Distributive Justice in Mining Governance: A Comparative Legal Analysis of Indonesia and Thailand

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Abstract

This research analyzes the construction and issues of distributive justice in mining governance in Indonesia and Thailand and formulates the direction for the reconstruction of Indonesian law based on comparative learning. The research uses normative legal methods with legislative, conceptual, and comparative approaches. The research results show that both countries place the state as the controller of mineral resources to achieve societal prosperity thru the distribution of economic benefits, environmental protection, community participation, and intergenerational sustainability. Indonesia relies on the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which is elaborated thru regulations on mineral and coal mining, mechanisms for state and regional revenue, community empowerment, and environmental protection. Meanwhile, Thailand, thru the Minerals Act B.E. 2560 (2017), articulates more explicitly the balance of interests between the state, business actors, local communities, economy, society, health, and environment in mineral management. The problem in Indonesia mainly lies in the gap between norms and implementation, centralization of authority, inequality in the distribution of economic benefits, distribution of socio-ecological burdens, and the limited participation of local and indigenous communities. Therefore, the reconstruction of Indonesian law needs to be directed toward a model of mining governance based on distributive justice thru the strengthening of benefit sharing, meaningful participation, environmental and health protection, and the proportional distribution of responsibilities among the state, business actors, society, and future generations.

I. Introduction

Mining is one of the strategic sectors in natural resource management, as it is directly linked to economic interests, state revenues, regional development, employment opportunities, and the provision of raw materials for industry (Harinda et al., 2021). However, the extractive nature of mining also gives rise to complex legal issues, as the exploitation of mineral resources may simultaneously generate economic benefits for the state and business operators, while its social and ecological costs are often borne by communities residing in and around mining areas (Nasir et al., 2023). Therefore, mining governance is not merely concerned with how the state grants licenses to companies to exploit mineral resources, but also involves the more fundamental questions of who benefits from mining, who bears its impacts, and how the law ensures that these benefits and burdens are distributed fairly.

From the perspective of distributive justice, the success of mining governance should therefore not be measured solely by increased investment, mineral production, state revenues, or economic growth, but also by the ability of the law to proportionally distribute economic benefits, social protection, access to resources, and environmental responsibilities among the state, local governments, business operators, and affected communities (Sépulchre, 2022). This issue has a strong constitutional foundation in Indonesia. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that the land, waters, and natural resources contained therein are controlled by the state and utilized to the greatest extent for the prosperity of the people. This constitutional provision demonstrates that state control over natural resources cannot be understood merely as an administrative authority to grant mining licenses, but also entails a legal responsibility to ensure that the utilization of natural resources generates the broadest possible benefits for society . Thus, there is a close relationship between the principle of state control, public welfare, environmental sustainability, and distributive justice. Legal problems arise when the orientation toward increasing the economic value of mineral resources is not fully accompanied by benefit-distribution mechanisms capable of safeguarding the interests of local communities, resource-producing regions, indigenous peoples, and groups that directly bear the social and ecological consequences of mining activities.

Within Indonesia's positive legal framework, the primary regulation governing mineral and coal mining is Law Number 4 of 2009 on Mineral and Coal Mining, as amended several times, including through Law Number 3 of 2020 and subsequent amendments under the Job Creation regulatory regime. Law Number 3 of 2020 itself positions minerals and coal as non-renewable natural resources and wealth controlled

by the state and intended to support sustainable national development in order to realize the welfare and prosperity of the people in a just manner. At the same time, the preamble to the law acknowledges that the implementation of mining activities continues to face issues concerning the division of authority between the Central Government and Regional Governments, licensing, the protection of affected communities, mining data and information, supervision, and sanctions.

This normative recognition demonstrates that mining problems in Indonesia have never been limited to resource exploitation, but also concern the institutional design and legal mechanisms that determine how the benefits, authority, risks, and responsibilities associated with mining are distributed. One of the relevant legal issues from the perspective of distributive justice is the centralization of mining authority and its implications for the position of regional governments and local communities. Changes to mining regulations through Law Number 3 of 2020 and Law Number 6 of 2023 within the context of the Job Creation regulatory framework have strengthened the role of the Central Government in the management of mineral and coal mining licensing (B. Salinding, 2019). This condition raises concerns regarding the balance between national interests and those of resource-producing regions, particularly when regions that geographically bear the impacts of mining lack commensurate authority and participation in decision-making processes. A number of recent legal studies indicate that the centralization of mining affairs may reduce the participation of regional governments and communities and create problems of justice and legal certainty when it is not accompanied by adequate mechanisms for participation and benefit sharing. Accordingly, distributive issues in mining law cannot be separated from the question of how authority is distributed between the Central Government and Regional Governments.

The next issue concerns the distribution of the economic benefits of mining. Mining generates substantial economic value through state revenues, royalties, taxes, investment, exports, and downstream industrial development. However, the existence of such economic benefits does not automatically demonstrate the fulfillment of distributive justice. The law must ensure that communities in mining areas receive proportional benefits through state and regional revenue instruments, community empowerment programs, corporate social obligations, employment opportunities, local business development, and value-added enhancement mechanisms. Problems arise when the benefits of mining are concentrated in the state and corporations, while local communities receive only limited benefits while simultaneously bearing the consequences of environmental degradation, spatial changes, loss of livelihoods, and social conflicts. Studies on Indonesian mining law have even identified an imbalance between fiscal and investment interests and the

interests of indigenous communities within mineral resource benefit-sharing schemes.

