Toward Economic Legal Pluralism in Indonesia's Mining Law: *Sadd al-Żarī'ah* or *Fatḥ al-Żarī'ah*?

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Abstract: The dominance of fiscal and investment interests in Indonesia's mining regime indicates the need for a renewed interpretation based on economic legal pluralism. This article examines how Law No. 4 of 2009 jo No. 3 of 2020 on Mineral and Coal Mining and the Job Creation Law shape the flow of state and corporate profits while marginalizing Indigenous Peoples from fair benefit-sharing schemes. The perspective of economic legal pluralism is applied to analyze the interaction among state law, corporate practices represented by IUP and IUPK, and customary law including *hak ulayat* as a single field of distribution. The concepts of *sadd al-ẓarī'ah* and *fatḥ al-ẓarī'ah* are used as analytical instruments to assess the prevention of *mafsadah* (harms) and the realization of *maṣlaḥah* at the community level. The findings show the closure of substantive participation channels through the simplification of environmental impact assessments and public consultations, the predominance of CSR-based compensation over rights-based claims, and the absence of measurable benefit-sharing mechanisms. The theoretical contribution lies in an evaluative framework that connects the principle of distributive justice in Islamic business law with auditable legal and institutional indicators. Policy implications include stronger recognition of *hak ulayat* in licensing, verifiable FPIC mechanisms, community quotas in revenue-sharing funds, citizen-based monitoring, and effective grievance procedures. The study is limited by its focus on national regulations and the absence of quantitative measurement of rent flows. Future research should expand fieldwork and regional comparisons to test the effectiveness of these designs.
Kewords: Economic legal pluralism; mining governance; *Sadd al-Żarī'ah; Fatḥ al-Żarī'ah*; Distributive Justice; Indigenous Rights; Socio-Ecological Sustainability

Abstrak: Dominasi kepentingan fiskal dan investasi dalam rezim pertambangan menandakan kebutuhan pembacaan ulang berbasis pluralisme hukum ekonomi. Kajian dalam artikel ini mengajukan rumusan masalah utama tentang bagaimana UU Minerba No. 4/2009 jo. UU No. 3/2020 dan UU Cipta Kerja membentuk aliran keuntungan negara-korporasi sekaligus meminggirkan masyarakat adat dari skema bagi hasil yang adil. Perspektif pluralisme hukum ekonomi digunakan untuk membaca interaksi hukum negara, praktik korporasi (IUP/IUPK), dan hukum adat (termasuk hak ulayat) sebagai satu ruang distribusi, sementara *sadd aẓ-ẓarī'ah* dan *fatḥ aẓ-ẓarī'ah* dioperasionalkan sebagai instrumen analitis untuk menakar pencegahan *mafsadat* serta pembukaan *maṣlaḥah* pada tingkat komunitas. Temuan utama menunjukkan penutupan kanal partisipasi substantif melalui penyederhanaan AMDAL dan konsultasi publik, dominannya kompensasi CSR dibanding klaim

berbasis hak, serta absennya mekanisme *benefit-sharing* yang terukur. Kontribusi teoretis hadir pada perumusan kerangka evaluatif yang menautkan asas keadilan distributif dalam hukum bisnis Islam dengan indikator legal-institusional yang dapat diaudit. Implikasi kebijakan meliputi penguatan pengakuan hak ulayat dalam perizinan, penegakan FPIC yang dapat diverifikasi, kuota komunitas dalam DBH, pemantauan berbasis warga, dan jalur keberatan yang efektif. Keterbatasan riset terletak pada fokus regulasi nasional serta belum digunakannya pengukuran kuantitatif aliran rente; riset lanjut disarankan memperluas studi lapangan dan perbandingan regional untuk menguji efektivitas rancangan tersebut.
Kata kunci: Pluralisme Hukum Ekonomi; Tata Kelola Pertambangan; *Sadd aż-Żarī'ah; Fatḥ aż-Żarī'ah*; Keadilan Distributif; Hak Masyarakat Adat; Keberlanjutan Sosial-Ekologis

Introduction

Indonesia's mining sector stands at the intersection of legal, economic, and socio-ecological tensions. The national agrarian system formally recognizes *hukum adat* (customary law) through the 1960 Basic Agrarian Law (*UUPA - Undang-Undang Peraturan Dasar Pokok-Pokok Agraria*),[1] which places customary rights as a foundational element of land regulation. However, this normative recognition has not been fully translated into regulatory implementation in the mining sector. Instead of creating a balanced governance structure, the interaction among state law, corporate law, and customary law has produced an asymmetric form of economic legal pluralism, in which state and corporate frameworks dominate while customary law remains marginal. This imbalance is further reinforced by the legal framework of the mining industry itself, particularly Law No. 4 of 2009 in conjunction with Law No. 3 of 2020 on Mineral and Coal Mining (*Undang-Undang Pertambangan Mineral dan Batubara* or *Minerba* Law), which explicitly prioritizes the generation of state revenue. Articles 128 and 129 of the *Minerba* Law impose strict fiscal obligations on companies holding Mining Business Licenses (*Izin Usaha Pertambangan* or IUP) or Special Mining Business Licenses (*Izin Usaha Pertambangan Khusus* or IUPK), directing the primary flow of economic benefits toward the state and corporations.[2] No clear legal mechanism ensures equitable benefit-sharing with *masyarakat adat* (Indigenous peoples), even though nearly 70% of Indonesia's land conflicts involve these groups.[3]

This legal architecture shapes the way mineral resources are treated as strategic commodities, extracted under the logic of fiscal optimization and investment certainty. Indigenous peoples and local populations live alongside mining operations and face their social and ecological consequences, while their participation is often limited to non-binding

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[1] Suartining, Ni Ketut, and Benny Djaja. "Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law Number 5 of 1960." *Journal of Social Research* 2.6 (2023): 1775-1785. https://doi.org/10.55324/josr.v2i6.903

[2] Joni, H. "Mining Reclamation Activities in the Perspective of Mining Law in Indonesia." *JL Pol'y & Globalization* 106 (2021): 53. https://doi.org/10.7176/JLPG/106-07

[3] Nuhidayah, Laely, Peter J. Davies, and Shawkat Alam. "Resolving Land-Use Conflicts over Indonesia's Customary Forests." *Contemporary Southeast Asia* 42.3 (2020): 372-397. https://doi.org/10.1355/cs42-3c

consultative forums. Such conditions weaken their bargaining power during licensing processes, environmental obligation setting, and decision-making on economic benefit flows.[4] For Islamic business law, the management of natural wealth is not merely a question of production and state revenue; it is a trust (*amanah*) that requires distributive justice and the preservation of public welfare (*maṣlaḥah*).[5]

Against this legal architecture, this study is situated at the intersection of economic legal pluralism, distributive justice, and *uṣūl al-fiqh* (Islamic legal theory). Prior research has mapped the coexistence of state, corporate, and customary legal orders and shown how mining policies generate tension between fiscal priorities and socio-ecological sustainability. Such contributions are valuable, yet many stop at regime description or broad normative critique. A more direct analytical instrument is needed. The present analysis proceeds on the premise that legal norms can be assessed through two complementary lenses namely *sadd al-żarī'ah* (blocking avenues to harm), which gauges how rules prevent dispossession of community rights, unfair environmental burdens, and loss of access to economic benefits;[6] and *fatḥ al-żarī'ah* (opening avenues to benefit), which examines whether rules create meaningful opportunities for benefit-sharing, strengthen the standing of *masyarakat adat* (Indigenous peoples), and enable community-based monitoring and remedies.[7] Centering these lenses places distributive justice at the core, linking legal texts, implementation practices, and material outcomes for affected communities.

