



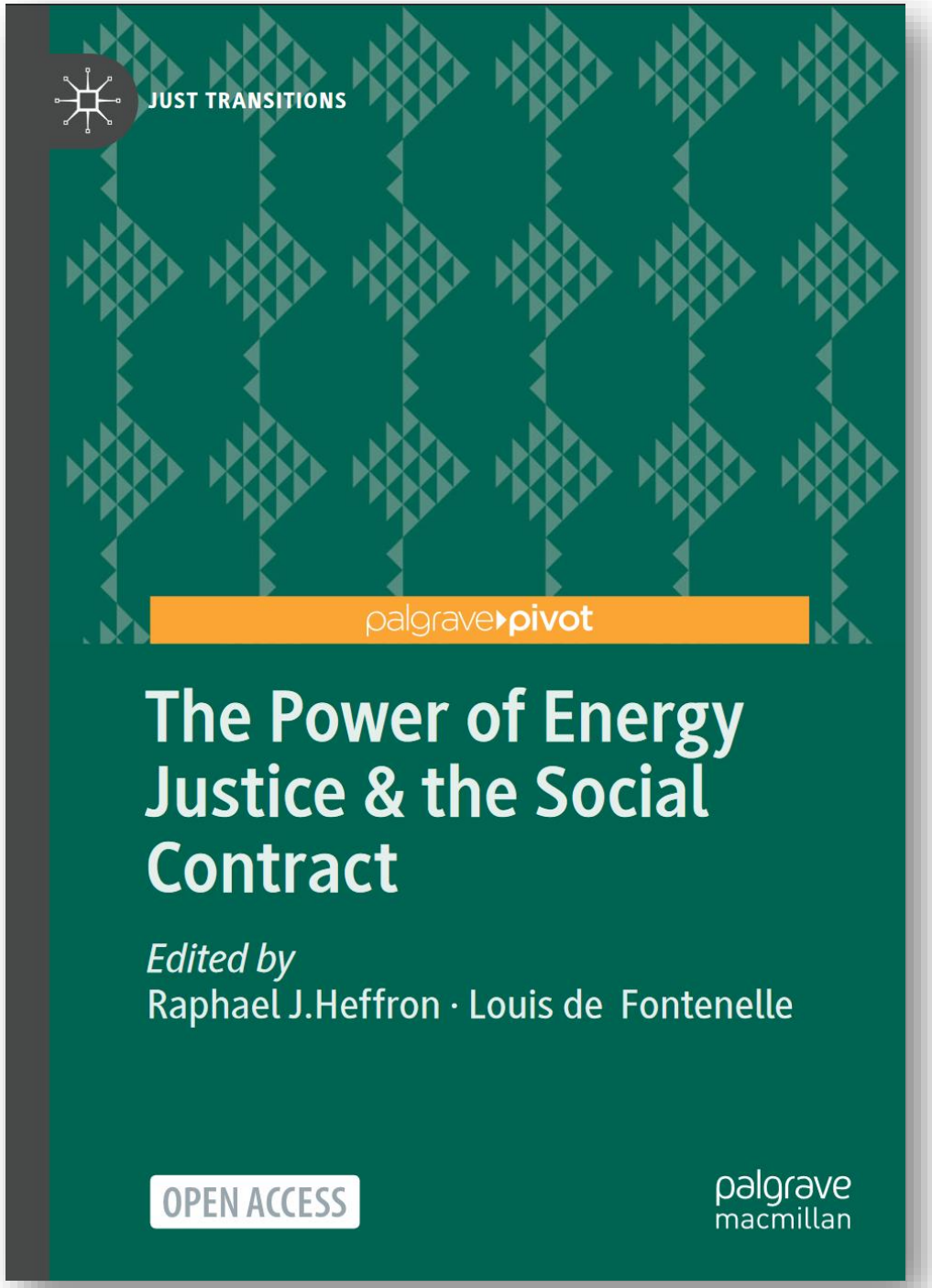


Mengikat Klausul Keadilan Transisi Energi dengan Kontrak Sosial –

Belajar dari Karya Mutakhir Heffron dan de Fontenelle, eds. [2024]

J a l a l

Disampaikan dalam SIRD #69
Mewujudkan Energi Berkelanjutan dengan Transisi Energi. Siap?
Jakarta, 11 Oktober 2024



