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Deconstructing climate justice in indonesia's climate mitigation legal policy: A theoretical analysis of distributive and procedural justice in the Carbon Economic Value (NEK) regulation

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ABSTRACT

Presidential Regulation No. 98 of 2021 "Carbon Economic Value" gives the first market-based instrument in the legal politics of Indonesia mitigation of climate change. In relation to this, the regulation hopes to accelerate target emissions. However, it also under climate justice implications in relation to the most vulnerable, specifically Indigenous Peoples (Masyarakat Hukum Adat/MHA). This research aims to dismantle the climate justice within the legal politics of NEK Regulation. This research is based on normative legal research methods where the author employs a statute, a conceptual approach, and a critical approach. This research is concerned with the two pillars of justice: distributive and procedural. The research findings show, first, that the legal politics of NEK distributive justice is to a large degree narrowly defined where the focus is on the 'money', 'distribution', and 'rights', and these 'rights' are the corporate permits. Perhaps worse, there are likely neo-disparities in the economic benefit-sharing to the Indigenous Peoples relative to the ecological burden-sharing. Second, in respect to the NEK regulation and procedural justice, particularly around the Free, Prior and Informed Consent (FPIC) concept, procedural justice in its normative assessment sees it as the completion of an administrative ritual. Such representation runs a high risk of becoming tokenism, which co-opts and undermines the real rights of Indigenous Peoples concerning carbon governance. This study finds that the NEK Regulation, as it currently stands, favors the efficiency of markets over justice in a substantive form, which illustrates the need to refocus the legal politics of mitigation on climate justice as a cornerstone.

Keywords: deconstruction; climate justice; legal politics; Carbon Economic Value (NEK); distributive justice; procedural justice; indigenous peoples.

1. INTRODUCTION

Climate change has become an undeniable crisis that disrupts ecological and social orders globally. The Intergovernmental Panel on Climate Change (IPCC) reports accelerated temperature increases as a consequence of human greenhouse gas emissions on an annual basis (IPCC, 2022). The effects of this crisis are manifested through extreme heatwaves in Europe, prolonged droughts in Africa, and intensifying storms. In response to this urgency, the Paris Agreement was implemented, requiring every country to formulate a Nationally Determined Contribution (NDC) to mitigate global warming. As a signatory, Indonesia is legally and morally obliged to partake in global mitigation. Mitigation failures represent an ecological and an intergenerational human rights failure on a global scale.

Considering its geographical distribution, Indonesia is an archipelagic state with an exceptional stake of being affected by the challenges posed by climate change. As coastal abrasion and the sinking of land under sea level become more pronounced, millions of residents in the unsparing WALHI recorded coastal area like the North Java Coast put residents at risk (Trinata et al., 2025). Indonesia paradoxically occupies the position of one of the largest global emitters of greenhouse gases, with the LULUCF sector being the principal contributing sector. The recurrent forest and peatland fires associated with the expansion of plantations and peatland mining industries release enormous quantities of carbon gases. Hence, Indonesia is paradoxically positioned as a vulnerable victim while being a significant perpetrator of the climate crisis (Febriani Irma & Gusmira, 2024).

This paradoxical situation can be observed in Indonesia's Legislation on the Politics of Mitigation. Indonesia shows a worrying gap between commitment and practice. Indonesia in fact has updated its NDC target and will significantly reduce its emissions by 2030 and achieve Net Zero Emission by 2060 (Overland et al., 2021). Notwithstanding the intensity of climate commitments made, the reliance on extractive industries within national policies of development demonstrates the disconnect between rhetoric and operation. Civil Society Organization (CSO) data from the Mining Advocacy Network (JATAM) and others show the issuing of new permits for coal mines and the expansion of oil palms, including within forested areas. Duly noted, unmitigated extraction and expansion driven by powerful economic incentives indicates a persistent legal-political inconsistency (Naim et al., 2018).

Taking into account the lack of consistency, and the unfulfilled climate financing obligations, the Government of Indonesia launched its first legal innovation through Presidential Regulation Number 98 of 2021 concerning the Implementation of Carbon Economic Value (NEK). This regulation is intended as an innovative new legal framework to finance the NDC target. At the heart of the NEK regulation is the innovative market-based mechanism of NEK which consists of emission trading, payment for result, and carbon levies. It aims to provide economic rationality to the business actors to cut their emissions economically to a predetermined level. The underlying assumption is that the economic incentives for emissions reduction to be viable and to stimulate economically rational contaminating behaviors to remove the emissions economically (Rizaldy & Lilleh, 2024).

