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URGENCY AND CIVIL CLAIMS FOR VIOLATION OF ENVIRONMENTAL, SOCIAL, AND GOVERNANCE CLAUSES IN BUSINESS CONTRACTS

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ARTICLE INFO	ABSTRACT
Keywords: Environmental, Social, and Governance Clauses (ESG); Business Contracts; Freedom of Contract; Civil Claims; Business Sustainability.	This research is driven by the aspiration to promote sustainable business practices through the adoption of Environmental, Social, and Governance (ESG) principles. The study aims to examine the significance of ESG clauses in business contracts and the legal recourse available to aggrieved parties in cases of non-compliance. Utilizing a normative juridical approach, this research analyzes legal norms, doctrines, and theories relevant to the subject matter, employing both statutory and conceptual frameworks. Primary legal sources include the Indonesian Civil Code and other relevant legislation, while secondary sources consist of academic literature, journal articles, and previous studies on the topic. Data were collected through library research. The findings indicate that the principle of freedom of contract underpins the inclusion of ESG clauses in business agreements as a preventive measure against risks arising from environmental, social, and governance failures. By virtue of the pacta sunt servanda principle, ESG clauses are contractually binding and must be observed to preclude legal claims from counterparties. Consequently, ESG clauses serve as a risk management tool and a protective legal mechanism in the event of contractual breaches by any party to the business contract.

A. INTRODUCTION

Business dynamics have shifted significantly alongside the growing emphasis on business sustainability.[1] This shift has given rise to more adaptive business practices, notably the implementation of Environmental, Social, and Governance (ESG) principles. These principles aim to ensure that corporate

[1] Yoshino Naoyuki, and Farhad Taghizadeh-Hesary, "Introduction: Sustainable Finance, Esg Investment And The Green Transition Of Small And Medium-Sized Enterprises," *The Singapore Economic Review 71*, no. 03 (2026): 789.

activities are not solely profit-driven at the expense of other critical aspects. Instead, ESG mandates a focused attention on environmental stewardship, social responsibility, and sound corporate governance. Through ESG integration, companies can minimize operational risks, enhance accountability, and achieve long-term sustainability.[2] Furthermore, ESG serves as an evaluative standard to measure how responsibly a company conducts its operations toward all stakeholders. ESG also serves as a standard for evaluating how responsibly a company conducts its business activities toward all stakeholders.[3]

Currently, there is no comprehensive legislation exclusively governing ESG. In the Indonesian legal framework, the juridical basis for ESG implementation is reflected in regulations concerning Corporate Social and Environmental Responsibility (CSER), as well as sustainable finance policies enforced through specific Financial Services Authority of Indonesia regulations.[4] The statutory framework governing the implementation of Environmental, Social, and Governance (ESG) principles in Indonesia includes Article 74 of Law Number 40 of 2007 concerning Corporate Social Responsibility, Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 13 of 2003 concerning Manpower, and various other supporting regulations.

It should be recognized that violations of ESG principles may adversely affect the interests of business partners, as business relationships are no longer based solely on economic profit but also on reputation, compliance, and business sustainability.[5] Crucially, the violation of ESG principles can significantly impact the interests of business partners, as modern business contracts and relationships are no longer solely predicated on economic profit, but also on reputation, regulatory compliance, and business sustainability. Business partners, including investors, suppliers, buyers, and financial institutions, increasingly incorporate sustainability standards and ESG clauses into their business contracts. If a company commits a violation of these

[2] Miguel Fonseca Luis, Ilona Skačkauskienė, Cristian Bușu, and Mihaela Minciu, "Integrating ESG in Business: Opportunities and Risks through a Systematic and Bibliometric Analysis," *Management & Marketing 20*, no. 4, (2025): 232.

[3] Joanna Błach, Iwona Gorzeń-Mitka, and Małgorzata Lipowicz, "Scientific Mapping of Environmental, Social, and Governance (ESG) Research from the Perspective of Stakeholders: A Content Analysis Study," *Journal of Entrepreneurship, Management and Innovation* 21, no. 4 (2025): 79.

[4] M. Miqdad Thufeil Iqbal Assegaf, Ahmad Syaifudin, and Isdiyana Kusuma Ayu, "Aspek Hukum Environmental, Social, And Governance (Esg) Sebagai Sarana Mewujudkan Pengembangan Perusahaan Yang Berkelanjutan Di Indonesia (Perbandingan Hukum Dengan Malaysia)," *Dinamika 30*, no. 2 (2024): 10329.

