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Institutionalizing Green Competition Parameters within Contemporary Indonesian Transnational Corporate Merger Control Doctrines

Institusionalisasi Parameter Antimonopoli Hijau Dalam Doktrin Pengendalian Penggabungan Korporasi Transnasional Kontemporer Indonesia

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Abstract

This study analyzes the disparity in environmental, social, and governance due diligence enforcement within transnational corporate restructurings between Indonesia and Singapore, evaluating its profound impact on foreign direct investment certainty. Utilizing a doctrinal legal methodology with comparative and conceptual approaches, this research systematically investigates the normative friction between mandatory frameworks in Singapore and fragmented regulations in Indonesia. The findings reveal that the corporate legal architecture of Indonesia, particularly the reduction of sustainability metrics to mere corporate philanthropy under the Company Law, alongside the complete absence of green antitrust parameters in merger controls, creates severe legal uncertainty. This regulatory vacuum directly exposes investors to greenwashing and hidden financial risks. Consequently, this article proposes a statutory reconstruction grounded directly in the Green Constitution paradigm. Transforming voluntary metrics into mandatory due diligence within corporate restructuring is an absolute necessity to protect all transnational investors, optimize investment climates, and ensure long term ecological sustainability.

Abstrak

Penelitian ini menganalisis disparitas penegakan uji tuntas lingkungan, sosial, dan tata kelola dalam restrukturisasi korporasi transnasional antara Indonesia dan Singapura, serta mengevaluasi dampak signifikannya terhadap kepastian penanaman modal asing. Menggunakan metodologi hukum doktrinal melalui pendekatan komparatif dan konseptual, riset ini secara sistematis menginvestigasi friksi normatif antara kerangka regulasi imperatif di Singapura dengan fragmentasi hukum di Indonesia. Temuan menunjukkan bahwa arsitektur hukum perseroan Indonesia, khususnya reduksi metrik keberlanjutan menjadi sekadar filantropi perusahaan di bawah Undang-Undang Perseroan Terbatas, ditambah ketiadaan absolut parameter antimonopoli hijau dalam pengendalian penggabungan, menciptakan tingkat ketidakpastian hukum yang sangat parah. Kekosongan regulasi ini secara langsung mengekspos investor pada risiko pengelabuan hijau dan kerugian finansial tersembunyi. Konsekuensinya, artikel ini mengusulkan sebuah rekonstruksi legislasi yang berpijak langsung pada paradigma Konstitusi Hijau. Transformasi metrik sukarela menjadi kewajiban uji tuntas pemaksa dalam restrukturisasi korporasi merupakan suatu keniscayaan absolut untuk melindungi seluruh investor transnasional, mengoptimalkan iklim investasi, serta menjamin keberlanjutan ekologis jangka panjang.

A. INTRODUCTION

1. Background

Global investment law in the third decade of the twenty-first century is undergoing a fundamental paradigm shift, moving decisively away from the doctrine of shareholder primacy toward a model of stakeholder capitalism. This transformation is tangibly manifested through the integration of Environmental, Social, and Governance (ESG) metrics into the lifeblood of corporate strategic decision-making.[1] Within the modern international investment law landscape, ESG is no longer merely a voluntary philanthropic endeavor or an extension of Corporate Social Responsibility (CSR). Instead, these parameters have evolved into critical mechanisms for financial risk mitigation, the basis for binding regulatory compliance, and an essential foundation for construing directorial fiduciary duties.[2]

This paradigm shift has ignited a crucial clash of norms within corporate restructuring transactions, specifically mergers and acquisitions (M&A). Under the international investment law regime, failing to codify ESG integration within the due diligence framework does more than expose parties to valuation losses; it triggers the risk of international investment arbitration if state policies are deemed inconsistent with environmental protection mandates.[3] Legal certainty surrounding ESG now functions as a primary determinant for the viability of Foreign Direct Investment (FDI). Absent clear statutory standards, M&A transactions risk falling into greenwashing traps, which ultimately degrades the reputation of a host state's investment jurisprudence among global investors.[4]