Considering the implications of the NEK Presidential Regulation, Indonesia's mitigation legal politics undergoes a significant transformation in approach, transitioning from a command-and-control model to a more market-oriented model. While developing market-based approaches to be managed like any other economic activity entails a multitude of theoretical market imperfections, some commentators consider the problems posed to the marketing of the "deeply commodified" economic resources of nature (forests and peatlands). Critics contend that carbon trading, in the absence of tight regulation, devolves to providing methane "pollution" credits, essentially a "license to pollute" in the hands of buried carbon large corporations. The disproportionate concern for market efficiency is also likely to "starve" the fatal structural inequities that constitute the "real" climate crisis (Indonesian Center for Environmental Law, 2021).

Theoretical frameworks on Climate Justice analyzes elements beyond mere data-driven carbon reduction calculations. It raises questions about historic accountability relating to the climate crisis, vulnerability to loss impacts, and the share of mitigation and adaptation burdens. This approach asserts that measures to address climate change must not deepen existing injustices constituting social, economic,

and gender inequity. The core of Climate Justice is to ensure that the most excluded, particularly Indigenous Peoples (Masyarakat Hukum Adat/MHA), are the focal subjects in the processes.

This research will analyze two climate justice frameworks in the NEK context, starting with distributive justice. It concerns the fairness in assigning the advantages and disadvantages of a policy. In NEK, this raises a central issue, who rightfully claims the "benefits" from carbon credit sales on customary forests? It is possible that the NEK legal politics narrowly define "the right to carbon" as formal permit ownership held by and corporations. Such a construction risks leaving new inequities, where Indigenous Peoples, as the forests' stewards, receive only a tiny part of the compensation and continue to shoulder the carbon project's ecological and social burdens.

The second pillar to deconstruct is procedural justice which demands the meaningful, inclusive, and accountable participation of all parties. The principle of Free, Prior, and Informed Consent (FPIC) is critical to the Indigenous Peoples. However, the NEK Regulation and its derivative regulations recognize community involvement for the consultative and decision-making processes, its normative framing demands critical scrutiny. In many cases of project implementation, the public consultations and the FPIC processes are routinely reduced to a mere administrative step in a decision-making process that is already set top-down. This type of participation is described as tokenism and disregards the procedural rights of the Indigenous Peoples.

The distinct novelty of this research resides in its departure from the prevailing technocratic orthodoxy. To date, the vast majority of legal scholarship concerning the Presidential Regulation on the Economic Value of Carbon (NEK) has operated within a functionalist paradigm, predominantly assessing the regulation's instrumental effectiveness in facilitating carbon markets and meeting emission reduction targets. While some studies have examined the synchronization of statutory provisions, they largely treat the law as a neutral vessel for policy delivery. Crucially, current literature has failed to interrogate the normative foundations of the regulation, leaving an epistemic void regarding how the NEK framework actively reshapes the power dynamics between state, capital, and marginalized communities. By neglecting these underlying structural inequities, existing scholarship inadvertently normalizes a legal regime that prioritizes market liquidity over human rights.

In contrast to these compliance-oriented studies, this research employs a deconstructive lens to expose the legal politics embedded within the NEK's textual framing of justice. Rather than asking the conventional question, "Is the NEK Regulation effective?", this inquiry poses a more fundamental interrogation: "Whose concept of justice is being constructed, legitimized, and enforced through this legal instrument?" This work represents the first substantive effort in the literature to dismantle the concept of climate justice within Indonesia's mitigation policy. It argues that the current legal-political configuration suffers from a deliberate imbalance, where market efficiency and investment certainty are elevated to supreme legal values, while substantive justice for Indigenous Peoples and local communities is relegated to mere rhetoric.

Furthermore, the deconstruction offered in this study yields a novel conceptual proposition regarding "Exclusionary Green Legality." This concept demonstrates how the NEK Regulation utilizes the language of procedural justice such as consultation and participation not as a means of empowerment, but as a mechanism of legitimation for agrarian dispossession. The research reveals that the regulation constructs a "juridical illusion" of inclusion, where indigenous rights are formally acknowledged in preamble but materially negated in the operational articles governing carbon trading licenses. By decoding this mechanism, the study moves beyond a general critique of market logic to specifically identify how legal provisions are weaponized to transform communal customary land into tradable carbon assets, thereby creating a new typology of conflict disguised as "green projects."