An economic legal pluralism perspective ensures that the analysis does not stop at classifying legal systems.[8] The discussion focuses on the tangible consequences of regulatory design choices for the flow of benefits. Positive legal sources remain important, but their significance becomes clearer when connected to institutional structures that determine who decides, who supervises, and who receives the benefits. The need for concrete distributive measures motivates the development of an evaluative instrument capable of assessing legal norms not merely by their declared intent but by their ability to prevent *mafsadāt* (harm) and open *maṣlaḥah* (public benefit) at the community level. This line of reasoning aims to bridge Islamic economic ethics with a grounded reading of Indonesia's mining regulatory order.

There are two research questions guide this article. The first concerns how the perspective of Indonesia's mining law shapes the distribution of economic benefits for local communities and *masyarakat adat* (Indigenous peoples) living in mining areas. The second focuses on how the principles of *sadd al-żarī'ah* and *fatḥ al-żarī'*ah can be used as analytical tools to evaluate the effectiveness of legal instruments in ensuring distributive justice in resource governance. Formulating these questions maintains alignment with the study's broader aim which is strengthening an inclusive analytical perspective that recognizes

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[4] Muhammad Bagus Adi Wicaksono and Devi Triasari, "Coal Post-Mining Reclamation Policies in Several Countries: Lessons for Indonesia," *Journal of Law, Environmental and Justice* 2, no. 3 (2024): 229–53, https://doi.org/10.62264/jlej.v2i3.106.

[5] Asyraf Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid Al-Shari`ah, Maslahah, and Corporate Social Responsibility," *American Journal of Islamic Social Sciences* 24, no. 1 (2007): 25–45, https://doi.org/10.35632/ajiss.v24i1.415.

[6] Sarumpaet, Muhammad Idris, and Dhiauddin Tanjung. "Al-Adillah Al-Mukhtalaf Fiha: Sadd Al-Zari'ah." *Jurnal Hukum, Politik dan Ilmu Sosial* 3.4 (2024): 42-57. https://doi.org/10.55606/jhpis.v3i4.3981

[7] Nurjanah, Siti, Agus Hermanto, and M. Yasin al Arif. "Fatḥ al-Dzari'ah Solution for Determining the Status of Children from Secret Marriages Through the Constitutional Court Decision." *Jurnal Legalitas* 17.1 (2024): 66-80. https://doi.org/10.33756/jelta.v17i1.24831

[8] Keebet Von Benda-Beckmann and Bertram Turner, "Legal Pluralism, Social Theory, and the State," *The Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (2018): 255–74, https://doi.org/10.1080/07329113.2018.1532674.

masyarakat adat as legitimate legal subjects and economic actors while offering clear criteria to assess whether legal norms foreclose harm or enable benefit.

Debates among scholars on the regulation of Indonesia's mining sector through the lens of Islamic studies have concentrated on integrating *maqāṣid al-sharīʻah* (objectives of Islamic law) and Islamic ethical principles into natural resource governance. Fikri (2024) show that *maṣlaḥah* (public benefit), *ʻadl* (justice), and *ḥifẓ al-māl* (protection of wealth) furnish a normative basis for mining governance oriented toward public welfare and environmental sustainability rather than narrow fiscal targets.[9] Sanawiah el al. (2023) further highlight how applying *ḥifẓ al-bī'ah* (protection of the environment) and *amānah* (trust) can strengthen environmentally just and accountable models of governance, particularly through *ijtihād maqāṣidī* (independent reasoning guided by *maqāṣid*) and *taḥqīq al-manāṭ* (contextual legal analysis) as adaptive instruments of Islamic law.[10] Kusniati (2024) emphasize protecting community rights via participatory mechanisms such as the recognition of *hak ulayat* (collective customary land rights) and the implementation of FPIC (Free, Prior, and Informed Consent) to advance ecological justice.[11] Fahru Azwa et al. (2024) illustrate how *maqāṣid al-sharīʻah* may guide regional mining spatial planning to balance economic interests with ecological sustainability.[12] Arrisman (2018) underscores Islamic business ethics as a moral instrument that strengthens relations between companies and local communities.[13] Yet across this body of work, operational use of *sadd al-ẓarīʻah* and *fatḥ al-ẓarīʻah* as systematic analytical tools for evaluating the distribution of economic benefits and regulatory performance in Indonesia's mining law remains limited, an analytical gap this study directly addresses in light of the current *Minerba* (Mineral dan Batubara, Indonesia's "Mineral and Coal" regime) framework and its revenue-centered priorities.

This article's contribution lies in advancing *sadd al-ẓarīʻah* and *fatḥ al-ẓarīʻah* beyond normative discourse and applying them as structured instruments for examining how mining law shapes the flow of economic benefits, affects community rights, and steers the direction of distributive justice. In practical terms, the lenses are mobilized to interrogate whether specific provisions tied to *Izin Usaha Pertambangan* (IUP, Mining Business License) and *Izin Usaha Pertambangan Khusus* (IUPK, Special Mining Business License) foreclose harm or enable benefit at community level.[14] This approach expands the scope of Islamic business law by

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[9] Ahmad Lutfi Rijalul Fikri, "Maqashid Sharia Study on Minerals and Coal Law in Indonesia," *Hayula: Indonesian Journal of Multidisciplinary Islamic Studies* 8, no. 1 (2024): 43–56, https://doi.org/10.21009/hayula.008.01.03.

[10] Sanawiah Et Al., "LAW POLITICS OF PEOPLE'S MINING BASED ON MAQASHID SYARIAH'S WELFARE AND SOCIAL JUSTICE VIEWPOINT," *Russian Law Journal* 11, no. 3s (2023), https://doi.org/10.52783/rlj.v11i3s.774.

[11] Retno Kusniati, "Free, Prior, and Informed Consent Principles as Indigenous Peoples' Right: Soft Law or Hard Law?," *Jambe Law Journal* 7, no. 1 (2024): 169–93, https://doi.org/10.22437/home.v7i1.350.

[12] Fahru Azwa Mohd Zain et al., "Integrating Environmental, Social and Governance (ESG) Principles with Maqasid al-Shariah: A Blueprint for Sustainable Takaful Operations," *International Journal of Islamic and Middle Eastern Finance and Management* 17, no. 3 (2024): 461–84, https://doi.org/10.1108/IMEFM-11-2023-0422.

[13] Arrisman Arrisman, "ISLAMIC LAW AND BUSINESS ETHICS PERSPECTIVES TOWARDS BURNING FOREST AS METHOD TO LAND CLEARING," *AHKAM : Jurnal Ilmu Syariah* 18, no. 1 (2018), https://doi.org/10.15408/ajis.v18i1.7489.

[14] Nasrullah Rullah, "Aplikasi Teori Sadd Al-Dzarīʻah Dan Fatḥ al-Dzarīʻah Ke Dalam Peraturan TIPIKOR Di Indonesia," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 19, no. 2 (2019): 223–42, https://doi.org/10.18326/ijtihad.v19i2.223-242; Irfan Syauqi Beik et al., "Methodologies and Smart Techniques Recommended in Analyzing Maqasid Al-Shari'Ah for Islamic Economics and Finance," in *Teaching*

linking *uṣūl al-fiqh* (Islamic legal theory) with empirical assessments of positive law in a strategic sector. Employed here as an interpretive and evaluative perspective, economic legal pluralism reads the interactions among state law, customary law, and Islamic principles not merely as parallel normative orders but as an arena where power and economic value are allocated.

A key objective is to develop a distributive-justice analytical framework in Indonesia's mining law by combining economic legal pluralism with the analytical instruments of *sadd al-ẓarīʻah* and *fatḥ al-ẓarīʻah*. Scientifically, the article contributes to methodological refinement in Islamic business law by translating classical principles into auditable criteria for evaluating natural resource legislation and its implementation. Practically, the framework offers policymakers and regulators a way to test whether benefit-sharing clauses, recognition of *hak ulayat*, and grievance mechanisms tied to licensing actually deliver *maṣlaḥah* while preventing *mafsadāt*. The intended outcome is a set of policy-relevant insights for designing public policies and governance models that yield more equitable results for local communities and *masyarakat adat* (Indigenous peoples) in mining regions, consistent with the ethical imperatives of Islamic law.