Keterangan Buku

Judul Buku: The Power of Energy Justice & the Social Contract

Penyunting: Raphael J. Heffrom dan Louis de Fontenelle

Penerbit dan Tahun Terbit: Palgrave MacMillan, 2024

Jumlah Halaman: 265 + xxxi

”This open access book focuses on the energy sector and will make a significant contribution to its continued evolution. For many years, the energy sector has been missing a raison d’etre and now finally there are increased calls for that to be justice. Hence, this book will develop the concept of energy justice and how it needs to be formalised in a new ‘social contract’ with all stakeholders in society. The focus will be on improving legal systems at local, national and international levels while ensuring that justice is a core issue within energy law, the legal system and more broadly in society.”

Bisa dibeli dengan harga EUR40 (cetak) namun dapat diunduh secara gratis (elektronik) melalui tautan:

https://link.springer.com/book/10.1007/978-3-031-46282-5

Tentang Penyunting

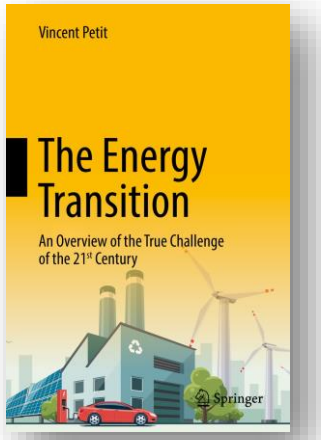
Raphael J. Heffron is Professor in Energy Law, Justice, the Social Contract and Sustainability at the Universite de Pau et des Pays de l'Adour, Pau, France. He is also Jean Monnet Professor in the Just Transition to a Low-Carbon Economy awarded by the European Commission (2019–2022). In 2020, he was appointed as Senior Counsel at Janson law firm in Brussels (Belgium). He is a qualified Barrister-at-Law and a graduate of both Oxford (M.Sc.-Christ Church) and Cambridge (M.Phil.-Darwin & Ph.D.-Trinity Hall). He also holds degrees from the University of St. Andrews (MLitt) and Trinity College Dublin (B.A., M.A.). His work all has a principal focus on achieving a sustainable and just transition to a low-carbon economy, and combines a mix of law, policy and economics. He has published over 190 publications of different types and is the most cited scholar in his field worldwide for energy law, energy justice and just transition worldwide.

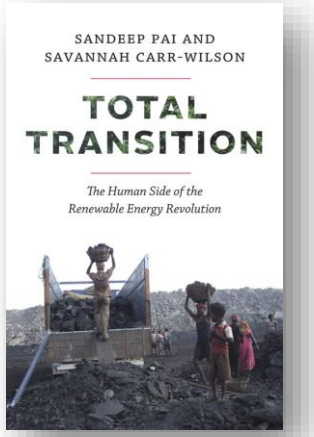


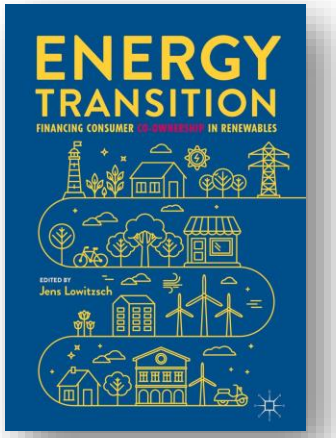
Louis de Fontenelle is Associate Professor in Public Law at the University of Pau and Pays de l'Adour, Pau, France. He is member of the research centre TREE (University of Pau and Pays de l'Adour, CNRS, France). His research focuses on issues of law and justice relating to the ecological transition in the context of climate change, in particular energy, sustainable mobility and natural resources. He is also conducting research into the contribution of the human and social sciences to technological innovation. His work is interdisciplinary, involving geography, economics and philosophy.