Narrowing the focus to Southeast Asia, the disparity among legal regimes in addressing ESG introduces significant theoretical complexity. Singapore, leveraging its common law tradition, has adopted a "climate-first" enforcement approach through

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[1] Muhammad Sani Khamisu, Ratna Achuta Paluri, and Vandana Sonwaney, "Stakeholders' Perspectives on Critical Success Factors for Environmental Social and Governance (ESG) Implementation," *Journal of Environmental Management* 365 (August 2024): 121583, https://doi.org/10.1016/j.jenvman.2024.121583.
[2] Cynthia A. Williams and Donna M. Nagy, "Esg and Climate Change Blind Spots: Turning the Corner on Sec Disclosure," *Texas Law Review* 99, no. 7 (2021): 1453–85, https://texaslawreview.org/esg-and-climate-change-blind-spots-turning-the-corner-on-sec-disclosure/.
[3] Sandrine Maljean-Dubois, Hélène Ruiz Fabri, and Stephan W. Schill, "International Investment Law and Climate Change: Introduction to the Special Issue," *The Journal of World Investment & Trade* 23, no. 5–6 (December 16, 2022): 737–45, https://doi.org/10.1163/22119000-12340268.
[4] Jody Grewal and George Serafeim, "Research on Corporate Sustainability: Review and Directions for Future Research," *Foundations and Trends® in Accounting* 14, no. 2 (September 2, 2020): 73–127, https://doi.org/10.1561/1400000061.

prescriptive amendments to its stock exchange (SGX) rules, which now mandate ISSB-based sustainability reporting.[5] Jurisprudentially, the decision in *Foo Kian Beng v. OP3 International Pte Ltd* establishes binding precedent that negligence regarding ESG risks can pierce the protections of the business judgment rule for corporate directors.[6]

Conversely, Indonesia's current investment law architecture remains characterized by regulatory fragmentation. While Law No. 25 of 2007 on Capital Investment explicitly mandates environmental preservation, its execution in corporate actions is severely obstructed by an inherent statutory flaw in the Company Law (UUPT).[7] Article 74 of the UUPT continues to reduce ESG to a philanthropic "cost budgeting" burden rather than construing it as a mechanism for mitigating material operational risk.[8] This disparity is exacerbated by the merger control regime enforced by the Business Competition Supervisory Commission (KPPU) under KPPU Regulation No. 3 of 2023. The agency's framework relies purely on asset thresholds, failing entirely to accommodate green efficiencies.[9] Consequently, foreign investors face profound legal uncertainty when conducting cross-border restructuring, a reality distinctly highlighted by the jurisdictional challenges in recognizing PT Garuda Indonesia's restructuring plan in Singapore.[10]

Recent academic discourse regarding ESG integration in corporate restructuring over the past five years can be synthesized into three primary clusters. The first cluster focuses on economic performance impacts: Risanto and Chalid (2024) demonstrate a positive correlation between M&A and ESG performance in the Asia-Pacific region,[11]

