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# DECONSTRUCTING ESG SOCIAL WASHING: CUSTOMARY LAND ANNEXATION, FPIC VIOLATIONS, AND SUSTAINABLE LEGAL CERTAINTY FRAMEWORKS

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***Abstract.*** *The aggressive expansion of coal mining companies has exposed a critical regulatory gap at the highly contested intersection of customary agrarian rights and compliance with modern sustainable finance. This article examines the annexation of customary land without Free, Prior, and Informed Consent (FPIC), disguised as communal partnerships in ESG reports. The research aims to uncover the mechanisms of social laundering, the disregard of Constitutional Court Decision No. 35/PUU-X/2012, the exploitation of the lack of customary land certificates, and the formulation of a transformative legal accountability framework. Methodologically, this research employs a normative socio-legal approach, comparing factual and empirical precedents from the Sendawar District Court with the strict financial regulatory framework of POJK 51/POJK.03/2017, SEOJK 16, and the Global Reporting Initiative (GRI) standards. The research findings demonstrate a systemic failure of boards of directors to manage social risks in accordance with Good Corporate Governance (GCG) principles. This study formulates a framework for sustainable legal certainty that classifies ESG social laundering as capital market fraud and proposes the implementation of the P2SK Law, including administrative sanctions up to and including delisting of company shares.*

***Keywords:*** *Customary Land; ESG Social Washing; FPIC Violations; POJK 51/2017; Sustainable Legal Certainty.*

## 1. Introduction

The global paradigm shift toward Sustainable Finance has radically redefined the operational mandates, fiduciary responsibilities, and disclosure requirements of extractive industries worldwide (Financial Services Authority, 2025). In an era where institutional investors, sovereign wealth funds, and global asset managers are increasingly bound by strict ethical investment mandates, absolute compliance with Environmental, Social, and Governance (ESG) metrics has transitioned from a voluntary philanthropic endeavor into an uncompromising prerequisite for capital access (Arifin & Santoso, 2024). For public coal mining emitters, securing and maintaining inclusion in prestigious international financial benchmarks most notably the MSCI ESG Leaders Index requires an unimpeachable demonstration of legal awareness in implementing sustainability goals and mitigating long-term systemic risks (Sutedi, 2023; Ramadhan, 2025; MSCI ESG Research, 2025). This macro-financial evolution theoretically operates as a formidable mechanism for global accountability, effectively forcing historically pollutive and exploitative industries to internalize their environmental and social externalities. Under the auspices of the Financial Services Authority (*Otoritas Jasa Keungan*/OJK) through Regulation Number 51/POJK.03/2017 (POJK 51/2017) and its implementing guideline SEOJK 16/SEOJK.04/2021, Indonesian public companies are now legally mandated to publish comprehensive annual sustainability reports that transparently detail their ESG performance (Indrati, 2024; Effendi, 2026).

However, a severe and legally complex paradox exists within Indonesia's coal mining sector, a paradox profoundly illuminated by the accelerated and aggressive territorial expansions in the Kutai Barat regency between the fiscal years of 2020 and 2022 (Prabowo, 2022). Public mining emitters operating within these resource-rich regional epicenters consistently project an image of absolute, frictionless adherence to sustainable development goals to their shareholders. Through voluminous, professionally audited sustainability reports that claim strict alignment with the Global Reporting Initiative (GRI) standards, these multinational corporations broadcast continuous narratives of harmonious community empowerment, robust indigenous partnerships, and meticulous socio-environmental stewardship (Global Reporting Initiative, 2024; Widjaja, 2024). Yet, a forensic legal examination of the agrarian landscape in Kutai Barat reveals a fundamentally divergent reality: the systematic, legally engineered, and frequently violent displacement of indigenous Dayak communities from their ancestral territories (Mahardika, 2023; Ali, 2025; Human Rights Watch, 2025). This stark dichotomy between glossy financial disclosures aimed at international shareholders and the brutal realities of agrarian annexation exposes a critical, systemic failure in the genuine implementation of Good Corporate Governance and Risk Compliance (GCG-RC) within the Indonesian jurisdiction (Halim, 2024).