[5] Marcelo Werneck Barbosa, Marcelo Bronzo, Noel Torres Júnior, and Paulo Renato de Sousa. "Predictors of corporate reputation: circular economy, environmental, social, and governance, and collaborative relationships in Brazilian agribusiness." *Sustainability 17*, no. 7 (2025): 2969.

standards, the associated risks are not confined to the offending entity but can cascade to its partners, particularly within the supply chain. Such circumstances pose the risk of substantial damages, manifesting as diminished market confidence, disruption of business operations, and ultimately, the termination of business contracts by aggrieved partners, which may subsequently trigger civil claims.[6]

For instance, PT Astra Agro Lestari (a palm oil company) was accused of involvement in land conflicts and human rights violations. Following these reports, Nestlé instructed its suppliers to halt the procurement of palm oil from several Astra Agro Lestari subsidiaries within their supply chain. Such alleged violations can inflict detriment on business partners, as they are exposed to legal and reputational risks if they maintain business relations with entities deemed non-compliant with sustainability standards.[7]

Furthermore, the case of IndoAgri (an affiliate of Indofood) illustrates that violations of Environmental, Social, and Governance (ESG) aspects can severely impact business partners. This issue arose after the Rainforest Action Network (RAN), Organization for the Strengthening and Empowerment of Community-Based Enterprises, and the International Labor Rights Forum reported alleged labor rights violations in IndoAgri's palm oil plantations. The reported violations encompassed inadequate wages, hazardous working conditions, and allegations of child and forced labor. These reports subsequently disrupted IndoAgri's business relations with global partners such as PepsiCo, driven by heightened reputational risks and the mounting pressure to enforce sustainability principles across the corporate supply chain.[8]

Accordingly, the inclusion of ESG clauses aims to ensure that each party complies with the agreed-upon environmental, social, and governance standards. These clauses generally encompass compliance obligations, reporting requirements, and monitoring mechanisms for business operations.[9] From a business perspective, the urgency of ESG clauses in contracts lies in

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[6] Ari Purwanti and Eva Yuniarti Utami, "How Companies Manage Risk in the Supply Chain Through an ESG Approach ?," *West Science Accounting and Finance* 3, no. 02 (2025): 232.

[7] Angel, May, and Bernadette Christina. "Nestle to Stop Sourcing from Indonesian Palm Oil Producer AAL." Reuters, 2022. Accessed 23 June 2026 https://www.reuters.com/business/sustainable-business/nestle-stop-sourcing-indonesian-palm-oil-producer-aal-2022-09-30/.

[8] Lierley Emma Rae, "New Report Finds Global Food Giants PepsiCo, Indofood Linked to Poverty Wages, Worker Exploitation and Discrimination," Rainforest Action Network, n.d. Accessed 23 June 2026 https://www.ran.org/press releases/new_report_finds_global_food_giants_pepsico_indofood_linked_to_poverty_wages_worker_exploitation_and_discrimination.

[9] Kurdi and Cut Zulfahnur Syafitri, "Prinsip Esg dalam regulasi hukum kpbu: upaya peningkatan efektivitas pembangunan infrastruktur Di Indonesia," M Volume 10 Nomor 2 Desembe 10, no. 2 (2024): 358.

their role as a risk mitigation tool.[10] From a business perspective, the urgency of ESG clauses in business contracts lies in their role as a risk mitigation tool. Furthermore, these clauses function as a binding mechanism to ensure that each party fulfills its obligations as agreed, particularly concerning the sustainability of inter-company business relationships. ESG clauses enable the parties to establish explicit standards regarding environmental obligations, social responsibilities, and corporate governance, thereby ensuring that contract execution maintains a balance of interests between the companies.

From a risk management perspective, the presence of ESG clauses mitigates potential losses arising from environmental violations, labor disputes, fraudulent practices, or actions that damage corporate reputation. It must be noted that corporate reputation is fundamental in building and maintaining trust among all stakeholders.[11] Such trust encompasses the confidence of investors, business partners, and, most crucially, consumers.[12]

Several scholars have examined the intersection of Environmental, Social, and Governance (ESG) principles and civil law; however, their studies remain confined to conceptual and regulatory levels. For instance, Zainuri, Purborini, and Suryaningsih,[13] investigated the interaction between ESG and the principles of freedom of contract and good faith under the Civil Code. Nevertheless, their research has yet to address the practical mechanics regarding the violation of ESG clauses in business contracts and the subsequent formulation of civil claims. In a separate study, Sudarwanto, Kharisma, and Putri focused on the formulation of ESG regulations in the banking sector and proposed administrative sanctions against ESG-washing practices,[14] without examining the possibility of civil claims arising from the violation of such clauses in the civil realm. Similarly, Puntarangi[15] focused exclusively on sustainable investment regulations in the renewable energy

[10] Gladilina Hafis Hajiyev Irina, Irina Vaslavskaya, Elena Kirillova, Olga Dymchenko, Emil Hajiyev, Olga Averina, and Rustem Shichiyakh, "Adapting ESG Principles to Contracting Practices: Towards Sustainable Business Agreements," *International Journal of Sustainable Development & Planning 19*, no. 7 (2024): 2627.