Distributive justice is also closely related to the protection of communities and their right to participate in mining decision-making (Begum, 2019). Normatively, communities residing in mining areas are not merely objects of development, but rather legal subjects whose interests must be taken into account in licensing processes, environmental management, land acquisition or use, and mining supervision. In this context, the legal issue that needs to be examined is whether public participation mechanisms within Indonesia's mining system have provided affected communities with meaningful opportunities to participate, or whether participation remains merely an administrative procedure. Studies on Indonesian mining regulations indicate that issues concerning transparency and the involvement of local communities persist, while research on Free, Prior and Informed Consent (FPIC) demonstrates that Indonesian mining law has yet to provide a clear mechanism that meaningfully guarantees the consent of indigenous and local communities before mining projects commence. This condition is significant from the perspective of distributive justice because communities that lack an adequate position in decision-making processes are potentially the most vulnerable parties in both receiving the benefits and bearing the consequences of mining activities.

In addition to the distribution of benefits, there are also issues concerning the distribution of environmental and social burdens. Mining activities may result in landscape alteration, pollution, ecosystem degradation, agrarian conflicts, and changes in the social structure of communities (Awang et al., 2024). Within the framework of environmental law, the principle of sustainable development requires that the utilization of natural resources must not compromise the rights of either present or future generation (Kurniawan, Samsithawrati, Disantara, Thuong, et al., 2025). Therefore, mining law must be capable of establishing a balance between economic interests and the protection of the environment and public health. This issue has become increasingly important because recent studies indicate that changes in mining supervisory authority toward greater centralization may affect the effectiveness of environmental oversight and the protection of affected communities. Accordingly, distributive justice in mining should be understood more broadly as involving the distribution not only of benefits, but also of costs, risks, and responsibilities.

These legal issues become particularly compelling when Indonesia is compared with Thailand. Thailand has a different mining legal framework that positions the state as having an obligation to manage mineral resources in order to generate optimal benefits for the state and society in a sustainable manner. Notably, mineral

management under the Thai framework must take into account the balance between economic development, social development, impacts on the environment and public health, and the fair distribution of benefits among the state, business operators, and local communities in and around mining areas that are affected by mining activities. Normatively, this framework demonstrates a more explicit articulation of benefit sharing as an element of mineral governance compared with an approach oriented primarily toward state revenues and investment.

A comparison between Indonesia and Thailand is relevant because both countries possess mineral resources that are important to economic development, yet they have developed legal instruments with distinct approaches to regulating the relationship between the state, mining companies, communities, and the environment. Indonesia places state control and public prosperity at the constitutional foundation of natural resource management, while Thailand, through the Minerals Act B.E. 2560 (2017), more explicitly formulates the need for the fair distribution of benefits among the state, business operators, and local communities. This difference in normative construction provides an opportunity to assess whether Indonesia's legal framework has sufficiently operationalized the principle of distributive justice or whether a gap remains between the constitutional mandate and sectoral legal instruments. Through a comparative legal approach, this study does not merely seek to identify which legal system is superior, but rather to identify similarities, differences, weaknesses, and relevant legal lessons that may contribute to strengthening mining governance in Indonesia.

In this context, the principal legal issue examined in this study concerns the potential gap between the mandate of social justice in the control of natural resources and the design and implementation of mining law governing the distribution of benefits, authority, participation, and the socio-ecological burdens of mining. In Indonesia, this issue can be traced through the relationship between Article 33 of the 1945 Constitution of the Republic of Indonesia, Law Number 4 of 2009 as amended by Law Number 3 of 2020 and Law Number 6 of 2023, and their implementing regulations. On the one hand, the law affirms that mining activities must contribute to public welfare; on the other hand, the strengthening of centralized authority, issues concerning community participation, the protection of affected communities, the distribution of economic benefits, and environmental oversight indicate the need to evaluate the effectiveness of these legal norms. Legal literature has also identified inconsistencies between the constitutional mandate and mining practices with regard to social justice, environmental sustainability, and the welfare of local communities.

From a comparative law perspective, these issues can be examined by considering how Thailand has developed legal instruments that normatively incorporate the principle of balance among economic and social interests, environmental protection, public health, and benefit distribution. This is important because distributive justice requires the law to go beyond merely recognizing that natural resources are controlled by the state. It also requires the state to establish concrete mechanisms determining who is entitled to receive benefits, the forms in which such benefits are provided, how affected communities are involved, who bears responsibility for environmental losses, and how the burdens and benefits of mining are distributed proportionally. Accordingly, the measure of justice in mining governance must move beyond mere resource exploitation toward fair resource governance.

Based on this framework, this study analyzes how the principle of distributive justice is constructed within the mining laws of Indonesia and Thailand, particularly with regard to the distribution of economic benefits, the allocation of authority, the protection of local communities, public participation, and the distribution of responsibility for social and environmental impacts. This study also seeks to identify normative gaps in Indonesian mining law and compare them with the Thai approach in order to formulate a legal construction better capable of balancing the interests of the state, business operators, local communities, and environmental sustainability. Accordingly, this study positions distributive justice not as an ancillary consequence of mining governance, but as a principal parameter for assessing the legitimacy of the legal framework governing mineral resource management and its conformity with the principles of the rule of law, public welfare, sustainable development, and social justice.

