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Integrating ESG in Corporate Restructuring: Comparative Legal Frameworks of Indonesia and Singapore

Integrasi ESG dalam Restrukturisasi Korporasi: Komparasi Kerangka Hukum Antara Indonesia dan Singapura

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Abstract

This article comparatively analyzes the integration of Environmental, Social, and Governance (ESG) standards within corporate restructuring frameworks in Indonesia and Singapore. Driven by the global transition towards stakeholder capitalism, this study investigates how structural disparities in positive law and fiduciary duty doctrines dictate legal due diligence in mergers and acquisitions. Utilizing a comparative doctrinal methodology, the analysis applies stakeholder and legitimacy theories to evaluate the Indonesian Company Law and antitrust regulations against Singapore's mandatory reporting regime. The findings demonstrate that Indonesia's fragmented regulatory architecture and purely quantitative merger control mechanisms facilitate impression management, exposing acquiring entities to severe extraterritorial liabilities. Conversely, Singapore effectively mitigates these risks through institutionalized compliance and dynamic judicial interpretation. The research concludes that amending Indonesia's corporate law to mandate ESG due diligence and instituting a preliminary green antitrust evaluation are imperative to prevent greenwashing and ensure legal certainty in sustainable transnational business consolidation and corporate transactions.

Abstrak

Artikel ini menganalisis secara komparatif integrasi standar *Environmental, Social, and Governance* (ESG) dalam kerangka restrukturisasi korporasi di Indonesia dan Singapura. Didorong oleh transisi global menuju kapitalisme pemangku kepentingan, penelitian ini menginvestigasi bagaimana disparitas struktural dalam hukum positif dan doktrin kewajiban fidusia mendikte uji tuntas hukum pada penggabungan dan pengambilalihan. Menggunakan metodologi doktrinal komparatif, analisis ini menerapkan teori pemangku kepentingan dan legitimasi untuk mengevaluasi perundangan korporasi beserta regulasi persaingan usaha Indonesia terhadap rezim pelaporan imperatif Singapura. Temuan mendemonstrasikan bahwa arsitektur regulasi Indonesia yang terfragmentasi dan mekanisme pengendalian penggabungan kuantitatif memfasilitasi rekayasa impresi, sehingga mengekspos entitas pengakuisisi pada ancaman liabilitas ekstrateritorial yang parah. Sebaliknya, Singapura secara efektif memitigasi risiko tersebut melalui kepatuhan terinstitusionalisasi dan interpretasi yudisial dinamis. Riset ini menyimpulkan bahwa mengamandemen hukum korporasi Indonesia untuk mewajibkan uji tuntas ESG dan mengadopsi evaluasi *green antitrust* adalah instruksi imperatif untuk mencegah *greenwashing* serta menjamin kepastian hukum dalam transaksi konsolidasi bisnis transnasional skala internasional.

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A. INTRODUCTION

1. Background

In the third decade of the twenty-first century, the landscape of global corporate law is undergoing a fundamental paradigmatic shift from the doctrine of shareholder primacy toward a governance model predicated on stakeholder capitalism. This transformation is manifested through Environmental, Social, and Governance (ESG) metrics, which are now intrinsically embedded within corporate strategic decision-making frameworks.[1] Within the macroeconomic and global legal architecture, ESG has transcended its status as a mere philanthropic instrument or a charitably oriented iteration of Corporate Social Responsibility (CSR). Rather, these metrics have evolved into vital mechanisms for financial risk mitigation, a binding baseline for regulatory compliance, and a foundational cornerstone for the contemporary interpretation of directors' fiduciary duties.[2,3]

This paradigmatic transition precipitates a critical clash of norms when operationalized in high-stakes strategic corporate actions, most notably within corporate restructuring transactions such as mergers and acquisitions (M&A). Corporate law is increasingly compelled to reconcile two competing poles of interest: on the one hand, the maximization of shareholder wealth through transactional synergies, and on the other, the imperative to mitigate legacy ESG risks inherited from the target entity. A failure to institutionalize ESG integration within the due diligence framework engenders not only exposure to post-closing valuation impairments, but also precipitates multijurisdictional litigation, the revocation of antitrust clearances, and civil liability claims against directors predicated on greenwashing allegations.[4]

Narrowing the analytical lens to the Southeast Asian regional landscape, the divergence among legal regimes in addressing ESG mandates engenders profound theoretical complexities. Singapore, operating within a common law tradition, has adopted a 'climate-first' regulatory posture through proactive amendments to the

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[1] Gaurav Talan et al., "From ESG to Holistic Value Addition: Rethinking Sustainable Investment from the Lens of Stakeholder Theory," *International Review of Economics & Finance* 96 (November 2024): 103530, https://doi.org/10.1016/j.iref.2024.103530.
[2] Reinier Kraakman et al., *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 3rd ed. (Oxford: Oxford University Press, 2017). Hal, 89-91.
[3] 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/.
[4] Jones Day, "APAC ESG Update | Spring Quarter 2024," Jones Day, 2024, https://www.jonesday.com/en/insights/2024/07/apac-esg-update-spring-2024.