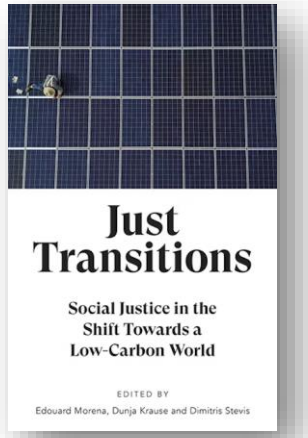


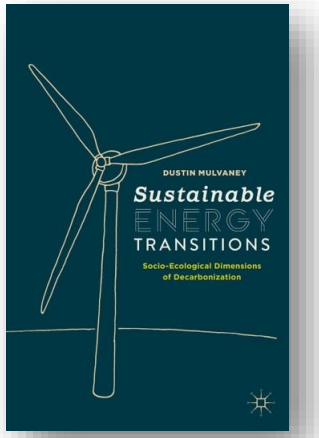
Buku-buku tentang Keadilan (Transisi) Energi (Petit, 2017; Pai dan Carr-Wilson, 2018; Lowitzsch, [ed.], 2019; Morena, et al. [eds.], 2020; Mulvaney, 2020; Fiorino, 2022; Atkins, 2023; Ayuk, 2023; Scholtens [ed.], 2023)