2. Research Method

This study constitutes normative legal research aimed at analyzing the legal construction of distributive justice in mining governance through a comparison of the legal frameworks of Indonesia and Thailand. Normative legal research is employed because the primary objects of the study are legal norms, legal principles, legal concepts, and the relationships among statutory provisions governing the control, management, utilization, and distribution of mineral resource benefits (Masnun, Muh. Ali, Prasetio, Dicky Eko, 2025). This study is grounded in a normative issue concerning the gap between the principle of controlling natural resources for the greatest prosperity of the people and the legal mechanisms governing the distribution of economic benefits, the allocation of authority,

community participation, the protection of affected communities, and the allocation of social and environmental responsibilities in mining activities.

The statutory approach is employed to identify, inventory, and analyze the legal norms underlying mining governance in Indonesia and Thailand. In the Indonesian context, the analysis focuses primarily on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia as the constitutional foundation for state control over natural resources; Law Number 4 of 2009 on Mineral and Coal Mining, as amended, inter alia, by Law Number 3 of 2020 and Law Number 6 of 2023; and relevant implementing regulations concerning licensing, management, revenues, the allocation of authority, community empowerment, and environmental protection. The study also examines the relationship between mining law and Law Number 32 of 2009 on Environmental Protection and Management, as well as legal provisions concerning regional government and financial relations between the Central Government and Regional Governments insofar as they relate to the distribution of mineral resource benefits. In the Thai context, the study primarily examines the Minerals Act B.E. 2560 (2017) and related regulations governing mineral management, state authority, licensing processes, community and environmental protection, and the distribution of mining benefits. This approach is employed to examine how each country establishes legal norms governing the relationship among state interests, the interests of mining companies, the interests of local communities, and environmental protection.

The conceptual approach is employed to establish analytical parameters concerning the meaning and indicators of distributive justice in mining governance. This approach is necessary because the concept of distributive justice cannot be understood solely on the basis of textual formulations in legislation, but must also be constructed through legal theories and doctrines. The comparative approach is employed to compare the legal constructions of mining governance in Indonesia and Thailand. The comparison does not merely examine the wording of statutory provisions or the structure of regulations, but analyzes how the two legal systems provide normative responses to the same underlying issues, namely the control and utilization of mineral resources and the distribution of the benefits and burdens of mining. The comparison focuses on several key variables, including state control over mineral resources, licensing authority, the distribution of economic benefits, the position of regional governments, local community participation, the protection of affected communities, environmental protection, and mechanisms for distributing benefits to communities surrounding mining areas. Through this method, the study identifies the similarities, differences, strengths, and weaknesses of each legal

system.

The comparison between Indonesia and Thailand employs the functional comparison method, which compares how each legal system addresses or responds to legal issues that serve the same social function (Peter De Cruz, 2015). Accordingly, differences in governmental systems, institutional structures, legal traditions, and regulatory terminology do not constitute obstacles to conducting a comparative analysis. For example, the issue of mining benefit distribution in Indonesia and Thailand can be compared based on its legal function in providing benefits to local communities, even though the institutional mechanisms employed by the two countries differ. This approach enables the study to avoid formalistic comparisons and instead direct the analysis toward the substance of the law and the capacity of legal norms to realize distributive justice.

The legal materials used in this study consist of primary legal materials, secondary legal materials, and non-legal materials. Primary legal materials include Indonesian and Thai legislation relating to mining, natural resource management, environmental protection, regional government, and the distribution of mineral resource benefits. Indonesian primary legal materials comprise the 1945 Constitution of the Republic of Indonesia, the Mineral and Coal Mining Law and its amendments, as well as relevant implementing regulations. Thai primary legal materials primarily comprise the Minerals Act B.E. 2560 (2017) and its implementing regulations relating to mineral governance. Secondary legal materials consist of legal books, scholarly journal articles, research findings, legal doctrines, expert opinions, and academic studies concerning distributive justice, mining law, benefit sharing, environmental justice, and comparative law. Non-legal materials are used to support the understanding of legal terminology and include legal dictionaries, legal encyclopedias, and other relevant reference sources.

The collection of legal materials is conducted through library research by identifying, inventorying, classifying, and examining materials relevant to the research issues. Primary legal materials are analyzed based on the hierarchy of legislation, the relationship among legal norms, and the consistency between higher-level and lower-level norms. The legal materials are analyzed using a qualitative-prescriptive approach. Qualitative analysis is conducted by interpreting legal norms, connecting relevant legal provisions, identifying regulatory patterns concerning the distribution of mining benefits and burdens, assessing normative gaps in Indonesian mining law, and formulating directions for regulatory strengthening based on the comparative findings from Thailand (Rohman et al., 2024).

2. Results and Discussion

A. Legal Construction of Distributive Justice in Mining Governance in Indonesia and Thailand

Distributive justice in mining governance is fundamentally grounded in the idea that natural resources possessing economic, social, ecological, and strategic value should not merely be regarded as commodities that may be exploited for profit, but rather as resources whose utilization must result in the fair distribution of benefits and burdens among the state, business operators, local communities, and future generations (Brondi et al., 2025). From the perspective of natural resource law, distributive justice encompasses more than merely the distribution of mining revenues. It concerns questions of who benefits from the control and utilization of mineral resources, who bears the social and ecological costs of mining activities, who has the authority to determine how such resources are utilized, and the extent to which communities living in and around mining areas have meaningful opportunities to participate in decision-making processes (Hilmiyatun et al., 2022). Accordingly, the measure of justice should not be confined to the amount of state revenue or economic growth generated by the mining sector, but should also be assessed based on the capacity of the law to ensure that economic benefits, development opportunities, environmental protection, compensation, area rehabilitation, and access to decision-making processes are distributed proportionally.

