

Environmental Justice in Intra-Generations: an Overview of Aristotle's Distributive Justice to Coal Mining

**Yovi Cajapa Endyka^{1*}, Muhamad Muhdar²,
Abdul Kadir Sabaruddin³**

^{1,2,3}Faculty of Law, Universitas Mulawarman, Indonesia

*Corresponding: yovicajapaendyka@gmail.com

Abstract

Indonesia is a country with abundant natural resources, ranging from sand, tin, copper, coal, iron ore to gold. Therefore, the State should provide wise and sustainable management of natural resources to ensure environmental justice. This study will examine how Aristotle's distributive justice can sharpen the concept of justice for coal mining management. This study will focus on environmental justice in intra-generational terms in terms of Aristotle's distributive justice to coal mining. Protection of access (conservation of access) reflects the allocation of rights and access to natural resources balance between different generations and fellow members of the current generation. Thus, access to protection provides fair and non-discriminatory rights for every citizen of the current generation to use environmental resources. However, in using these resources, each member of the current generation has an obligation (equitable duties) to ensure that his actions will not reduce future generations' access to these resources. The state through mining or environmental policies has not provided justice for the community, where the community are exposed to

more risks such as social injustice, environmental and health harm from coal mining activities than receiving the benefits.

Keywords: coal; mining; sustainable development; distributive justice; environmental justice.

1. Introduction

Environmental law is the field of law dealing with the preservation and protection of the environment, including preventive measures such as the requirements of environmental-impact statements, as well as measures to assign liability and provide cleanup for incidents that harm the environment.¹ Environmental justice is an essential matter for every living being that depends on natural resources. Indonesia is a country with abundant natural resources, from sand, tin, copper, brass, iron ore to gold.² To carry out the management and utilization of this abundant natural resource, the State requires much capital. Therefore it requires the involvement of investors or companies that participate in investing and managing this natural wealth.

¹ Garner, B. A. (2009). *Black Law Dictionary. 9th edition.* U.S.A. Thompson West Group. p. 642.

² Awaliyah, S. (2014). Kontrak Karya Dan Perjanjian Karya Pengusahaan Pertambangan Batubara (KK/PKP2B). *Jurnal Pendidikan Pancasila dan Kewarganegaraan.* Vol. 27. (2).p. 111.

One of the most attractive business fields for investors is the mining and natural resource extraction sectors. These sectors are still the mainstay for the acceleration of Indonesia's economic development.³

Indonesia is rich in natural resources and this phrase is often embedded in various text discourses and political and legal narratives.⁴ The regulatory factor is an essential element because it becomes the guide for the State as the party that controls Natural Resources.⁵ Normatively, the legal politics of natural resource management in Indonesia have been stipulated in the Republic of Indonesia's Constitution. 1945 Constitution Amendment⁶ as being carried out on Article 33 (4) of the 1945 Constitution "The organization of the national economy shall be conducted based on economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy", it is related to liberalization in the natural resource management sector. Natural resource management must contain seven constitutional features: First, the economy aims to achieve shared prosperity for all people.

Second, people's participation in the ownership, production process and enjoying

³ Lestari, D. (2016). Dampak Investasi Sektor Pertambangan Terhadap Pertumbuhan Ekonomi Dan Tenaga Kerja. *Jurnal Ekonomi, Manajemen dan Akuntansi*. Vol. 16. (3).p 176.

⁴ Muhdar, M. (2020). Rekonstruksi Basis Perhitungan Kerugian Negara dalam Peristiwa Tindak Pidana Korupsi pada Sektor Sumber Daya Alam. *Jurnal de Jure Vol 12 (1) April*. p. 39.

⁵ Muhdar, M. et al. (2015). Implikasi Hukum Terhadap Praktik Pinjam Pakai Kawasan Hutan untuk Kegiatan Pertambangan Batubara. *Halrev. Vol 1(3)*.p. 433.