[11] Surya Jen, Muhammad Iqbal, Sulaiman, Siti Aisyah TW, Wan Mariatul Kifti, H*ukum Bisnis Dan Perilaku Organisasi Bisnis*, *Pertama*, (Banyumas: Penerbit Wawasan Ilmu, 2026), 23.

[12] Shapira Roy, "Reputation through litigation: how the legal system shapes behavior by producting information," *Wash. L. Rev.* 91 (2016): 1193.

[13] Zainuri Suryaningsih, and Vivi Sylvia Purborini, "Aspek Perdata Dalam Penerapan Esg (Environmental, Social, And Governance) Dalam Praktik Bisnis Di Indonesia," Maksigama 19, no. 2, (2025): 323.

[14] Sentot Sudarwanto, Dona Budi Kharisma, and Salsabila Adinda, "Formulation of Environmental, Social, and Governance (ESG) Concept Regulation in the Banking Sector as a Strategy to Realize Sustainable Development in Indonesia," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 2 (2025): 8428.

[15] Parardhya Amaraputri Puntarangi, "Tinjauan Regulasi Investasi Berkelanjutan Di Sektor Energi Terbarukan Indonesia Dengan Indikator ESG," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 2 (2024).

sector from a government policy perspective, without examining contractual aspects, the qualification of breach, or civil sanctions under the Civil Code. Consequently, none of the aforementioned studies have specifically analyzed the violation of ESG clauses and the basis for civil claims from a civil law perspective.

To analyze these issues, several relevant theories and legal principles are utilized. Regarding the urgency of implementing ESG clauses in business contracts, this study employs stakeholder theory (managing stakeholder interests), institutional theory (responding to regulatory and societal pressures for legitimacy), and the principle of freedom of contract. Meanwhile, to address the issue of civil claims for the violation of ESG clauses, the principle of *pacta sunt servanda* is applied.

This study has two primary objectives. First, to determine the urgency of including ESG clauses in business contracts. Second, to examine the right to file civil claims by aggrieved parties due to the violation of ESG clauses committed by other parties. Accordingly, this research focuses on answering two core issues: First, what is the urgency of ESG clauses in business contracts in Indonesia? Second, how are civil claims formulated for the violation of such ESG clauses? These two issues need to be examined to realize responsible and sustainable business practices, provide legal certainty, and foster a conducive environment for business partners.

B. RESEARCH METHODS

This study is classified as normative juridical research that examines legal norms, principles, doctrines, and statutory regulations.[16] The approaches utilized are the statutory approach and the conceptual approach. The statutory approach examines regulations concerning contract law, corporate social and environmental responsibility, and sustainability. The conceptual approach examines theories, concepts, and doctrines regarding contracts, civil claims, breach of contract, tortious acts, and Environmental, Social, and Governance (ESG) clauses. The primary legal materials for this study are sourced from the Civil Code, Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 13 of 2003 concerning Manpower, and other relevant regulations. Secondary legal materials are derived from books, scientific journals, research findings, articles, and expert opinions.[17] Legal materials were collected through library research, which involves compiling, examining, and analyzing legal materials relevant to the subject of the study.

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[16] Al-Fatih Sholahuddin, *Perkembangan Metode Penelitian Hukum Di Indonesia,* 1st ed (Malang: UMMPress Universitas Muhammadiyah Malang, 2023), 43.

[17] Hehanussa Deassy, J.A., *Metode Penelitian Hukum* (Bandung: CV. Widina Media Utama, 2023), 41.