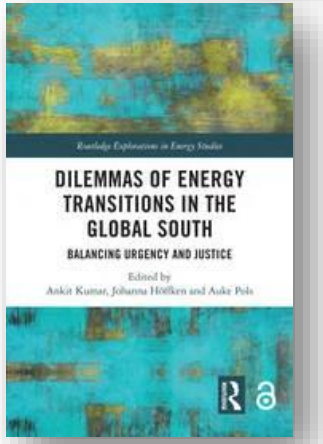


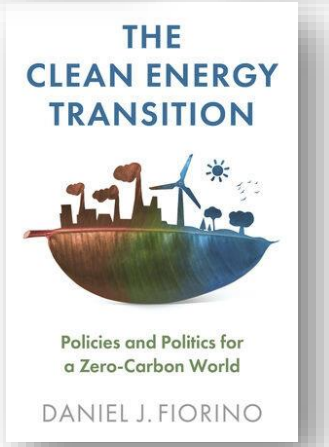


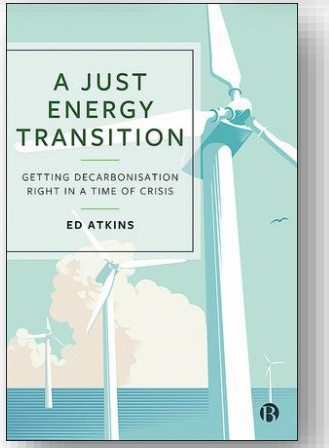


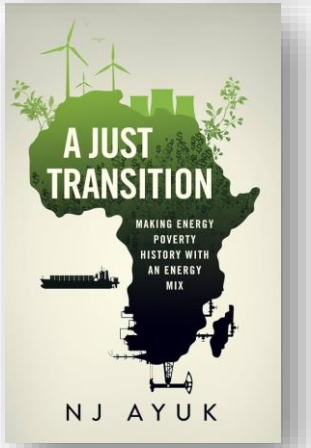


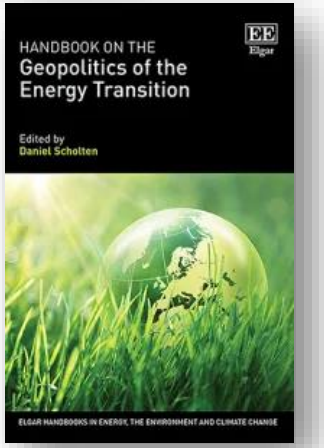




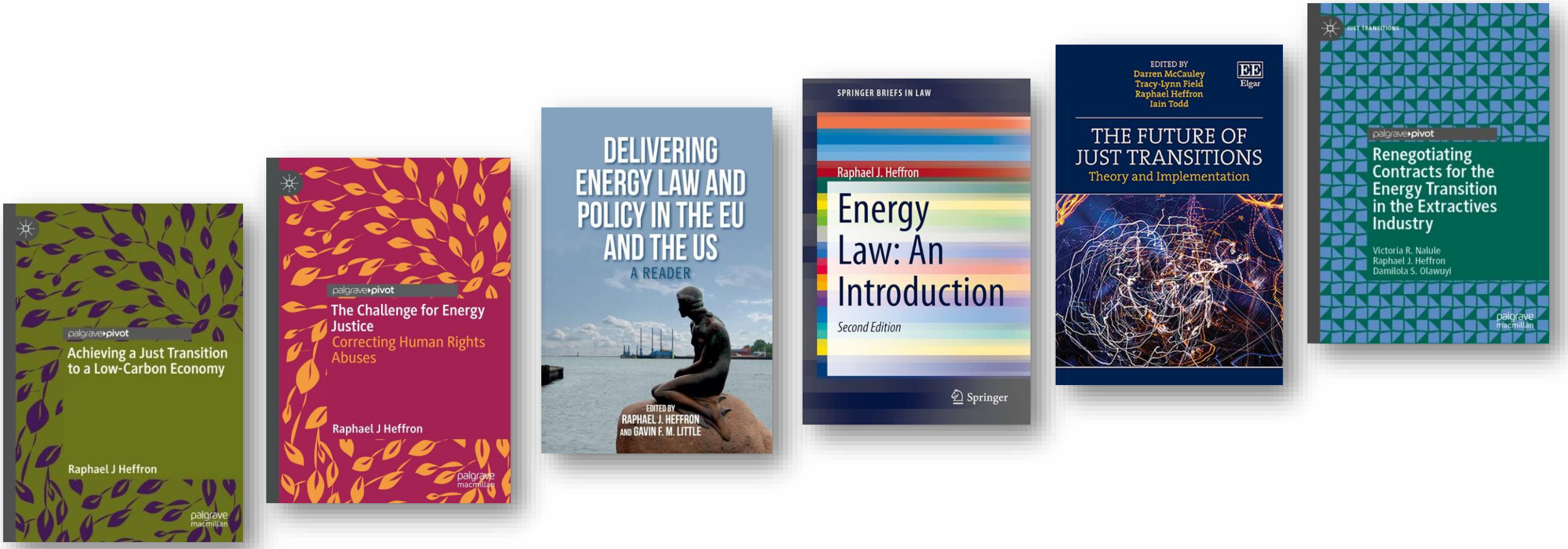








Buku-buku Karya Heffron Lainnya



Finally, the world faces the critical challenges of the climate change and the energy transition. It is also clear that the process for change needs to be accelerated. It is vital that this process be fair and characterised by justice, such as procedural, distributive, recognition, restorative and cosmopolitan. It is a significant step forward in expanding the energy justice body of knowledge to see so many scholars engage in these concepts and to think about how they can transfer into practice. For me, I hope more scholars see the merit in this framework, and that they see how change can happen when justice is place at the centre. I hope the scholars who interact with this text will continue its work and seek to make the world more fair, just, equitable and inclusive.

June 2023

Robert D. Bullard
Distinguished Professor of Urban Planning and Environmental Policy and Director of the Bullard Center for Environmental and Climate Justice
Texas Southern University
Houston, TX, USA

Dari Kata Pengantar

Daftar Isi

Contents

Part I Introduction to the Power of Energy Justice

1 Energy Justice—The First Step in an Energy Decision Today 3
Raphael J. Heffron

2 Energy Justice and the Social Contract Theory 9
Louis de Fontenelle

Part II Core Energy Justice Issues

3 The Formation of Energy Law as a Discipline That Integrates the Principle of Energy Justice 17
Vicente López-Ibor Mayor and E. J. I. López-Ibor Mayor

4 Energy Education: A Cosmopolitan Challenge to Ensure Justice in the Transition 23
Luigi Maria Pepe

5 Energy Justice and Energy Law—An Approach to the Differences Between Both Concepts 29
Íñigo del Guayo

6 Energy Justice as a Key to Achieve Affordable Energy 35
Gonzalo Irrazabal Pérez Fourcade

7 Cross-Border Energy Investment, Energy Justice and International Economic Law 41
Chung-Han Yang

8 Enforcing Energy Justice Through the Legal System: A Cascade of Four Conditions 49
Maciej M. Sokołowski

Part III Clean Energy Development & Energy Justice

9 An Energy Justice Exploration to the Revival of the Solar Thermal Energy in France 57
Elodie Annamayer

10 The Power of Procedural Justice in the Planning of Energy Projects 63
Nerissa Edem Lawrencia Anku

11 International Investor-State Disputes Arbitration Through Energy Justice Lenses: Opening the Case for "Greening Through Free Trade" Narratives 69
Emmanuelle Santoire

12 Energy Justice Concerns of Nuclear Power in the 2025 Energy Transition Vision of Taiwan and Net Zero Roadmap of 2050 77
Anton Ming-Zhi Gao

13 Social Acceptance for Renewable Energy Technologies: The Role of the Energy Justice Framework 83
Mohammad Hazrati

14 Breaking Barriers: Integrating Energy Justice to Overcome Investor-State Dispute Settlement (ISDS) Roadblocks to Climate Change Mitigation Efforts 93
Demilade Isioma Elemo