In the context of Indonesia and Thailand, this framework is relevant because both countries position the state as the primary actor in the management of mineral resources, while developing legal instruments with different characteristics in translating the relationship among national interests, economic interests, local community interests, and environmental protection. Conceptually, distributive justice can serve as a parameter for assessing whether mining governance has fulfilled the objectives of natural resource law (Jeko, 2024). Mining inherently involves unequal distributional relationships. The state receives revenues in the form of taxes, non-tax state revenues, royalties or mineral royalties, as well as broader macroeconomic benefits; companies derive profits from mineral exploration, production, processing, and sales; some communities benefit from employment opportunities, infrastructure development, and empowerment programs; while communities living around mining sites may bear burdens in the form of landscape alteration, loss of access to land, disruption of water sources, pollution, noise, social

conflict, and changes in livelihoods (Lelisari et al., 2021). Therefore, mining law oriented toward distributive justice must establish mechanisms to correct these inequalities.

Fair distribution does not mean that all parties receive equal amounts of benefits; rather, each party should receive benefits and protection proportionate to their position, contribution, rights, and the risks they bear. Communities located closest to mining resources and bearing the greatest impacts of mining activities therefore have strong legal and moral grounds for greater access to information, participation, compensation, remediation, and development benefits (Rumadan et al., 2023). Conversely, companies as parties granted the right to exploit mineral resources must assume commensurate obligations toward the environment and affected communities. In the Indonesian context, the construction of distributive justice derives a strong constitutional foundation from Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which provides that the land, waters, and natural resources contained therein are controlled by the state and utilized to the greatest extent for the prosperity of the people. This provision cannot be understood merely as the legal basis for state ownership or control over mineral resources; rather, it must be positioned as a constitutional norm that provides both direction and limits for mining policies.

The phrase "to the greatest extent for the prosperity of the people" entails that state control cannot be limited to the state's authority to grant licenses to business entities to exploit mineral resources, but must instead be directed toward creating broad and equitable social benefits (Koeswahyono & Maharani, 2022). The elucidation of Law Number 2 of 2025, as the fourth amendment to Law Number 4 of 2009, also reaffirms that minerals and coal constitute non-renewable natural resources whose management is controlled by the state to increase the added value of the national economy and realize the prosperity and welfare of the people in a just manner. The concept of "state control" in this context must also be distinguished from the concept of the state as the absolute owner of natural resources. State control is more appropriately understood as the exercise of public authority through policymaking (beleid), regulation (regelendaad), administration (bestuursdaad), management (beheersdaad), and supervision (toezichthoudendaad), aimed at ensuring that natural resources are utilized in the public interest (Masnun et al., 2026). Therefore, the legality of a mining license does not, in itself, demonstrate the fulfillment of distributive justice. A license is merely a legal instrument that grants certain rights to business operators within the limits prescribed by law (Satriawan, 2021).

The Indonesian mining legal framework demonstrates significant development

in integrating economic, state, community, and environmental interests. Law Number 4 of 2009 on Mineral and Coal Mining has undergone several amendments, including through Law Number 3 of 2020, Law Number 11 of 2020, Law Number 6 of 2023, and most recently Law Number 2 of 2025. Law Number 3 of 2020, for instance, expanded the regulation of mining areas, mineral and coal management authority, planning, the strengthening of state-owned enterprises, licensing, community mining, value-added enhancement, share divestment, guidance and supervision, community empowerment, and environmental management, including reclamation and post-mining activities. These amendments demonstrate that Indonesian mining law no longer treats mineral exploitation merely as an administrative relationship between the government and companies, but has evolved into a legal regime governing the value chain, the allocation of authority, revenue management, community empowerment, and environmental responsibilities.

The first dimension of distributive justice in Indonesian law concerns the distribution of economic benefits. Mineral and coal mining generates revenues that are directly connected to the fiscal interests of both the state and regional governments. From the perspective of distributive justice, state revenues should not be understood merely as income accruing to the central government, but as fiscal resources that must ultimately be returned in the form of public services and development that generate benefits for society (Kurniawan, Samsithawrati, Dharmawan, Disantara, et al., 2025). Law Number 1 of 2022 on Financial Relations between the Central Government and Regional Governments regulates fiscal relations through taxes and levies, transfers to regions, regional expenditure, regional financing, and the synchronization of national fiscal policies. One of the objectives of managing these financial relations is to reduce fiscal disparities and disparities in public service provision among regions. Furthermore, Government Regulation Number 37 of 2023 regulates transfers to regions, including the Revenue Sharing Fund (Dana Bagi Hasil or DBH), which consists of Tax Revenue Sharing Funds and Natural Resource Revenue Sharing Funds. Normatively, these mechanisms can be regarded as benefit-sharing instruments, as revenues derived from the exploitation of natural resources do not remain entirely at the central level but are distributed through fiscal mechanisms to regional governments (Kurniawan, Samsithawrati, Disantara, Nutakor, et al., 2025).