The theoretical foundation of this study rests on three key elements namely economic legal pluralism, distributive justice in Islam, and the analytical instruments of *sadd al-ẓarīʻah* and *fatḥ al-ẓarīʻah*. Economic legal pluralism is employed to capture how state law, customary law, and Islamic legal principles intersect and compete in shaping the distribution of economic benefits. Law is thus understood not merely as a normative text but as a structuring force that allocates access, power, and value.[15] This perspective makes it possible to trace how Indonesia's mining regulatory design shapes benefit flows and how *masyarakat adat* (Indigenous peoples) are positioned within those structures. Distributive justice in Islam provides the normative foundation, emphasizing *maṣlaḥah* (public benefit), *'adl* (justice), and *ḥifẓ al-māl* (protection of wealth).[16] The lens of *sadd al-Żarīʻah* is applied to assess how law prevents *mafsadāt* (harm),[17] such as the exclusion of community rights, unequal distribution, and ecological degradation.[18] In contrast, *fatḥ al-ẓarīʻah* evaluates how law creates pathways to *maṣlaḥah*, including fair benefit-sharing and stronger community rights.[19] Together, these foundations allow mining law to be examined not as a neutral instrument but as a field of distributive contestation.

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and Research Methods for Islamic Economics and Finance, 1st ed., by Mohd Ma'Sum Billah (Routledge, 2022), https://doi.org/10.4324/9781003252764-6.

[15] Benda-Beckmann and Turner, "Legal Pluralism, Social Theory, and the State"; Syaif Al Haq et al., "INSTITUTIONALIZING THE CONCEPT OF LEGAL PLURALISM AS AN EFFORT TO REALIZE SUBSTANTIVE JUSTICE," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 14, no. 1 (2024).

[16] Saim Kayadibi, "The Theory of Syarîʻah Oriented Public Policy," *AHKAM : Jurnal Ilmu Syariah* 15, no. 2 (2015), https://doi.org/10.15408/ajis.v15i2.2861.

[17] Syatar, Abdul, et al. "Interfaith Marriage Phenomenon in Indonesia from the Perspective of Sadd al-Żarī'ah and Fatḥ al-Żarī'ah." *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman* 9.1 (2023): 19-38. https://doi.org/10.24952/fitrah.v9i1.6800

[18] Saefudin, Saefudin, et al. "Legal Analysis of Storing Cutlery From Gold and Silver Perspective of the Syafi'i Opinion." *Al-Jadwa: Jurnal Studi Islam* 2.2 (2023): 195-207. https://doi.org/10.38073/aljadwa.v2i2.1033

[19] Rullah, "Aplikasi Teori Sadd Al-Dzarīʻah Dan Fatḥ al-Dzarīʻah Ke Dalam Peraturan TIPIKOR Di Indonesia."

Methodologically, the study adopts a normative-sociological approach supported by legal hermeneutics.[20] Normative-sociological analysis enables examination of statutes in their political, economic, and social contexts, while hermeneutics aids in interpreting legal meaning in relation to real impacts on communities.[21] Key legal sources include the 1960 Basic Agrarian Law (*UUPA*), the *Minerba* Law (Law No. 4/2009 on Mineral and Coal Mining), the Job Creation Law (*Undang-Undang Cipta Kerja*, Omnibus Law), implementing regulations, and relevant jurisprudence, alongside secondary data on agrarian conflicts and environmental governance. Legal instruments are then assessed through the dual lenses of *sadd al-żarī'ah* and *fatḥ al-żarī'ah* to identify where law closes or opens avenues for justice. This approach ensures analytical alignment between distributive justice goals and Indonesia's mining regulatory realities.

Results and Discussion

Economic Distribution under Mining Law

Law No. 10 of 1959 on the Abolition of Mining Rights marked an early attempt to unwind colonial dominance by shifting full control of mining to the state and elevating BUMN (*Badan Usaha Milik Negara*, state-owned enterprises).[22] Yet the statute did not recognize *masyarakat adat* (Indigenous peoples) or establish benefit-sharing mechanisms, leaving *hak ulayat* (customary collective rights) outside the design of natural resource management. This state-centered paradigm was then consolidated through Perpu No. 37 of 1960 (*Peraturan Pemerintah Pengganti Undang-Undang*, Government Regulation in Lieu of Law), which reaffirmed "state control" under Article 33 of the 1945 Constitution.[23] Licensing authority and revenue allocation were placed squarely in government hands; corporations could operate only by state authorization; Indigenous peoples were positioned as policy objects without explicit entitlements, and thus absent from equitable benefit distribution.[24]

A decisive turn arrived with Law No. 11 of 1967 on Basic Mining Provisions, which introduced the Contract of Work (CoW) system and opened the sector to large-scale foreign capital.[25] The state acted as regulator and recipient of royalties and taxes, while corporate actors, especially foreign investors, became the principal beneficiaries of extraction. For *masyarakat adat*, the scheme enabled appropriation of *ulayat* lands without adequate recognition or compensation, further eroding community standing within the legal order.

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[20] Kurniawati, Mila, et al. "Hermeneutics as a Method of Legal Discovery in Court Decisions." *Journal of Law, Social Science and Humanities* 2.1 (2024): 251-258.

[21] Tjon Soei Len, Lyn KL. "Hermeneutical Injustice, Contract Law, and Global Value Chains." *European Review of Contract Law* 16.1 (2020): 139-159. https://doi.org/10.1515/ercl-2020-0008

[22] Darman, Melani, and Indah Riyanti. "The Effectiveness of Regional Government Authority on Mining Business Permits Post Presidential Regulation Number 55 of 2022 Concerning Delegation of Authority in the Management of Mineral and Coal Mining." *International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry"(ICCLB 2023).* Atlantis Press, 2023. https://doi.org/10.2991/978-2-38476-180-7_105

[23] Taufiq, Muchamad. "Constitutionality of State Control Meaning on Mineral and Coal Mining Field." *JL Pol'y & Globalization* 111 (2021): 6. https://doi.org/10.7176/JLPG/111-02

[24] Usman, Anwar. "The role of Indonesian Constitutional Court in strengthening welfare state and the rule of law." *Lex Publica* 7.1 (2020): 11-27.

[25] Meutia, Ami A., Royke Lumowa, and Masayuki Sakakibara. "Indonesian artisanal and small-scale gold mining—a narrative literature review." *International Journal of Environmental Research and Public Health* 19.7 (2022): 3955. https://doi.org/10.3390/ijerph19073955

During the Soeharto period (1967–1998), successive CoW generations entrenched corporate advantage. The first generation (1967–1977) disproportionately favored foreign investors and yielded modest fiscal returns to the government, while dispossession of Indigenous peoples intensified.[26] A second generation (1976–1988) modestly improved the state's bargaining position, yet structural exclusion of Indigenous rights persisted. Later iterations introduced local-content requirements (third generation, 1985–1994) and environmental obligations (fourth generation, 1989–1994), but these adjustments did not alter the asymmetric distribution of benefits.[27] Community inclusion largely took the form of limited corporate social responsibility (CSR), which neither addressed land claims nor produced a credible share of revenues.[28]

The Indonesian Reformasi Era (after The Soeharto Regime) brought fiscal decentralization through the Revenue Sharing Fund (DBH, *Dana Bagi Hasil*), allowing regional governments to capture a portion of mining income and offering only thin social recognition to *masyarakat adat*. Absent clear legal entitlements, communities remained structurally excluded from benefit-sharing. A more sweeping change came with Law No. 4/2009 on Mineral and Coal Mining (*Minerba* Law), which abolished CoW and installed the *IUP* regime (*Izin Usaha Pertambangan*, Mining Business License).[29] State control over licensing and revenue distribution increased and corporate autonomy narrowed, yet Indigenous stakeholders gained only indirect acknowledgment, primarily through environmental compensation, without being recognized as legitimate claimants to mining revenues.

