

Facing Legal Uncertainty: Challenges of Corporate Law and Environmental Regulation for Sustainable Business Practices in Indonesia

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ABSTRACT

This study explores the challenges posed by legal uncertainty in corporate law and environmental regulations that affect sustainable business practices in Indonesia. The research uses a normative approach to review existing literature, examining the connections between various legal frameworks and their implications for sustainability. The findings reveal that conflicting regulations, frequent changes to laws, and inconsistent enforcement hinder businesses from adopting sustainable practices. The introduction of the Omnibus Law in 2020, intended to simplify business processes, has led to concerns about weakened environmental protections, further complicating compliance for businesses. The study concludes that a comprehensive legal framework for sustainability, along with the establishment of a regulatory oversight body and improved stakeholder engagement, is necessary to reduce legal uncertainty and promote sustainable practices. By aligning environmental regulations with industrial policies, Indonesia can create a more stable legal environment that fosters sustainable business development, ultimately supporting the country's long-term economic and environmental goals.

Keywords: legal uncertainty, sustainable business practices, environmental, social and governance (ESG)

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INTRODUCTION

Indonesia faces challenges in balancing economic growth with environmental protection. The growth of industries in different areas has caused environmental problems because the focus has mainly been on managing these industries, without enough attention to protecting and preserving the environment (Hoessein et al., 2020). Without clear rules on environmental, social, and governance (ESG) practices, businesses in Indonesia may find it hard to include sustainability in their operations (Hakim & Fuad, 2024). Confusing laws, frequent changes, and inconsistent enforcement create a difficult environment for companies. The Omnibus Law, passed in 2020 to make it easier for foreign investments and simplify business rules, has raised concerns about weakening environmental safeguards (Ikhsan, 2022). This uncertainty could reduce business confidence, hinder innovation, and lead to unintentional legal violations. This study focuses on the challenges that businesses in Indonesia face due to legal uncertainty in implementing sustainable business practices. It analyzes the causes of this uncertainty, evaluates its impact, and suggests solutions for both businesses and authorities.

The need for a balanced approach between economic development and environmental sustainability is becoming more pronounced in Indonesia as industrial growth continues. Environmental degradation, driven largely by deforestation, mining, and unchecked industrial activities, threatens the nation's ecological health. As industries expand, environmental damage is often overlooked in favor of economic growth. However, with increasing awareness of the need for sustainability, companies are being urged to integrate environmental, social, and

governance (ESG) principles into their operations. The legal frameworks, though crucial in ensuring these principles are adhered to, have yet to fully support the efficient implementation of such sustainable practices due to legal ambiguity.

The Omnibus Law, introduced in 2020 to streamline business regulations and attract foreign investment, has exacerbated these challenges. While designed to simplify investment processes, the law has sparked concerns about its potential to weaken environmental protections. The absence of clear ESG guidelines has left many businesses in a regulatory limbo, unsure of how to proceed with sustainable practices. This study seeks to explore the challenges that legal uncertainty presents to businesses in Indonesia, particularly in their efforts to adopt sustainable business practices.

Another challenge is the inconsistency in enforcement. Despite the existence of robust environmental laws, weak enforcement mechanisms have allowed businesses to bypass regulations without facing substantial consequences. The lack of coordination between government agencies responsible for environmental protection further complicates the situation. Without effective legal oversight and consistent enforcement, businesses may prioritize short-term profits over long-term sustainability goals, which can lead to environmental damage.

A comprehensive legal framework is necessary to resolve these issues. By aligning environmental, health, and safety regulations with industry policies, the government can create a more conducive environment for businesses to operate sustainably. This study argues that there is a need for a more synchronized approach to regulation, ensuring that all relevant laws and policies work together to foster sustainable business practices.

Research by Hakim & Fuad (2024) examined how the absence of clear ESG regulations in Indonesia impedes the integration of sustainability into business practices. Their findings suggest that without a comprehensive legal framework, businesses face difficulties in aligning their operations with global sustainability standards. Similarly, Ikhsan (2022) analyzed the impact of the Omnibus Law on environmental governance, arguing that while the law seeks to streamline business processes, it compromises environmental protections, thus increasing legal uncertainty for businesses looking to invest in sustainable practices. Both studies highlight the significant role that regulatory clarity plays in enabling businesses to implement effective sustainability strategies.

This study is urgent given the increasing pressure on Indonesia to balance its economic growth with the need for sustainable environmental practices. Legal uncertainty regarding environmental regulations and the lack of a unified approach to ESG guidelines have created significant barriers for businesses striving to implement sustainable operations. Furthermore, the recent introduction of the Omnibus Law has sparked debates on its potential to weaken environmental protections. Understanding these challenges is critical for policymakers and businesses to create an environment conducive to sustainable development.