Finally, this research provides critical normative implications for the future trajectory of Indonesia's climate law. By exposing how distributive justice is currently framed as a trickle-down byproduct of carbon trading rather than a fundamental right, this study establishes the theoretical groundwork for a necessary legal reform. It posits that a truly just climate policy must transcend the current obsession with carbon quantification and instead institutionalize "safeguards of recognition." This implies a normative shift where the legality of any carbon project is contingent not merely on administrative

compliance, but on the substantive fulfillment of indigenous veto rights and equitable benefit-sharing. Thus, this work does not merely critique; it offers a reconstructive blueprint for shifting the NEK from a tool of capital accumulation to an instrument of ecological and social reparation.

2. METHOD

This study employs a normative legal research methodology (Marzuki, 2014), This research involves a critical examination of Indonesia's climate mitigation legal framework, more clearly described as doctrinal research within the legal field. The research is mainly concerned with a legal text and context analysis, as well as the principles, norms, and doctrines thereof. The principal legal documents to be analyzed, in a hierarchical manner, are the primary Presidential Regulation No. 98 of 2021 About the Implementation of the Carbon Economic Value (NEK) and superior documents such as the 1945 Constitution (with regard to Indigenous Peoples' rights) and principles of international climate justice. To carry out the analysis, the research applies a statute approach, in which the legal jargon within the NEK regulation is analyzed, and a conceptual approach where the normative theories of climate justice, distributive justice, and procedural justice are defined in the context of the research.

As stated in the background, the primary analytical undertaking of this research is deconstruction. As such, this normative method seeks to analyze, albeit briefly, the "legal politics" (politik hukum) of the NEK regulation's text. By combining the statute's and the concepts' approaches, this method seeks to interrogate the law's framing (construction) of justice. This will be used to deconstruct the normative framing of distributive justice (RQ1) to expose how the regulation's text on benefit-sharing likely opens up unequal distributions. At the same time, it will assess the legal framing of procedural justice (RQ2), particularly how the text of mechanisms such as FPIC is structured and to what extent this formulation may reduce substantial participation to tokenism.

3. RESULTS AND DISCUSSION

3.1. Deconstructing the Legal Politics of Distributive Justice: An Analysis of Potential New Disparities (Neo-Disparities) in the Allocation of Benefits and Burdens under the NEK Regulation

Distributive justice poses the question: what resources, benefits, and burdens should be fairly allocated in response to the climate crisis? This response should consider historical obligations and the varying i nequalities and adverse impacts different social groups face. For the justice of climate change mitigation, the question is, who gets to reap the benefits and who gets to suffer the burdens of climate protected efforts? This justice is not limited to the monetary, and includes the recognition of the decision non-ownership rights, the active participation in the ownership of climate protected efforts. The legal politics of a regulation determines how this "fairness" is defined and constructed. Finally, the distributive justice presents the parameters we assess any climate policy to determine if the policy reproduces or, in fact, removes the structural injustices (Hoyle & Rhodes, 2025).

The document explaining the legislation on the Carbon Economic Value (Regulasi NEK) states the purpose of the regulation as facilitating market-driven climate change mitigation efforts in Indonesia. The regulation views "justice" as the economic optimization of greenhouse gas emissions mitigation efforts, therefore, translating profit into "justice." The regulation justifies market-driven climate change mitigation efforts by arguing that economic valuations of carbon should lead to efficient allocations of emissions mitigation activities in the market. The benefits of emissions trading or other financial rewards payable to the "justice" epitomizes the prevailing ethos of climatic profit regulation (Mita et al., 2021). Distributive justice within the NEK framework is, therefore, by default interpreted as the distribution of financial benefits to the actors participating in the market scheme. This focus on market efficiency is a political-legal choice with profound implications for who is recognized as a legitimate legal subject.

First, I must dismantle the concept of 'benefit' as framed in the NEK Regulation. In the NEK Regulation, 'benefits' always translates to something quantifiable and interchangeable with currency value,

specifically as money paid for certified carbon units (KLHK, 2023). The most significant problem with this framing is the ecosystem valuation problem. It overlooks the customary forests' spiritual, cultural, and subsistence value, which materially affects the Masyarakat Hukum Adat (MHA) Community. The monetization of 'benefits' is reductionalist, and 'benefits' that the law acknowledges will only be those that can be fundamentally commercialized. Consequently, all 'market potential' abstractions of social and ecological 'benefits' that MHA have historically stewarded will vanish in the NEK Regulation's unjust law. Not acknowledging all non-economic social and ecological 'benefits' is a form of distributive injustice in social ecology (Mia et al., 2021).