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[5] Singapore: Accounting and Corporate Regulatory Authority, "Sustainability Reporting and Assurance Requirements," ACRA, 2026, https://www.acra.gov.sg/regulations/sustainability-reporting/requirements-timeline/.
[6] Lan Luh Luh, "When Green Meets Governance: How ESG Is Reshaping Directors' Duties in Common Law," National University of Singapore, 2026, https://blog.nus.edu.sg/lawresearch/2026/02/16/when-green-meets-governance-how-esg-is-reshaping-directors-duties-in-common-law/.
[7] Petra Mahy, "Indonesia's Omnibus Law on Job Creation: Legal Hierarchy and Responses to Judicial Review in the Labour Cluster of Amendments," *Asian Journal of Comparative Law* 17, no. 1 (July 12, 2022): 51–75, https://doi.org/10.1017/asjcl.2022.7.
[8] "Pasal 47 Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas (UUPT)" (2007).
[9] "Peraturan Komisi Pengawas Persaingan Usaha Nomor 3 Tahun 2023 Tentang Penilaian Terhadap Penggabungan, Peleburan, Atau Pengambilalihan Saham Dan/Atau Aset Yang Dapat Mengakibatkan Terjadinya Praktik Monopoli San/Atau Persaingan Usaha Tidak Sehat" (2023).
[10] Jones Day, "Singapore Court Issues Landmark Decision Recognizing Indonesian Restructuring Plan," Jones Day, 2024, http://jonesday.com/en/insights/2024/03/singapore-court-issues-landmark-decision-recognizing-indonesian-restructuring-plan.
[11] Brian Rizki Risanto and Dony Abdul Chalid, "The Impact of Mergers and Acquisitions on ESG Performance in Asia Pasific," *Jurnal Ekonomi Dan Bisnis* 29, no. 1 (2026): 1–20, https://doi.org/10.24914/jeb.v29i1.17060.

contrasting sharply with the findings of Feyisetan et al. (2025), who identify negative post-merger impacts within the UK financial sector.[12] The second cluster examines compliance and reporting dimensions, with scholars detecting impression management manipulation within mandatory sustainability reporting where regulatory enforcement remains weak.[13,14] The third cluster analyzes board structures and fiduciary duties, asserting that ESG considerations are inherently embedded in modern fiduciary obligations, despite notable variations in enforcement efficacy between the board systems of Indonesia, Singapore, and Malaysia.[15,16]

Synthesizing this literature reveals a profound blind spot: previous scholarship has largely overlooked the state's paralysis in designing mandatory compliance policies during the restructuring process. There is a palpable failure within the state's public policy architecture to mitigate the ecological risks posed by massive corporate investments. This research provides a novel contribution by dissecting the anatomy of investment and antitrust law enforcement through an Indonesian-Singaporean comparative lens. Departing from the predominantly econometric nature of prior studies, this article offers a legal reconstruction of the policy disorientation that persistently conflates voluntary CSR with material ESG risk management.

This article argues that absent deliberate legal engineering—specifically, integrating ESG due diligence into the UUPT’s fiduciary standards and compelling the KPPU to adopt a "sustainability-based public interest" parameter—ESG enforcement in Indonesia will remain purely cosmetic. This superficiality ultimately undermines investment legal certainty and perpetuates greenwashing. As a remedy, this paper proposes a conceptual reconstruction of Article 74 of the UUPT alongside an expansion of the KPPU’s attributed authority. Empowering the antitrust agency to evaluate ecological

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12 Omotayo Olaleye Feyisetan, Fadi Alkaraan, and Chau Le, “The Influence of ESG on Mergers and Acquisitions Decisions and Organisational Performance in UK Firms: Comparison between Financial and Non-Financial Sectors,” *Journal of Applied Accounting Research* 26, no. 3 (May 6, 2025): 679–707, https://doi.org/10.1108/JAAR-09-2024-0340.
13 Antonio Iazzi et al., “Evaluating Companies’ Impression Management Tactics in Mandatory Sustainability Reporting,” *Business Strategy and the Environment* 34, no. 6 (September 3, 2025): 6828–48, https://doi.org/10.1002/bse.4326.
14 Ning Tang et al., “The Impact of ESG Distance on Mergers and Acquisitions,” *International Review of Financial Analysis* 96 (November 2024): 103677, https://doi.org/10.1016/j.irfa.2024.103677.
15 Muhamad Sidik, Suherman Suherman, and Atik Winanti, “Supervision of One-Tier Board System in Indonesia (Comparative Study in Malaysia and Singapore),” *International Journal of Law and Society* 2, no. 3 (July 8, 2025): 192–206, https://doi.org/10.62951/ijls.v2i3.692.
16 Alice Martiny et al., “Determinants of Environmental Social and Governance (ESG) Performance: A Systematic Literature Review,” *Journal of Cleaner Production* 456 (June 2024): 142213, https://doi.org/10.1016/j.jclepro.2024.142213.