Part IV Energy Justice for Local Communities

15 Energy Justice, Prior Consultation and Energy Supply for Communities in Colombia 107
Luis Fernando Bastidas Reyes and Luis Bustos

16 Land for Clean Energy Projects: For Community Energy 113
Halima I. Hussein

17 Deploying Energy Justice for a Meaningful Inclusion of Indigenous Peoples in Energy Decision-Making 121
Mathilde Stephanie Ngo Pouhe

18 The Power of Energy Justice for Rural Communities 129
Madeline Taylor

19 A Pivotal Moment for Energy Community Cooperation in Chile 137
Elizabeth Stephani

20 The Power of Energy Justice for Attaining and Maintaining Acceptance for Renewable Energy Projects 147
José Vega-Araújo

Part V Energy Justice National & International Perspectives

21 The Quest for Cosmopolitan Justice in the Energy Transition in Caribbean Small Island Developing States 155
Alicia Phillips

22 Righting the Injustices Within the Nigerian Energy Industry 163
Ayodele Morocco-Clarke

23 Utilising Recognition Justice to Bridge Climate and Energy Financing Gaps in the Global South 171
Susan Nakanwagi

24 Australian Petroleum and Coal Resources: Taxation, Emissions and Energy Justice 179
Diane Kraal

25 Contribution of Local Energy Communities to the Realization of a Just Energy Transition in Spain 187
Ignacio Zamora and Alejandra Garzón

26 Solving Energy Justice in the European Union 193
Marzena Czarnecka and Marcin Kazniewski

Part VI Energy Life-Cycle Activities and Justice

27 The Power of Consumers: On the Interplay Between Consumer-Centric Markets and Energy Justice 201
Anne Michaelis and Martin Weibelzahl

28 Energy Justice Concerns of Artisanal and Small-Scale Mining Amidst Energy Transition 209
Chioma V. Basil

29 The Energy Justice Imperative for Clean Energy Storage Alternatives 217
Zinnure Osman Zengin

30 Just Transitions in Extractive Territories 227
Tara Righetti

31 Minimum Standards of Access to Energy Services: Underpinning Energy Justice and Legal Action 235
Tedd Moya Mose

32 Empowering Those in Harm's Way: A Restorative Justice Approach 243
Amina Ahmed Ibrahim

Part VII Conclusion

33 Diffusing Energy Justice into the New 'Social Contract' for Society 253
Raphael J. Heffron and Louis de Fontenelle

Index 261

Bagian 1. Pendahuluan

"**One powerful effect of energy justice for all decision-makers will be that energy justice can balance the 3Rs which are 'Risk, Reward, and Responsibility'**. For all decision-makers in energy whether in politics, in a public or private company and a leader of a local community, achieving a balance between the 3Rs's is fundamental. Ensuring justice is applied across these 3Rs will ensure that a decision-maker as future-proofed their decision and in due course they can therefore demonstrate their accountability and process in their decision-making." [h. 7]

"The role of the social contract is essential in making justice, particularly energy justice, a reality and in setting the direction for the development of the energy society as a whole. **Justice is a determining factor in the distribution of the resources generated, which should benefit the entire territory where the projects are located, while the location and ownership of the necessary resources and means of production are unevenly distributed at international and national levels**. Equally, justice is essential to ensure that rights and freedoms are respected throughout the energy life cycle, from exploration and production to consumption, and that any damage caused is fairly compensated. That is the whole point of the social contract." [h. 12-13]