Singapore Exchange (SGX) Listing Rules, which institute a phased mandate for sustainability disclosures.[5] Furthermore, the Singaporean judiciary has elevated the interpretive scope of directors' fiduciary duties within the conceptual framework of enlightened shareholder value (ESV), whereby a failure to mitigate ESG risks can effectively abrogate the protections afforded by the business judgment rule.[6]

Conversely, the Indonesian legal architecture is characterized by regulatory fragmentation and normative lacunae. This asymmetry engenders profound uncertainty during cross-border restructurings, as exemplified by the Singapore International Commercial Court (SICC) decision concerning the recognition of the restructuring plan of PT Garuda Indonesia (Persero) Tbk (*Re PT Garuda Indonesia*, SGHC(I) 1).[7] "The cross-border legal friction endured by Garuda during its debt restructuring establishes a precedent that would become exponentially more critical and complex were it to manifest within substantive corporate merger and acquisition (M&A) transactions, wherein the commingling of assets and environmental liabilities becomes permanent.

Within the domestic sphere, the sectoral regulatory framework of the Indonesian Financial Services Authority (OJK) maintains an exclusive personal scope of application, thereby effectively excluding closely held corporations that are governed solely by Law No. 40 of 2007 on Limited Liability Companies (the Indonesian Company Law or UUPT).[8] The statutory formulation of Article 74 of the UUPT continues to relegate Corporate Social and Environmental Responsibility (CSER) to a mere budgetary expense, rather than conceptualizing it as an essential governance framework for mitigating material operational risks.[9] Furthermore, the merger control regime administered by the Indonesian Competition Commission (KPPU) pursuant to KPPU Regulation No. 3 of 2023 relies exclusively on asset or turnover thresholds. This strictly quantitative framework risks clearing ecologically destructive market consolidations, as it completely fails to

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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 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.

8 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/.

9 “Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas (UUPT)” (2007).

integrate environmental sustainability parameters into its competitive effects analysis.[10]

A mapping of the extant literature reveals a stark polarization in the analytical focus surrounding ESG governance within corporate restructurings. The current scholarly landscape is largely bifurcated into two primary axes: the first is dominated by empirical econometric analyses concerning post-merger performance and valuation,[11,12,13] and the second encompassing theoretical discourses on the manipulation of sustainability reporting (impression management) and the boundaries of directors' fiduciary duties across divergent institutional governance regimes.[14,15,16,17] "A synthesis of this literature uncovers a fundamental research gap: prior scholarship has failed to dissect the doctrinal mechanics of positive law enforcement. Specifically, a profound scholarly void exists regarding how ambiguities within civil law—namely, directors' fiduciary duties during due diligence—and antitrust law—specifically, the pre-merger notification regime—interact to undermine the substantive validity of a merger transaction prior to closing.

To address this theoretical lacuna, this study offers a novel analytical approach by dissecting the structural anatomy of civil law and antitrust enforcement within merger and acquisition (M&A) frameworks. Through a comparative evaluation of Indonesia's UUPT and KPPU regimes against Singapore's Companies Act and SGX regulatory oversight, this article holistically delineates the structural deficiencies within Indonesian

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10 "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).

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 (April 29, 2026): 1–20, https://doi.org/10.24914/jeb.v29i1.17060.

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 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.

14 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.

15 James S. Mukombwe, Andrea du Toit, and Sheryl L. Hendriks, "Sustainable Development Goal 16: Peace, Justice and Strong Institutions," in *Handbook on Public Policy and Food Security* (Champaign: Edward Elgar Publishing, 2024), 376–85, https://doi.org/10.4337/9781839105449.00041.

16 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.

17 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.

legislation—most notably, its persistent conflation of philanthropy with material risk governance—and demonstrates how this doctrinal disorientation fundamentally subverts the efficacy of legal due diligence.

In conclusion, this article advances the central argument that absent legal engineering that imperatively integrates mandatory ESG due diligence into the standard of directors' fiduciary duties under the UUPT, and without the inclusion of sustainability-based public interest parameters into the KPPU's merger clearance framework, the enforcement of ESG mandates within Indonesian corporate restructurings will remain acutely vulnerable to greenwashing. The integration of climate-readiness standards into positive law instruments has evolved into a determinative corporate legal liability mitigation shield.[18] Accordingly, this manuscript proposes a conceptual reconstruction by advocating for the redefinition of Article 74 of the UUPT to encapsulate the doctrine of ESG materiality, alongside the expansion of the KPPU's statutory authority to evaluate ecological efficiencies ('green efficiencies') as a substantive baseline for the legality of corporate restructurings.