While previous studies have explored various aspects of legal uncertainty in Indonesia, there remains a gap in research focusing specifically on the interplay between corporate law, environmental regulation, and sustainable business practices. Most existing literature examines either corporate law or environmental law in isolation, without considering how legal uncertainty in both areas collectively affects the ability of businesses to adopt sustainable practices. This study aims to fill this gap by analyzing the challenges businesses face due to conflicting laws and inconsistent enforcement, with a particular focus on the Omnibus Law's impact on sustainability.

This study introduces a novel approach by integrating the analysis of both corporate and environmental laws in the context of legal uncertainty. It explores how the Omnibus Law, designed to simplify business regulations, inadvertently contributes to regulatory confusion, thus hindering sustainable business practices. This dual focus on corporate law and

environmental regulation provides a fresh perspective on the challenges businesses face in adopting sustainability initiatives, offering new insights into how legal frameworks can be reformed to better support sustainability goals.

The purpose of this study is to explore the challenges posed by legal uncertainty in corporate law and environmental regulations that affect sustainable business practices in Indonesia. By analyzing these challenges, the study aims to provide recommendations for creating a more cohesive and transparent legal framework that supports sustainable business practices. The benefits of this research include helping policymakers understand the regulatory barriers businesses face, offering suggestions for improving the legal environment, and promoting a more sustainable future for Indonesia by fostering an ecosystem that encourages responsible business practices.

METHOD

The methodology of this study is normative research based on a literature review, aimed at identifying connections between vertical and horizontal laws so that they can be synchronized and harmonized with each other. An analytical approach is used to examine practices in relation to the intent of the law. The materials were gathered from legal journals available in open-access formats, as well as from the e-resources database of Perpurnas (the Indonesia National Library's access library) and Google Scholar. A bibliographic study was chosen as the approach for this research, utilizing qualitative analysis.

RESULTS AND DISCUSSION

Sustainable Business Practices

Indonesia guarantees the right to a healthy environment and the protection of natural resources through its legal policies on environmental management. The 1945 Constitution serves as the foundation of these policies, ensuring that environmental protection is a fundamental aspect of the nation's governance (Mahardika & Bayu, 2022). Article 28 H, paragraph 1, states that everyone has the right to enjoy a good and healthy environment, and article 33, paragraph 4, states that the national economy is organized based on sustainability and environmental insight. Meanwhile, Economic growth, which was supported by various sectors such as industry, agriculture, and energy, may conflict with environmental policies, leading to resistance or a slowdown in their implementation (Lestari et al., 2024).

The central government needs to create rules that align and do not conflict regarding the environment, health, and safety with policies related to industry, trade, and jobs. By doing this, the country can achieve not only small improvements but also significant innovations (Dernbach & Mintz, 2011). In addition, to create a sustainable and inclusive business environment, Indonesia needs to develop and put into practice guidelines for environmental, social, and governance (ESG) practices (Hakim & Fuad, 2024). According to the Oxford Dictionary, "sustainable" means using natural resources and energy in a way that does not harm the environment. When applied to business practices, it means focusing on using resources responsibly without causing environmental damage. Therefore, the guidelines should support industry growth while also protecting the environment.

Cause of Legal Uncertainty

There are three major causes of legal uncertainty that pose challenges to sustainable business practices in Indonesia. The most significant cause is the contradiction among several regulations. The next causes are frequent changes to regulations and inconsistent enforcement of those regulations.

Environmental damage occurs for two main reasons. First, environmental management often prioritizes profit over important concepts like sustainability and responsible development. Second, conflicts between environmental laws and industry-specific regulations—such as

those for mining, oil and gas, forestry, and land use—have led to pollution and harm to land, water, and air (Hoessein et al., 2020). Current environmental laws, intended to guide development, are insufficient to ensure that policymakers address these issues, resulting in environmental concerns being overlooked in favor of interests that benefit officials through investments (Maulidi et al., 2024).

Additionally, the Omnibus Law, enacted in 2020, aims to encourage foreign investment and simplify business regulations to create job opportunities in Indonesia. While it has positively impacted economic growth and employment, it has also negatively affected environmental sustainability and land rights (Ikhsan, 2022). The law's introduction has sparked controversy due to a lack of transparency, leading to numerous unintended consequences (Ikhsan, 2022). For example, the law simplifies business requirements by allowing companies to conduct environmental impact assessments as a condition for obtaining a business license which often results in permits being granted to organizations that overlook sustainability. This situation makes it difficult for environmental groups and their members to voice their concerns about the project's impact on sustainability. Furthermore, the law removes the strict liability principle from the Forestry and Environmental Law (FEL), complicating efforts to enforce regulations against companies that intentionally burn land for commercial purposes (Ikhsan, 2022).

Law should play a vital role in ensuring fair and effective governance. It sets important guidelines, establishes the institutions and processes for decision-making, and offers methods for accountability and conflict resolution (Martin et al., 2016). However, conflicting laws and regulations tend to create uncertainty and confusion in their implementation.