C. DISCUSSION

1. The Urgency of Environmental, Social, and Governance (ESG) Clauses in Business Contracts

Environmental, Social, and Governance (ESG) constitutes a conceptual framework utilized to evaluate and measure corporate performance across environmental, social, and governance dimensions.[18] Rather than focusing solely on corporate profitability, the ESG framework integrates the company's accountability for sustainability and the societal impact of its operational activities. This concept has evolved by systematically incorporating non-financial factors into business and investment decision-making processes.[19]

The objective of implementing ESG in business is to achieve business sustainability through the management of various forms of risk. [20] The primary objective of implementing ESG in business is to achieve operational sustainability through the management of various risks, specifically those pertaining to environmental, social, and governance factors. Furthermore, ESG implementation aims to fortify corporate reputation, attract investor interest, and generate long-term value for stakeholders.[21] Through ESG integration, companies are expected to maintain an equilibrium between economic profitability, social interests, and environmental preservation.

From the perspective of Stakeholder Theory, a company is required to manage the interests of various parties affected by its business activities.[22] The implementation of Environmental, Social, and Governance (ESG) principles in business contracts serves as a harmonization of stakeholders, such as investors, regulators, and the community.[23] Consequently, the inclusion of clear ESG clauses in business contracts is a strategic step to mitigate future risks, underscoring the urgency of such provisions. This aligns with Institutional Theory, which posits that organizations must conform to their

[18] Robert G. Eccles, Ioannis Ioannou, and George Serafeim, "The Impact of Corporate Sustainability on Organizational Processes and Performance," *Management Science 60*, no. 11, (2014): 2332.

[19] Rubab, A., A. Alam, Haque, Saghir E., F. V., Siddiqui, H. Khan, and N. & Tasneem, "A Critical Review of Environmental, Social, and Governance Factors Influencing Sustainable Investment Decisions," *Corporate Governance and Sustainability Review 9*, no. 1, (2025): 434.

[20] Suhasmoro Auliyah Rizky, Tanti Novianti, Noer Azam Achsani, and Trias Andati, "When ESG Signals Fail: The Moderating Role of ESG Controversies in Shaping Firm Value, Returns, and Cost of Capital," *Journal of Risk and Financial Management* 19, no. 7 (2026): 524.

[21] Friede Gunnar, Timo Busch, and Alexander Bassen, "ESG and financial performance: Aggregated evidence from more than 2000 empirical studies," *Journal of sustainable finance & investment* 5, no. 4 (2015): 213.

[22] Purwantono Rivan Achmad, *Stakeholder Management: Rahasia Sukses Optimasi Para Pemangku Kepentingan* (Jakarta: Penerbit Buku Kompas, 2024), 232.

[23] M. T. Okano, "The Corporate Contract and The Private Ordering of Shareholder ESG Proposals," *Theoretical Inquiries in Law 22*, no. 1, (2021): 23.

surrounding institutional environment to maintain legitimacy.[24] This encompasses regulations, social norms, and prevailing practices within society.

Understanding the importance of harmonizing stakeholders' interests through the ESG framework requires more concrete follow-up actions. Commitments to environmental, social, and corporate governance aspects remain merely moral aspirations without a clear legal foundation. Therefore, the existence of a legal instrument is essential to transform ESG values into enforceable obligations through business contracts. Through such contracts, the parties' agreement on business sustainability shifts from a moral commitment to a legal obligation that carries legal consequences in the event of a breach.[25]

This encompasses regulations, social norms, and prevailing practices within society.[26] Ricardo Simanjuntak asserts that a contract is an integral part of an agreement that carries legally binding consequences for the involved parties, the execution of which is closely related to the patrimonial rights of each bound party.[27] Thus, a business contract is not merely a promise, but a legal instrument that generates rights and obligations enforceable before a judge in the event of a violation by one of the parties, which subsequently gives rise to civil claims.

Contracts are legally binding because they are formed through the mutual agreement of the parties. However, their binding force largely depends on the contents of the agreed contractual clauses, which must be consistent with the applicable law and the prevailing norms within society. Indonesian civil law addresses this principle through the doctrine of freedom of contract, under which the parties are granted the autonomy to determine their respective rights and obligations in accordance with the applicable legal framework. [28]

The inclusion of ESG clauses in business contracts can be executed on the basis of the principle of freedom of contract (Article 1338 of the Civil Code). Through this provision, the parties may agree on their respective obligations regarding environmental, social, and governance aspects, provided that they do not violate statutory regulations, public order, and morality. Consequently,

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[24] Noersyam Muhrim, *Pengantar Ilmu Administrasi Bisnis. Edited by Tita Yuni Zalni* (Padang: Gemilang Press Indonesia, 2026), 34.
[25] Isabel Ríos Zuloaga, and María Ignacia Vial Undurraga, "Sustainability as a general principle of transnational commercial contract law," *Uniform Law Review 30*, no. 2 (2025): 107.
[26] *Imran Ilham, A. Gani, Hukum Kontrak Dan Perikatan (Teori, Konsep & Teknik Penyusunan Kontrak)*, (Gowa: Cahaya Bintang Cemerlang, 2025), 243.
[27] Simanjuntak Ricardo, *Hukum Kontrak Teknik Perancangan Kontrak Bisnis* (Jakarta: Kontan Pub, 2011), 22.
[28] John Lumbantobing Bayu Seto Hardjowahono, *Indonesian Perspectives on the Hague Principles*, (United Kingdom: vLex, 2021), 23.