The next phase involving deconstruction requires identifying which individuals constitute legal subjects entitled to benefits. NEK's legal politics particularly prioritizes those with formal legality in which the state has vested legality. For instance, corporations that have Forest Utilization Business Permits (IUPHHK) or Ecological Restoration Permits. Such corporations are granted legal "ownership" of the rights to that carbon within their concession areas. In contrast, MHA, inasmuch as their customary rights are communal and hereditary as well as unregistered within the state's licensing regimes, are legally located within the margins (Sonia & Sukmareni, 2025). Although MHA are the de facto guardians of the ecosystem, they are de jure excluded from primary ownership of carbon benefits within their own customary territories. This lopsided construction of legal subjects is the essence of the legal politics that creates injustice.

The NEK Regulation mentions a "benefit sharing" system with communities. However, this construction begs further deconstruction. Within the NEK scheme, MHA are not positioned as primary owners sharing benefits with partners (i.e. corporations); it is the opposite. Corporations, who hold the permits, are positioned as owners, and as such, are only obliged (and usually very little) to give a portion of their profits to the community. This degrades MHA from being sovereign owners of their customary territories to secondary beneficiaries, or "objects," of compensation. This legal politics overlooks the principal of Distributive Justice. Thus, the "benefit sharing" system, within the NEK scheme, is a potential means to camouflage the appropriation of MHA's carbon rights (Rizaldy et al., 2025).

The inequitable construction of the law creates what is termed a "new disparity" or neo-disparity. While the old disparity (pre-NEK era) involved "land grabbing" to extract natural resources such as timber or palm oil, the new disparity is in the form of "carbon grabbing." To all intents and purposes, the unlogged forest under the carbon scheme appears "protected." Nonetheless, the rights to manage, exploit, and extract value from the forest's atmosphere to be "carbon neutral" economically and ecologically, is lost to the permit-holding corporation. MHA lose substantive control over their most critical ecological asset, creating a new form of disparity disguised as "green development" or the "green economy."

Looking at the other side of the distributive justice balance, a deconstruction of the allocation of "burdens" reveals the same gravity of skewed balance. NEK Regulation constructs "burden" primarily as a financial and technical requirement that project developers (corporations) must fulfill. This involves the costs of Measurement, Reporting, and Verification (MRV), certification, and the operational expenditures necessary to control carbon stocks. This legal politics actively disregards the recognition of the non-monetary burdens, both historical and current, that MHA carry.

MHA is multidimensional affected across all three dimensions–ecological, social, and cultural–for which the market offers no compensation.

MHA ecological and social burdens manifest in the form of restrictions of access and the loss of management rights. To ensure the "permanence" of carbon credits and make them viable for sale, NEK projects impose severe restrictions on MHA and their customary forest activities. MHA are subsistence practitioners of rotational farming, hunting, and gathering non-timber forest products, all of which are suddenly banned within their territories. The MHA are forced to bear the burden of loss-–no or token access–conservation (carbon sequestering) for the global carbon market. As the global carbon market recipient of the MHA conservational burdens, the regulation's refusal to acknowledge non-use of their land as a burden is particularly ironic.

To add, MHA face an enormous burden when their customary boundaries are turned into carbon units. For MHA, customary forests are living spaces, part of an ancestral identity, and a spiritual

apothecary. The carbon warehousing metaphor dehumanizes MHA's relationship with their life spaces, creating profound cultural alienation. The burden of losing spiritual meaning and social cohesion through market interventions, which NEK's distributive justice framework completely ignores, involves erosion, alienation, and social disintegration. MHA's lived experience continues to be neglected by the legal politics of NEK.

The imbalance evident in the allocation of benefits and burdens fundamentally emerges from the NEK's legal and political choice—preferring formal legal certainty, held by corporations, over substantive justice owed to the MHA. For carbon investors, state-issued business permits, such as the IUPHHK, provide far "safer" and more "bankable" legal guarantees than recognition of MHA's customary rights, which is convoluted and frequently unresolved. This political-legal choice of defaulting to the formal legality of permits is a shortcut that, by design, ignores the constitutional rights of MHA. Through the NEK Regulation, the state, in effect, facilitates the transfer of carbon rights from customary communities to corporate capital and market efficiency.

