or the state, such as land, water, and natural resources should be managed for the greatest prosperity of the people. The essence of this article is that economic activities are not left entirely to the market, but should aim to benefit everyone (welfare).

Article 33(3) of the 1945 Constitution aligns with the welfare state theory, which means the state must play an active role in ensuring the well-being of its citizens. According to T. H. Marshall, the state is the appropriate institution to participate in promoting the welfare of its citizens (Sukmana, O. (2016). Others also view that the idea of the welfare state originated in the 18th century when Jeremy Bentham promoted the notion that the government has a responsibility to ensure "the greatest happiness (welfare) of the greatest number" of its citizens. This perspective suggests that government intervention is necessary as the government has the responsibility for its citizens' welfare.

However, the application of these welfare principles in Indonesia faces complex challenges, particularly in managing the oil and gas sectors. Globalization brings many private sectors entering Indonesia, and one of them is from the oil and gas sector. Although the Constitution gives the state control, globalization has shown that too much of a state monopoly can cause inefficiency, corruption, and even slow growth. Therefore, the government needs to find a balance between keeping its authority and allowing private companies to help improve efficiency and innovation.

From this perspective, the efficiency theory offers a supportive approach. According to Kaldor-Hicks, a policy or action is considered good if it increases the happiness of society, even though some individuals may be disadvantaged. The measure is not about who gains or loses, but whether the total happiness of society increases after everything is taken into account. Allowing private participation in the oil and gas sectors can enhance efficiency, production levels, and lead to greater overall welfare, which is in line with Article 33(3) of the 1945 Constitution.

Problems like lack of transparency and bureaucracy have made it difficult for the government to meet the country's energy needs on its own. Letting private and foreign companies help with exploration and production does not go against Article 33(3) of the 1945 Constitution. Article 33(3) supports the main goal of using natural resources for the people's benefit. As long as the government acts as a regulator and makes sure that the private companies do not harm the public interest, this system still follows the Constitution.

The meaning of "controlled" in Article 33(3) of the 1945 Constitution, in terms of economy, does not mean that the state itself is a capitalist but the state must behave such as the government must be a supervisor and regulator on the people's safety, the

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increasing number of companies and the increasing of people who depend on the basis of their lives because the greater the participation of the government should be, the motherland must be under State authority, and large mining companies are run as state business (Hayati, T. (2019). This view aligns with the main ideas of good governance, which are being accountable, transparent, and involving the public. A government that regulates the economy well enough without blocking market activities can achieve both fairness and efficiency. Indonesia should not completely reject capitalism but try to make it more humane and fairer.

In today's global economy, keeping this balance is not just about ideology but also a necessity. The world market nowadays is competitive and requires large investments. Indonesia needs to use its natural resources wisely while also taking advantage of the efficiency of private businesses. The government must continue to regulate these activities to prevent exploitation and protect the environment. Therefore, the government should shift to a facilitator that supports fair and sustainable development.

In conclusion, Indonesia's commitment to being a nation based on law and improving the welfare of its citizens remains the most important thing to do. Article 33(3) of the 1945 Constitution serves as the moral and legal guide for a better economic policy for citizens' prosperity. However, the government should also ensure that the policies are efficient. Combining the ideas of the welfare state with the Kaldor-Hicks efficiency theory gives a better approach, which balances fairness and effectiveness. The meaning of "state control" is not about the government owning everything, but managing resources for the people's benefit. By following state policies, welfare theory, and efficiency theory, Indonesia can achieve its constitutional goals.

RESEARCH METHOD

In accordance with the title and research problem, this study will be conducted using a normative juridical research method (normative legal research method). Normative juridical research is a type of legal research that is literature-based (Rosidi,2024). This method is carried out by examining and analyzing various library materials or secondary data as the primary sources. The researcher does not collect data directly in the field but instead focuses on the study of legal documents such as laws and regulations, court decisions, legal literature, and other written sources. Thus, this research relies on theoretical materials and existing legal documents to address the research problem.

RESULTS AND DISCUSSION

Public Goods Theory and Limited Resources

From an economic view, society will face the challenge of scarcity. Resources such as land, water, energy, and oil are limited (Wang, J., & Azam, W. (2024). Public goods theory explains that some goods will not be efficient if only one market manages the whole situation. Some resources cannot be restricted to some part of

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users and should be shared with everyone. While some resources are limited, it would be unsustainable if the market manages them without rules. Because it could run out or be unfairly distributed between society.