Following the 2009 statute, Law No. 3/2020 recentralized licensing authority in the national government, diminishing the fiscal role of regions and narrowing avenues for *masyarakat adat* (Indigenous peoples) to participate meaningfully.[30] That centralizing move was reinforced by Law No. 11/2020 on Job Creation (*UU Cipta Kerja*, Omnibus Law), which streamlined procedures to attract capital. While state agencies and corporations gained heightened regulatory certainty, safeguards intended to protect communities—environmental impact assessments and public consultations among them—were weakened in design and practice.[31] As these filters thinned, Indigenous voices receded further from decision-making over licensing, environmental obligations, and benefit flows.

A conditional ruling by Indonesia's Constitutional Court on the Job Creation Law prompted issuance of Perpu No. 2/2022 (*Peraturan Pemerintah Pengganti Undang-Undang,*

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[26] Kusumaryati, Veronika. "Freeport and the states: Politics of corporations and contemporary colonialism in West Papua." *Comparative Studies in Society and History* 63.4 (2021): 881-910. https://doi.org/10.1017/S0010417521000281

[27] Santoso, Yulida Nuraini. "The Transnational Role of Foreign Companies in the Upstream Sector of Oil and Gas in Indonesia: pre-Gross Split Mechanism." *Global South Review* 1.1: 63-81. https://doi.org/10.22146/globalsouth.34484

[28] Sudaryat, Sudaryat. "Hilirization Obligations for Mining Companies with Contract of Works Status In Indonesian Positive Law." *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum* 4.1 (2024): 141-158. http://dx.doi.org/10.51825/sjp.v4i1.24955

[29] Irsan, Irsan, and Meria Utama. "The Political Law on Coal Mining in the Fulfilment of People's Welfare in Indonesia." *Sriwijaya Law Review* (2019): 11-25. https://doi.org/10.28946/slrev.Vol3.Iss1.202.pp11-25

[30] Toumbourou, Tessa, et al. "Political ecologies of the post-mining landscape: Activism, resistance, and legal struggles over Kalimantan's coal mines." *Energy Research & Social Science* 65 (2020): 101476. https://doi.org/10.1016/j.erss.2020.101476

[31] Mahy, Petra. "Indonesia's Omnibus Law on job creation: legal hierarchy and responses to judicial review in the labour cluster of amendments." *Asian Journal of Comparative Law* 17.1 (2022): 51-75. https://doi.org/10.1017/asjcl.2022.7

Government Regulation in Lieu of Law), later ratified as Law No. 6/2023. Neither instrument adjusted the distributive architecture in any substantive way; priority still accrues to the state and corporate actors rather than to Indigenous peoples.[32] Read across political eras, from Soekarno and Soeharto to the post-Reformasion period, the governance of mineral resources continues to display asymmetrical benefit distribution. The state and corporations remain the primary beneficiaries, while Indigenous peoples occupy a residual position despite long-standing historical and cultural ties to the land.

Agrarian conflict in Indonesia constitutes a structural issue involving the contestation of land, water, and forest resources among local communities (including Indigenous Peoples) the state, and corporate actors. Preliminary data indicate 3,234 conflicts between 2015 and 2024, affecting approximately 1.8 million households. More broadly, agrarian conflicts have escalated consistently since the post-reform era. For instance, between 2010 and 2014, the Agrarian Reform Consortium (KPA) documented approximately 1,500 cases, which subsequently increased to 3,234 in the following decade.[33] This surge reflects the acceleration of agrarian and infrastructural development during President Joko Widodo's administration. In 2022, 212 conflicts were recorded, rising to 241 in 2023 (a 14 percent increase), and reaching a peak of 295 in 2024 (a 21 percent increase compared to 2023).[34] These cases involved 1,113,577 hectares of land, 67,436 households, and 349 villages (though some reports noted 329 villages, reflecting methodological differences).[35] From the perspective of Indigenous Peoples, the Indigenous Peoples Alliance of the Archipelago (*Aliansi Masyarakat Adat Nusantara*, AMAN) documented 687 conflicts in customary territories from 2014 to 2024, resulting in the dispossession of 11.07 million hectares and 925 incidents of criminalization, including arrests and intimidation.[36] Specifically, in 2024, AMAN reported 121 cases of dispossession covering 2.8 million hectares, affecting 140 communities, alongside 121 cases of criminalization.[37]

Looking ahead, KPA projects that agrarian conflicts will persist or intensify in 2024, primarily due to National Strategic Projects (*Proyek Strategis Nasional*, PSN), such as the construction of the new capital city (IKN), as well as the expansion of plantations and food estate programs. Early 2025 data (as of February) indicate that plantation-related disputes remain dominant, with 67 percent of conflicts associated with oil palm plantations from 111 ongoing cases in 2024.[38] The TanahKita portal records an accumulation of 575 conflicts between 1988 and 2024, impacting 874,691 individuals and 4.73 million hectares, with an estimated economic loss of IDR 11.52 trillion, including reduced agricultural productivity

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[32] Perdana, Fadil Cakra, and Yogi Syahputra Alidrus. "Analysis of the Legitimacy of the State of Emergency in Forming Perppu Number 2 of 2022 Concerning Job Creation." *Asian Journal of Social and Humanities* 1.9 (2023). https://doi.org/10.59888/ajosh.v1i09.59

[33] Lucas, Anton, and Carol Warren. "The state, the people, and their mediators: the struggle over agrarian law reform in post-New Order Indonesia." *Indonesia* 76 (2003): 87-126.

[34] Rahmadani, S., Putri, R. J., Rizal, A. N., Asiah, U., & Bela, D. R. S. (2024). Farmers in The Throat of Agrarian Conflict in Indonesia. *Wedya Journal of Multidisciplinary*, *1*(2), 44-51.

[35] Konsorsium Pembaruan Agraria (KPA), *Adakah Reforma Agraria di Bawah Komando Prabowo? Laporan Konflik dan Kebijakan Agraria di Masa Transisi Politik. Catatan Akhir Tahun 2024* (Jakarta: KPA, 2025).

[36] Kurniawan, Kharis Fadlan Borni, et al. "Territorialization of plantation concessions: customary land acquisition process, agrarian fragmentation and social resistance." *Cogent Social Sciences* 10.1 (2024): 2367259. https://doi.org/10.1080/23311886.2024.2367259

[37] Aliansi Masyarakat Adat Nusantara (AMAN), *Catatan Akhir Tahun 2024: Transisi Kekuasaan & Masa Depan Masyarakat Adat* (Jakarta: AMAN, 2024).

[38] https://www.kpa.or.id/2025/01/psn-jadi-salah-satu-pemicu-utama-konflik-tanah-tahun-2024/

and litigation costs. As of May 2025, TanahKita further documented additional cases in Java and Sumatra, particularly urban land disputes such as those in Pancoran, Jakarta.