2. Research Questions

To resolve these theoretical and normative lacunae, this article investigates two central inquiries: (1) how the intersection of positive law regimes and the doctrine of fiduciary duty dictates the enforcement of ESG materiality standards within corporate restructuring due diligence in Indonesia through a comparative lens with Singapore; and (2) how the structural architecture of the UUPT and the merger control regime administered by the KPPU must be reconstructed to eliminate governance ambiguities, prevent greenwashing practices, and safeguard cross-border legal certainty.

3. Research Methods

This study employs a comparative doctrinal research framework to investigate the intersection of positive law norms, the doctrine of fiduciary duty, and antitrust regimes concerning the implementation of ESG governance. The comparative approach is specifically operationalized to address the primary inquiry regarding the divergence in due diligence obligations and the efficacy of enforcement. In this context, Singapore is utilized as an institutional benchmark, given the sophistication of its common law tradition in integrating mandatory climate disclosure standards into the Singapore

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

Exchange (SGX) Listing Rules,[19,20] as well as the jurisprudential agility of its commercial judiciary in interpreting cross-border fiduciary duty doctrines within corporate restructuring schemes.[21]

"To address the second inquiry concerning the reconstruction of the domestic legal architecture, this study synthesizes a statutory approach and a conceptual approach. The normative evaluation focuses on the harmonization of primary legal authorities—comprising Law No. 40 of 2007 on Limited Liability Companies (UUPT), OJK Regulation No. 51/POJK.03/2017, and KPPU Regulation No. 3 of 2023—with global governance benchmarks, specifically those codified in the 2023 G20/OECD Principles of Corporate Governance.[22]

These regulatory instruments and judicial precedents are analyzed via deductive syllogism, utilizing Stakeholder Theory and Legitimacy Theory as the overarching analytical framework. Specifically, stakeholder theory serves as a theoretical lens to redefine the contours of directors' duties, ensuring they are no longer subordinated to the absolute doctrine of shareholder primacy.[23] Concurrently, legitimacy theory is deployed to dissect the empirical regulatory loopholes that facilitate corporate impression management and greenwashing practices within sustainability disclosures.[24] Through this theoretical synthesis and institutional comparison, this study articulates a comprehensive normative prescription for the reform of due diligence under the UUPT and the pre-merger notification evaluation within the KPPU regime.

B. DISCUSSION

1. The Paradigmatic Tension Between Fiduciatry Duty Doctrines and ESG Due Diligence

Merger and acquisition (M&A) transactions serve as fundamental corporate instruments for achieving inorganic growth. Yet, within this same strategic phase,

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[19] Singapore: Accounting and Corporate Regulatory Authority, "Sustainability Reporting and Assurance Requirements."
[20] 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.
[21] "Singapore International Commercial Court (SICC). (2024). Re PT Garuda Indonesia (Persero) Tbk SGHC(I) 1" (2024).
[22] OECD, *G20/OECD Principles of Corporate Governance 2023*.
[23] Justin Robert Blount and Michael Conklin, "Non-Human Stakeholders: Testing the Boundaries of Stakeholder Theory," *SSRN Electronic Journal*, 2023, 229–67, https://doi.org/10.2139/ssrn.4402429.
[24] Craig Deegan, "Introduction: The Legitimising Effect of Social and Environmental Disclosures – a Theoretical Foundation," *Accounting, Auditing & Accountability Journal* 15, no. 3 (August 1, 2002): 282–311, https://doi.org/10.1108/09513570210435852.

corporations are exposed to the risk of transferring latent legal liabilities, encompassing environmental pollution disputes, labor rights infractions, and systemic governance malpractices. Risanto and Chalid affirm that target companies boasting robust Environmental, Social, and Governance (ESG) metrics inject enhanced sustainability performance into the acquiring entity.[25] From a doctrinal standpoint, this positive valuation transfer predicates upon a robust substantive legal foundation that compels the acquiring entity to scrutinize and validate the veracity of the target's ESG data through a rigorous legal due diligence framework. A failure to execute commensurate due diligence inevitably results in the absorption of toxic assets, thereby eroding post-merger market capitalization.