Resources are limited, which is why ownership must be restricted to ensure sustainability and social protection. Law plays a role in regulating the accessibility of the resources, how much is permissible, and under what conditions. Without regulation, individuals may act according to personal benefit and lead it to overuse, which is the tragedy of the commons (Bezin, E.,2019). Article 33(3) enables the State to impose legal boundaries on ownership and exploitation to ensure that such resources can be replenished for long-term welfare.

Welfare Maximization and the Role of Law

The concept of welfare maximization refers to the purpose of reaching the greatest benefit of society through the optimization of resources and the system. The constitutional context in Article 33(3) of the 1945 Constitution aligns with this principle. Philosophically, this is based on the proactive role of law in promoting welfare, which is rooted in the idea of utilitarianism.

Through Article 33(3), the law is used as the primary regulatory tool to reach public welfare. Justified by the wording in Article 33(3), which places the power of control over vital sectors and natural resources in the government for the greatest benefit of the people. The right to control, as written in Article 33(3), could be defined not merely as ownership but also the power to regulate and operate. Consequently, the law acts as a mechanism that subjects economic activity in strategic sectors to a mandatory requirement of fulfilling the mandate of the Indonesian welfare state.

Generation of welfare as mandated by the constitution through Article 33(3), is carried out through specific regulatory instruments that shape market dynamics. One example of such an instrument is the Competition Law (UU Persaingan Usaha). The law serves as a concrete implementation of maintaining public welfare and fulfillment of the constitutional mandate by intervening to distribute market power (Zaid,2021), which forces business actors to innovate, improve quality, and offer competitive pricing. Thus, serves as a safeguard ensuring economic efficiency directed towards the constitutional objective of maximizing welfare (Saputra, R.,2022).

Determining Sectors That Require Competition vs. Natural Monopoly

Not all sectors work well under competition. Some industries naturally function better as a monopoly because having many companies operate in the same space would actually increase profit instead of lowering it. This situation is called a natural monopoly (Hadi, A., 2023). The railroad industry could be a good example. If some companies built their own rail lines, it would cause duplicate tracks, with higher infrastructure costs, and be inefficient in operating the services. To prevent these problems, governments often take care of this by regulating a single operator so the system can run smoothly and efficiently for society.

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The same thing applies to other sectors, such as electricity, water, and land. Where electricity needs expensive networks and constant supply, water services depend on heavy infrastructure and are crucial for daily life, and land is a basic resource that correlates directly to public welfare. These sectors are not public goods in the strict economic sense, but they are so important that mismanaging them would harm society. Article 33(3) of the Indonesian Constitution reflects this reasoning, and it declares that sectors vital to the public interest should be controlled by the State to protect people's welfare and ensure that essential services are managed responsibly.

State Intervention in Oil Distribution

The government views oil as different from ordinary goods because it plays a major role in people's everyday lives and national welfare. For that reason, the government believes it should have authority over how oil is sold and distributed. In this view, oil is treated as a public resource, where the State claims it requires government action to protect the public interest. Some parts of society argue that state control can prevent supply disruptions, protect the vulnerable part of society, and ensure important policy goals can be achieved. However, the real issue is whether the advantages of direct control are greater than the potential costs.

When the government takes full charge of fuel distribution, it can control fuel prices, set quality requirements, and decide which kinds of fuel or vehicles to promote. This helps maintain stable supplies, avoid sudden price spikes, and ensure that environmental and safety standards are applied consistently. A state-operated system can also channel its revenue into public services and national development projects. For people concerned about shortages or global disruptions, government control can seem like a safeguard against sharp and unfair price increases.

However, state monopolies come with drawbacks. When a single government-owned company manages fuel distribution, competition declines, reducing the incentive to innovate, lower costs, or improve services. This can lead to higher fuel prices in the long run and delay the development of cleaner or more advanced fuel options. Private firms may invent safer or improved products, but these innovations might never reach consumers. State-run companies can also be influenced by political interests, resulting in pricing decisions or policies that are inefficient and ultimately burden taxpayers. In short, less competition and political influence can make the energy sector less efficient and slower to develop new technology.

Cost–Benefit Analysis of State Control

A cost–benefit analysis (CBA) helps policymakers decide whether government action brings more good than harm. It offers a clear method for measuring how government decisions affect the economy and people's well-being (Dehnhardt, A., 2022). When the State controls fuel distribution, it can help keep fuel prices more stable for consumers. This control also allows the government to match fuel distribution with national energy plans. The State can also set consistent environmental rules that support long-term sustainability.

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State control can protect consumers from sudden price increases caused by global market changes. However, these advantages should be compared with the disadvantages of reducing the number of competitors. With less competition, companies may become less efficient and innovate at a slow pace. State-run systems may also experience problems such as slow decision-making or mismanagement (Pangestu, R. A. 2023). In addition, political influence may affect decisions and discourage private companies from investing.