The next cause, frequent change, the frequency and scale of legislative changes affect regime uncertainty (Lee et al., 2024). Such shifts in policy can increase environmental uncertainties, influence how businesses form expectations and make decisions, and ultimately affect the sustainable and coordinated growth of the economy. Therefore, it is crucial that changes to economic policy are made carefully and consistently (Bin-Feng et al., 2024). In light of the global climate crisis, Indonesia should prioritize ecological principles in all its policies. However, the introduction of the Omnibus Law on Job Creation shows a different approach, where economic considerations have been favored over environmental concerns (Najib & Saraswati, 2023). To create a cohesive approach, it is essential that all regulatory frameworks work together to prioritize environmental considerations while also fostering economic growth and prosperity.

The third factor contributing to this uncertainty is the inconsistent enforcement of regulations, which need to be addressed with care. It is important to recognize that uncertainty in the legal system often arises from the rules, institutions, and practices that determine how laws are enforced, rather than from the laws themselves (Dari-Mattiacci & Deffains, 2006).

Enforcement of environmental laws continues to provide significant difficulties in Indonesia. Although the country has established various environmental regulations, their enforcement remains largely ineffective (Sipayung et al., 2023). The high incidence of pollution and environmental damage often hampers effective law enforcement (Naiborhu & Kasenda, 2024). When preventive measures fail to stop violations, even with strict oversight, it becomes necessary to resort to repressive enforcement through administrative sanctions (Naiborhu & Kasenda, 2024). Several factors contribute to these challenges, including insufficient funding, lack of cooperation among agencies, and limited public awareness of environmental issues (Sipayung et al., 2023). Additionally, weak supervision and enforcement practices obstruct the effective implementation of environmental policies. Insufficient penalties for violations and low levels of public compliance further undermine the effectiveness of environmental law enforcement (Lestari et al., 2024).

Impact of Legal Uncertainty

Due to legal uncertainty, three key impacts directly affect sustainable business practices. The most significant of these is a reduction in business confidence and investment, which in turn hinders innovation for sustainable practices. Additionally, this uncertainty contributes to increased non-compliance and the imposition of legal penalties.

Legal uncertainty leads to a reduction in business confidence and investment. While entrepreneurs are usually not driven by uncertainty; instead, they focus on solving the main technical challenges that come with it (York & Venkataraman, 2010). During uncertain times, private firms typically reduce their investments significantly. In contrast, public firms tend to cut their investments by approximately 50% more than private firms when faced with increased uncertainty (Dreyer & Schulz, 2023). Firms may postpone or delay their investments during uncertain times until they obtain more information or clarity about future outcomes (Bin-Feng et al., 2024). Many firms may choose to postpone their investments until they gather more information or gain clarity about future outcomes. Additionally, firms often reassess their ESG investments by weighing long-term benefits against short-term costs, especially in high-risk situations. The degree to which firms adjust their investments is also influenced by the size of available opportunities and the competitive pressures they encounter (Bin-Feng et al., 2024). It has to be addressed that the way policy uncertainty affects investment can change over time. Notably, public firms often show a rebound effect, meaning they increase their investment levels again, while private firms do not. This difference in how they recover may be related to the fact that public firms tend to invest more efficiently when dealing with rising policy uncertainty. As a result, public firms may be more likely to pursue investments at a higher rate than before, whereas private firms often do not make up for their initial drop in investment later (Dreyer & Schulz, 2023).

Reduced on investment, especially in sustainability business, could hinder the innovation of the practices. The existing uncertain economic environment discourages entrepreneurs from making investments due to the heightened risk of potential failure. To counteract this, policymakers must ensure transparency, stability, and consistency in economic policies, as such an uncertain climate negatively impacts investment in the industrial sector, which is vital for overall economic stability (Farooq et al., 2022). One effective strategy for tackling environmental issues is to harness the market's capacity to communicate information and motivate the right stakeholders to drive innovation. By creating financial incentives, markets can motivate the development of sustainable technologies and practices. This approach not only promotes innovation but also aligns economic interests with environmental objectives (York & Venkataraman, 2010).

This uncertainty contributes to promoting the increased non-compliance and the imposition of legal penalties. Insufficient enforcement of penalties and sanctions for environmental violations, along with low public compliance, can diminish the effectiveness of environmental law enforcement (Lestari et al., 2024). Additionally, certain economic sectors, including industry, agriculture, and energy, may have interests that conflict with environmental policies, which can result in resistance or delays in their implementation. For instance, in Indonesia, the palm oil sector plays a vital role in driving economic growth in rural areas. However, this growth comes at a cost, as it is associated with the replacement of tropical rainforests, alterations in land cover and land use, increased CO₂ emissions, threats to biodiversity, and harm to various ecosystem services. Thus, while the palm oil industry offers economic advantages, it also poses significant environmental challenges and negatively impacts biodiversity (Lestari et al., 2024). This situation highlights the inherent contradiction between the nature of such businesses and the principles of sustainable development.