Within the Singaporean jurisdiction, sustainability disclosure obligations and ESG due diligence do not operate merely as moral exhortations; rather, they are prescriptively institutionalized by the exchange authority. Pursuant to the amendments to the Singapore Exchange Listing Rules (SGX Listing Rules 711A and 711B), sustainability reporting is enforced through a 'comply or explain' framework that progressively narrows the regulatory margin of tolerance.[26] "Commencing in fiscal year 2025, the SGX intensified its disclosure enforcement by mandating the reporting of Scope 1 and Scope 2 Greenhouse Gas (GHG) emissions for all listed issuers, alongside a phased integration of the International Sustainability Standards Board (ISSB) framework tailored to corporate market capitalization. This regulatory shift effectively dismantles the voluntary paradigm long justified by corporate appeals to compliance-cost efficiency.[27]

From the perspective of corporate law doctrine, although Singapore's Companies Act 1967 has yet to explicitly codify ESG terminology, the jurisprudence of its commercial judiciary has progressively infused sustainability principles into the business judgment rule. The landmark ruling in *Foo Kian Beng v. OP3 International Pte Ltd* (SGCA 10) illustrates a paradigm shift from shareholder primacy toward enlightened shareholder value, wherein the board of directors is legally obligated to account for stakeholder interests, particularly when the corporation undergoes a fundamental restructuring scheme.[28] Within the context of acquisitions, the deliberate omission of ESG due diligence

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[25] Rizki Risanto and Abdul Chalid, "The Impact of Mergers and Acquisitions on ESG Performance in Asia Pasific."
[26] Singapore Exchange Limited, "Practice Note 7.6 Sustainability Reporting Guide."
[27] Singapore: Accounting and Corporate Regulatory Authority, "Sustainability Reporting and Assurance Requirements."
[28] Luh, "When Green Meets Governance: How ESG Is Reshaping Directors' Duties in Common Law."

by an acquiring entity in Singapore can be construed as a breach of the duty of care. Such negligence, which culminates in the absorption of environmental liabilities, exposes directors to derivative actions and claims for damages—demonstrating that common-law enforcement does not invariably require a statutory catch-all provision when courts dynamically interpret fiduciary duties.[29]

In stark contrast to Singapore's cohesive legal architecture, positive law in Indonesia exhibits a highly fragmented regulatory landscape. Financial Services Authority Regulation (POJK) No. 51/POJK.03/2017 operates purely as a sectoral administrative instrument, exclusively binding financial services institutions, publicly traded issuers, and public companies.[30,31] Consequently, the vast majority of large-scale private companies operating within the real sector remain exclusively subject to the governance of Law No. 40 of 2007 on Limited Liability Companies (UUPT).[32,33] Herein lies the root of the normative disorientation: Article 74 of the UUPT construes Corporate Social and Environmental Responsibility (TJSL) merely as a discriminatory 'cost-budgeting' obligation confined to the natural resources sector, rather than an integrated risk management framework embedded across all corporate operations.

Operationalizing legitimacy theory reveals that private corporations in Indonesia exploit the regulatory gaps within Article 74 of the UUPT merely as a vehicle for impression management. This manipulation artificially mitigates regulatory scrutiny—engendering a veneer of statutory compliance through superficial charitable donations—without requiring any substantive alteration to their core, and potentially exploitative, business models.[34,35,36] These impression management practices engender a fatal

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[29] Kraakman et al., *The Anatomy of Corporate Law: A Comparative and Functional Approach*. Hal, 89-91.
[30] Rahmansyah, Suwana, and Sukardi, "A Regional Comparison of ESG Regulations: Indonesia."
[31] Karunya Saka Listianto, "Indonesia's Chairmanship of Asean 2023: Advancing Regional Collaboration on Environmental Diplomacy," *Jurnal Studi Diplomasi Dan Keamanan* 17, no. 1 (2025): 31–47, https://doi.org/10.31315/jsdk.v17i1.14405.
[32] Peter Draper et al., "The Impact of Due Diligence Legislation on International Trade and Business: Analysis of Potential Trade-Offs," *Global Policy* 16, no. 5 (November 18, 2025): 1075–86, https://doi.org/10.1111/1758-5899.70096.
[33] Annisa Sekaringtias, Brunilde Verrier, and Jennifer Cronin, "Untangling the Socio-Political Knots: A Systems View on Indonesia's Inclusive Energy Transitions," *Energy Research & Social Science* 95 (January 2023): 102911, https://doi.org/10.1016/j.erss.2022.102911.
[34] Maha Faisal Alsayegh, Rashidah Abdul Rahman, and Saeid Homayoun, "Corporate Economic, Environmental, and Social Sustainability Performance Transformation through ESG Disclosure," *Sustainability* 12, no. 9 (May 11, 2020): 3910, https://doi.org/10.3390/su12093910.
[35] de Villiers, Kuruppu, and Dissanayake, "A (New) Role for Business – Promoting the United Nations' Sustainable Development Goals through the Internet-of-Things and Blockchain Technology."
[36] Deegan, "Introduction: The Legitimising Effect of Social and Environmental Disclosures – a Theoretical Foundation."