⁶ Qurbani, I. D. (2012). Politik Hukum Pengelolaan Minyak dan Gas Bumi di Indonesia. *Jurnal Arena Hukum Vol. 6 (2). August*. p. 79-154.

the results. Third, following the principles of Article 33 paragraph (4) of the 1945 Constitution, namely efficiency with justice, the economy needs to be run by using a fair market mechanism based on healthy competition and the role and authority of the State for intervention in the event of a market failure. Fourth, the role of the State must be guaranteed as mandated by the 1945 Constitution, especially in terms of national economic planning, in shaping and enforcing the implementation of laws and in implementing community service and empowerment programs, tax exemptions, providing subsidies and others.⁷

Fifth. State-owned enterprises (BUMN) as one of the pillars of economic activity, controls important production branches and those that control the lives of many people. Sixth, cooperatives as the pillars of the economy must be realized in the spirit of togetherness with State-owned enterprises and the private sector and people's economic enterprises. Seventh. The national economy must manifest equal partnerships between cooperatives, state-owned enterprises and the private sector.⁸

Equal partnerships can be made for parties conducting a single transaction. In contract theory, it describes the agreement of one actor to take any action that has economic value to another party. The consequences of reciprocal action or payment. So in a partnership, there must be reciprocal economic action. These characteristics must be translated into a series of regulations concerning mineral and coal mining.⁹ For expositional simplicity and to maintain consistency with the subsequent empirical work that employs the Ecological Footprint to measure environmental

⁷ Tjakrawerdaja, S. (2008). Menunggu UU Induk Mengenai Perekonomian Nasional. *Reform Review. Volume 2 (1) April-June*. p. 40

⁸ *Ibid*. p. 40.

⁹ Yustika, A. E. (2013). *Ekonomi Kelembagaan Paradigma. Teori. dan Kebijakan*. Jakarta: Erlangga.

utilization.¹⁰ The utilization of natural resources should provide justice for every living being, both the present and future generations.

Economic development through natural resources should prioritize sustainable development. Sustainable development can be derived into several core elements: the principle of integration, which asks for guarantees that environmental considerations will be integrated into plans, policies, and programs related to economy and development, and that meeting development needs must take into account the objectives of environmental protection, the principle of sustainable use, which is reflected in the exploitation of natural resources in a sustainable, prudent, rational, wise, and appropriate manner, the principle of intra-generational justice, which is shown through the equitable use of natural resources (fair use of natural resources), where the use of natural resources by one country must still pay attention to the needs of other countries and the principle of justice between generations, which can be seen from the need to protect natural resources for the benefit of creating future ones.¹¹

The distributive justice is related to the equitable distribution of resources and risks that apply at the regional, national and international levels. In fact, in some cases, such as in Mulawarman Village,¹² District

Kutai Kartanegara, they have to move their residence or be marginalized due to mining activities. The environment that directly affects people's lives, such as rivers and plants cannot be enjoyed again as it should have been before mining activities took place. The granting of mining business permits to entrepreneurs based on the interests of forest utilization as an economic interest becomes a priority so that the rights of the communities around the mine are indirectly injured or marginalized by the economic interests proclaimed by the government.

Coal mining and community rights in one (intra) generation is a big question, coal mining can provide access to accommodate economic interests and realize distributive justice that give a proportional equality to everyone what is their right and obligation according to their abilities and achievements. The distribution of risk in coal mining activities still seems unfair on what has been done by coal mining operators to the benefits and environmental damage that are shared with the community in intra generation. Remarkably, the state should be can provide justice to the community and coal mining operator towards risk distribution on coal mining.

2. Discussion and Analysis

2.1 Aristotle's Distributive Justice in Intra-Generation

Theories that examine the problem of justice in-depth have been carried out since ancient Greece.¹³ Natural Law theories from Socrates to Francois Geny still maintain justice as the crown of law. Natural Law

¹⁰ Chambers, D. & Guo, J-T. (2009). Natural Resources and Economic Growth: Some Theory and Evidence. *Annals of Economics and Finance November*. p. 4.