efficiency as a baseline for restructuring legality will properly align the Indonesian regulatory framework with the 2023 G20/OECD Principles of Corporate Governance.[17]

2. Research Questions

In light of the theoretical and jurisprudential gaps delineated above, this study addresses two primary questions:

a. How do the respective statutory frameworks and ESG due diligence enforcement mechanisms governing mergers and acquisitions (M&A) in Indonesia and Singapore compare, and what is the consequent impact of these regulatory divergences on legal certainty and cross-border investor protection?

b. What is the optimal public policy architecture—achieved through amending the Company Law and reforming the KPPU's merger control instruments—necessary to embed binding ESG compliance, thereby deterring greenwashing practices and fortifying a sustainable investment climate in Indonesia?

3. Research Methods

The methodological design of this study is meticulously engineered to dissect the normative and comparative legal complexities inherent in cross-border investment regimes. Rather than merely cataloging positive law, this doctrinal legal research serves to deconstruct the underlying principles, legal doctrines, and legislative rationale that shape the state's public policy architecture in corporate restructuring. Analytically, the inquiry operates through a seamless synthesis of statutory, conceptual, and comparative approaches.

The selection of Singapore as the comparative jurisdiction is not premised solely on the maturity of its common law tradition in adaptively accommodating climate reporting instruments. Viewed through the lens of investment law, this comparative justification is anchored in the macroeconomic reality that Singapore serves as a primary financial hub and a leading epicenter of Foreign Direct Investment (FDI) for Indonesia. Regulatory disparities between the two nations regarding Environmental, Social, and Governance (ESG) governance and reporting directly destabilize the legal certainty of cross-border M&A transactions. Consequently, these statutory asymmetries threaten to generate inefficient capital allocation and broadly distort the aggregate macroeconomic policy

[17] OECD, *G20/OECD Principles of Corporate Governance 2023* (OECD Publishing, 2023), Hal, 1-45. https://doi.org/10.1787/ed750b30-en.

architecture.[18]

This study relies on authoritative primary legal instruments, comprising Law No. 40 of 2007 on Limited Liability Companies (UUPT), Financial Services Authority (OJK) Regulation No. 51/POJK.03/2017, KPPU Regulation No. 3 of 2023, the Singapore Companies Act 1967, the SGX Listing Rules, and the international frameworks embedded within the 2023 G20/OECD Principles of Corporate Governance. The structural analysis of these primary sources is robustly substantiated by a synthesis of globally recognized secondary literature. Data collection was executed through comprehensive doctrinal review and the examination of judicial records. Methodologically, the selection of the Singapore International Commercial Court (SICC) decision in *Re PT Garuda Indonesia* is justified as an optimal jurisprudential laboratory. This ruling is indispensable for empirically illustrating the clash of norms between a domestic restructuring framework—riddled with statutory vacuums—and the strict determinism of international governance compliance standards.[19]

At the level of theoretical abstraction, this legal analysis does not operate within a descriptive vacuum. Instead, it is constructed upon a foundation of deductive reasoning to formulate robust policy prescriptions. The research integratively operationalizes Stakeholder Theory and Legitimacy Theory.[20] The synthesis of these two theories functions as an analytical scalpel to dissect legal policies that risk devolving into mere rhetoric. Through this theoretical fusion, the proposed regulatory transformations within the investment regime—specifically the realization of ecological justice and "green constitution" principles—are grounded in empirical and operational private law enforcement frameworks. Furthermore, the application of Legitimacy Theory ensures that ESG integration does not devolve into superficial compliance, actively preventing corporations from exploiting sustainability mandates as impression management tools to deflect regulatory scrutiny.[21]

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[18] Tang et al., "The Impact of ESG Distance on Mergers and Acquisitions."
[19] "Singapore International Commercial Court (SICC). (2024). Re PT Garuda Indonesia (Persero) Tbk SGHC(I) 1" (2024).
[20] Justin Robert Blount and Michael Conklin, "Non-Human Stakeholders: Testing the Boundaries of Stakeholder Theory," *SSRN Electronic Journal*, 2023, https://doi.org/10.2139/ssrn.4402429.
[21] Iazzi et al., "Evaluating Companies' Impression Management Tactics in Mandatory Sustainability Reporting."