information asymmetry within cross-border due diligence. Consequently, multinational acquiring entities bound by stringent global regulations run the risk of absorbing Indonesian target companies saddled with latent environmental or labor liabilities, ultimately destabilizing the corporate group's consolidated balance sheet and breaching sustainability-linked financing covenants.[37]

Table 1. Comparative Legal Parameters of ESG Due Diligence and Corporate Disclosure Frameworks

Legal Parameter	**Singapore Legal Framework**	**Indonesian Jurisdiction**	**Critical Normative Gap Analysis**
Regulatory Foundation for Reporting	*Mandatory SGX Listing Rules utilizing a phased, tiered integration based on the ISSB framework.*	POJK No. 51/POJK.03/2017, which exclusively binds listed issuers, public companies, and financial services institutions (LJK).	This regulatory fragmentation exempts large-scale private (non-listed) corporations, creating a systemic loophole for concealing material liabilities within M&A transactions.
Construction of Fiduciary Duties	Common-law jurisprudence dynamically interprets stakeholder interests commensurately within the *Business Judgment Rule* (e.g., *Foo Kian Beng* ruling).	Rigidly locked into a literalist, textualist interpretation of Article 74 of the UUPT, which reduces ESG metrics merely to corporate social responsibility (CSR) expenditure.	The structural architecture of the UUPT artificially dichotomizes core business operations from material risk mitigation, structurally impeding the execution of holistic *due diligence*.
Greenwashing Enforcement	Integrated via robust secondary legislative interventions and definitive, enforceable administrative sanctions by the exchange authority.	Marked by a specific statutory lacuna; relying instead on generalized frameworks of unlawful acts (*Perbuatan Melawan Hukum*/tort) or criminal fraud, which demand a high burden of proof.	Absent a precise, actionable greenwashing offense, acquisition prospectuses that manipulate ecological claims cannot be effectively scrutinized or invalidated on an *ex-ante* basis.

[37] Riyan Al Fajri, "Facing Legal Uncertainty: Challenges of Corporate Law and Environmental Regulation for Sustainable Business Practices in Indonesia," *Journal of Social Research* 4, no. 4 (March 2025): 726–34, https://doi.org/10.55324/josr.v4i4.2503.

2. The Extraterritoriality of Restructuring and Public Policy Limitations

The enforcement of law within large-scale corporate consolidations and restructuring transactions frequently ignites cross-border jurisdictional friction, wherein ESG compliance increasingly operates as a public policy limitation governing transactional validity. This discourse is vividly articulated through the 2024 ruling of the Singapore International Commercial Court (SICC) concerning the recognition of the Suspension of Debt Payment Obligations (PKPU) scheme of PT Garuda Indonesia (Persero) Tbk (*Re PT Garuda Indonesia* [2024] SGHC(I) 1).[38] The SICC overruled the lessors' objections, which contended that the procedural discrepancies in creditor class voting under the Indonesian PKPU framework contravened Singaporean public policy and subverted the protective doctrine of the *Gibbs* rule.[39] The SICC emphasized that the public policy exception must be narrowly construed and cannot be invoked to deny the recognition of foreign judgments merely on the basis of procedural disparities in restructuring frameworks.[40]

Although the ruling in *Re PT Garuda Indonesia* originates from a debt restructuring (PKPU) context, its *ratio decidendi* regarding the public policy exception carries profound precedential significance that can be extensively extrapolated to mergers and acquisitions (M&A) frameworks. If the mere procedural classification of civil creditors can be litigated on public policy grounds, then the manipulation of climate materiality within cross-border M&A prospectuses—now imperatively governed by extraterritorial instruments like the European Union's Corporate Sustainability Due Diligence Directive (CSDDD)—possesses an inherently greater potential to invoke an invalidation veto by foreign judiciaries.[41,42]

"Should an M&A transaction originating from Indonesia be proven to conceal modern slavery liabilities or the manipulation of toxic emission reports (greenwashing), global regulatory instruments—such as the Green Claims Directive—alongside seminal precedents like *ClientEarth v. Shell*, will increasingly compel transnational judiciaries to

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[38] Singapore International Commercial Court (SICC). (2024). Re PT Garuda Indonesia (Persero) Tbk SGHC(I) 1.

[39] Jones Day, "Singapore Court Issues Landmark Decision Recognizing Indonesian Restructuring Plan."

[40] Blount and Conklin, "Non-Human Stakeholders: Testing the Boundaries of Stakeholder Theory."

[41] Lucian A. Bebchuk and Roberto Tallarita, "The Perils and Questionable Promise of ESG-Based Compensation," *SSRN Electronic Journal*, 2022, https://doi.org/10.2139/ssrn.4048003.