ESG clauses are legally binding, and any violation thereof can be categorized as a breach of contract.[29]

In line with the position of ESG clauses originating from the principle of freedom of contract, the forms of these clauses in contractual practice have evolved according to the needs of the parties. In contract law theory, the content of an agreement constitutes the rights and obligations agreed upon to achieve a specific purpose.[30] The parties are free to determine the ESG clauses as long as they fulfill the conditions for the validity of an agreement (Article 1320 of the Civil Code) and do not contravene applicable legal provisions.

In the environmental aspect, ESG clauses may take the form of corporate obligations to comply with environmental protection standards, manage waste, reduce emissions, and adhere to environmental regulations.[31] These clauses may also incorporate reporting and environmental audit obligations to ensure the parties' compliance with the contract and government regulations, as well as to fulfill their responsibilities towards society.

Environmental clauses in business contracts encompass not only operational obligations but also monitoring and accountability mechanisms. The inclusion of these clauses ensures that all corporate activities remain within the framework of environmental protection established by the government and society. Environmental clauses represent a concrete manifestation of a company's responsibility to preserve the natural environment, thereby contributing to the sustainability of human life.[32]

In the social aspect**,** ESG clauses typically encompass the protection of workers' rights, the prohibition of discrimination, the guarantee of occupational health and safety, and the respect for human rights in business operations.[33] These provisions establish a legal framework to ensure that companies also fulfill their social responsibilities toward workers and the community. Compliance with the social aspect of ESG provides legal grounds to protect

[29] Alysha Nabila, Fitri Rahmadani, Ditia Prabandari, Hana Alicia, Safa Manohara, and Dwi Aryanti Ramadhani, "Analisis wanprestasi dan penerapan klausul non-competition dalam putusan Mahkamah Agung Nomor 1785 K/Pdt/2023," *Media Hukum Indonesia (MHI)* 4, no. 1 (2026): 389.

[30] Sanusi Sanusi, Mukhidin Mukhidin, Fajar Ari Sudewo, and Ervin Hengki Prasetyo, "Legal Protection for the Parties in an A Agreement (Civil Law Studies)," *International Journal Law, Crime, and Justice, 1*, no. 4, (2024), 232.

[31] Nakzim Khalid, Siddiq Diman Ade Mulada, and Arief Rahman, "Penerapan Konsep ESG dalam Regulasi dan Praktik Hukum di Sektor Energi," *Jurnal Hukum Agama Hindu Widya Kerta* 8, no. 1 (2025): 29.

[32] Nnennaya and Nwali, "Renegotiating for Sustainability: Aligning Nigerian Petroleum Contracts with Environmental Goals & Investor Interests," *Journal for Sustainable Development Law & Policy 16*, no. 348, (2025): 232.

[33] Solihin Ismail, *Corporate Social Responsibility: From Charity to Sustainability*, (Jakarta: Salemba Em, 2009), 84.

workers from exploitation while simultaneously fostering harmonious relations between the company and the surrounding community.[34]

The purpose of social clauses in business contracts is to create a fair and dignified working environment. Protection for workers and surrounding communities is no longer merely a moral obligation.[35] If such clauses are disregarded, they can damage the company's reputation while also triggering social conflicts and legal claims. Social clauses will serve as instruments to ensure that business operations do not progress at the expense of fundamental human rights.

Meanwhile, the governance aspect is implemented through clauses concerning corporate transparency. Furthermore, the governance aspect encompasses compliance with statutory regulations, the prevention of conflicts of interest, and corporate anti-bribery policies.[36] From the perspective of contract law, the inclusion of ESG clauses demonstrates that the function of a contract has evolved into an instrument for managing risks and ensuring compliance within modern business contracts.[37]

Governance clauses in business contracts affirm a company's commitment to the principles of good corporate governance. Clarity in reporting, compliance with applicable regulations, and the prevention of fraudulent practices constitute the foundation for establishing healthy and trustworthy business relationships. When all parties diligently fulfill these obligations, the risk of contractual breaches can be minimized, thereby strengthening trust among business partners.