¹¹ Wibisana, A. G. (2017). Keadilan Dalam Satu (Intra) Generasi: Sebuah Pengantar Berdasarkan Taksonomi Keadilan Lingkungan. *Mimbar Hukum Vol. 29. (2). June*. p. 292-307.

¹² In the case of Mulawarman villagers, the loss of food production has become the main problem that makes them fail to maintain food self-sufficiency. As a result, the villagers have lost their independence and turned to the government in order to qualify for social welfare, not to

mention their dependence upon the existing companies for clean water (Muhdar, Nasir & Nurdiana, 2020: p. 658).

¹³ Nasution, B. J. (2014). Kajian Filosofis Tentang Konsep Keadilan dari Pemikiran Klasik Sampai Pemikiran Modern. *Yustisia Vol. 3 (2) May - August*. p. 118-130.

Theory prioritizes "the search for justice,¹⁴ various kinds of theories regarding to justice and society, theories concern rights and freedoms, income and prosperity. Among those theories can be called: Aristotle's theory of justice in his book *Nicomachean ethics* and John Rawl's theory of social justice in his book *a theory of justice* and Hans Kelsen's theory of law and justice in his book *general theory of law and State*. In the study of philosophy, several theories of justice have been emphasized by several philosophers based on equality. Some of them are Aristotle. Thomas Aquinas and John Rawls. Aristotle provides the concept of justice through equal status, equality of rights and obligations proportionally through distributive justice which Thomas Aquinas later developed. Furthermore. John Rawls also stated that there must be something called the original position in the concept of justice which places everyone equally in position and status to have equal rights to fundamental freedoms.¹⁵

Aristotle's views on justice can be found in his work on *Nicomachean ethics*, politics and rhetoric. Seen explicitly in the book *Nicomachean Ethics*, the book is entirely devoted to justice based on Aristotle's philosophy of law "because the law can only be established with justice."¹⁶ This view of justice is a granting of equal but not equal rights. Aristotle distinguished his equal rights according to proportional rights. In terms of equality of human rights as an equal creature. This is what can be understood by every citizen and everyone is equal before the law. Proportional equality

gives everyone what is their right and obligation according to their abilities and achievements.¹⁷

Aristotle's view on justice is divided into "distributive" justice and "commutative" justice. Distributive justice is justice that gives each person a portion according to his / her achievement. Commutative justice provides as much to everyone without differentiating their performance in this case related to the role of exchanging goods and services.¹⁸ Through this division of justice. Aristotle gets much debate on the thoughts put forward.

Distributive justice according to Aristotle, focuses on distribution, honorarium, wealth and other goods that can be found in society. Putting aside the mathematical "proof." it is clear that what Aristotle had in mind was the distribution of wealth and other valuables based on prevailing values among the citizens.¹⁹ A fair distribution may be a distribution following the value of goodness, namely its value for society. Aristotle's doctrines not only laid the foundations for legal theory but also western philosophy in general. Aristotle's contribution to the philosophy of law is his formulation of the question of justice which distinguishes between "distributive" justice and "corrective" or "remedial" justice, which is the basis for all theoretical discussion of the subject matter. Distributive justice refers to distributing goods and services to everyone according to their position in society and equal treatment of equality before the law.²⁰

One key problem with contemporary liberal theories of justice is that recognition

¹⁴ Friedrich, C. J. (2004). *Filsafat Hukum Perspektif Historis*. Bandung: Nuansa dan Nusamedia. p. 24.

¹⁵ Adlhiyati, Z. & Achmad. (2019). *Melacak Keadilan dalam Regulasi Poligami: Kajian Filsafat Keadilan Aristoteles, Thomas Aquinas, dan John Rawls*. *Jurnal Hukum*, Vol. 2 (2). p. 409-431.

¹⁶ Apeldoorn L. J. V. (1996). *Pengantar Ilmu Hukum*. Cetakan Ke Dua Puluh Enam. Jakarta: Pradnya Paramita.

¹⁷ Amin, S. (2019). *Keadilan Dalam Perspektif Filsafat Hukum Terhadap Masyarakat*. *El-Afkar Vol. 8 (1). January-June*. p. 2.