B. DISCUSSION

1. Paradigmatic Tensions Between Fiduciary Duty Doctrine and ESG Materiality in Acquisition Due Diligence

Mergers and acquisitions (M&A) represent a critical phase of structural expansion for inorganic corporate growth. Conversely, these strategic corporate actions create profound vulnerabilities to the transfer of latent legal liabilities, spanning from acute environmental contamination disputes and labor rights violations to corporate governance malpractice. Situating this within the broader discourse, data-driven empirical studies affirm that target companies with robust ESG ratings proportionally inject enhanced sustainability performance into the acquiring entity.[22] Doctrinally, however, the transmission of such positive valuation demands a material legal foundation. This framework must compel the acquirer to detect and validate the target's ESG data through prescriptive legal due diligence mechanisms. A failure to conduct proportionate due diligence inevitably results in the absorption of "toxic assets," which subsequently degrades the valuation of the post-merger entity.

Within the Singaporean jurisdiction, the mandate for sustainability reporting and ESG due diligence is anchored in a compliance paradigm designed to ensure market resilience, rigidly institutionalized by exchange authorities. Pursuant to amendments to the Singapore Exchange (SGX) Listing Rules, sustainability reporting is progressively mandated toward absolute compliance with the International Sustainability Standards Board (ISSB) reporting guidelines.[23,24,25,26] From a corporate law perspective, Singaporean high court jurisprudence has independently injected corporate sustainability principles into the lifeblood of the business judgment rule. An analysis of the landmark decision in *Foo Kian Beng v. OP3 International Pte Ltd* demonstrates how the judiciary mandates directors to maintain a balance among diverse stakeholder interests, even during fundamental restructuring phases.[27] Transposing this *ratio decidendi* into the context of corporate acquisitions, the deliberate omission of ESG due diligence can be definitively construed as a breach of the duty of care.

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22 Rizki Risanto and Abdul Chalid, "The Impact of Mergers and Acquisitions on ESG Performance in Asia Pasific."
23 Gordon Kuo Siong Tan, "Assembling Sustainability Reporting in Singapore," *Competition & Change* 26, no. 5 (October 15, 2022): 629–49, https://doi.org/10.1177/10245294211020624.
24 Lawrence Loh and Sharmine Tan, "Impact of Sustainability Reporting on Brand Value: An Examination of 100 Leading Brands in Singapore," *Sustainability* 12, no. 18 (September 9, 2020): 7392, https://doi.org/10.3390/su12187392.
25 Singapore Exchange Limited, "Practice Note 7.6 Sustainability Reporting Guide," Singapore Exchange Limited, 2026, https://rulebook.sgx.com/rulebook/practice-note-76-sustainability-reporting-guide.
26 Zhiyuan Sun, "Evaluation Singapore's Sustainability Reporting Alignment with the IFRS S1 Standards," September 3, 2024, https://doi.org/10.20944/preprints202409.0236.v1.
27 Luh, "When Green Meets Governance: How ESG Is Reshaping Directors' Duties in Common Law."