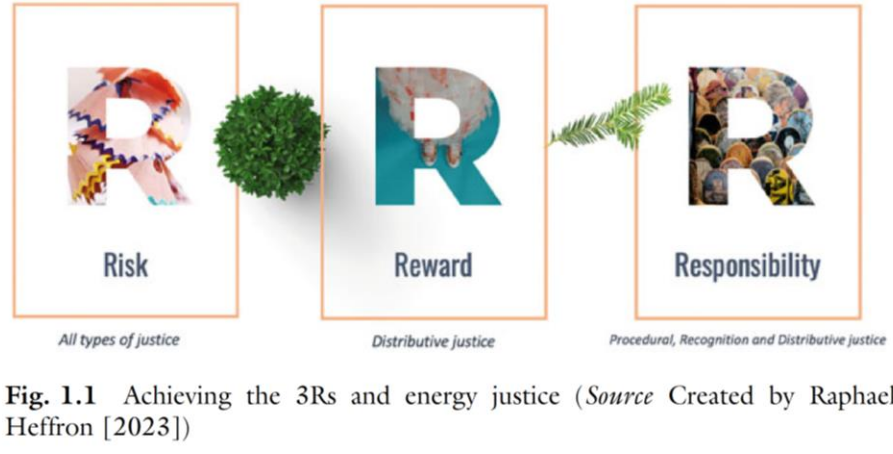


Fig. 1.1 Achieving the 3Rs and energy justice (*Source* Created by Raphael Heffron [2023])

Bagian 2. Isu-isu Keadilan Energi

“Clearly, there can be no sustainable energy transition, no effective fight against climate change and even less compliance with the Sustainable Development Goals, if any of the links in the energy supply chain violate human rights or harm the environment.” [h. 21]

“It is only by now that with the rise of energy justice and of the energy justice principles, the science of law can finalize its aim of bringing justice to the next generation by weighing the unity of peoples through the unity of laws.” [h. 27]

“Regulating cross-border energy investment requires navigating the complexities of international economic law, human rights, environmental treaties, energy law, and domestic regulations. To address the limitations of global energy systems, transformative action is necessary. Energy justice calls for comprehensive efforts to combat social exclusion, environmental degradation, and climate change, facilitating a holistic energy transformation. “ [h. 46-47]

“To make it happen, and to enforce energy justice in the legal system, meeting a cascade of the following four conditions is needed. As these are actions, let us write them as activities: (1) defining; (2) recognizing; (3) enhancing; and (4) supervising.” [h. 51]

“The sooner it starts, the better, as action on energy justice is needed now. This should be accompanied by legal education on energy justice, as nowadays many professionals, including lawyers, researchers, and reviewers, do not really know what energy justice is.” [h. 53]

Bagian 3. Pengembangan Energi Bersih dan Keadilan Energi

“The question is therefore not so much about how to address injustices, but rather how to restructure an existing sector which, despite many expectations, is not operant. In order to avoid the perception of social injustice by most vulnerable households, it would then be ideal to provide them with direct financing for solar thermal installations.” [h. 60]

“The imperative of energy justice framework to fairly engage stakeholders in energy decision-making is useful in unmasking the injustices of current energy systems to ensure desirable outcomes in the future.” [h. 67]

“The idea of community benefits has emerged as one that encompasses some elements of distributive justice, in which collaboration with community stakeholders is promoted to create a plan for community benefits that outlines the specific ways in which the project will provide measurable advantages to the communities involved at each stage of the project.” [h. 88]

“… energy transition in the midst of the climate crisis is not just an option among others, but the only way forward for humankind. However, we must not forget that the current crises are a result of either a lack of attention to human rights and ecological limits or have been worsened by such neglect.” [h. 89]

“Investment is essential to obtaining energy security, addressing energy poverty, putting the world on a path to net-zero emissions, stimulating post-COVID-19 economic recovery, and ensuring sustainable development in developing nations.1 As such, the investor-state dispute settlement (ISDS) regime, a contract or (but mostly) treaty-based regime of rights, principles, and standards that imposes obligations on host states to foreign investments in their territories, is a vital aspect of the energy sector. [h. 94]

Bagian 4. Keadilan Energi untuk Masyarakat Lokal

“Some regulatory and market barriers must be accomplished to ensure this community energy supply. However, some instruments come from corporate social responsibility, prior consultation agreements, or through a regulatory modification that offers practical solutions that could be linked to figures such as energy communities and energy self-generation systems that will ensure the supply of energy to communities.” [h. 111]

“It is not enough to conduct dialogue with host communities early on to communicate local benefits, such as job and investment opportunities, or reduced energy bills, as it has been suggested. The process of decision making right from government formulation of policy, call out for tenders and a joint public participation process between the project developer and the government in obtaining permits is key to building this community support.” [h. 116]