Solution

To potentially reduce the impact of legal uncertainty and address its underlying causes, three key solutions could be proposed. The most significant solution might be the development of a Comprehensive Legal Framework for Sustainability, which could provide clearer guidelines and standards. Following this, the establishment of a Regulatory Oversight Body might help ensure more effective monitoring and enforcement of these regulations. Additionally, enhancing stakeholder engagement could foster collaboration and potentially improve the overall quality of law implementation. Collectively, these measures may contribute to creating a more stable and effective legal environment for sustainability initiatives.

To establish a Comprehensive Legal Framework for Sustainability, central governments must integrate environmental, health, and safety regulations with industrial, trade, and employment policies. This holistic approach has the potential to drive not only incremental improvements but also significant disruptive or breakthrough innovations, fostering a more sustainable future. (Dernbach & Mintz, 2011). Additionally, current laws need to be reinforced, institutions should collaborate more efficiently, and environmental issues must be highlighted to the public (Sipayung et al., 2023). While many experts agree that achieving sustainability necessitates the creation of new laws and amendments to current ones, it is less frequently acknowledged that sustainability can also be attained by applying existing laws to emerging issues or by implementing gradual adjustments to those laws (Dernbach & Mintz, 2011). Furthermore, the Government should consider that less restrictive regulations can foster better innovations aimed at addressing environmental challenges (York & Venkataraman, 2010). The framework should take into account the needs of small and medium enterprises due to their vital role and significant contribution to our economy, as well as their unique characteristics. Smaller businesses encounter unique challenges in complying with ESG regulations, primarily due to their limited resources and lack of access to additional funding. So the framework should be practical and easy to implement (Hakim & Fuad, 2024). A balanced approach that combines the reinforcement of existing laws with the flexibility to adapt to new circumstances may be the key to unlocking innovative solutions for sustainability.

The establishment of a Regulatory Oversight Body is necessary due to the limitations in the ability to validate the implementation of regulations. Good governance also includes basic standards like following the rule of law and ensuring strong parliamentary oversight and judicial independence during implementation. Independent oversight is also essential. Several organizations, including international agencies such as Transparency International, the International Union for Conservation of Nature, and the Aarhus Convention Committee, can provide important governance integrity checks. They can assess the quality of law implementation and ensure compliance with international agreements (Martin et al., 2016). Both international and domestic oversight would help to manage the quality of the implementation.

Furthermore, a Regulatory Oversight Body can enhance stakeholder engagement in Indonesia's environmental governance by promoting transparency and accountability. It would create structured channels for participation, ensuring that diverse voices are heard in decision-making processes, ultimately fostering trust and collaboration among all parties involved.

Currently, the enforcement of environmental criminal laws is not achieving the desired results. One major reason for this failure is the lack of coordination and alignment within the criminal justice system, both in terms of culture and structure. This includes the need for better preventive and punitive actions to effectively reach the Sustainable Development Goals (SDGs) (Salim & Palullungan, 2021). Moreover, insufficient coordination and collaboration among government agencies responsible for implementing and enforcing environmental laws

can result in gaps, overlapping policies, and ambiguous roles in the fight against climate change (Lestari et al., 2024).

To enhance the effectiveness of the effectiveness of environmental legal policies, collaboration among key agencies, including environmental ministries, legal departments, law enforcement agencies, and environmental organizations, is essential. Effective coordination among these entities is crucial for aligning legal policies with their implementation and enforcement at both national and regional levels (Lestari et al., 2024).

The engagement may result in the following outcomes, such as a shared understanding and common terminology regarding legal requirements, decreased ambiguity and uncertainty in project planning, a timely focus on the relevant issues with appropriate precision, alignment and coordination of the project's technological design with the permitting process, prevention of changes and the need for additional requests, and the creation of solutions that are optimal from economic, technological, environmental, and social perspectives (Pauna et al., 2023).

CONCLUSION

Legal uncertainty must be addressed. There are three main causes of legal uncertainty affecting sustainable business practices: contradictions among various regulations, frequent changes to regulations, and inconsistent enforcement of those regulations. These issues can lead to a decline in business confidence and investment, which in turn hinders innovation in sustainable practices and contributes to increased non-compliance and the imposition of legal penalties. To address this, governments should consider developing a Comprehensive Legal Framework for Sustainability that provides clearer guidelines and standards. Additionally, establishing a Regulatory Oversight Body could enhance the monitoring and enforcement of these regulations. By improving stakeholder engagement, the quality of understanding, alignment, and collaborative efforts will also be elevated.

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