This article rigorously addresses the primary jurisprudential issue of ESG "social washing" within the highly contested context of customary land acquisition. Social washing, particularly within the extractive sector, constitutes a highly sophisticated, deceptive corporate practice wherein emitters deliberately fabricate or grossly exaggerate their compliance with international human rights standards to secure international green funding and maintain domestic regulatory approval (Cahyani & Sugeng, 2023; Baskoro, 2023; Irwansyah, 2024). Specifically, corporations systematically manipulate the inherently abstract and qualitative nature of the "Social" metric within the ESG tried to conceal aggressive, coercive agrarian tactics. The core of this manipulation revolves around the fabrication of compliance with the Free, Prior, and Informed Consent (FPIC) principle a non-negotiable cornerstone of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (Lubis, 2023; Anwar,2023; Cendana, 2024). In Kutai Barat, empirical socio-legal investigations and regional court records reveal that while corporate sustainability reports extensively document consensual and equitable land acquisition processes, these identical corporations are actively annexing uncertified customary lands (*Tanah Ulayat*) through highly coercive methodologies that frequently involve the strategic deployment of armed state apparatus to intimidate indigenous populations into surrendering their ancestral territories (Wignjosoebroto, 2022; Simanjuntak, 2024).

The legal mechanics of this dispossession are heavily reliant on the strategic exploitation of evidentiary burdens embedded within the dualistic nature of Indonesian agrarian law.

By weaponizing the indigenous communities' historic lack of formal, state-issued land certificates (*Sertifikat Hak Milik*/SHM), corporate litigators intentionally downgrade ancestral ownership to mere usage rights, subsequently suppressing civil compensation to arbitrary and non-negotiable "compassionate funds" (*tali asih*) (Kusuma, 2022). When these forced agrarian acquisitions are subsequently repackaged, sanitized, and reported to the Indonesia Stock Exchange (*Bursa Efek Indonesia*/BEI) as voluntary "communal partnerships" or successful Corporate Social Responsibility (*Tanggung Jawab Sosial dan Lingkungan*/TJSL) initiatives, the corporation commits a profound and highly lucrative regulatory breach. A comprehensive review of existing legal scholarship indicates that the academic discourse surrounding customary land disputes have been historically confined to a rigid, conventional, and heavily compartmentalized analytical framework. Prominent agrarian scholars have produced extensive and invaluable analyses regarding the marginalization of customary law within state courts, emphasizing how the Basic Agrarian Law (*Undang Undang Pokok Agraria*/UUPA, Law Number 5 of 1960) remains fundamentally ill-equipped to protect uncertified *Tanah Ulayat* against the onslaught of corporate legal teams armed with state-sanctioned mining concessions (Bedner, 2022; Simarmata, 2022).

Furthermore, contemporary legal literature frequently laments the judicial reluctance at the regional level to fully implement Constitutional Court Decision Number 35/PUU-X/2012, a landmark ruling that sought to emancipate customary forests from unilateral state control (Fadli, 2022). However, despite the depth of these agrarian analyses, a critical limitation pervades the current body of literature: a persistent, systemic failure to interconnect these localized, civil agrarian violations with the modern, macroeconomic financial oversight mechanisms governing publicly listed companies. Existing studies predominantly treat agrarian land disputes and capital market financial reporting as mutually exclusive legal domains (Lestari, 2023; Rahardjo, 2025). They analyze the Sendawar District Court verdicts as isolated failures of agrarian justice, without tracing the subsequent laundering of these agrarian violations through the corporate sustainability reports mandated by POJK 51/2017. By failing to recognize that the bulldozer on the customary land and the ESG report on the investor's desk are inextricably linked components of a singular corporate strategy, the existing literature inadvertently perpetuates the very regulatory vacuum that mining empires exploit to maintain their capital inflows.