Recent developments in Indonesian mining law demonstrate a tendency toward strengthening the role of the Central Government in the management of minerals and coal. Law Number 3 of 2020 explicitly introduced provisions concerning the authority to manage mineral and coal resources and strengthened the

position of the Central Government within the licensing system. This development has subsequently undergone further adjustments through amendments to implementing regulations. From an administrative perspective, centralization may offer advantages in terms of policy uniformity, licensing standardization, control over strategic resources, and the prevention of fragmentation in mining policies (Harun et al., 2023). However, from the perspective of distributive justice, centralization also raises questions concerning the proximity of decision-making to communities that directly experience the impacts of mining activities. The greater the distance between the decision-making center and the mining site, the more important mechanisms for local community participation and representation become in ensuring that decisions concerning natural resources are not based solely on macroeconomic interests.

Distributive justice is closely connected to procedural justice, as the fair distribution of benefits is difficult to achieve without decision-making processes that provide meaningful space for community participation. Law Number 32 of 2009 on Environmental Protection and Management provides an important legal basis for public participation in environmental management. Article 70 grants communities equal and broad rights and opportunities to participate actively, including through social oversight, the submission of advice, opinions, proposals, objections, and complaints, as well as the provision of information and reports. This environmental legal regime is particularly relevant to mining because mining activities almost invariably generate ecological consequences that may affect local communities (Kuswantoro et al., 2023). Thus, community participation should not be regarded merely as an administrative formality, but rather as an instrument for improving the quality of decision-making and the distribution of benefits. In the context of indigenous communities, the dimension of justice becomes more complex because mineral resources are often located in areas that possess significant social, cultural, and ecological value for indigenous peoples (Kurniawan, Samsithawrati, Disantara, & Nutakor, 2025). Therefore, the recognition of indigenous peoples and the protection of their rights to their customary territories and living spaces must form part of the construction of distributive justice. The state cannot merely calculate the economic value of minerals located beneath the ground, but must also take into account the social and ecological values embedded in the communities' living spaces. Within this framework, even financial compensation cannot always be regarded as an adequate substitute for the loss of livelihoods, cultural identity, or the ecological functions of an area.

Mining activities inherently generate externalities, namely costs that are not always reflected in the price of commodities but are ultimately borne by

communities and the environment (Ranggalawe et al., 2023). Water pollution, soil degradation, loss of vegetation cover, landscape alteration, dust, noise, health risks, and changes in local economic structures are examples of burdens that may arise from mining activities (Masnun, Muh. Ali, Noviyanti, Santoso, Irwan Bagyo, Wedhatami, Bayangsari, Abiyoga, 2024). Therefore, distributive justice requires that parties deriving economic benefits from mining activities bear commensurate responsibility for the impacts they cause. Indonesian law has integrated reclamation and post-mining obligations, as well as environmental management requirements, into the mining regulatory regime. Law Number 3 of 2020 explicitly strengthened policies concerning environmental management, reclamation, and post-mining activities. In addition, the environmental legal regime recognizes the public's right to a good and healthy environment and provides avenues for community participation.

Reclamation and post-mining obligations are particularly important because mining is an extractive activity whose economic benefits are relatively short-term compared with the ecological consequences that may persist over the long term (Idrus, 2022). Reclamation and remediation obligations ensure that the present generation does not transfer the entire cost of resource exploitation to future generations. This also connects distributive justice with the principle of intergenerational justice. Minerals are non-renewable resources; therefore, their exploitation today reduces the resources available to future generations. In Thailand, the concept of distributive justice is expressly reflected in the fundamental principles governing mineral management. The Minerals Act B.E. 2560 (2017) replaced and consolidated the previous mineral regulatory framework. The Thai Government explains that Section 7 establishes the state's obligation to regulate mineral management in order to generate maximum benefits for the state and society in a sustainable manner, while taking into account the balance between economic and social development, impacts on environmental quality and public health, and the fair distribution of benefits among the state, business operators, and local communities in mining areas and surrounding areas affected by mining activities (Sutthichaimethee et al., 2025). This formulation is significant from a comparative perspective because distributive justice is not merely derived as a consequence of the general principle of public welfare, but is more explicitly linked to the distribution of benefits among the state, companies, and local communities.

Thus, there is a fundamental similarity between Indonesia and Thailand. Both countries place mineral management within the framework of the public interest and sustainability. Neither state leaves mineral management entirely to market mechanisms; instead, both retain the authority to regulate exploration, mining activities, revenues, supervision, and environmental protection. The key difference

lies in how this principle is formulated. Indonesia constructs distributive justice primarily through the constitutional principle of "the greatest prosperity of the people," which is subsequently translated through various legal regimes governing mining, state and regional finance, environmental protection, and community empowerment. Thailand, through the Minerals Act B.E. 2560 (2017), adopts a relatively more explicit formulation requiring consideration of the balance among economic, social, environmental, and public health interests, as well as the distribution of benefits among the state, business operators, and local communities (Raihan, 2025).