“The energy justice framework offers pathways for deviating from the hegemonic business-centred energy systems to human and community-centred models. However, key challenges must be overcome to allow a cosmopolitan and systemic instrumentalisation of procedural justice to avoid the repetition of past injustices. These challenges entail indigenous peoples’ access to financial and technical support for community-led energy projects, robust legal frameworks for participation procedures, political, legal and infrastructural recognition, the extraterritorial ruling of business impacts on indigenous peoples, a strong and consistent governance and businesses’ recognition of their diversity.” [h. 127]

Bagian 5. Perspektif Nasional dan Internasional

“While SIDS have contributed to climate change efforts by attempting to meet their obligations under the UNFCCC, arguably, more can be done swiftly at the policy level while balancing energy security through the full commitment and introduction of renewables. Furthermore, SIDS are indeed aptly placed to theoretically shift to or incorporate a complete renewable energy mix, whether it be solar, water or wind given their geographical location, but these are currently underexploited. Overall, there continues to be a dependency on a diminishing resource for so much of economic growth and livelihood which beckons a change in focus, especially when the future of these countries is at stake from this reliance.” [h. 160]

“The entrenchment of recognition justice within the Nigerian energy industry will open the door for the courts to apply restorative justice which will see victims compensated, penalties applied by infractions and the consistent practice of remediation and restoration for ecological damage. Consequently, the distributive, procedural and cosmopolitan principles of energy justice will be routinely applied.” [h. 169]

“The energy transition in the global south necessitates investing in and promoting renewable energy technologies, pushing for regulations that encourage sustainable environmental practises and economic development, and prioritising energy efficiency measures. The energy transition must be equitable and inclusive, and developing economies should have access to financial and technological assistance.” [h. 176]

“There needs to be a fairer tax system to equitably share the benefits of energy minerals extraction, with the government share best distributed to address the negatives of GHG emissions. Bearing in mind the cosmopolitanism of our existence, taxes from developed countries should fund loss and damage from climate change borne by developing countries.” [h. 184]

Bagian 6. Daur Aktivitas Energi dan Keadilan

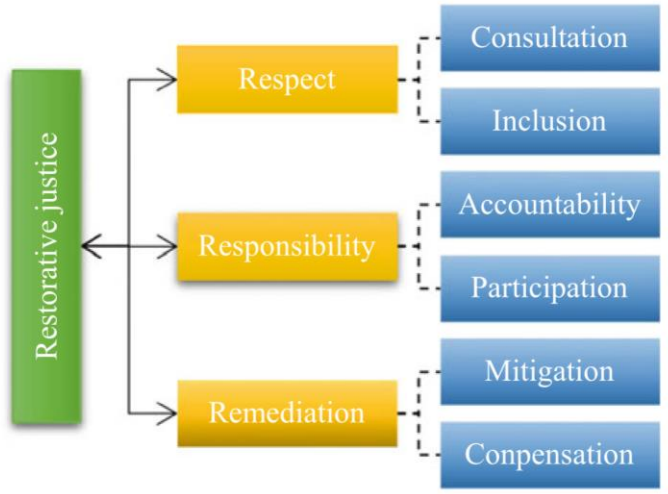


Fig. 32.1 Abstract framing of restorative justice concept from an energy justice perspective (*Source* Created by Ibrahim, A. [2023])

"The benefits and adverse impacts associated with artisanal and small-scale mining are of global significance; often involving elements of technological, economic, environmental, health and safety, social, and governmental and political concerns. The exacerbated demand for metals used for low-carbon technologies as a result of climate change mitigation necessitates an intervention against the grave dangers associated with small-scale mining activities. Unfortunately, many governments do not attempt to control these activities, which are either outside their regulatory framework, or they lack the capacity to monitor or control these activities." [h. 209]

"Energy justice can guide energy storage policies and promote a just transition to a sustainable energy future. By applying tenets of energy justice, policymakers can develop strategies that minimise the environmental impacts of batteries, promote fair and inclusive decision-making, and respect diverse stakeholder perspectives." [h. 223]

"Justice in extractive territories is as much about creating a new social contract as it is about fulfilling the existing social contract. This must begin with restorative justice that addresses the existing imbalances created by historic markets, patterns of production, and allocations of capital that have resulted in pollution and lack of diversification in extractive territories." [h. 232]

Bagian 7. Kesimpulan

"As stated earlier, the energy sector remains a problematic sector in society with key issues in terms of climate change, environmental impacts, economics and governance. The rise in energy justice as a concept and as theory and also in practice over the last decade is an expression that the energy sector is seriously flawed. The five elements of energy justice can be implemented by the social contract. These five forms of justice should be the key terms of a 'social contract' whereby a: a social contract can be defined as: the 'just' agreement between stakeholders in the energy sector and society where citizens' rights and well-being are protected in today's modern economy at local, national and international levels." [h. 256]