Based on the foregoing discussion, it can be concluded that ESG is grounded in Stakeholder Theory, which emphasizes the consideration of the interests of all parties affected by business activities. The integration of ESG clauses into business contracts serves as a strategic mechanism to mitigate future risks through a commitment to comply with statutory regulations and prevailing ethical norms, encompassing environmental aspects, labor rights, and clean, transparent corporate governance. Given that these ESG clauses are stipulated in legally binding instruments, the parties are strictly obligated to adhere to the provisions contained therein; otherwise, any violation will expose the defaulting party to civil claims from aggrieved parties.

[34] Michal Erben, Michal Kuděj, and Jan Kubálek, "The social factors impact on sustainable business growth perception within the ESG concept," *Amfiteatru Economic* 27, no. 68 (2025): 196.
[35] Wanjiru Mary, "The Role of International Trade Agreements in Shaping Labor Standards and Worker Rights," *International Journal of Law and Policy* 9, no. 1 (2024): 38.
[36] Simanjuntak Evi Nurita, Adisthy Shabrina Nurqamarani, *Strategi Good Governance Dan Etika Bisnis Dalam Memperkuat Kepatuhan Anti-Penyuapan Dan Korupsi Di Sektor Korporasi*, (Tangerang Selatan: FHISP Universitas Terbuka, 2025), 33.
[37] Mazhorina Maria V., "ESG principles in international business and sustainable contracts," *Actual problems of Russian law 16,* no. 12 (2022): 185.

2. Civil Claims for Violation of Environmental, Social, and Governance (ESG) Principles in Business Contracts

Business contracts serve as instruments for establishing long-term cooperation, extending beyond their fundamental nature as legal documents. Well-drafted business contracts can align the interests of all parties and prevent future disputes. Therefore, incorporating Environmental, Social, and Governance (ESG) principles into business contracts is a strategic imperative to foster equitable, responsible, and sustainable business relationships.[38]

Agreed-upon Environmental, Social, and Governance (ESG) clauses within a contract possess binding legal force. A violation of such clauses transcends mere moral breach; it constitutes a legal violation of established contractual promises.[39] Consequently, a violation of ESG clauses within sustainable business contracts can be classified as a breach of contract. On these grounds, ESG clauses have transformed the moral obligations inherent in corporate social responsibility into legally enforceable obligations actionable by each contracting party.[40] Thus, a violation of ESG commitments no longer merely impacts public reputation; it engenders legal consequences that must be fulfilled by the parties to the business contract.[41]

Default (*wanprestasi*) occurs when the obligations stipulated in an agreement between the creditor and the debtor are not fulfilled.[42] Furthermore, default is a condition wherein the debtor and/or creditor fails to meet the obligations agreed upon in the contract.[43] Its manifestations may include the complete failure to perform, imperfect performance, delayed performance, or the execution of actions prohibited under the agreement.[44] In accordance with Article 1243 of the Civil Code, default gives rise to an obligation to pay compensation to the aggrieved party.

Beyond creating a condition of default, the violation of ESG clauses in business contracts can inherently constitute a tangible form of an unlawful act

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[38] Marharyta Radchenko, "Greening the Supply Chain: CSR Clauses and Codes of Conduct in Light of the Corporate Sustainability Due Diligence Directive (CS3D)," *Journal of Law and Commerce* 43, no. 2 (2025).

[39] E.S. Pannebakke, "Sustainable Development Clauses in International Contracts," *Uniform Law Review* 29, no. 2 (2024).

[40] Zainuri Suryaningsih, and Vivi Sylvia Purborini, "Aspek Perdata Dalam Penerapan Esg (Environmental, Social, And Governance) Dalam Praktik Bisnis Di Indonesia," Maksigama 19, no. 2, (2025): 324.

[41] Gladilina Hafis Hajiyev Irina, Irina Vaslavskaya, Elena Kirillova, Olga Dymchenko, Emil Hajiyev, Olga Averina, and Rustem Shichiyakh, "Adapting ESG Principles to Contracting Practices: Towards Sustainable Business Agreements," *International Journal of Sustainable Development & Planning 19*, no. 7 (2024): 2627.

[42] Salim, H.S. *Pengantar Hukum Perdata Tertulis (BW)* (Jakarta: Bumi Aksara, 2021), 11.