Another similarity can be observed in the mechanisms for community participation. The Minerals Act B.E. 2560 (2017) of Thailand provides consultation mechanisms and, under certain circumstances, even a local referendum when a mining concession application is opposed by the community and the issue cannot be resolved through administrative processes. The Thai Government's official explanation of the Minerals Act states that, following the submission of a concession application and the determination of the relevant area, a public consultation process is conducted. Where the community does not consent to the proposed mining activity and the licensing authority is unable to resolve the issue, a community referendum may be conducted within the area covered by the application. This mechanism demonstrates that Thai law links the legitimacy of granting mining rights to social acceptance at the local level (Raihan, 2025).

In Indonesia, community participation in environmental management also has a strong normative basis, but the structure of participation is dispersed across several legal regimes. Communities are provided with opportunities to submit objections, opinions, information, and complaints, as well as to exercise social oversight in environmental protection. In the context of mining, participation is also connected to consultation processes and environmental obligations embedded in the licensing process. However, compared with Thailand, Indonesia's legal framework may be regarded as more fragmented and does not fully provide a single sector-specific mechanism that explicitly links community opposition to a referendum mechanism such as that provided under Thailand's Minerals Act. This distinction is important because it demonstrates that distributive justice depends not only on the existence of participation rights, but also on the effectiveness of institutions through which such participation can influence decision-making.

Thailand also demonstrates a more layered allocation of authority in several respects. The Minerals Act B.E. 2560 (2017) distinguishes among different types of mining activities and licensing authorities. Within this framework, roles are assigned to local or provincial mineral officials, provincial mineral committees, central

authorities, and the mineral committee (Muttaraid et al., 2024). The Thai Government explains that this allocation of authority varies according to the category of mining activity, including the delegation of certain powers to local mineral industry officials and local government organizations in small-scale mining activities and mineral panning. This structure demonstrates an effort to connect national mineral governance with local governmental capacity. From the perspective of distributive justice, such limited decentralization may offer advantages because local governments possess greater knowledge of the characteristics of the areas and communities affected by mining activities.

Another important dimension concerns remediation obligations and the protection of affected communities. Thailand's Minerals Act requires mining permit holders to prepare rehabilitation plans, plans for the redevelopment or reuse of mining areas, and measures for monitoring environmental and public health impacts during mining operations and after mine closure. Permit holders are also required to provide financial guarantees for area rehabilitation and compensation to affected parties. For certain categories of mining activities, permit holders are additionally required to maintain liability insurance covering the life, bodily integrity, and property of third parties. These provisions demonstrate a polluter-pays principle translated into mechanisms of financial guarantees and liability (García-Portela, 2023). In other words, the costs of remediation should not be imposed on the state or communities when companies derive profits from mining activities. When the two systems are compared in terms of the distribution of economic benefits, Indonesia has a strong benefit-sharing structure at the national and regional levels through state revenues and transfers to regions. This system enables mineral resources exploited in a particular region to contribute to the financing of both national and regional development. Thailand also imposes mineral royalties and has revenue mechanisms involving the state and local governments. The Minerals Act B.E. 2560 (2017) regulates the obligation of concession holders and certain mining operators to pay mineral royalties. However, a fundamental difference lies in the articulation of the relationship between revenues and local communities.

Thailand explicitly links the principle of mineral management to the fair distribution of benefits among the state, operators, and local communities, whereas Indonesia primarily realizes benefit distribution through state revenue structures, fiscal transfers, community empowerment, and corporate social obligations dispersed across various legal instruments. From the perspective of the distribution of environmental burdens, both countries essentially demonstrate a similar direction. Mining activities cannot be legitimized solely on the basis of their economic value, but must also take into account environmental quality and public

health. Indonesia has an environmental legal framework that recognizes the public's right to a good and healthy environment, community participation, social oversight, and the obligations of business operators to control environmental impacts (Mahfud et al., 2022). Thailand, through the Minerals Act B.E. 2560 (2017), likewise requires a balance between economic and social benefits and environmental and public health impacts, while requiring remediation mechanisms and guarantees for affected parties. This difference in approach demonstrates that Thailand tends to integrate distributive considerations more directly into its mineral law, whereas Indonesia constructs distributive justice through the interaction of mining law, environmental law, central–regional fiscal law, and development policies.

Within this framework, benefit sharing should be developed as a key instrument of distributive justice. Benefit sharing should not be narrowly understood as the provision of funds to communities surrounding mining sites, but rather as a system that ensures communities derive economic, social, ecological, and institutional benefits from the presence of mineral resources in their territories (Fernando et al., 2023). These forms may include regional revenues, economic empowerment programs, employment preferences, local business development, public infrastructure development, community capacity building, access to information, participation in monitoring, compensation for losses, rehabilitation guarantees, and mechanisms for monitoring public health and environmental conditions. In this regard, Thailand offers an important lesson because its Minerals Act B.E. 2560 (2017) explicitly identifies the distribution of benefits among the state, operators, and local communities as part of the principles governing mineral management. Indonesia, meanwhile, possesses a strong constitutional foundation for developing benefit-sharing mechanisms through the principle of "the greatest prosperity of the people" and fiscal distribution mechanisms.

Based on this comparison, there are both points of convergence and differences in the legal characteristics of the two systems that can serve as a foundation for developing a more equitable model of mining governance. Indonesia can strengthen the explicit articulation of direct benefit sharing with local communities, following the more clearly formulated principle under Thailand's Minerals Act, without undermining the principle of state control established under Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Conversely, Indonesia's experience with central–regional fiscal relations and the regulation of transfers to regions can provide an important perspective on how mineral resource benefits can be distributed more systematically within the framework of national and regional development (Jamil, 2022). Accordingly, the comparative legal analysis is not intended to establish that one legal system is entirely superior to the other, but rather

to identify normative aspects that can complement one another.