The Ethanol Policy and Externalities

Recently, the government introduced a rule for fuel to contain 10% ethanol. Private companies argued that if fuel contained 10% ethanol, it could damage the vehicle engines with this government act, the policy will create unexpected costs for consumers or society. This kind of situation is called a negative externality, where the government takes an action, but the public ends up dealing with the disadvantages. It shows how policies are not always helpful, but can sometimes create hidden problems.

This issue shows why strong legal protections are important. Article 33(3) of the 1945 Constitution gives the state the right to manage essential resources, but it also requires the government to make every decision that will benefit the public. A policy with risks damaging many vehicles would not fit with the goal of improving public welfare. When this happens, the room for government involvement becomes weak. Good governance must be applied (Sari, A. R. (2023), because the state has the power that can truly help society.

Because of these risks, the law requires having economic impact assessments. These assessments help identify possible negative effects early on, before they become public. With this action, the government can change or redesign a future policy that might harm society in the future. Sorting the impact of regulations helps ensure that policies remain useful and fair for the public welfare. This process also builds public trust and strengthens the legitimacy of government decisions (Salampessy, M.,2024).

The Impacts of Monopoly: Positive and Negative

When the State becomes heavily involved in a sector, it often creates a monopoly. A monopoly can sometimes bring benefits that help national development, like producing and distributing goods on a large scale can lower costs and improve efficiency. It is also easier to maintain consistent service when only one organization is in charge. In addition, the government can plan development more effectively and make sure essential services can be received by everyone.

However, State monopolies also have serious disadvantages. With the absence of competition, organizations will have less motivation to run the business or improve. This situation can increase the chances of corruption or misuse of power. Innovation may slow down because there is no room to improve the products or

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services. As a result, consumers may have fewer choices, and the market may stop developing.

In sectors like electricity and water, State monopolies do work because these services require huge investments and could be wasteful to build multiple competing businesses. These industries are often seen as natural monopolies. But oil distribution is different and does not comply with the monopoly to work well. Because of this, the advantages and disadvantages must be carefully studied before deciding on full State control. A thoughtful evaluation helps ensure that policies benefit the public without creating unnecessary problems.

Policy Outcomes and Future Regulation

The final part of this analysis looks at how future regulations should develop after considering welfare, public goods, externalities, and monopoly effects. Future rules should make sure that important resources stay available and sustainable, as required by Article 33(3). Policymakers should use economic tools like cost–benefit analysis before making big decisions. They should also check whether a new policy might cause hidden costs for the public. This helps the government create policies that truly benefit society.

making the services better and cheaper. In many sectors, competition encourages businesses to innovate and improve their work (Lappen, J.,2025). When the government takes full control without a valid reason, services can become slower or less efficient. This means policymakers need to decide which areas work with competition and which ones need direct State control.

Good regulation also requires clear and open decision-making, especially when the policies will impact the private companies and the public. Being transparent can build public trust and reduce the chance of decisions being influenced by politics. State-owned companies should also be held to strong accountability standards. Making these standards will prevent corruption or mismanagement when the State handles the primary resources. Strong oversight can protect both the government and the public from any possible negative outcomes.

Article 33(3) does not require the government to run every essential sector as a monopoly. But it will require the State to guide and supervise the resources in a way that the public can receive them in the best condition. This control can take different forms, such as regulation, oversight, and partnerships with private companies (Suparto, S. 2020). The goal is to choose the type of control that creates the greatest benefit for society, by picking the right approach that ensures the public's needs can make the economy remain healthy and efficient.

CONCLUSION

Article 33(3) of the 1945 Constitution requires the government to manage important resources in a way that benefits everyone. From both legal and economic views, this makes sense because some resources are limited and too important to be left fully to the market. In areas like electricity and water, strong state involvement is

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reasonable because competing systems would be inefficient and expensive. However, in oil distribution, full state control can reduce innovation and slow down improvements that consumers need. The ethanol fuel policy shows how government decisions can create problems when the impacts are not being sought through.

Because of these risks, government action must be supported by good planning and careful evaluation. The State should compare the benefits and costs of every major policy to make sure it truly helps the public. Every decision should be informed to the public, because it could build trust in society and avoid political influence that could harm society. The government should not control everything, instead, it needs to make sure that the essential resources remain fair and responsibly managed. In the end, Article 33(3) shows that the government has to balance public protection with economic efficiency so that essential sectors can support the welfare of all people.

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