Most cases involve Indigenous Peoples. In 2024, KPA recorded 53 Indigenous-related cases, ranking them as the third largest affected group after farmers and urban poor communities. AMAN highlights that 58 percent of agrarian conflicts in Asia involve customary land, with Indonesia accounting for the majority. By sector, plantation disputes were the most prevalent in 2024 (111 cases or 41 percent, including 75 oil palm-related), encompassing 127,281 hectares and 14,696 households. Prominent examples include PT Ledo Lestari in West Kalimantan[39] and the Merauke Integrated Food and Energy Estate (MIFEE) in Papua.[40] This was followed by infrastructure-related disputes (79 cases or 27 percent, covering 290,785 hectares, including IKN (Ibu Kota Nusantara, the future capital of Indonesia), which threatens approximately 20,000 Indigenous residents), mining (41 cases or 14 percent, covering 71,102 hectares, such as PT Toba Pulp Lestari in Sumatra), forestry (25 cases or 8 percent, with the largest affected area of 379,588 hectares), and property development (25 cases). AMAN's records show 58 Indigenous land conflicts in plantations, 29 in mining, 14 in infrastructure, 9 in forestry, and the remainder in energy and tourism, rising to 110 cases.[41]

Regionally, conflicts are concentrated outside Java. In Sumatra, disputes are primarily linked to oil palm plantations and mining; in Kalimantan, to IKN and plantations (with 84 complaints in Central Kalimantan); in Papua, to food estates and MIFEE; and in Sulawesi/Nusa Tenggara, to forestry projects such as Poco Leok.[42] In contrast, Java predominantly experiences disputes related to infrastructure and property. The principal drivers of conflict include corporate actors (36 percent), government policies and agencies (29 percent), and land mafias (21 reported cases in 2024). Many disputes have persisted for over two decades without resolution. Consequences for Indigenous Peoples are severe because they include loss of livelihoods, environmental degradation (including 37,483 hectares deforested for palm-oil and timber concessions), and escalating criminalization (925 incidents over the last decade, 121 in 2024 alone). The economic impact is substantial, with national losses reaching IDR 11.52 trillion, while the social consequences encompass forced evictions, cultural disintegration, and human rights violations, exemplified by the Toba Pulp Lestari case. Ecologically, dispossession of customary territories undermines biodiversity and restricts access to natural resources, contravening Constitutional Court Decision No. 35/2012, which has yet to be fully implemented.

Comparative data underscore Indonesia's prominence in agrarian conflicts across Asia. Between 2023 and 2024, Indonesia accounted for 74 percent of recorded incidents in six countries (including India, the Philippines, and Bangladesh), 94 percent of affected individuals, and 84 percent of impacted households. In total, 690 agrarian conflicts were

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[39] Berenschot, Ward, Ahmad Dhiaulhaq, and Aurelia Deviane. "Local brokerage and international leverage: NGOs and land conflicts in Indonesia." *Journal of International Development* 35.3 (2023): 505-520. https://doi.org/10.1002/jid.3640

[40] McDonnell, John E. "The Merauke Integrated Food and Energy Estate (MIFEE): An Ecologically Induced Genocide of the Malind Anim." *The Genocide-Ecocide Nexus*. Routledge, 2022. 102-123. https://doi.org/10.1080/14623528.2020.1799593

[41] Aliansi Masyarakat Adat Nusantara (AMAN), *Catatan Akhir Tahun 2024: Transisi Kekuasaan & Masa Depan Masyarakat Adat* (Jakarta: AMAN, 2024).

[42] Thontowi, Jawahir, and Sri Wartini. "Effectuating Food Sovereignty without Violating the Rights of Indigenous People: A Case Study of the Merauke Integrated Food and Energy Estate Project." *KnE Social Sciences* (2023): 616-624. https://doi.org/10.18502/kss.v8i9.13376

documented in Asia during this period, with Indonesia alone contributing 241 in 2023. While the Philippines reported the largest disputed land area (approximately 1 million hectares), India recorded the highest number of affected families (162,000).[43] To address these challenges, KPA advocates for inclusive agrarian reform, the institutionalization of Free, Prior, and Informed Consent (FPIC), and the establishment of an arbitration body. AMAN emphasizes the urgency of passing the Indigenous Peoples Bill (*Rancangan Undang-Undang Masyarakat Adat*) to prevent further dispossession.

From a regulatory perspective, the trajectory of mining governance in Indonesia (from the Sukarno and Suharto eras to the post-reform and contemporary periods) demonstrates a consistent pattern of state and corporate dominance, with Indigenous Peoples remaining systematically marginalized. Initial regulations reinforced state control, while the contract of work system facilitated foreign corporate dominance. Post-Reformasi Era decentralization via *Dana Bagi Hasil/DBH* (Revenue Sharing Fund) granted limited authority to local governments but did not secure robust legal protections for Indigenous peoples. Subsequent legislative reforms, including the 2009 Mining Law, the Omnibus Law on Job Creation, and Law No. 6 of 2023, further centralized authority in the central government and facilitated investment, while weakening Indigenous rights. This structural imbalance has been exacerbated by the rise in agrarian conflicts involving Indigenous Peoples, underscoring that six decades of mining regulation have yet to deliver equitable and sustainable benefit distribution. Accordingly, a paradigmatic shift in resource governance is imperative, one that moves beyond fiscal and corporate interests to integrate Indigenous rights as a central pillar of natural resource management.

Opening Benefit, Closing Harm: Economic Legal Pluralism in Indonesia's Mining Revenue Distribution

This study shows that Indonesia's mining governance has long prioritized state fiscal interests and corporate profit while sidelining the rights and interests of masyarakat adat (Indigenous Peoples). Such a configuration reveals the limits of a legal order that centers state and corporate actors but lacks credible mechanisms for equitable benefit-sharing with local communities, particularly those living in and around extraction sites. A reorientation is therefore necessary, and the proposed path is economic legal pluralism, a perspective that recognizes multiple legal systems and foregrounds their interaction in shaping economic distribution.[44] Within this perspective, state law, corporate law, and customary law are not mutually exclusive; they can be integrated to pursue distributive justice through clear recognition of *hak ulayat* (customary collective rights), enforceable benefit-sharing clauses, and community-based monitoring.[45] The emphasis on the economic dimension is crucial because the persistent problem in Indonesia's mining sector is less about formal legality than about the unequal allocation of benefits produced by extraction; rules may be lawful on paper

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[43] Chikowore, Average, and Admire Chawarika. "Impact of land reform policy on tobacco export performance: case of Zimbabwe." *Cogent Economics & Finance* 12.1 (2024): 2399960. https://doi.org/10.1080/23322039.2024.2399960

[44] Benda-Beckmann, Franz von. "Legal pluralism and social justice in economic and political development." *IdS Bulletin* 32.1 (2001): 46-56. https://doi.org/10.1111/j.1759-5436.2001.mp32001006.x

[45] Benda-Beckmann, Keebet von, and Bertram Turner. "Legal pluralism, social theory, and the state." *The Journal of Legal Pluralism and Unofficial Law* 50.3 (2018): 255-274. https://doi.org/10.1080/07329113.2018.1532674

yet still channel rents primarily to the treasury and corporations while communities bear social and ecological costs without commensurate return.

Adopting economic legal pluralism enables a shift toward regulatory mechanisms that are both legally valid and economically just, linking licensing and fiscal instruments to measurable outcomes for communities. The rights of *masyarakat adat* as holders of *ulayat* land should stand on equal footing with state and corporate interests in any scheme for distributing mining rents, moving policy beyond a narrow fixation on revenue and profit toward socio-economic sustainability.[46] Practically, this perspective reads the coexistence of state law (mining legislation and implementing regulations), corporate law (contracts of work and licenses such as *Izin Usaha Pertambangan/IUP and Izin Usaha Pertambangan Khusus/IUPK*), and customary law (rights over *ulayat* territories) as a single socio-economic field where power and value are allocated.[47] Experience to date shows these orders rarely operate in harmony; a hierarchy persists in which state and corporate law dominate agenda-setting and revenue flows, while customary law remains marginal in decision-making, compensation design, and access to remedies, precisely the spaces where distributive justice ought to be tested.[48]

During the Sukarno era, mining regulations emphasized the principle of "state control" as a mechanism to dismantle colonial domination. From the perspective of legal pluralism, the state sought to replace colonial legal frameworks with national law. Yet, customary law remained excluded, confining economic distribution to the state and state-owned enterprises while excluding Indigenous Peoples as legitimate economic actors. Interpreted through the lens of *sadd al-Żarī'ah*, Sukarno's mining policy sought to forestall the re-emergence of colonial economic dominance. Simultaneously, *fatḥ al-Żarī'ah* was intended to promote national economic growth. However, the exclusion of customary law foreclosed broader redistributive opportunities for Indigenous Peoples. A balanced application of sadd and *fatḥ al-Żarī'ah* would have integrated customary law into national frameworks, thereby creating channels for more equitable economic distribution.[49]