The ultimate assessment of distributive justice in mining should at least encompass six main indicators: (1) justice in resource control, ensuring that state authority is exercised in the public interest; (2) economic justice, ensuring that mining benefits are distributed among the state, regional governments, companies, and communities; (3) territorial justice, ensuring that resource-producing regions receive proportionate development benefits; (4) participatory justice, ensuring that local communities and affected groups can meaningfully influence decision-making processes; (5) environmental justice, ensuring that ecological burdens are not disproportionately imposed on communities; and (6) intergenerational justice, ensuring that resource exploitation does not undermine the ability of future generations to enjoy adequate environmental conditions and natural resources. When these six indicators are applied together, mining governance is no longer assessed merely on the basis of production efficiency and state revenues, but also on the quality of the relationship among resource exploitation, public welfare, environmental protection, and sustainable development.

B. Challenges and Reconstruction of Distributive Justice in Mining Governance: Lessons from Thailand for Indonesia

The principal challenge in Indonesian mining governance does not fundamentally lie in the absence of a legal foundation for mineral resource management, but rather in the existence of a gap between law in the books and law in action, particularly in realizing the principle of distributive justice (Arevuo, 2024). Normatively, Indonesia has a strong constitutional foundation through Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which stipulates that the land, waters, and natural resources contained therein are controlled by the state and utilized to the greatest extent for the prosperity of the people. This principle is subsequently elaborated through Law Number 4 of 2009 on Mineral and Coal Mining, as amended several times, most recently, inter alia, through Law Number 2 of 2025, as well as various regulations concerning central–regional fiscal relations, environmental protection, community empowerment, reclamation, post-mining activities, and value-added enhancement. Textually, this body of norms demonstrates the legislative intent to position mining as an instrument of national development and public welfare. However, the existence of these norms does not automatically produce a fair distribution of benefits and burdens. Problems arise when state control over mineral resources is primarily

exercised through licensing authority, production control, state revenues, and administrative supervision, while communities living closest to areas of exploitation do not always have a commensurate position in decision-making processes or access to the benefits generated.

From the perspective of distributive justice, this condition demonstrates that the success of mining law cannot be determined solely by legal certainty for investment and increased state revenues, but must also be assessed based on who receives the benefits, who bears the risks, and the extent to which such distribution can be justified socially, ecologically, and across generations. Mining activities are inherently extractive activities that alter natural conditions and have the potential to generate externalities. These burdens may take the form of environmental degradation, declining water quality, landscape alteration, loss of vegetation, health disturbances, changes in community economic structures, land-use conflicts, and economic dependence on extractive industries. Although Indonesian law requires environmental management, reclamation, and post-mining activities, issues of justice arise when the social and ecological costs generated exceed the benefits received by surrounding communities. From the perspective of environmental justice, groups that receive the least benefits should not be expected to bear the greatest environmental burdens (Kurniawan et al., 2024). Therefore, communities surrounding mining areas should receive stronger protection against ecological risks, access to environmental information, opportunities for participation, effective grievance mechanisms, and guarantees of remediation when they suffer losses.

Recent developments in Indonesian mining law demonstrate a strengthening of the role of the Central Government in the management of minerals and coal. Centralization may be justified from the perspective of national interests because minerals constitute strategic resources that transcend regional boundaries and are closely connected to industrial, energy, trade, fiscal, and economic security policies. However, from the perspective of distributive justice, centralization must be accompanied by mechanisms of participatory decentralization. The issue is not merely whether licensing authority rests with the central or regional government, but whether communities in areas where mining activities take place have adequate opportunities to influence decision-making. Excessively centralized decision-making may create a gap between licensing authorities and communities that directly experience mining impacts. When decisions concerning land use and resource utilization are made far from affected areas, there is a risk that the indicators of success will be based more heavily on national interests and investment than on the socio-ecological needs of local communities. Therefore,

reconstruction need not necessarily be directed toward returning all mining authority to regional governments.

From the perspective of distributive justice, communities living in mining areas cannot be positioned merely as recipients of empowerment programs or as parties receiving compensation after mining decisions have already been made (Akhmaddhian et al., 2023). Communities are directly concerned with land, water, the environment, livelihoods, and the social sustainability of their territories. For indigenous communities, these issues are even more complex because areas designated for mining may possess cultural and spiritual values that cannot be measured solely in economic terms. Therefore, a legal approach that relies exclusively on financial compensation as an instrument for resolving conflicts may produce transactional justice, but does not necessarily achieve substantive justice. The state must ensure that communities have access to information, meaningful consultation, participation in decision-making processes, protection of environmental rights, and effective dispute resolution mechanisms. In this regard, the lessons from Thailand are particularly important. The Minerals Act B.E. 2560 (2017) explicitly places mineral management within a framework aimed at generating maximum benefits for the state and society in a sustainable manner, while taking into account the balance between economic and social development, impacts on environmental quality and public health, and the fair distribution of benefits among the state, business operators, and local communities in mining areas and surrounding areas affected by mining activities (Muttaraid et al., 2024). This formulation demonstrates a relatively integrative legal construction because local communities are not treated as external variables in mining activities, but rather as one of the parties whose interests must be considered in the design of mineral management.