The claim that MHA continues to receive compensation or monetary benefit-sharing ignores the issue of distributive injustice. Deconstruction shows that the injustice is far more systemic and profound. Compensation is generally estimated based on the market value of carbon, the temporary economic losses, or the shortsighted economic losses, forgetting the losses associated with the eco-cultural territory over which management rights have been relinquished. MHA's unequal bargaining power regarding the compensation that is determined in a top-down fashion and the value of their eco-cultural assets makes it seem as though compensation is determined in a free market. This compensation mechanism, rather than constituting a final compensation worthy of the value of the carbon rights- or the eco-cultural assets, merely circumvents the real issue and rationalizes the continuing appropriation of carbon rights.

In summation, the legal politics of the NEK Regulation has reframed the restorative justice discourse to be encircled with a narrow, biased, and reductionist approach. Justice is merely the economically calculable sharing of benefits within the market logic, rather than the underlying rights and conservation contribution of MHA. The deconstruction attempts of this argument reveal that the NEK Regulation has the potential to create neo-disparities: the MHA bear the ecological, social, and cultural burdens of restrictions on their customary territories, while the principal economic rewards flowing from carbon trading are captured by profit-making formally permitted corporations. Market efficiency and legal certainty for the investors clearly come at the expense of substantive distributive justice.

3.2. Framing of Procedural Justice and Tokenism in FPIC Mechanisms for Carbon Governance

Procedural justice constitutes the second pillar of climate justice, complementing distributive justice by focusing on how a decision is made, not just what the outcome is. In the context of climate policy, this pillar demands transparent, accountable, and inclusive processes for all affected stakeholders. Procedural justice requires that vulnerable groups, such as Customary Law Communities (Masyarakat Hukum Adat - MHA), are not only heard but also possess substantive power to influence the direction and final outcome of a policy or project. Without fair procedures, the allocation of benefits and burdens (distributive justice) discussed previously cannot possibly be negotiated equitably. Procedural justice is the guarantee that shifts MHA's status from objects of policy to sovereign legal subjects (de Ridder et al., 2023).

The internationally recognized juridical instrument serving as the 'gold standard' for guaranteeing procedural justice for MHA is the principle of Free, Prior, and Informed Consent (FPIC)(IAITPTF & IPF, 2018). In Indonesia, this principle is known as Persetujuan Atas Dasar Informasi Awal Tanpa Paksaan (PADIATAPA)(Golar et al., 2012). Having a collective right, FPIC states that MHA can give or withhold consent for activities that may affect their customary lands and resources. This principle must not be understood as "consultation" or "socialization" activities in the First Place. At its core, FPIC entails the veto power—the agency to decline any unwanted intervention. This principle has been enshrined in several instruments, including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

The normative analysis on the Carbon Economic Value (NEK) Regulation, including Presidential Regulation 98/2021 and its ministerial-level implementing regulations, reveals the problematic framing of the principle of community participation. For instance, while there are references to "community involvement" and "empowerment" in the NEK Regulation, the legal text still remains unable to fully and adequately embrace the FPIC standard. The prevalent reference tends to "public consultation" or "socialization," both of which are of far less hierarchical strength than "consent," which the legal text abounds with. This legal framing creates ambiguity and places MHA participation at the lowest level of the participation continuum. The NEK legal framework thus fails to meet its normative obligation by not providing to the MHA, the right to refuse a carbon project (Rizaldy & Lilleh, 2024).

Participants are treated as "consultation" participants as the legal framework for the practice of pseudo-participation, or tokenism, within the NEK legal framework. Under NEK laws, public consultation is treated as the completion of an administrative formality that project proponents must fulfill to obtain operational legality. This means MHA participation is treated as a mere bureaucratic checklist, instead of a substantive right. As long as the project proponent is able to present "proof" of having socialized the idea—such as event photographs or attendance sheets—the procedural requirement is considered fulfilled. This legal approach is clear in its bias for procedural certainty for carbon investors while neglecting the protection of procedural rights for MHA.

In practice, difficulties regarding the "Informed" component of FPIC are enormous. The governance of carbon entails particular difficulties given the use of terms like baseline, permanence, leakage, and other deeply complex financial relationships. The "socialization" aspect of carbon projects, in the real world, tends to be carried out in a one-sided and brief manner. Presentations are in technocratic language that goes over the heads of the MHA, and long-term consequences, including the management of land loss and rights for several decades that accompany the carbon project contract, are rarely addressed. This leaves the MHA with no option but to make ill-informed decisions.

The "Prior" component refers to the fact that as practice currently stands, the weak norms under the NEK regulation do not allow for the "Prior" component to operate as legally required. In principle, FPIC should be undertaken before any significant project decisions, such as site selection or the issuance of principal permits. In practice, however, consultations are conducted only after the corporation has secured the initial permits and the project design has been completed. In such instances, MHA participation is not collaborative and co-project design is not possible. In such scenarios, participation is for the government's and project proponents' unilateral decision for retroactive justification.