This research explicitly addresses these critical scholarly gaps by offering a groundbreaking paradigm shift in the legal prosecution of corporate agrarian offenses transitioning from a traditional, reactive "Soft Law" agrarian approach to a proactive, punitive "Hard Law" financial regulatory approach. The primary scientific contribution and novelty of this study reside in its conceptual elevation of customary land annexation. This article posits that the coercive acquisition of *Tanah Ulayat*, when deliberately concealed or misrepresented in a mandatory public disclosure, entirely transcends the jurisdictional boundaries of a regional civil land dispute; it must instead be legally reclassified and prosecuted as a matter of national capital market fraud and market manipulation (Abdullah, 2024; Adinugroho, 2025). By proving that the violation of customary land and the total bypass of FPIC protocols directly equate to the falsification of mandatory sustainability disclosures, this study establishes a novel, direct legal nexus. This nexus is absolutely critical for establishing modern legal certainty, as it unlocks the formidable investigative and punitive tools of federal financial regulators, providing the jurisprudential architecture necessary to utilize the newly enacted Financial Sector

Development and Strengthening Law (UU P2SK) as an impenetrable agrarian shield. The identification of this regulatory blind spot is of paramount importance; without reclassifying these offenses, the Indonesian legal system will continue to inadvertently subsidize the intergenerational structural poverty of its indigenous populations by providing a safe harbor for corporate social washing.

Based on this, the aim of this research is 1) How does the regulatory vacuum enable customs land annexation?; 2) How does ESG social washing through illusory FPIC compliance constitute financial fraud under the GCG-RC paradigm?; 3) How should a sustainable legal certainty framework integrate customary land rights and FPIC into mandatory ESG reporting?

This research aims to examine the legal mechanisms that enable the annexation of customary land through regulatory gaps, analyze how ESG social washing and the misrepresentation of Free, Prior, and Informed Consent (FPIC) constitute financial fraud within the Good Corporate Governance–Risk Compliance (GCG-RC) framework, and formulate a sustainable legal certainty framework that integrates customary land rights and FPIC into mandatory ESG reporting. In doing so, this study seeks to strengthen corporate accountability and enhance the effectiveness of Indonesia's sustainable finance regulatory regime.

## 2. Research Methods

This study employs a normative socio-legal approach to critically examine the intersection of agrarian disputes and financial compliance mechanisms (Marzuki, 2022). The research methods consist of specific analytical frameworks designed to deconstruct the regulatory vacuum utilized by corporate entities. The types of research utilized are predominantly doctrinal and empirical-normative, focusing on the systemic implementation of statutory laws in real-world socio-economic contexts. The approach methods incorporate statutory analysis, evaluating the frictions between the Basic Agrarian Law (Undang Undang Pokok Agraria/UUPA), the Financial Sector Development and Strengthening Law (Undang-Undang Pengembangan dan Penguatan Sektor Keuangan/UU P2SK), and OJK Regulation No. 51/POJK.03/2017. Furthermore, a conceptual approach is heavily relied upon to dissect the theoretical underpinnings of Good Corporate Governance (GCG), Risk Compliance (RC), and the Global Reporting Initiative (GRI) standards. The research specifications are descriptive-analytical, aimed at providing a comprehensive forensic breakdown of corporate ESG reporting behaviors. Data were collected through library research using secondary data, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include statutory regulations, Constitutional Court decisions, and the Sendawar District Court judgments. Secondary legal materials comprise corporate sustainability reports, scholarly books, and journal articles, while tertiary legal materials include legal dictionaries and other supporting references. The Sendawar District Court judgment was selected as the primary empirical case because it directly involves the corporate practices examined in this study and reflects the legal consequences arising from agrarian disputes in relation to corporate sustainability and financial compliance. As such, the case provides an appropriate empirical basis for evaluating the implementation of the relevant statutory framework, particularly the Basic Agrarian Law, Law No. 4 of 2023 (P2SK Law), and OJK Regulation No. 51/POJK.03/2017.