¹⁸ Friedrich, C. J. *Op. Cit.* p. 25.

¹⁹ Faiz, P. M. (2009). *Teori Keadilan John Rawls*. *Jurnal Konstitusi*. Vol. 6 (1). p. 135.

²⁰ Helmi, M. (2015). *Konsep Keadilan Dalam Filsafat Hukum dan Filsafat Hukum Islam*. *Mazahib*. Vol. 25. (2) *December*. p. 133-144.

and its link to both distribution and to participation. That recognition is an element of justice should be uncontroversial; that it has been so neglected should be admitted and addressed. Its articulated and understood as a balance of numerous interlinked elements of distribution, recognition, participation and capability.²¹ Furthermore, any conflict of interest between coal mining operator, state and society in the implementation of mining activity. Economic growth, coal mining profit, environment would be point of view from any parties whose impacted by coal mining activity as an optimization on natural resources or injustice issue from the society. The tension between the repercussions of these injustices versus the economic benefits of coal mining are reflected in the literature from a wide range of countries at virtually all stages on the economic development scale. A universal conflict of power and priorities is evident and is arguably a direct function of contemporary society's use of coal power as a base for the expansion of economic growth. This conflict includes contestation over fundamentals such as water rights and land use.²²

Environmental justice is concerned with the equitable distribution of environmental rights and benefits among people, such as give a rights to operate a coal mining which is cognizance to sustainable development and give a value to society and state. Here, the procedural aspect of public participation in decision-making is considered a substantive right that is part of distributive justice.²³ Distributive justice in

coal mining should be sustainable development where this has been realized in Environmental Protection and Management Act 2009 and discussed in several national and international meetings. In essence, all of them are efforts to protect natural resources and the environment as one of the fundamental problems that underlie sustainable development²⁴. Intra-generational Justice is justice aimed at those who live in one generation related to the equitable distribution of resources.²⁵ Every generation has the right to live well and appropriately in a conducive situation where there is no disturbance physically and spiritually. Each generation should not be burdened by the problems generated by previous generations.²⁶

2.2. Realizing Environmental Justice for Coal Mining in Intra-Generation

Based on Dobson's opinion as quoted by Langhelle, distributive justice has a very close relationship with sustainable development for three reasons, namely: first, the environment is a resource that must be distributed relatively; second, justice is functional in creating sustainability; and third, sustainability also requires justice for the environment itself. Langhelle then added a fourth reason, namely that sustainability is also a necessary condition for creating

²¹ Schlosberg, D. (2007). *Defining Environmental Justice Theories, Movements, and Nature*. USA: Oxford University Press.

²² Morrice, E. & Colagiuri, R. (2013). Coal mining, social, injustice and health: A universal conflict of power and priorities. *Health & Place* 19. p.74-79

²³ Setyorini, S. N., Wirdyaningsih, & Hazna, C. A. (2019). Wakaf Lingkungan Hidup dalam Rangka Pelaksanaan Pembangunan Berkelanjutan Dan

Penegakkan Keadilan Antargenerasi. *Journal of Islamic Law Studies Edition* 9 May 2019. p. 98-132.

²⁴ Wowor, K. (2017). Penerapan Prinsip Berkelanjutan Sebagai Upaya Pencegahan Kerusakan Lingkungan Hidup Dibidang Pertambangan Ditinjau dari UU Nomor 4 Tahun 2009. *Agri-Sosioekonomi Unsrat*. Vol. 13 (2) July. p. 343 - 354.

²⁵ Nababan, R. K. (2017). Potensi PP KLHS dalam Mengintegrasikan Pembangunan Berkelanjutan dalam Penyusunan Kebijakan. Rencana. dan/atau Program. *Jurnal Hukum Lingkungan* Vol. 3 (2). March. p. 125-140.