The weakest and most critical components are "Free" and "Consent." The reality on the ground within many customary territories reflects extreme and coercive power imbalances. MHA operate coercively—whether implicitly through intimidation and promises of compensation or explicitly—within the decision to approve a project. The "right" to say "no" is also rarely operationalized within the MHA. In many civil society-documented cases, the refusal of a community results in criminalization or stigmatization as "anti-development" actors, thereby worsening the climate of fear that silences dissenting voices within MHA (Rizaldy et al., 2025).

An absence of normative framing coupled with reality contradictions encourages tokenism. This refers to the practice whereby members of marginalized groups are offered the token chance to participate. They are granted the opportunity to "speak," but without real power to "decide." Within the NEK context, MHA are invited to Environmental Impact Assessment (AMDAL) consultation meetings, or project socializations. Yet, the fundamental design of the project is rarely, if ever, altered on the basis of their input, criticisms, or refusals. This form of participation acts as a social safety valve and, at the same time, an instrument of political legitimacy for the project proponent.

The most dangerous effect of pseudo-participation, or tokenism, is the co-opting of MHA rights. When MHA agree to participate in consultation, albeit flawed procedures, they have no other option, and their participation is claimed as evidence of valid "consent." This procedure substantiates the appropriation of MHA rights over their lands, territories, and natural resources. The project proponent relies on the procedural justice to justify the inappropriate outcome described in the previous chapter.

The reality of tokenism within NEK scheme pilot projects has been demonstrated by various implementations of pilot projects. Central Kalimantan and Jambi case studies show that project proponents interact only with a few village elites or customary authorities. Community decision-making structures and processes around musyawarah adat where customary deliberation occurs, are bypassed and elite capture deployed to expedite consent. As a result, flawed consent is gained for projects, and social friction within a community is horizontal and readily triggered.

Elite capture is exacerbated by the legal framing around the NEK regulation which does not give clear technical guidance around who the 'community' subject is within the FPIC process. It does not clear the difference between administrative representation (e.g. a Village Head) and customary representation (e.g. a Customary Head or Customary Council). The absence of clarifying guidance risks allowing project proponents to cut procedural corners. They prefer to engage negotiated settlements with 'elite' stakeholders (likely to be co-opted) instead of the lengthy participatory customary consensus process where project opposition could be established.

The ambiguity and weak stipulations of FPIC in the NEK Regulation and its derivatives should be seen as a political-legal choice. Between the need to accelerate carbon market investment (efficiency) and the need to safeguard MHA rights (justice) the legal politics of the NEK clearly opts for the former. The absence of comprehensive, binding, and enforceable procedural requirements is not a technical error in law-making. It is the politics of leaving a 'grey area' to afford project proponents the maximum scope to superficially engage and fulfill participation requirements.

To conclude, the Norms on the NEK Regulation value procedural justice in an overly simplistic way. The core principle of FPIC, which is substantive, is reduced to an administrative consultation workaround. This flawed legal framing, compounded by the stark realities of power asymmetries, gives rise to the systematic institutionalization of tokenism and elite capture. This tokenism legally and procedurally functions to capture MHA and strip them of their substantive rights over the governance of carbon. This capture of substantive rights and the procedural justice that fails to achieve them, therefore, is subordinated to the distributive injustice that it serves.

3.3. Implications of Deconstruction: The Dominance of Market Efficiency Logic over Substantive Climate Justice in New and Renewable Energy Regulation

A deconstructive analysis on the Carrier Economic Value (NEK) Regulation's blueprint reveals a partial deficit on the legal framework's distributive and procedural justice. The present discussion shall serve a summary bearing the conviction that the two failures do not result from mere isolated, technical deficiencies. The contempt of Customary Law Communities (MHA) with respect to both the distributive and participatory facets of justice cannot be viewed in isolation. They are consequences of a single, dominant, and politico-legal choice that prioritizes the logics of market efficiency over that of (substantive) climate injustice. The NEK Regulation, at its core, betrays the inequity of efficiency.

The legal policies driving NEK Regulation are primarily influenced by the 'market environmentalism' paradigm. This is based on the premise that the externalization of some market 'externalities', such as the effects of climate change, can be predominantly solved with market-based mechanisms. Economic actors are expected to change their behavior in ways that are 'environmentally favorable' when mechanisms such as 'pricing' carbon are used. This paradigm elevates 'efficiency' as the ultimate measure of value with little or no regard for human rights, social justice, and other value 'displacements'. Within the NEK system, 'success' is defined as the rapid and inexpensive generation and trading of carbon credits with little or no regard for the justice of the process (Denier et al., 2014).