Thus, Thai law provides an important lesson that the principle of distributive justice can be made more operational by explicitly identifying the parties entitled to benefit from the exploitation of natural resources. Another aspect of particular relevance to Indonesia is the mechanism for community participation under Thai mineral law. The Minerals Act B.E. 2560 (2017) provides for public consultation mechanisms in processes concerning the granting of mining rights. Under certain circumstances, when communities oppose mining activities and the issue cannot be resolved through administrative processes, Thai law provides for a local community referendum. This mechanism is significant because it gives communities the possibility of influencing the legitimacy of mining activities, rather than merely expressing their views after an administrative decision has been made. From the perspective of distributive justice, such participation serves a

corrective function against the imbalance of power among companies, government, and communities. Companies possess capital and technical expertise, while the government possesses administrative authority; communities therefore require legal mechanisms to ensure that their bargaining position does not depend entirely on informal negotiations.

Another important lesson from Thailand is the integration of economic, social, health, and environmental interests within a single mineral law framework. The Minerals Act B.E. 2560 (2017) does not regard economic benefits as the sole parameter for assessing the success of mining activities. The objectives of mineral management are linked to economic and social development, environmental quality, public health, and the fair distribution of benefits. This approach offers an important lesson for Indonesia because mining law frequently interacts with various other legal regimes. In practice, mining decisions may involve environmental law, administrative law, forestry law, agrarian law, indigenous peoples' law, state finance law, and industrial policy. In terms of benefit sharing, the comparison between Indonesia and Thailand reveals differences that may provide valuable lessons. Indonesia already has revenue-sharing mechanisms through the central–regional fiscal system, community empowerment obligations, and instruments for development and value-added enhancement. However, direct benefits for local communities have not yet been uniformly constructed as enforceable community rights that can be clearly claimed within the mining legal system. In Thailand, the principle of benefit sharing among the state, operators, and local communities is articulated more explicitly within the objectives of mineral management. Thai law also provides mechanisms relating to community funds, health monitoring, rehabilitation, and risk management in certain mining contexts.

This difference indicates that Indonesia needs to move from a CSR-oriented benefit model toward rights-based benefit sharing. Corporate social responsibility programs should not serve as the sole instrument for benefit distribution because CSR is relatively dependent on corporate design and does not necessarily have a direct relationship with the requirements of distributive justice. Rights-based benefit sharing requires communities to possess rights to specific benefits derived from mining activities, supported by a clear legal basis, allocation formula, purposes of use, oversight mechanisms, and accountability requirements. Such benefits may include local economic development, workforce capacity building, support for micro and small enterprises, public infrastructure development, health monitoring, environmental remediation, and financing for economic diversification after mine closure. Under this model, communities are not positioned as parties to whom benefits are merely "given" by companies, but as parties possessing legal

interests in natural resource governance. This shift is philosophically significant because it transforms the relationship from charity to justice (Monteiro et al., 2021). Companies do not provide benefits merely out of goodwill; rather, they fulfill part of the social and ecological obligations arising from the rights they obtain to exploit public resources.

In this context, Indonesia could develop a Community Mining Benefit Fund, or a mining community benefit fund, established on a sector-specific legal basis and integrated with corporate obligations and the mining revenue system. Such a fund should be distinguished from voluntary CSR programs and used for purposes directly related to the welfare of affected communities, health monitoring, socio-ecological remediation, education, skills development, economic diversification, and post-mining preparation. Its management should be transparent and involve regional governments, communities, and representatives of affected groups. Thailand's experience with community fund mechanisms and rehabilitation obligations may provide useful inspiration, but the institutional design should be adapted to Indonesia's public finance system to avoid overlap with the State Budget (APBN), Regional Budgets (APBD), Revenue Sharing Funds (DBH), or other revenue mechanisms.

D. Conclusion

The legal construction of distributive justice in mining governance in Indonesia and Thailand similarly positions the state as the controller of mineral resources to ensure public prosperity, emphasizing the distribution of economic benefits, environmental protection, community participation, and intergenerational sustainability. Indonesia relies on the constitutional mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which is elaborated through the Mineral and Coal Mining Law, state and regional revenue mechanisms, community empowerment, and environmental protection. Thailand, meanwhile, through the Minerals Act B.E. 2560 (2017), more explicitly integrates the interests of the state, business operators, local communities, and economic, social, health, and environmental considerations into the distribution of mining benefits. Thus, the principal difference lies in the degree to which benefit sharing and local community participation are explicitly articulated, with Thai law establishing these elements more clearly as part of the objectives of mineral management.

The challenges of distributive justice in Indonesian mining governance primarily lie in the gap between legal norms and their implementation, particularly

unequal distribution of economic benefits, the distribution of socio-ecological burdens, the centralization of authority, and limitations on the participation of local and indigenous communities. Lessons from Thailand demonstrate the need to strengthen benefit sharing, meaningful participation, environmental and public health protection, and accountability through the integration of state, corporate, and local community interests. Therefore, the reconstruction of Indonesian mining law should be directed toward a distributive justice-based mining governance model that ensures the proportional distribution of benefits, the fair allocation of burdens and responsibilities, and the protection of the interests of communities and future generations.

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