Under Suharto, the introduction of contracts of work generated a new form of legal pluralism, incorporating international corporate law into mining governance. State law served as the regulatory framework, but customary law was further marginalized. From the perspective of economic legal pluralism, this reflected asymmetrical power relations in which global corporate law was privileged over local customary law.[50] While the regime may be interpreted as a *sadd al-Żarī'ah* effort to prevent economic stagnation and state bankruptcy, it simultaneously generated new harms by entrenching corporate dominance and weakening

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[46] Tamanaha, Brian Z. "The rule of law and legal pluralism in development." *Hague Journal on the Rule of Law* 3.1 (2011): 1-17. https://doi.org/10.1017/S1876404511100019

[47] Tamanaha, Brian Z. "Legal pluralism across the global South: colonial origins and contemporary consequences." *The Journal of Legal Pluralism and Unofficial Law* 53.2 (2021): 168-205. https://doi.org/10.1080/07329113.2021.1942606

[48] Isra, Saldi, and Hilaire Tegnan. "Legal syncretism or the theory of unity in diversity as an alternative to legal pluralism in Indonesia." *International Journal of Law and Management* 63.6 (2021): 553-568. https://doi.org/10.1108/IJLMA-04-2018-0082

[49] Nita Triana et al., "Application of the Precautionary Principle in Judge's Legal Considerations for Pollution Cases in Islamic Law Perspectives," *Al-'Adalah* 20, no. 1 (2023): 61, https://doi.org/10.24042/adalah.v20i1.16660.

[50] Benda-Beckmann, Keebet von. "Trajectories of legal entanglement examples from Indonesia, Nepal, and Thailand." *Legal Pluralism and Critical Social Analysis* 54.1 (2022): 13-30. https://doi.org/10.1080/27706869.2022.2056372

national sovereignty.[51] In principle, contracts of work could have functioned as instruments of *fatḥ al-Żarīʿah* by embedding mechanisms for equitable benefit-sharing and recognition of Indigenous land rights, yet these opportunities were disregarded. Consequently, Suharto-era mining governance deepened distributive injustice by subordinating Indigenous Peoples to corporate and state interests.

In the post-Reformasi period, decentralization enabled local governments to access mining revenues through *Dana Bagi Hasil/DBH* (Revenue Sharing Fund). From an economic legal pluralism perspective, however, *masyarakat adat* (Indigenous Peoples) were largely repositioned as recipients of corporate social responsibility (CSR) programs rather than recognized as rights-bearing subjects in distribution.[52] Considerations of *sadd al-Żarīʿah* (blocking avenues to harm) informed efforts to offset New Order centralism by reallocating a portion of revenues to regions, yet the absence of explicit recognition of *hak ulayat* (customary collective rights) and enforceable community claims reproduced subordination at the local level. By contrast, *fatḥ al-Żarīʿah* (opening avenues to benefit) would have linked *DBH* (Revenue Sharing Fund) formulas and licensing obligations directly to the acknowledgment of customary tenure and participatory oversight.[53] What emerged instead was an administrative (rather than substantive) pluralism in which partial remedies for fiscal imbalance without addressing the structural inequities that keep communities outside the circle of legitimate beneficiaries.

A decisive juncture arrived with the 2009 Mineral and Coal Mining Law (*Undang-Undang Minerba*), which replaced Contracts of Work with mining permits (IUP/IUPK) and consolidated regulatory authority under the state. Framed as an assertion of national sovereignty, the statute effectively recentralized power and privileged investor certainty. Corporate law retained strategic influence through licensing and contractual devices, while customary law receded to peripheral environmental considerations. Read through *sadd al-ẓarīʿah*, the move aimed to curb excessive dominance by foreign investors and close avenues to regulatory capture; in practice, meaningful participation by *masyarakat adat* remained elusive. Viewed through *fatḥ al-ẓarīʿah*, the same reform could have opened space for inclusive benefit-sharing, but distributive commitments were subordinated to the imperative of legal predictability for capital.[54]

Taken together, these trajectories indicate that both legal unification and nominal pluralism have yet to deliver economic justice in mining governance. A persistent hierarchy, state and corporate law over customary law, has entrenched unequal bargaining positions and narrowed access to remedies. Without a paradigmatic shift toward economic legal pluralism as a distributive perspective, regulation risks remaining confined to centralization

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[51] Sarumpaet, Muhammad Idris, and Dhiauddin Tanjung. "Al-Adillah Al-Mukhtalaf Fiha: Sadd Al-Zari'ah." *Jurnal Hukum, Politik dan Ilmu Sosial* 3.4 (2024): 42-57. https://doi.org/10.55606/jhpis.v3i4.3981

[52] Agung Basuki et al., "Establishing Ecological Justice in the Governance of Land Inventory, Ownership, and Utilisation in Indonesia," *Journal of Law, Environmental and Justice* 1, no. 2 (2023): 137–54, https://doi.org/10.62264/jlej.v1i2.12.

[53] Zuhdi, S., Indah, D. N., Candraningtyastuti, D., & Kamila, T. S. (2022). Ijarah and Riba In The Sharia Card: Analysis Of 'Illat Hukmi Of Sharia Card In The Adz-Dzari'ah Perspective. *Jurnal Jurisprudence*, *11*(2), 221-233. https://doi.org/10.23917/jurisprudence.v11i2.15307

[54] Natasha, Benanda Bunga, and M. Junaidi. "Analysis of the Employment Law Policy for Foreigners in Indonesia in the Job Creation Law Viewed from an Islamic Law Perspective, Fathu Dzariah Wa Saddu Dzariah Rules." *Proceeding International Conference Restructuring and Transforming Law*. Vol. 2. No. 2. 2023.

and investment facilitation rather than serving as an instrument for justice and the protection of Indigenous rights.[55]

The 2020 amendment to the Mining Law (*Undang-Undang Minerba*) further narrowed pluralism by re-centralizing authority at the national level, significantly weakening regional roles and foreclosing avenues for Indigenous advocacy in provincial and district forums. In pluralist terms, the state chose to suppress interaction among local, customary, and national orders to deliver legal certainty for corporate actors. Economically, this reconfiguration concentrated surplus within central institutions and corporations, while *masyarakat adat* were pushed further to the margins of revenue allocation and oversight.[56] From the vantage of *sadd al-ẕarī'ah*, centralization can be read as an attempt to prevent *mafsadāt* (detriments) associated with overlapping permits, jurisdictional disputes between central and local governments, and regulatory disharmony, issues often cited as investment obstacles.[57] Yet closing those avenues to harm also narrowed channels for Indigenous participation and reduced local governments' authority over the distribution of mining rents, thereby curtailing broader access to economic justice. Within *fatḥ al-ẕarī'ah*, by contrast, the 2020 amendment could have generated new public benefits, more inclusive revenue-sharing arrangements, stronger protection for *hak ulayat*, and clearer community standing in licensing review. That potential was left unrealized as the reform prioritized corporate legal certainty and consolidation of central authority, forfeiting an opportunity to transform regulation into a vehicle for distributive justice.

From an economic legal pluralism perspective, the 2020 amendment to the Mining Law (*Undang-Undang Minerba*) signaled a move toward legal unification that privileged state and corporate interests at the expense of participation by Indigenous Peoples. The resulting architecture centralized authority and produced a more hierarchical distributional order in which surplus flowed predominantly to central agencies and corporate actors, while Indigenous peoples were excluded from enforceable entitlements linked to *hak ulayat* (customary collective rights). This outcome reinforces the core claim of this study that unless customary law is repositioned as a legitimate economic subject, capable of holding claims, shaping allocation, and accessing remedies, mining regulation will continue to function as a machinery of accumulation rather than as an instrument of distributive justice.