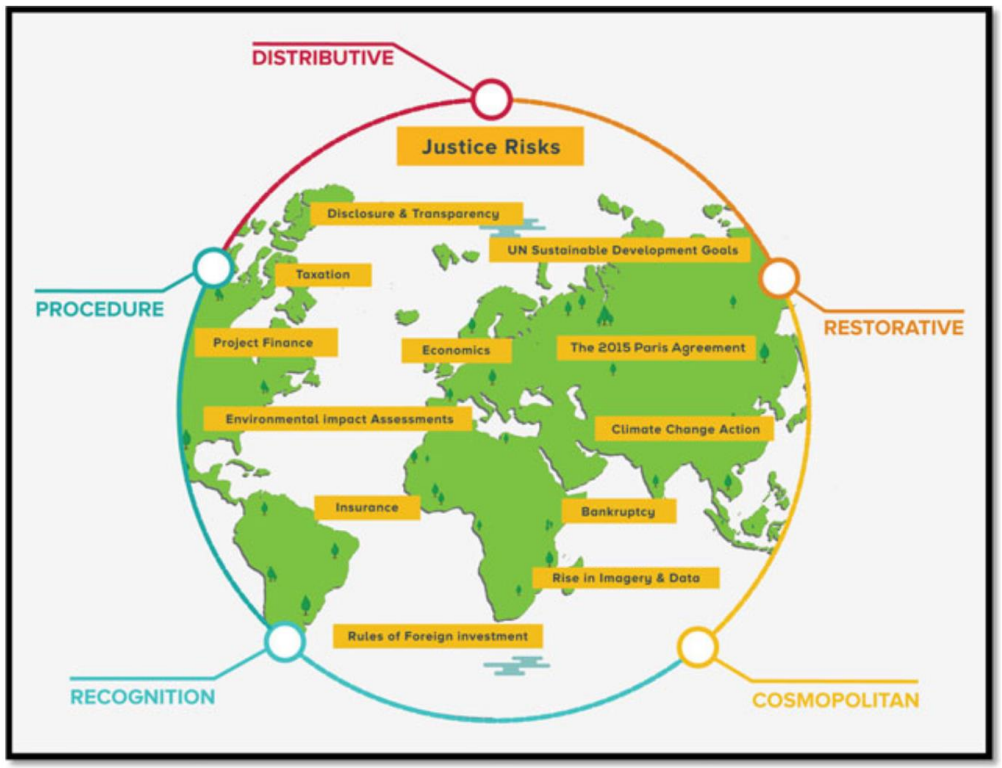


Fig. 33.1 Global justice risks in the energy sector (*Source* Created by Heffron [2020])

Beberapa Komentar

1. Membahas isu yang sangat penting, keadilan energi—yang sesungguhnya belum pernah terwujud—dan mengaitkannya dengan keniscayaan dan urgensi transisi energi dengan sangat luas.
2. Para penulisnya berhasil memberikan gambaran menyeluruh tentang konteks dan dimensi keadilan yang sangat kompleks.
3. Menyediakan sumber pustaka yang sangat komprehensif, yang dapat dimanfaatkan untuk pencarian yang lebih dalam lagi bagi mereka yang berminat.
4. Sangat meyakinkan dalam membujuk pembaca bahwa keadilan energi seharusnya benar-benar tertuang dalam kontrak sosial formal.
5. Banyak bab yang terasa kelewat singkat, walau pesan-pesan pentingnya sudah sangat jelas tersampaikan dalam isu yang dibahas.
6. Sangat kurang dalam memanfaatkan gambar, bagan, dan tabel yang seharusnya bisa sangat membantu pembaca untuk memahami isu tulisan secara cepat.
7. Direkomendasikan sebagai salah satu buku untuk memahami keadilan (transisi) energi, namun perlu dibaca bersama buku dan artikel lain yang membahas dengan lebih mendalam.



SALAM LESTARI.
TERIMA KASIH!



J A L A L
Chairperson of Advisory Board – **Social Investment Indonesia**
jalal.csri@yahoo.com; +62-811-8814488