[42] Agne Sneideriene and Renata Legenzova, "Greenwashing Prevention in Environmental, Social, and Governance (ESG) Disclosures: A Bibliometric Analysis," *Research in International Business and Finance* 74 (February 2025): 102720, https://doi.org/10.1016/j.ribaf.2024.102720.

elevate climate viability and ethical standards into an essential component of public policy (*ordre public*).[43,44,45,46] "This constellation underscores that merger approvals sanctioned by Indonesian domestic authorities will be devoid of extraterritorial validity should the transaction's prospectus be fundamentally defective in accommodating the principle of material ecological transparency, thereby creating a procedural avenue for foreign judiciaries to completely deny the recognition of such restructuring schemes.[47]

3. Restructuring the UUPT and the Transition Toward KPPU's 'Green Antitrust' Framework

The validity of corporate merger and acquisition (M&A) transactions must navigate a final administrative-economic evaluation governed by antitrust law. Presently, the merger control regime under KPPU Regulation No. 3 of 2023 operates strictly through a post-merger notification framework and relies exclusively on conventional, quantitative metric thresholds, such as asset accumulation or sales turnover.[48] "This doctrinal construction reduces competitive analysis to narrow market-share calculations, systematically excluding the dimension of ecological sustainability. Global trends underscore a surge in strategic acquisitions within the green technology sector, wherein predatory maneuvers—such as 'killer acquisitions' designed to mothball renewable energy patents—can directly derail national energy transition trajectories.[49]

To resolve this epistemological paralysis, it is imperative to reconstruct Indonesia's corporate and competition law frameworks in alignment with the 2023 G20/OECD Principles of Corporate Governance, which mandate the integration of a dedicated

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[43] Gianluca Vitale et al., "Investigating How Mandatory Sustainability Reporting Influences Corporate Governance Effects on ESG Performance: From Obligation to Impact for Sustainable Development," *Corporate Social Responsibility and Environmental Management* 32, no. 5 (September 19, 2025): 6261–82, https://doi.org/10.1002/csr.70025.
[44] Vittorio Laus et al., "Are Deal Premiums Affected by ESG and Financial Distress?," *International Review of Economics & Finance* 102 (September 2025): 104401, https://doi.org/10.1016/j.iref.2025.104401.
[45] Hendrik Silalahi, "Indonesia M&A 2026 Guide: KPPU Reg, Foreign-to-Foreign Nexus & PMK 1/2026," Global Law Experts, 2026, https://globallawexperts.com/indonesia-ma-2026-guide/.
[46] Sabyasachi Mondal et al., "Navigating the Evolution: A Comprehensive Review of Sustainable Finance in Mergers and Acquisitions," *F1000Research* 14 (March 14, 2025): 298, https://doi.org/10.12688/f1000research.150207.1.
[47] OECD, *G20/OECD Principles of Corporate Governance 2023*.
[48] 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.
[49] Sipei Zhou, "Integrating ESG Principles into Directors' Fiduciary Duties: A Legal Framework for Regulatory Application," *Advances in Economics, Management and Political Sciences* 243, no. 1 (December 3, 2025): 66–71, https://doi.org/10.54254/2754-1169/2026.BJ30281.

chapter on “Sustainability and Resilience".[50] The first pillar mandates amending Article 74 of the UUPT to decouple the conceptualization of philanthropic CSR from the governance of ESG risk identification. This legislative overhaul must impose a statutory obligation upon any corporation undergoing fundamental restructuring to append an independently assured ESG Impact Assessment Report.[51,52] Under this newly conceptualized legal framework, the maladministration of ESG due diligence, the alteration of emissions data, or the concealment of environmental liabilities will directly satisfy the juridical thresholds for gross negligence or bad faith. Establishing these infractions vitiates the safe-harbor immunity of the business judgment rule, thereby triggering the doctrine of piercing the corporate veil to attach personal liability to the directors' private assets.

The second pillar hinges upon the transformation of the KPPU into the vanguard of the 'green antitrust' doctrine. Amendments to Law No. 5 of 1999 and the transition toward a mandatory pre-merger notification regime will fail to attain structural significance without the integration of an exemption clause predicated on ecological efficiencies.[53] This parameter operates through a dichotomous framework: serving as a justification for granting conditional clearance to corporate concentrations that empirically demonstrate accelerated decarbonization, while simultaneously establishing an absolute prohibitory prerogative to block acquisitions that exacerbate systemic pollution and environmental exploitation.