[43] Dewi Sulistianingsih, Christian Chandra Wijaya, Rahmawati Mohd Yusoff, and Yuli Prasetyo Adhi, "Juridical consequences of anticipatory breach as a form of breach of a contract," *JILS* 9 (2024): 131.

[44] Miru Ahmadi, *Hukum Kontrak Dan Perancangan Kontrak* (Jakarta: Raja Grafindo Persada), 12.

(*onrechtmatige daad*) as recognized by statutory law or societal norms, in line with the intent of Article 1365 of the Civil Code. This article stipulates that any unlawful act resulting in damage obliges the perpetrator to compensate the injured party. Regarding this, Rosa Agustina explains that there are two sources of obligations: first, agreements, and second, statutes (Article 1233 of the Civil Code). Default originates from the violation of an agreement, whereas an unlawful act originates from actions that contravene statutes.[45] Although both have distinct legal grounds, within the context of a business contract, the aggrieved party suffering losses due to the violation of ESG clauses may exercise the right to choose (*electa via una*) between filing a civil claim for default or for an unlawful act. A civil claim for default can be filed due to the violation of the ESG clauses, while a civil claim for an unlawful act can be filed because the act contravenes statutory laws, such as Law Number 40 of 2007 on Limited Liability Companies, Law Number 32 of 2009 on Environmental Protection and Management, Law Number 13 of 2003 on Manpower, and other relevant regulations.

Several potential civil claims may arise from the violation of Environmental, Social, and Governance (ESG) clauses. Examples include land clearing without permits, working hours exceeding statutory limits, and environmental degradation.[46] Due to the failure to fulfill the agreement to implement ESG principles, the aggrieved party in the business contract may seek compensation on the grounds of tort (Article 1365 of the Civil Code). Alternatively, the aggrieved party may pursue a civil claim for breach of contract, given that the violating party has breached the explicitly agreed ESG clauses.

A company's failure to exercise the duty of care regarding social and environmental impacts, as agreed upon in the business contract, can also serve as grounds for litigation.[47] The findings of Zainuri et al. indicate that ESG expands the scope of civil claims, as ecological and social damages can be litigated through tort *(onrechtmatige daad)* even if not explicitly stipulated in the agreement.[48] Examples of such violations include pollution caused by the negligence of business partners, human rights abuses within the supply chain, and waste management practices that contravene sustainability commitments.

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[45] Ari Purwanti and Eva Yuniarti Utami, "How Companies Manage Risk in the Supply Chain Through an ESG Approach ?," *West Science Accounting and Finance* 3, no. 02 (2025).

[46] Ben Chester Cheong, "The Doctrine of Corporate Conscience: Navigating the Labyrinth of ESG Litigation in the Quest for Sustainability and Justice," *Capital Markets Law Journal* 19, no. 4 (2024): 352.

[47] Johnston Andrew, "The European Corporate Sustainability Directives: Extending the Common Law Duty of Care?" *European Company and Financial Law Review 23*, no. 1, (2026), 232.

[48] Luqman Hakim, "Penegakan Hukum Lingkungan Hidup Melalui Gugatan Perbuatan Melawan Hukum," *Jurnal Hukum Lex Generalis* 2, no. 12 (2021): 1264.

Furthermore, the potential for civil claims may also arise from fraudulent Environmental, Social, and Governance (ESG) reports (greenwashing), whether occurring prior to the execution of business contracts or during their subsequent performance.[49] Prisandani's research asserts that greenwashing practices containing elements of deception can be legally qualified as contractual fraud under the Civil Code.[50] For instance, when a party makes inaccurate or exaggerated sustainability claims to attract partners or investors, this induces a defect of will specifically fraud in the formation of the business contract for the counterparty. Consequently, the aggrieved party is entitled to seek the annulment of the agreement (*voidable contract*), as the consent was not grounded in accurate and good-faith information, which is a prerequisite for the validity of a contract. Furthermore, if such false statements are subsequently proven to violate regulations and societal norms, civil claims can be pursued on the grounds of a tortious act (unlawful act).

In the financial services sector, civil claims may also arise from the failure to fulfill sustainability reporting obligations in accordance with Regulation of the Indonesia Financial Services Authority Number 51/POJK.03/2017. However, based on the research conducted by Salsabela et al., it was found that weak violation indicators within Regulation of the Indonesia Financial Services Authority Number 51/POJK.03/2017 result in such reporting often becoming merely a formality. More critically, the failure of sustainability reporting without due consideration to environmental and social factors gives rise to greenwashing practices, thereby causing losses to stakeholders who may make erroneous business decisions based on misleading information.[51] To anticipate such risks, parties engaged in business operations should incorporate ESG clauses into the business contracts they intend to execute.