## 3. Results and Discussion

### 3.1. The Regulatory Vacuum in Customary Land Annexation

The aggressive agrarian expansion executed by multinational coal mining corporations in the Kutai Barat regency is not an anomaly of rogue operational behavior; rather, it represents a highly sophisticated, systemic exploitation of structural deficiencies within Indonesia's dualistic agrarian legal system (Bedner, 2022). To comprehend the mechanics of ESG social washing, one must first deconstruct the precise legal loopholes and regulatory vacuums that corporate entities weaponize to facilitate the physical acquisition of Tanah Ulayat without incurring corresponding financial or legal liabilities. The structural architecture of Indonesian agrarian law, heavily influenced by colonial remnants, provides a fertile ground for this exploitation, seamlessly allowing corporations to bypass the fundamental tenets of Good Corporate Governance (GCG) while operating entirely within the boundaries of positive state law (Nurjaya, 2023).

To fully comprehend the anatomy of this legal exploitation, it is imperative to critically analyze the jurisprudence emerging from regional judiciaries. The Sendawar District Court, which presides over the epicenter of coal expansion in Kutai Barat, provides a stark, empirical documentation of how positive state law is manipulated to disenfranchise indigenous populations (Wicaksono, 2023). The precedents established in this jurisdiction between 2020 and 2022 systematically illustrate the methodological dismantling of customary rights by heavily capitalized corporate legal teams.

The cornerstone of the corporate defense strategy in agrarian disputes relies on the deliberate and targeted weaponization of Article 5 of the Basic Agrarian Law (UUPA). While Article 5 nominally recognizes customary law (*hukum adat*) as the foundation of Indonesian agrarian law, this recognition is severely circumscribed by the conditional clause that it must not conflict with national interests or positive state regulations (Harsono, 2022). In practice, this creates an insurmountable evidentiary burden for indigenous Dayak communities within formal civil litigation (Human Rights Watch, 2025). The judicial system inherently demands that fluid, intergenerational customary ownership be translated into the rigid, codified parameters of Western-style property rights, specifically the State-issued Certificate of Ownership (*Sertifikat Hak Milik*/SHM) (Qamar, 2022).

Corporate legal teams systematically exploit this paradigm by capitalizing on the indigenous communities' historic lack of formal land certificates. During extensive litigation in the Sendawar District Court, corporate entities consistently argued that in the absolute absence of a formal SHM or a registered state decree, the indigenous communities possessed no legally recognizable, alienable ownership over their ancestral lands (Kusuma, 2022). Through this precise legal argumentation, the corporations successfully downgraded the indigenous legal status from absolute ancestral owners to mere illegal occupants possessing highly fragile, subordinate "usage rights" on what the state ultimately classifies as state-controlled land (*Tanah Negara*) (Darmawan, 2023).

This tactical downgrade is not merely a semantic legal maneuver; it is profoundly financially motivated and strategically aligned with corporate risk minimization. By legally stripping the land of its absolute ownership status, corporations successfully devalue the required civil compensation. Instead of paying fair market value based on the intergenerational economic and cultural yield of the land, corporations are legally permitted by the courts to disburse arbitrary, minimized, and non-negotiable "compassionate funds" (tali asih) (Utami, 2023). The legal concept of tali asih operates as a devastating instrument of corporate expansion: it provides the illusion of an equitable civil settlement while effectively extinguishing ancestral land rights for a mere fraction of their actual economic value. This judicial practice legally sanctions the economic expropriation of indigenous agrarian assets, trapping the Dayak communities in an inescapable cycle of landlessness and structural poverty while simultaneously protecting the corporate balance sheet (Prabowo, 2022; Human Rights Watch, 2025).