Restoring the fundamental competitiveness of Indonesian corporate law within the global investment landscape requires lawmakers to possess the jurisprudential commitment and political will to transform ESG metrics from the realm of *soft law* (voluntary guidelines) into imperative, binding instruments (*hard law*). Rigid compliance with pre-acquisition ESG integration does not inherently shackle transactional agility; rather, it erects a structural bastion of immunity shielding corporations and their boards of directors from cross-jurisdictional climate litigation, while simultaneously securing

[50] OECD, *G20/OECD Principles of Corporate Governance 2023*.
[51] Rizki Fajar, “Disparitas Risiko Merger Dan Akuisisi Tanpa Legal Due Diligence (LDD) Komprehensif Serta Keterlambatan Notifikasi Ke Komisi Pengawas Persaingan Usaha,” *Jurnal Ragam Pengabdian* 3, no. 1 (February 8, 2026): 5029–58, https://doi.org/10.62710/jpw7f009.
[52] Assegaf Hamzah & Partners, “Major Changes Ahead: Indonesian Competition Law Reform Moves Forward,” Assegaf Hamzah & Partners., 2025, https://www.ahp.id/major-changes-ahead-indonesian-competition-law-reform-moves-forward/.
[53] “Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktik Monopoli Dan Persaingan Usaha Tidak Seha” (1999).

legal certainty for sustainable restructurings.

C. CONCLUSION

The architectural divergence between Singapore's mandatory reporting regime and Indonesia's fragmented regulatory framework demonstrates a profound structural weakness in mitigating Environmental, Social, and Governance (ESG) risks within corporate merger and acquisition due diligence practices. The statutory lacuna regarding explicit ecological materiality disclosure obligations within the Limited Liability Company Law (UUPT) dilutes the supervisory standards governing directors' fiduciary duties, thereby doctrinally facilitating greenwashing and exposing acquiring entities to latent extraterritorial liabilities. Parallel to these civil vulnerabilities, the strictly quantitative approach under the KPPU's post-merger notification regime fails to accommodate the assessment of ecological efficiencies against potentially destructive market consolidations. Consequently, integrating ESG as a *hard law* obligation within future UUPT amendments, coupled with adopting *green antitrust* parameters within the KPPU's pre-merger notification mechanism, constitutes an absolute prerequisite to guarantee governance certainty and comprehensively mitigate cross-border liabilities.

REFERENCES

Alsayegh, Maha Faisal, Rashidah Abdul Rahman, and Saeid Homayoun. "Corporate Economic, Environmental, and Social Sustainability Performance Transformation through ESG Disclosure." *Sustainability* 12, no. 9 (May 11, 2020): 3910. https://doi.org/10.3390/su12093910.

Assegaf Hamzah & Partners. "Major Changes Ahead: Indonesian Competition Law Reform Moves Forward." Assegaf Hamzah & Partners., 2025. https://www.ahp.id/major-changes-ahead-indonesian-competition-law-reform-moves-forward/.

Bebchuk, Lucian A., and Roberto Tallarita. "The Perils and Questionable Promise of ESG-Based Compensation." *SSRN Electronic Journal*, 2022. https://doi.org/10.2139/ssrn.4048003.

Blount, Justin Robert, and Michael Conklin. "Non-Human Stakeholders: Testing the Boundaries of Stakeholder Theory." *SSRN Electronic Journal*, 2023, 229–67. https://doi.org/10.2139/ssrn.4402429.

Deegan, Craig. "Introduction: The Legitimising Effect of Social and Environmental Disclosures – a Theoretical Foundation." *Accounting, Auditing & Accountability Journal* 15, no. 3 (August 1, 2002): 282–311. https://doi.org/10.1108/09513570210435852.

Draper, Peter, Andreas Freytag, Naoise McDonagh, and Matthias Menter. "The Impact of Due Diligence Legislation on International Trade and Business: Analysis of Potential Trade-Offs." *Global Policy* 16, no. 5 (November 18, 2025): 1075–86.

https://doi.org/10.1111/1758-5899.70096.

Fajar, Rizki. "Disparitas Risiko Merger Dan Akuisisi Tanpa Legal Due Diligence (LDD) Komprehensif Serta Keterlambatan Notifikasi Ke Komisi Pengawas Persaingan Usaha." *Jurnal Ragam Pengabdian* 3, no. 1 (February 8, 2026): 5029–58. https://doi.org/10.62710/jpw7f009.

Fajri, Riyan Al. "Facing Legal Uncertainty: Challenges of Corporate Law and Environmental Regulation for Sustainable Business Practices in Indonesia." *Journal of Social Research* 4, no. 4 (March 2025): 726–34. https://doi.org/10.55324/josr.v4i4.2503.

Feyisetan, Omotayo Olaleye, 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.

Jones Day. "APAC ESG Update | Spring Quarter 2024." Jones Day, 2024. https://www.jonesday.com/en/insights/2024/07/apac-esg-update-spring-2024.

———. "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.