²⁶ Maryanto. (2018). Membangun Lingkungan Yang Berbasis Konsep Berkelanjutan. *Jurnal Meta-Yuridis* Vol.1 (1). p. 37-47.

justice.²⁷ The pursuit of justice in law is a dynamic process that takes a long time. These efforts are often also dominated by forces fighting within the political order's general framework to actualize it.²⁸ Justice in the ideals of law which is a human struggle has evolved to follow the rhythm of the times and space, from the past to the present day without stopping.²⁹

The Indonesian constitution through Article 33 firmly describe that the state has to protect the whole nation and homeland and to utilize natural resources for the well-being of the people. The whole homeland implies a guarantee to all citizens for legal protection. This covers the protection of individuals in their access to natural resources as well as providing for a safe and healthy environment. In fact, Indonesia constitutes one of only a few countries in the world that incorporate environmental protection and entitlement into their constitutions.³⁰ Through Environmental Protection and Management Act 2009, the State should be present in providing justice for the management of natural resources, especially from coal mining activities to the surrounding community to provide justice for the present and future generations for a good and proper environment.

Coal mining management should prepare for an Intra-generational justice that can be seen from at least four perspectives, namely environmental justice as distributive, Corrective, procedural and social justice.

²⁷ Langhelle, O. (2000). Sustainable Development and Social Justice: Expanding the Rawlsian Framework of Global Justice. *Environmental Values*. Vol. 9 (3). p. 296.

²⁸ Friedrich, C. J. *Op. Cit.* p. 239.

²⁹ Subhi, A. M. (2001). *Filsafat Etika*. Jakarta: PT. Serambi Ilmu Semesta.

³⁰ Muhdar, M., Nasir, M. & Nurdiana, J. (2020). Risk Distribution in Coal Mining: Fighting For Environmental Justice in East Kalimantan. Indonesia. *Advances in Social Science, Education and Humanities Research*. Vol. 499. p. 656-664.

Distributive justice calls for a more equitable allocation of access to and benefits from environmental resources, for benefits of environmental protection and costs of environmental protection. Corrective justice wants a legal instrument that allows those who have caused harm to correct and eliminate the losses it causes. Procedural justice requires a process that ensures that distribution will be carried out fairly. In general, procedural justice can be realized by recognizing the right to participate in decision-making, the right to information and the right to contest. Meanwhile, social justice is a concept of justice that sees that environmental problems arise from social inequality and poverty. So that alleviating poverty and eliminating conditions of social injustice are integral parts of environmental protection and management efforts.³¹

Sands divides the principles of sustainable development into several legal principles/elements, namely: a) justice between generations, which can be seen from the need to protect natural resources for the benefit of future generations; b) Sustainable use, which is reflected in exploiting natural resources in a sustainable, Prudent, Rational, Wise, and proper manner; c) Intra-generational justice, which is demonstrated through the equitable utilization of natural resources. where the use of natural resources by one country must still pay attention to the needs of other countries; and d) The principle of integration, which calls for guarantees that environmental considerations will be integrated into economic and development policies as well as guarantees that the fulfillment of development needs must take into account the objectives of environmental protection.^{32,33} The public interest is rooted in

³¹ Wibisana, A. G. (2017). *Op. Cit.* p 305.

³² Sands. P. (1995). *Principles of International Environmental Law: Frameworks, Standards, and Implementation*. Manchester: Manchester University Press.

a philosophy known as social contract theory, the idea "that people collectively agree to behave morally as a way to reduce social chaos and create peace."³⁴

Coal mining activity should give a Protection of access (conservation of access) to society, that aims to ensure each generation has the same level of intelligence as the level of utilization of the previous generation, while encouraging the improvement of the situation for each generation, its reflects the balanced allocation of rights and access to natural resources between different generations and among members of the current generation. Thus, protection of access provides equitable and non-discriminatory rights for every citizen of the current generation to use environmental resources. However, in the use of these resources, each member of the current generation has an obligation (equitable duties) to ensure that their actions will not reduce future generations' access to these resources.³⁵ The protection could be described by making a law on the coal mining which is regard to sustainable development, community, economic and environment protection.³⁶