Reinforcement came through the Job Creation Law (*Undang-Undang Cipta Kerja*), which entrenched the ascendancy of state and corporate law within the plural legal order. Streamlining of *Analisis Mengenai Dampak Lingkungan/AMDAL* (environmental impact assessment) and public consultation procedures was justified in the name of efficiency but, in practice, diluted environmental safeguards and narrowed the procedural space where customary law might operate. In the language of economic legal pluralism, this is a form of

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[55] Flambonita, Suci. "The concept of legal pluralism in Indonesia in the New Social Movement." *Jurnal Analisa Sosiologi* 10.3 (2021).

[56] Hermininda, Alifannisa Shella, and M. Junaidi. "Islamic Law in the Rule of Sadd Adz-Dzari'ah on the Transfer of Agricultural Land Function to Housing in Grobogan." *YURISDIKSI: Jurnal Wacana Hukum dan Sains* 19.4 (2024): 526-537. https://doi.org/10.55173/yurisdiksi.v19i4.218

[57] Alfarisi, Diki, and Irhamuddin Irhamuddin. "Urgensi Pedekatan Sadd Żarī 'Ah Dalam Pengambilan Putusan Hukum Islam." *Innovative: Journal Of Social Science Research* 4.6 (2024): 4050-4063. https://doi.org/10.31004/innovative.v4i6.16143

juridical displacement in which customary orders are rendered formally visible yet practically inaudible, excluded from the sites where distributional decisions are made.[58]

Government justifications frequently invoked *sadd al-żarī'ah*, framing procedural simplification as necessary to accelerate investment and remove bureaucratic bottlenecks thought to impede growth. By closing "pathways of resistance," officials aimed to prevent stagnation, overlapping permits, and rent-seeking. Yet the same closure generated new *mafsadāt* (detriments) because it led erosion of community-based social control over extraction, weakening of environmental due diligence, and thinning of meaningful participation by *masyarakat adat* (Indigenous Peoples). In effect, *sadd al-żarī'ah* was operationalized to privilege investment facilitation over ecological balance and social justice.[59] While through *fatḥ al-żarī'ah* (opening avenues to benefit), the Job Creation Law could have been designed to deliver efficiency and inclusion. For example, by pairing expedited licensing with mandatory recognition of *hak ulayat*, measurable benefit-sharing clauses, and accessible grievance mechanisms. Such design would have balanced economic growth, distributive justice, and ecological sustainability in a single regulatory package. Instead, the statute consolidated power in state and corporate hands, foreclosing the very channels through which public benefit might have been realized for local communities and Indigenous Peoples.

Viewed again through economic legal pluralism, the Job Creation Law thus exemplifies juridical displacement in which customary and communitarian environmental norms are pushed to the margins of formal decision-making, and the distribution of mining rents is effectively monopolized by state institutions and transnational corporate actors.[60] This displacement marginalizes *masyarakat adat* not only as cultural communities but also as rightful economic actors with claims to revenue, compensation, and oversight. The net effect is to deepen state-corporate dominance while constricting the scope of Indigenous economic justice within the mining economy.[61]

Material consequences since 2015 make these dynamics visible. Data from KPA (*Konsorsium Pembaruan Agraria,* Agrarian Reform Consortium) and AMAN (*Aliansi Masyarakat Adat Nusantara*, Indigenous Peoples Alliance of the Archipelago) show that most agrarian conflicts arise from the appropriation of Indigenous territories for mining, plantations, or infrastructure. Economic costs include dispossession of productive lands and litigation burdens; ecological costs include widespread deforestation and degraded watersheds; social costs include the criminalization of Indigenous actors and the fraying of community institutions that once mediated resource use. Such outcomes are not incidental, they reflect

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[58] Hariri, Achmad, and Basuki Babussalam. "Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia." *Walisongo Law Review (Walrev)* 6.2 (2024). https://doi.org/10.21580/walrev.2024.6.2.25566

[59] Bin Salman, Abdul Matin, and Eko Asmanto. "Islamic Environmental Stewardship: A Sociological Approach to Hadith and Legal Frameworks for Ecological Responsibility." *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* (2024): 361-378. https://doi.org/10.24090/volksgeist.v7i2.12205

[60] Roth, Dik, and Sandrayati Moniaga. "Interview with Sandrayati Moniaga: Legal pluralism and the struggle for recognition of customary rights in Indonesia." *The Journal of Legal Pluralism and Unofficial Law* 53.3 (2021): 485-497. https://doi.org/10.1080/07329113.2021.2017641

[61] Wicaksono, Muhammad Bagus Adi, and Wiwit Rahmawati. "Ecological Justice-Based Reclamation and Post-Mining Regulations in Indonesia: Legal Uncertainty and Solutions." *Journal of Law, Environmental and Justice* 2.2 (2024): 109-136. https://doi.org/10.62264/jlej.v2i2.103

the design choices of a plural order that is plural in name yet distributively narrow in practice.[62]

Regional comparison further clarifies Indonesia's position. In the Philippines, for instance, Free, Prior, and Informed Consent (FPIC) operates as a relatively robust recognition of Indigenous rights and has tempered at least some extractive projects; in Indonesia, by contrast, customary law is often acknowledged symbolically while remaining procedurally sidelined. The resulting gap helps explain why Indonesia records some of the highest levels of agrarian conflict in Asia, mirroring the tight coupling of state and corporate law and the routine delegitimization of customary claims.[63]

Assessed through both *fatḥ al-żarī'ah* and *sadd al-żarī'ah*, the state ought to prioritize preventing social and ecological harms by enacting strong protections for Indigenous rights and by mandating inclusive, auditable benefit-sharing. Instead, regulatory reforms have tended to privilege extractive and infrastructural imperatives. Rather than preventing *mafsadāt* in the form of dispossession, deforestation, and criminalization, state law displaced customary safeguards that could have functioned as early-warning and corrective mechanisms. In this respect, *sadd al-żarī'ah* was left substantively unfulfilled, while the unrealized potential of *fatḥ al-żarī'ah* underscores the urgent need to reconfigure Indonesia's mining governance toward genuine distributive justice.[64] Within the framework of *fatḥ al-żarī'ah*, legal pluralism could have created opportunities for benefit by institutionalizing Indigenous participation mechanisms such as FPIC. In practice, however, customary law in Indonesia has been reduced to symbolic recognition, with little substantive implementation. This failure to integrate customary law foreclosed the possibility of equitable and sustainable economic distribution, resulting instead in protracted conflict.

From the perspective of economic legal pluralism, Indonesia's agrarian conflicts reveal a deeply embedded structural alliance between state law and corporate law, an alignment that channels economic surplus to a narrow circle of actors while *masyarakat adat* (Indigenous Peoples) disproportionately bear the economic and ecological costs. This entrenched arrangement demonstrates that unbalanced legal pluralism is not merely a legal or procedural problem; it is a political–economic structure that actively produces land dispossession, environmental degradation, and systematic marginalization of Indigenous peoples from the benefits of development.[65] By foregrounding the distributional dimension, economic legal pluralism offers a more comprehensive analytical framework, illuminating not only the coexistence of multiple legal systems but also the asymmetrical distribution of economic power and resources that results from their interaction.

An analysis grounded in this perspective underscores that Indonesia's mining revenue distribution is shaped not only by economic inequality but also by legal asymmetry.

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[62] Nasir, Mohamad, Laurens Bakker, and Toon Van Meijl. "Coal mining governance in Indonesia: Legal uncertainty and contestation." *Austl. J. Asian L.* 22 (2022): 53.