Kraakman, Reinier, John Armour, Paul Davies, Luca Enriques, Henry Hansmann, Gerard Hertig, Klaus Hopt, et al. *The Anatomy of Corporate Law: A Comparative and Functional Approach*. 3rd ed. Oxford: Oxford University Press, 2017.

Laus, Vittorio, Niccolò Nirino, Matilda Shini, and Antonio Salvi. "Are Deal Premiums Affected by ESG and Financial Distress?" *International Review of Economics & Finance* 102 (September 2025): 104401. https://doi.org/10.1016/j.iref.2025.104401.

Listianto, Karunya Saka. "Indonesia's Chairmanship of Asean 2023: Advancing Regional Collaboration on Environmental Diplomacy." *Jurnal Studi Diplomasi Dan Keamanan* 17, no. 1 (2025): 31–47. https://doi.org/10.31315/jsdk.v17i1.14405.

Luh, Lan 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/.

Martiny, Alice, Jonathan Taglialatela, Francesco Testa, and Fabio Iraldo. "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.

Mondal, Sabyasachi, Debdas Rakshit, Kishan Jee, and Satish Chandra Tiwari. "Navigating the Evolution: A Comprehensive Review of Sustainable Finance in Mergers and Acquisitions." *F1000Research* 14 (March 14, 2025): 298. https://doi.org/10.12688/f1000research.150207.1.

Mukombwe, James S., Andrea du Toit, and Sheryl L. Hendriks. "Sustainable Development Goal 16: Peace, Justice and Strong Institutions." In *Handbook on Public Policy and Food Security*, 376–85. Champaign: Edward Elgar Publishing, 2024. https://doi.org/10.4337/9781839105449.00041.

OECD. *G20/OECD Principles of Corporate Governance 2023*. OECD Publishing, 2023. https://doi.org/10.1787/ed750b30-en.

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).

Rahmansyah, Denny, 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/.

Rizki Risanto, Brian, and Dony Abdul Chalid. "The Impact of Mergers and Acquisitions on ESG Performance in Asia Pasific." *Jurnal Ekonomi Dan Bisnis* 29, no. 1 (April 29, 2026): 1–20. https://doi.org/10.24914/jeb.v29i1.17060.

Sekaringtias, Annisa, Brunilde Verrier, and Jennifer Cronin. "Untangling the Socio-Political Knots: A Systems View on Indonesia's Inclusive Energy Transitions." *Energy Research & Social Science* 95 (January 2023): 102911. https://doi.org/10.1016/j.erss.2022.102911.

Sidik, Muhamad, 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.

Silalahi, Hendrik. "Indonesia M&A 2026 Guide: KPPU Reg, Foreign-to-Foreign Nexus & PMK 1/2026." Global Law Experts, 2026. https://globallawexperts.com/indonesia-ma-2026-guide/.

Singapore: Accounting and Corporate Regulatory Authority. "Sustainability Reporting and Assurance Requirements." ACRA, 2026. https://www.acra.gov.sg/regulations/sustainability-reporting/requirements-timeline/.

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.

Singapore International Commercial Court (SICC). (2024). Re PT Garuda Indonesia (Persero) Tbk SGHC(I) 1 (2024).

Sneideriene, Agne, and Renata Legenzova. "Greenwashing Prevention in Environmental, Social, and Governance (ESG) Disclosures: A Bibliometric Analysis." *Research in International Business and Finance* 74 (February 2025): 102720. https://doi.org/10.1016/j.ribaf.2024.102720.

Talan, Gaurav, Gagan Deep Sharma, Vijay Pereira, and Glenn W. Muschert. "From ESG to Holistic Value Addition: Rethinking Sustainable Investment from the Lens of

Stakeholder Theory." *International Review of Economics & Finance* 96 (November 2024): 103530. https://doi.org/10.1016/j.iref.2024.103530.

Tang, Ning, Xiaodong Xu, Yuan-Teng Hsu, and Chih-Yung Lin. "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.

Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (UUPT) (2007).

Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Seha (1999).

Villiers, Charl de, 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.

Vitale, Gianluca, Sebastiano Cupertino, Giovanni Schiuma, and Ciro Troise. "Investigating How Mandatory Sustainability Reporting Influences Corporate Governance Effects on ESG Performance: From Obligation to Impact for Sustainable Development." *Corporate Social Responsibility and Environmental Management* 32, no. 5 (September 19, 2025): 6261–82. https://doi.org/10.1002/csr.70025.

Williams, Cynthia A., 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/.

Zhou, Sipei. "Integrating ESG Principles into Directors' Fiduciary Duties: A Legal Framework for Regulatory Application." *Advances in Economics, Management and Political Sciences* 243, no. 1 (December 3, 2025): 66–71. https://doi.org/10.54254/2754-1169/2026.BJ30281.