In drafting ESG clauses in business contracts, it is imperative to consider factors that may result in legal uncertainty (ambiguity).[52] This is because courts require clear benchmarks to assess a violation that forms the basis of a

[49] Paim Maria-Augusta, "Greenwashing in the oil and gas sector: the limitations of climate change litigation on advertising in Brazil," *Journal of Environmental Law 37*, no. 3 (2025): 421.

[50] Christiawan Rio, *Hukum Perubahan Iklim, ESG, Dan Perdagangan Karbon* (Depok: Rajawali Press, 2025), 52.

[51] Ni Ketut Aldira Safa Salsabela, Rindu Saraswati, Adinda Zahra Ristiana, and Widia Oktavia, "Rekonstruksi Pengaturan Sanksi Dalam POJK Nomor 51 / POJK . 03 / 2017 Untuk Memperkuat Implementasi Green Banking Di Indonesia Reconstruction of Sanction Regulations in POJK Number 51 / POJK . 03 / 2017 to Strengthen Green Banking Implementation in Indone," *JICN: Jurnal Intelek Dan Cendekiawan Nusantara 3,* no. 2, (2026): 53.

[52] Solicitors SE, "Commercial Contracts in the Age of ESG: From Aspirational Clauses to Legal Certainty," 2026. Accessed 23 June 2026 https://www.se-solicitors.co.uk/article/102mrei/commercial-contracts-in-the-age-of-esg-from-aspirational-clauses-to-legal-certai/.

breach of contract claim. Ambiguity in interpretation can render the ESG clauses unenforceable.[53]

ESG clauses must be drafted with precise wording and measurable criteria regarding environmental, social, and governance obligations, tailored to the specific business sector.[54] Consequently, the business contracts can effectively protect the rights of the parties from losses caused by the actions of business partners.

By incorporating ESG clauses into business contracts, the parties can collaboratively realize fair and sustainable business practices.[55] If the agreed-upon clauses are subject to violation by either party, the aggrieved party may pursue civil claims on the grounds of breach of contract or tortious act. Losses may manifest in various forms, ranging from environmental degradation and worker exploitation to falsified reports or misleading greenwashing. In the financial services sector, the failure to submit sustainability reports in accordance with Financial Services Authority of Indonesia Regulations can also trigger civil claims. However, to ensure legal certainty, ESG clauses must be drafted using unambiguous language with clear metrics for rights and obligations. Without such precision, judges will face difficulties in assessing a violation, and the business contracts may lose their enforceability.[56]

D. Conclusion

This study reveals that the principle of freedom of contract provides the legal basis for incorporating ESG clauses into business contracts to anticipate risks arising from violations of environmental, social, and corporate governance aspects. Based on the principle of *pacta sunt servanda*, ESG clauses are legally binding and must be complied with to avoid civil claims by the other contracting party. This study reinforces stakeholder theory by demonstrating that the interests of various stakeholders can be aligned through contractual provisions and enriches institutional theory by emphasizing that companies are required not only to comply with government regulations but also to conform to prevailing societal norms. The findings provide guidance for business actors and legal practitioners in drafting effective ESG clauses while emphasizing that violations of such clauses may

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[53] Mariska Nijenhof-Wolters, and Marcel Ruygvoorn, "ESG En Contracten: Van Declaratoire Bepaling Tot 'Wurgcontract,'" *Bedrijfsjuridische Berichten (Bb)*, no. 56 (2024): 2.
[54] Hay Emily, "Under My Umbrella: Seeking Shelter Under an ESG Clause," *Contemporary Asia Arbitration Journal 16*, no. 2, (2023): 232.
[55] Giupponi Belén Olmos and Raul Partido Figueroa, "Navigating ESG arbitrability challenges in energy and climate: an in-depth analysis and future perspectives," *European Energy & Climate Journal 12*, no. 1 (2024): 19.
[56] Ayjamal Togsanbaeva, "Evolving ESG Clauses in Commercial Contracts: Legal and Environmental Implications," *International Conference on Multidisciplinary Science 3*, no. 5, (2025): 828.

give rise to civil claims. This study is limited by its reliance on a normative juridical approach without empirical field research, resulting in an incomplete representation of the dynamics of business practice, while specific standardized criteria for environmental, social, and corporate governance aspects have not yet been clearly established. Therefore, future research is recommended to adopt an empirical approach to collect data on the challenges encountered by business actors and legal practitioners in implementing ESG clauses in practice.

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