Table 1. Comparative Analysis of Legal Parameters for ESG Due Diligence and Reporting Within Corporate Frameworks

Legal Parameter	Singaporean Legal Framework	Indonesian Legal Framework	Critical Normative Gap Analysis
Regulatory Basis for Reporting	Mandatory SGX Listing Rules imposing phased tiering (ISSB & TCFD alignment).	OJK Regulation No. 51/2017 & OJK Circular No. 16/2021 exclusively bind issuers, public companies, and financial services institutions.	Legal fragmentation in Indonesia exempts purely private (non-listed) corporations, facilitating systemic "toxic asset" liability loopholes during M&A transactions.
Fiduciary Duty Construction Regarding Stakeholders	Common law jurisprudence proportionally interprets stakeholder duties within the confines of the business judgment rule.	Rigidly confined to a textualist interpretation of Article 74 of the Company Law (UUPT), which diminishes ESG to mere CSR expenditures.	The UUPT architecture's failure to conceptualize ESG as a core operational risk mitigation instrument effectively obstructs holistic due diligence.
Enforcement Against Greenwashing Practices	Integrated through subsidiary legislation and interventions by competition and consumer protection authorities.	Specific statutory vacuum; enforcement relies entirely on the general civil tort of unlawful acts (*perbuatan melawan hukum*).	Lacking a definitive greenwashing offense, acquisition prospectuses manipulating ecological claims cannot be precisely invalidated.

In stark contrast to Singapore's architecture, Indonesian positive law presents a conceptually disoriented regulatory panorama. The central ESG pillar—Financial Services Authority (OJK) Regulation No. 51/POJK.03/2017—operates essentially as sectoral administrative law, categorically exempting hundreds of thousands of large-scale, closely held limited liability companies operating in the real sector.[28] The regulation of these private entities defers entirely to Law No. 40 of 2007 on Limited Liability Companies (UUPT). The root of the problem lies in the formulation of Article 74 of the UUPT regarding Corporate Social and Environmental Responsibility (TJSL), which constructs ESG merely as a philanthropic "cost budgeting" burden imposed on natural resource companies. Consequently, legal due diligence practices during target acquisitions in Indonesia frequently fail to map latent environmental disputes. Upon finalizing cross-border transactions, foreign acquirers risk piercing their parent balance sheets with hidden liabilities that trigger defaults under sustainability-linked loan covenants.

[28] Denny Rahmansyah, Aldilla Stephanie Suwana, and Albertus Jonathan Sukardi, "A Regional Comparison of ESG Regulations: Indonesia," Asia Business Law Journal, 2023, https://law.asia/comparison-of-esg-regulations-indonesia/.

2. The Clash of Norms in Extraterritorial Restructuring: A Jurisprudential Analysis of the SICC Decision in Re PT Garuda Indonesia

The enforcement of cross-border mergers and corporate debt restructurings invariably invites jurisdictional friction. Within this arena, ESG integration is increasingly asserting itself as a substantive public policy limitation. This dynamic is vividly articulated in the 2024 Singapore International Commercial Court (SICC) ruling concerning the recognition of PT Garuda Indonesia (Persero) Tbk's statutory suspension of debt payments (*Penundaan Kewajiban Pembayaran Utang* or PKPU) scheme. This judgment provides a highly relevant empirical model for analyzing the clash of norms between Indonesian insolvency frameworks and transnational adjudicatory regimes.[29] The SICC held that the Indonesian PKPU scheme was legally valid and binding within Singapore, expressly rejecting arguments that sought to deny recognition based on procedural disparities in creditor classification. The court definitively ruled that the "public policy" exception must inherently be construed narrowly.

Although the ruling primarily grapples with the validity of substantive private law rights, analyzing its rationale through the lens of Stakeholder Theory reveals profound theoretical implications for ESG enforcement. Looking forward, foreign creditors or multinational labor unions governed by stringent European regulations—such as the Corporate Sustainability Due Diligence Directive (CSDDD)—could invoke claims of "fundamental violations of human rights and climate standards." These claims could easily be weaponized as a definitive breach of public policy before foreign tribunals.[30] If Indonesia's M&A legal framework continues to relativize ecological rights protections and fails to incorporate climate materiality testing, foreign judiciaries may increasingly deploy the public policy exception as a jurisprudential veto. This doctrine would effectively empower them to categorically deny the extraterritorial recognition of Indonesian corporate restructurings.