The impact of market logic on distributive justice captures the imbalances outlined in chapter A. Like any other market, the ideal legal subject in the carbon market is an "efficient," "bankable," and legally certain entity, an ideal primarily achieved by corporations that hold carbon permits. In contrast, MHA's customary communal rights, which are often uncertified and based on customary law, are "complex," "inefficient," and untested for rapid transaction markets. Thus, NEK's legal politics chose to depend on the corporate permit holders on an assumption of legal certainty for allocating carbon rights (Sonia & Sukmareni, 2025) (Sonia & Sukmareni, 2025).

The logic explains the neo-disparity or "carbon grabbing" discussed in chapter A. When the state prioritizes an "attractive" carbon market, it removes market barriers by providing a legal commodity (carbon) that is "clean" of disputes. The fastest way to do that is to acknowledge the carbon rights of existing corporate permit holders while ignoring MHA counter-claims. The state sacrifices substantive distributive justice, which requires the first recognition of MHA rights, for the certainty of rapid market transaction and investment.

This political-legal decision creates a paradox: To "save" the forests as carbon stocks, the state legitimizes the resource control by the very people who, in the recent past, contributed to the deforestation resource control by concession holders. The NEK Regulation is unable to resolve inequities in land tenure, thus failing to correct agrarian injustice. Instead of rights redistribution to MHA who have demonstrated forest stewardship, NEK Regulation incentivizes concession holders with new "green" rewards. In this way, the market efficiency rationale within the NEK not only fails to deliver, but also deepens, the inequitable distribution of resources structural injustices (de Ridder et al., 2023).

The explanation market dominance provides for degraded procedural justice within NEK Regulation as pseudo-participation cited in Chapter B is similar but, in this case, the self-serving market efficiency rationale is that complex, time-consuming, and multisourced procedures create high "transaction costs." A substantive Free, Prior, and Informed Consent (FPIC) mechanism, especially one where the MHA holds the right to veto, poses the greatest risk to investors, as they are required to pay for a carbon project that has already incurred substantial costs for feasibility studies. MHA exercise of veto rights could collapse the project at any time.

To manage investment risk, NEK's legal policy designates MHA participation as mere "consultation" or "socialization," and not "consent." Remaining at this weak framing (tokenism) is an intentional design, allowing faster bureaucratic processing and regulatory certainty for project proponents. By treating FPIC as an administrative task, regulation eliminates the largest procedural obstacle to carbon investment. MHA's procedural right to self-determination continues to be sacrificed for market efficiencies.

Chapter A and Chapter B reinforce causal relations and, more specifically, the failure of procedural justice (tokenizing FPIC) as the facade for shifting the balance toward implementation of inequitable distributive justice (carbon grabbing). Since MHA lacks the real procedural power to veto or meaningfully negotiate a project, they must accept benefit-sharing arrangements offered as gifts by vertically integrated corporations. Pseudo-procedural justice is, effectively, the handmaiden for the state-sanctioned distributive injustice.

The originality of this synthetical analysis rests in arguing that the justice deficit in the NEK is neither an "implementation weakness" nor an accidental "legal loophole." Rather, this deconstruction demonstrates that the deficit is an intrinsic "design feature" of legal politics that, from the outset, prioritized market environmentalism as its dominant ideology. This regulation was not designed with MHA in mind; it was a designed with investors in mind, and MHA are merely managed as things in the way of market efficiency.

The consequences of this predominance of market-driven logic are profound and go far beyond economic losses for MHA. When the social, cultural, and spiritual dimensions of customary forests are reduced to merely tradable carbon units, an erosion of MHA's social identity and cohesion is profound. This commodification of nature shifts the order of social relations and increases the likelihood of social conflict (elite capture), undermining the community's resource governance. Thus, market efficiency, in this case, sacrifices justice and long-term socio-ecological resilience.

As an example of uneven advancement in the EU climate aquaculture policies, the NEK Regulation demonstrates an acute internal contradiction. On the one hand, it attempts to respond to the climate crisis engendered by over-exploitation, and on the other, it employs the very instruments (the market) and the same logic (profit efficiency) as the economic system that triggered the crisis. NEK's attempt at "greening" the economy ignores the socially embedded root causes of structural injustice. Rather than shifting in the direction of a fair and sustainable economy, NEK is at risk of "green accumulation" in the sense that economic elites will continue to profit under the new justification of

"climate saving," while access to the "green" resources is legalized through new NEK "greening" policies (Mia et al., 2021).