Furthermore, a critical examination of the regional judicial proceedings reveals a systemic and deliberate institutional amnesia regarding landmark constitutional jurisprudence. Constitutional Court Decision Number 35/PUU-X/2012 represented a watershed moment for indigenous rights in Indonesia, as it explicitly and absolutely separated Customary Forests (Hutan Adat) from State Forests (*Hutan Negara*) (Fadli, 2022). Theoretically, this monumental ruling granted indigenous communities' sovereign administrative control over their forested territories, removing the Ministry of Environment and Forestry's unilateral authority to grant Mining Business Licenses (IUP) or Right to Cultivate (HGU) concessions over these specific lands without explicit indigenous consent (Nugroho, 2023).

However, factual analyses of the Sendawar trials demonstrate that corporate entities effortlessly bypass this constitutional mandate by exploiting an intentional administrative bottleneck. The execution of Decision No. 35 is entirely contingent upon the issuance of local government regulations (Peraturan Daerah/Perda) to formally identify and gazette the specific indigenous communities and map their territories (Simarmata, 2022). Because local governments in resource-rich regions like Kutai Barat often exhibit severe political inertia frequently influenced by aggressive corporate lobbying and the promise of regional tax revenues these requisite Perda are rarely, if ever, enacted (Supriadi, 2024).

In the courtroom, corporate litigators aggressively argue that because the local executive branch has not formally recognized the Dayak communities via a specific Perda, the customary forest does not legally exist in the eyes of positive administrative law, thereby reverting its status back to state land ripe for immediate concession exploitation (Wignjosoebroto, 2022). By aggressively exploiting this administrative lethargy, corporations create a localized vacuum of law that overwhelmingly favors accelerated agrarian expansion. This vacuum allows bulldozers and heavy machinery to systematically clear ancestral forests long before the slow, highly politicized machinery of local government can formalize their customary status, effectively nullify the Constitutional Court's protective intent and render the highest law of the land practically void at the regional level (Rahardjo, 2022).

### 3.2. ESG Social Washing through Illusory FPIC Compliance: Reclassifying Agrarian Disputes as Financial Fraud under the GCG-RC Paradigm

While the brutal physical and civil annexation of land occurs in the remote forests of Kutai Barat and the courtrooms of Sendawar, a parallel, highly sanitized deception is continuously perpetrated in the glass towers of the capital markets. This section pivots to the manipulation of corporate financial reporting, explicitly contrasting the grim agrarian ground reality with the fabricated, highly polished financial disclosures presented to global institutional investors and state regulatory bodies (Gunawan, 2023).

Public coal mining companies operating in Kutai Barat are acutely aware of the rigorous demands of modern sustainable finance. To secure lucrative green bonds, maintain high international credit ratings, and ensure inclusion in prestigious indices like the MSCI ESG Leaders Index, these corporations routinely publish extensive annual sustainability reports (Tarigan, 2024). These documents, frequently authored by specialized public relations firms and claiming absolute adherence to the Global Reporting Initiative (GRI) standards, are saturated with progressive narratives detailing robust community engagement, poverty alleviation, and harmonious co-existence with local indigenous populations (Global Reporting Initiative, 2024; Kurniawan, 2024).

A forensic critical review of the Financial Services Authority Regulation (*Peraturan Otoritas Jasa Keuangan*/POJK) No. 51/POJK.03/2017 and its implementing technical guideline, Circular Letter (SEOJK) No. 16/SEOJK.04/2021, reveals a fatal structural flaw in Indonesia's sustainable finance architecture: the absolute lack of mandatory, independent forensic verification for grassroots social claims (Widjaja, 2024). While current OJK regulations strictly mandate comprehensive ESG disclosure from public emitters, they rely overwhelmingly on a deeply flawed system of self-reporting. The external assurance provided by independent auditing firms typically focuses almost exclusively on the mathematical accuracy of carbon emissions (the Environmental pillar) or the composition of board structures (the Governance pillar), leaving the "Social" pillar largely unverified by any independent, empirical ground-truthing (Hakim, 2024).