[63] Prihandono, Iman, Ekawestri Prajwalita Widiati, and Juozas Valčiukas. "Free, Prior, Informed Consent As A Legal Principle and Its Link to The Right to Freedom of Conscience." *International Comparative Jurisprudence* 9.2 (2023): 182-196. https://doi.org/10.13165/j.icj.2023.12.003

[64] Kamaluddin, Imam, and Mulyono Jamal. "Penerapan Prinsip Kehatian Hatian (Prudential Banking Principle) Dalam Akad Pembiayaan Pada Perbankan Syariah Dalam Tinjauan Sadd Dzari'ah." *ISTIKHLAF: Jurnal Ekonomi, Perbankan dan Manajemen Syariah* 4.1 (2022): 31-44. https://doi.org/10.51311/istikhlaf.v4i1.446

[65] Chaeruddin, Dannie. "Reform of The Criminal System In Mineral and Coal Mining Licensing Policies Oriented Towards Ecological Justice." *Asian Journal of Social and Humanities* 3.3 (2024): 518-525. https://doi.org/10.59888/ajosh.v3i3.451

Within the framework of *fatḥ al-żarī'ah* (opening avenues to benefit), law should operate as a *żarī'ah* (instrument) for realizing public benefit, ensuring equitable distribution and socio-ecological sustainability.[66] When customary law is sidelined, this instrumental role remains unrealized, leaving the potential benefits for Indigenous peoples unfulfilled. As long as state law maintains its alignment with corporate law while excluding customary law, agrarian conflicts and structural marginalization will persist.[67] Achieving a just resolution requires the integration of customary law as a legitimate component of mining governance, positioning Indigenous Peoples not as passive recipients of harm but as legal subjects entitled to claim and receive equitable shares of mining benefits.

Legal pluralism, properly understood, is essential for analyzing revenue distribution in the mining sector. Natural resources in Indonesia, especially minerals, are regulated through overlapping systems in which state law, customary norms, corporate contracts, and international human rights and environmental standards. Yet, in practice, Indonesian mining regulation has consistently reinforced state-corporate dominance, while relegating customary law to symbolic recognition without substantive implementation. This divergence is stark because for the state and corporations, mining represents a strategic source of foreign exchange, investment, and economic growth; for Indigenous peoples, it is inseparable from *ulayat* lands that sustain cultural identity, social structures, and spiritual life.

When distribution relies exclusively on national law, Indigenous peoples are invariably positioned at the weakest end of the spectrum. Under both the Suharto-era Contract of Work (CoW) regime and the post-Reformasi Mining Business License (*Izin Usaha Pertambangan, IUP)* system, the state and corporations captured the bulk of profits.[68] In contrast, Indigenous peoples received only limited compensation, typically in the form of corporate social responsibility (CSR) programs or modest land indemnities that did not reflect the true value of resource extraction or the social costs borne by these communities. By contrast, a legal pluralism approach would require distributional mechanisms that recognize customary legal norms, which conceptualize land, forests, and minerals as collective property rather than mere commodities to be exploited.

In short, legal pluralism compels mining revenue distribution to be evaluated not only through state revenues and corporate profits but also through livelihood security, ecological integrity, and social equity for Indigenous peoples. Unfortunately, recognition of Indigenous rights often remains superficial, confined to preambles of legislation or ceremonial acknowledgments, with no binding implementation mechanisms. As a result, the distribution of mining revenues remains skewed because the state and corporations capture the lion's share of benefits, while Indigenous Peoples shoulder the ecological, economic, and cultural burdens of extraction. This imbalance reinforces why a transformative shift toward economic legal pluralism, one that gives real legal standing and economic agency to customary law, is indispensable for achieving distributive justice in Indonesia's mining governance.

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[66] Basir, Abd, et al. "Contemporary Bank Interest Law in Fath Adz Dzara'i's Review." *al-Afkar, Journal For Islamic Studies* 6.4 (2023): 30-42. https://doi.org/10.31943/afkarjournal.v6i4.733

[67] Herry, Musleh. "Sengketa Kepemilikan Tanah EKS HGU Perspektif Adz-dzariah (Studi Putusan Mahkamah Agung Nomor: 3350 K/Pdt/2020)." *Al-Balad: Journal of Constitutional Law* 5.2 (2023).

[68] Junaidi, M., Wisnu Tri Nugroho, and Roudlotul Jannah. "Policy of the Coastal Zone and Small Islands Zoning Plan (RZWP3K) Viewed Through the Perspective of Fiqhiyah Rules." *Journal of Islamic and Muhammadiyah Studies* 6.1 (2024): 10-21070. https://doi.org/10.21070/jims.v6i1.1531

Conclusion

Answering the two research questions in this article, the findings show, first, that Indonesia's mining law, shaped by the *Minerba* Law, the Job Creation Law (UU *Cipta Kerja*), and licensing regimes (*IUP/IUPK*), structures the flow of benefits so that fiscal returns and corporate profits are prioritized while *masyarakat adat* (Indigenous Peoples) are confined to compensatory schemes such as CSR or land indemnities; in practice, this legal perspective positions customary rights (*hak ulayat*) at the margins of allocation, oversight, and remedies. Second, using *sadd al-ẓarī'ah* (blocking avenues to harm) and *fatḥ al-ẓarī'ah* (opening avenues to benefit) as analytical tools clarifies why distributive justice remains elusive because existing rules do close certain fiscal and procedural risks, yet leave *mafsadāt* (social-ecological harms) relatively unaddressed, and they have not been operationalized to produce community-level *maṣlaḥah* (public benefit) through auditable benefit-sharing, meaningful participation, and enforceable recognition of *hak ulayat*. Consequently, simultaneous invocation of *sadd* and *fatḥ* has not yielded a balance between preventing harm and enabling benefit; state-corporate alignment persists, and customary law remains symbolically acknowledged rather than economically empowered.

Viewed through *fatḥ al-ẓarī'ah*, mining regulation ought to promote public welfare by recognizing Indigenous economic rights and enabling equitable redistribution of revenues; if operationalized, this would harmonize state, corporate, and customary legal orders and recast Indigenous peoples as active agents. In practice, however, frameworks remain tilted toward state-corporate priorities, foreclosing the redistributive, social, and ecological potential of *fatḥ al-ẓarī'ah*, and the simultaneous invocation of *sadd* and *fatḥ* has not yet balanced harm prevention with public benefit. Against this impasse, this article advances the novel contribution of applying economic legal pluralism not merely as recognition of multiple orders but as an evaluative paradigm that centers distributive justice and operationalizes *sadd al-ẓarī'ah* or *fatḥ al-ẓarī'ah* within licensing, benefit-sharing, and oversight. In this paradigm, state, corporate, and customary laws are reconceived as collaborative instruments for socio-economic sustainability, supporting policies that recognize Indigenous peoples as legal subjects and legitimate economic actors; the result is a framework designed to deliver fairer benefit-sharing while reducing harm and aligning the interests of the state, corporations, and local communities.

This study is limited by its national regulatory focus and its normative-sociological, hermeneutic approach; it does not offer ethnographic depth on local negotiations or econometric measurement of project-level revenue flows. Conflict and dispossession evidence relies on secondary datasets with uneven coverage and methods, affecting comparability across years and regions. Temporal emphasis lies on post-2009 and post-2020 reforms, with less systematic treatment of subnational by-laws and ordinary judicial practice. Future work should pursue three tracks; first, field studies that operationalize *sadd al-ẓarī'ah* and *fatḥ al-ẓarī'ah* in licensing reviews, *DBH* (Revenue Sharing Fund) formulas, and FPIC procedures, with auditable metrics for community receipts and restoration; second, comparative legal analysis (e.g., the Philippines' FPIC regime, Malaysia's Indigenous land jurisprudence) to identify designs that translate plural recognition into distributive outcomes; third, mixed-methods evaluation combining administrative data, fiscal audits, and household surveys to quantify benefit distribution and test whether implementing regulations under the *Minerba* Law and *UU Cipta Kerja* reduce *mafsadāt* and increase *maṣlaḥah*, turning legal pluralism into a functioning distributive order for local communities and *masyarakat adat*.

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