3. The Statutory Vacuum in the Anatomy of the KPPU's Merger Control: The Imperative of a "Green Antitrust" Assessment

Beyond the civil law mechanics of due diligence, the legal validity of corporate consolidations must clear the ultimate administrative and economic threshold: antitrust law. Within Indonesia, this adjudicatory mechanism reveals a profound analytical deficit regarding

[29] Singapore International Commercial Court (SICC). (2024). Re PT Garuda Indonesia (Persero) Tbk SGHC(I) 1.
[30] Charl de Villiers, Sanjaya Kuruppu, and Dinithi Dissanayake, "A (New) Role for Business – Promoting the United Nations' Sustainable Development Goals through the Internet-of-Things and Blockchain Technology," *Journal of Business Research* 131 (July 2021): 598–609, https://doi.org/10.1016/j.jbusres.2020.11.066.

sustainable corporate governance. The merger control regime, as delineated by KPPU Regulation No. 3 of 2023, is structured as a monolithic post-merger notification system predicated exclusively on the calculation of combined asset or sales thresholds.[31] This rigid statutory construction reduces the substantive evaluation of market competition to mechanical market share calculations, effectively blinding the agency to the urgency of assessing sustainability impacts.

Global corporate trends indicate an exponential surge in vertical M&A transactions within the renewable energy sector. This phenomenon has inevitably spawned predatory anticompetitive maneuvers. Bereft of sufficient statutory authority, the KPPU lacks the ecological rationale to intervene when a carbon-intensive incumbent acquires a green tech startup with the express intent of abandoning its technology—a classic "killer acquisition".[32] Excluding product lifecycle analysis from the antitrust framework manifests a severe regulatory inertia within the state’s public policy architecture. This inaction permits monopolistic market consolidations to extract massive profitability at the direct expense of the ecological equilibrium. Consequently, it is imperative that the KPPU be granted the discretionary statutory authority to adopt a "green antitrust" enforcement model. Such a framework would empower the commission to either grant conditional clearance based on demonstrable, absolute emission-reduction efficiencies or unilaterally veto acquisitions that threaten to accelerate systemic deforestation.

4. The Reconstruction of Domestic Corporate and Antitrust Law Anchored in the 2023 G20/OECD Principles

The logical terminus of this comparative analysis of normative tensions justifies the urgent need for transformative legal engineering. Drawing upon the 2023 revisions to the G20/OECD Principles of Corporate Governance, the international legal architecture formally mandates boards of directors to systematically embed environmental risk metrics into the very core of corporate reporting.[33] To operationalize this governance framework, Indonesia's positive law must undergo structural renovation through two primary pillars of legislative reform.

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[31] Satya Arinanto, Dian Parluhutan, and Louise Sabela, “Compatibility Between the Indonesian Competition Law and Indonesia’s Climate Change Mitigation Policy Under The UNFCCC Paris Agreement 2016: Quo Vadis?,” *Indonesian Journal of International Law* 22, no. 4 (June 27, 2025): 731–62, https://doi.org/10.17304/ijil.vol22.4.1846.
[32] Valeria Falce and Nicola M. F. Faraone, “‘Killer Acquisitions’ or ‘Killing Innovation’: Antitrust Implications of the New Wave of Tech Acquisitions and the New European and Italian Regimes for Below-Threshold Mergers,” in *Research Handbook on Competition and Corporate Law* (Edward Elgar Publishing, 2025), 331–66, https://doi.org/10.4337/9781803920559.00029.
[33] OECD, *G20/OECD Principles of Corporate Governance 2023*. Hal, 1-45.