The absence of substantive climate justice as the foundational principle in the NEK Regulation demonstrates the urgent need to redesign the legal politics of mitigation. "Fixing" one or two articles of the Regulation only offers a "technical solution" to the perceived problems, while the dominant ideology around the regulation remains untouched. This ideological shift must focus on the legal politics more broadly around the NEK Regulation, shifting from a market-based paradigm to one centered around rights and community sovereignty. The imposition of market mechanisms will fundamentally shift climate justice from an ancillary outcome to a necessary pre-condition.

In light of this constructivist synthesis, I advocate for the rapid implementation of constructed political advancements in mitigation law through a series of direct actionable integrations. To begin with, a reversal in the allocation of rights logic. Corporations must not be recognized as the primary rights-holders over customary territory carbon. Instead, MHA must be recognized as primary rights-holders over carbon. Second, the regulatory strengthening of the normative FPIC. The FPIC standard must be adopted as regulation, binding "consent" with veto rights as the imposable limit, not "consultation." Third, a redefinition of "benefit." Compensation in benefit-sharing mechanisms must acknowledge and pay for the non-monetary, cultural, spiritual, and ecological values. Fourth, the creation of independent mechanisms for the resolution of disputes with MHA parallel inaccessibility. Combined with the above, this will radically rebalance the corporate power asymmetry.

4. CONCLUSION

This research endeavors to explain and elaborate on climate justice within the legal politics of Indonesia's Carbon Economic Value (NEK) Regulation, specifically addressing elements of distributive and procedural justice. From the deconstructive analysis seen throughout the discussion chapters, a few general conclusions may be synthesized.

To begin with and addressing the first research question, this study finds that the legal politics of the NEK has framed distributive justice precisely in a narrow, reductionist, and corporate biased manner. The deconstruction shows that the legal profit "benefits" were stripped of substantive context, and profit access "rights" were exclusively reserved for formal permit holders (corporations). This framing and construction of the distributive justice 'problem' systematically prefigures new and potential forms of disparity (neo-disparities), in this case, the Customary Law Communities (MHA) relatively and contextually idle and are alienated from the carbon rights of their customary land. MHA are secondary recipients, and they shoulder the disproportionate ecological, social, and cultural managerial 'burn' (loss of access) connected to the economically 'us' lite benefits.

Continuing with the second research question, the NEK Regulation demonstrates the norm construction of the administrative procedural justice as form over substance with rights as extinguished. The essence of FPIC (Free, Prior, and Informed Consent) has been reduced to weak "public consultation." Such legally framed expectations, considering the power asymmetries that exist in the socio-political context, systematically create the conditions under which the practices of pseudo-participation (tokenism) and elite capture operate. The latter serves as a procedural device to co-opt the MHA (Mental Health Act) and justify, in a manner that appears equitable, the injustice of the distribution of resources.

A synthesis and the primary conclusion this study offers is that failures in the distributive and procedural pillars are not technical mishaps but intentional design attributes of a legal politics that prioritizes the market's efficiency over substantive climate justice. The logic of market environmentalism that prevails within the NEK Regulation focuses on the certainty of investments and the rapidity of carbon transactions. Consequently, the "complex" and "inefficient" rights of MHA are sacrificed, albeit, illegitimately so. This regulation does not aim at addressing the historical injustices of a child of the agrarian. Rather, it a "green economy" pretext, it is poised to exacerbate such structural inequities.

Consequently, this study also holds that NEK Regulation, in its current form, does not operate as a transformative instrument toward climate justice. Thus, the study suggests the necessity of fundamental legal-political, rather than merely technical, reforms. These include, (1) Reversing the rights-allocation logic, placing MHA in the primary rights-holding position over carbon in their customary territories; (2) Upgrading FPIC as a normative framework to "consent" with veto rights rather than "consultation"; (3) Redefining "benefits" to embrace compensation for non-monetary dimensions (cultural, social, ecological); and (4) Establishing a dispute resolution body with the MHA that is independent and inequilibrium.

Ethical approval

This study was conducted in accordance with the ethical principles outlined in the Declaration of Helsinki.

Informed consent statement

Not applicable.

Authors' contributions

Not applicable.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Data availability statement

The data presented in this study are available on request from the corresponding author due to privacy reasons.

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