Coal companies legally exploit this regulatory gap by classifying coercive tali asih payments not as compensation for forced agrarian displacement but as voluntary Corporate Social Responsibility (TJSL) initiatives (Erviana, 2022). Likewise, the clearance of customary land is reported as the creation of "communal partnerships," constituting a form of ESG social washing that misrepresents coercive practices as sustainable community empowerment (Cahyani & Sugeng, 2023). Such reporting deceives investors and facilitates access to green financing based on a misleading narrative of social harmony (Nasution, 2024). This practice also undermines the principle of Free, Prior, and Informed Consent (FPIC) under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which requires indigenous communities to provide informed, voluntary consent free from coercion before projects affecting their ancestral lands commence (Ginting, 2025; Rachmat, 2025).

Empirical legal facts meticulously documented in the Kutai Barat land grabs demonstrate a complete, systemic annihilation of the FPIC doctrine. The documented involvement of "rogue apparatus" (*oknum aparatur*) specifically the strategic deployment of state security forces, military personnel, and local police to explicitly "escort" corporate heavy machinery during land clearing operations fundamentally transitions the corporate act from standard business expansion into state-facilitated, repressive territorial annexation (Mahardika, 2023).

The deliberate presence of armed state apparatus during land negotiations and physical clearing inherently and irrevocably nullifies the "Free" element of FPIC. When an indigenous Dayak farmer is confronted by corporate legal representatives flanked by armed state personnel, the resulting signature on a tali asih receipt is not a manifestation of informed consent or the initiation of a "communal partnership" it is a forced capitulation born of severe structural intimidation and the threat of state violence (Tanya, 2022). Furthermore, the "Informed" element is frequently and deliberately violated, as corporations consistently fail to provide impartial environmental and social impact assessments (*Analisis Mengenai Dampak Lingkungan*/AMDAL) to the affected communities prior to the commencement of operations, relying instead on obfuscation and technical jargon to confuse local stakeholders (Setiawan, 2025).

When a publicly listed corporation explicitly claims strict FPIC compliance and the cultivation of robust indigenous partnerships in its official ESG report while simultaneously deploying coercive state force to annex Tanah Ulayat, it is not merely committing an ethical breach or a public relations faux pas. It fundamentally, materially misrepresents its operational risk profile and its severe human rights liabilities to the capital markets (Halim, 2024). This deceptive practice directly drives indigenous populations into severe, intergenerational structural poverty, destroying their local food estates and localized energy resilience, all while the corporate entity reaps the immense financial rewards of falsely attained sustainability indices and artificially inflated green stock valuations (Lubis, 2023). The regulatory failure to bridge the gap between the UUPA and the capital market laws allows this sophisticated fraud to persist entirely unchecked.

The profound, systemic dissonance between the brutal agrarian realities occurring on the ground in Kutai Barat and the highly sanitized capital market disclosures mandated by POJK 51/POJK.03/2017 necessitates a fundamental, structural reevaluation of how legal scholars, financial regulators, and state judiciaries classify these corporate actions (Sutedi, 2023). Historically, Indonesian legal jurisprudence and corporate regulatory frameworks have treated corporate land grabbing and financial reporting as mutually exclusive, strictly compartmentalized legal domains. Agrarian disputes are consistently relegated to overburdened regional civil courts under the rigid parameters of the Basic Agrarian Law (UUPA), while corporate reporting anomalies are treated as mere administrative oversights within the capital markets, often resolved with negligible written reprimands (Indrati, 2024). This section establishes the absolute legal novelty of this research by deliberately collapsing this artificial jurisprudential dichotomy, merging customary agrarian law with strict capital market accountability to construct a radically new paradigm of corporate liability based on Good Corporate Governance and Risk Compliance (GCG-RC).