Although the concept of intra-generational justice can be easily understood, in practice, it is complicated to implement. One practice that shows a deviation from

intra-generational justice can be seen in using the discount rate in the economic calculation of economic valuation and the cost-benefit analysis (CBA) for environmental protection activities. Based on the CBA, a safeguard can be justified only if the safeguard's present benefit value is greater than or equal to the costs incurred for implementing the current safeguard.³⁷

Coal is the natural wealth contained in the bowels of the earth is a non-renewable natural resource. Therefore, its management needs to be done as optimally as possible by prioritizing the principles of efficiency, transparency, sustainability, and environmental insight and justice.³⁸ Nevertheless, the coal mining give an impact of economic to state yet the risk distribution on coal mining activity among society, coal mining operator and state it can be concluded that the existing environmental laws have not and not being successful to provide the protection to all, as the nature of the regulations solely tend to lead to conflicts.³⁹ Every development implementation in coal mining will always intersect with the exploitation of natural resources. The exploitation that is not appropriate often destroys natural resources, destruction of natural resources is defined as the unwise use of natural resources, and eventually, it will run out.⁴⁰ As the tide of chemicals born of the Industrial Age has arisen to engulf our environment, a drastic change has come about in the nature of the most serious public health problems.⁴¹ Natural resource management should prioritize the public

³³ Gunawan, Y. (2021). *Hukum Internasional: Sebuah Pendekatan Modern*, Yogyakarta, LP3M UMY, p. 98

³⁴ Stoker, K & Stoker, M. (2012). The Paradox of Public Interest: How Serving Individual Superior Interests Fulfill Public Relations' Obligation to the Public Interest. *Journal of Mass Media Ethics*. 27. p 34.

³⁵ Wibisana, A. G. (2017). *Perlindungan Lingkungan Dalam Perspektif Keadilan Antar Generasi: Sebuah Penelusuran Teoritis Singkat. Masalah - Masalah Hukum*. Vol. 46 No. 1. January. p. 9-19.

³⁶ Gunawan, Y. (2014). Transboundary Haze Pollution in the Perspective of International Law of State Responsibility. *Jurnal Media Hukum*. Vol. 21 No. 2 (2014). p. 170-180.

³⁷ Turner, R. K., Pearce, D. W. & Bateman. I. (1993). *Environmental Economics: An Elementary Introduction*. Baltimore: Johns Hopkins University Press.

³⁸ Azheri, B. (2016). *Prinsip Pengelolaan Mineral dan Batu Bara. kajian Filosofis terhadap Undang Undang No 4 Tahun 2009*. Jakarta: PT. Rajawali Pers.

³⁹ Muhdar, *Et.al*. *Op.cit.* (2020), p.663

⁴⁰ Rahmadi, T. (2011). *Hukum Lingkungan di Indonesia*. Jakarta. RajaGrafindo Persada.

⁴¹ Carson, R. 2002. *Silent Spring*. US: A Crest Book.

interest, mere attention to the total wealth of society as goal of law and economics has resulted in negligence to proper wealth distribution. Meanwhile, any legal rule is influential in method of wealth distribution and law shall be formed in accordance with distributive consequences.⁴²

3. Conclusion

Distributive justice in coal mining, it can be concluded that state have not success to give a fair distribution of justice among society, coal mining operator and state. Justice for one (intra) generation towards coal mining management through the existing environmental or mining laws have not success to provide the protection to society and the operators, coal mining activity solely tend to lead a conflicts in a society. The distribution of justice to the (one) intra generation have an uphill struggle and various obligations from each generation to ensure the protection of options, protection of environmental quality and protection of current generations access to natural resources. Economically, intra-generational justice must affect economic valuation of the benefits of environmental protection, Nevertheless, it can provide a fair distribution of benefits to the community, coal mining operators and state that considering that currently what is happening is that justice is not evenly distributed based on their achievements, where the community and the environment in the current generation is more likely to bear the risk of the impact of coal mining activities than to receive the benefits.

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