The first pillar necessitates a substantive amendment to Article 74 of the Company Law (UUPT). This statutory redefinition must transcend mere administrative patchwork; rather, it must be firmly anchored in the "Green Constitution" paradigm, as mandated by Article 28H, Paragraph 1, and Article 33, Paragraph 4, of the 1945 Constitution of the Republic of Indonesia.[34] This constitutional imperative dictates that both economic development and corporate actions must be fundamentally predicated on environmentally sound principles. Consequently, the jurisdictional limitation of ESG integration to specific economic sectors loses all juridical justification. Instead, compliance must be rendered mandatory for all large-scale corporations initiating restructuring. Operationally, the notarized merger plan must legally require the inclusion of an independent audit, specifically an "ESG Due Diligence and Impact Analysis Report." Administrative failure to fulfill this obligation should crystallize the piercing of the corporate veil, thereby exposing the directors' personal assets to liability resulting from gross negligence.

The second pillar hinges on the critical need to amend Law No. 5 of 1999, effectively transforming the KPPU’s structural evaluation framework to champion the "green antitrust" doctrine. The parameter of "ecological efficiency" must be codified within the agency's antitrust assessment guidelines as a legitimate legal basis for either clearing or enjoining a transaction.

Viewed through the lens of investment law, enforcing mandatory ESG compliance does not constitute an abridgment of the freedom of contract. Rather, it operates as a manifestation of preventive legal protection for both foreign and domestic investors. Stringent ESG standards shield investors from the trap of sunk costs precipitated by the revocation of environmental permits or post-acquisition operational sanctions.[35] This legal certainty in risk mitigation empirically functions as the primary determinant for preserving the stability and long-term attractiveness of Foreign Direct Investment (FDI) inflows.

A dialectical comparison between Indonesia’s corporate architecture and Singaporean jurisprudence reveals that securing the domestic legal framework’s supremacy in global investment diplomacy demands a profound paradigm shift. The state, acting through its legislature, must exhibit the legal-political commitment (*politik hukum*) to elevate ESG metrics from voluntary guidelines (soft law) into binding statutory mandates (hard law). Integrating this

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[34] Absori Absori et al., “The Prospect of Environmental Law to Achieve Healthy Environmental Development in Indonesia,” *Medico-Legal Update* 20, no. 1 (January 27, 2020): 204–8, https://doi.org/10.37506/mlu.v20i1.356.

[35] Muhamad Rizal, R. Anang Muftiadi, and Agus Taryana, “Integration of ESG Principles in Business Law: Why Should Indonesian Companies Care?,” *Social Sciences & Humanities Open* 13 (June 2026): 102447, https://doi.org/10.1016/j.ssaho.2026.102447.

reformative commitment into the core anatomy of corporate merger and restructuring doctrines is essential. Ultimately, such integration guarantees the legal certainty of investments, aligning corporate maneuvers meticulously with the principles of long-term ecological sustainability.

C. CONCLUSION

The regulatory disparity governing corporate mergers and acquisitions (M&A) between Indonesia and Singapore illustrates a critical deficit: the absence of mandatory Environmental, Social, and Governance (ESG) due diligence in Indonesia generates profound legal uncertainty that severely erodes preventive protections for cross-border investors. The failure of the domestic legal architecture is dual-pronged. First, a statutory anomaly within Article 74 of the Company Law (UUPT) improperly diminishes ESG obligations to mere corporate philanthropy. Second, the merger control regime enforced by the Business Competition Supervisory Commission (KPPU) entirely lacks sustainability parameters. Together, these structural defects severely elevate the risk that acquiring entities will absorb latent environmental liabilities—acting as irreversible sunk costs—and stumble into greenwashing traps, directly threatening capital stability.To cure this fundamental public policy defect, the state must restructure its corporate law by fully adopting a "Green Constitution" paradigm. The legislature must unequivocally elevate ESG reporting metrics from voluntary guidelines (*soft law*) into binding statutory mandates (*hard law*) governing large-scale corporate restructurings. Fortifying ESG due diligence and integrating "green antitrust" assessments into the competition authority’s mandate are absolute imperatives. These reforms are essential not only to restore the long-term attractiveness of Foreign Direct Investment (FDI) inflows but also to ensure that investment legal certainty operates in strict harmony with ecological equilibrium.

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