The contemporary corporate operational model utilized by extractive industries in Indonesia particularly within the heavily capitalized coal sector inherently views indigenous Dayak communities, and their uncertified Tanah Ulayat, merely as external, physical impediments to operational expansion (Nurjaya, 2023; Human Rights Watch, 2025). Within this traditional, purely extractive capitalist framework, indigenous populations in Kutai Barat are not recognized as legitimate partners or sovereign stakeholders; rather, they are legally and financially treated as localized liabilities to be managed, minimized, and ultimately removed at the lowest possible financial cost to the corporation (Prabowo, 2022). This regressive, anachronistic conceptualization represents a catastrophic, systemic failure in the implementation of Good Corporate Governance (GCG) and modern Risk Compliance (RC) mandates.

True Risk Compliance, particularly in the era of Sustainable Finance, dictates that all systemic operational risks including localized environmental degradation, social unrest, and gross human rights violations must be transparently identified, quantitatively assessed, and actively mitigated by the corporate board of directors (Oktaviani, 2023; Hidayat, 2024). However, coal mining corporations systematically and deliberately fail to properly calculate "Social Risk." By deploying state apparatus to coerce land surrenders and subsequently burying these severe human rights violations under arbitrary, minimized tali asih payments, the corporate board creates an immense, highly volatile hidden off-balance-sheet liability (Siregar, 2025: 305). If an aggrieved indigenous community decides to physically blockade a vital mining concession, or successfully files a massive international class-action lawsuit supported by global human rights NGOs, the resulting operational disruption could cost the public corporation millions of dollars, directly destroy shareholder value and threaten national energy resilience (Ketahanan Energi) (Widodo, 2024).

By suppressing the constitutional rights of Dayak communities and misrepresenting agrarian practices in sustainability reports, corporate executives breach their fiduciary duties (Murwadji, 2025). A sustainable GCG framework should recognize indigenous communities as primary legal subjects with equal legal standing and bargaining power, rather than treating them as objects of minimal compensation in the use of their ancestral lands (Tanya, 2022).

The agrarian conflicts in Kutai Barat reveal a fundamental contradiction between corporate ESG claims and the principles of Good Corporate Governance (GCG), particularly Responsibility and Fairness (Halim, 2024). The principle of Responsibility requires companies to comply with applicable laws, including FPIC under UNDRIP and environmental regulations, to ensure sustainable business practices (Lubis, 2023; Nugraha, 2024). However, the coercive acquisition of customary land for mining operations destroys indigenous forests, agricultural systems, and local food security, making corporate claims of social responsibility inconsistent with actual practices (Supriadi, 2024; Kurniawan, 2024). At the same time, the principle of Fairness requires equal protection of all stakeholders, yet indigenous communities often face significant legal and economic disadvantages when confronting large publicly listed mining companies supported by political influence and state security, resulting in an unequal balance of power and limited access to justice (Sutedi, 2023; Wicaksono, 2023).

When the corporation relentlessly leverages this severe structural asymmetry to force a tali asih settlement and deliberately deny fair market compensation for customary land, it totally annihilates the principle of Fairness. The Dayak communities are forced by the state and the corporation to bear 100 percent of the negative socio-environmental externalities of the mining operation including the irreversible loss of ancestral land, polluted water tables, and destroyed food estates while the corporate shareholders and executives extract 100 percent of the immense financial dividends (Darmawan, 2023). Repackaging this profound, systemic inequity as a voluntary "communal partnership" in a GRI-certified public sustainability report is the ultimate manifestation of corporate hypocrisy and represents a total, legally actionable failure of Good Corporate Governance (Cahyani & Sugeng, 2023).

To successfully rectify this systemic injustice and halt the ongoing annexation of customary lands, the Indonesian legal framework must aggressively and unapologetically transition from a passive "Soft Law" approach to a highly punitive "Hard Law" financial regulatory approach. For decades, indigenous advocacy groups, environmental NGOs, and progressive legal scholars have relied predominantly on "Soft Law" mechanisms to fight corporate land grabs (Prasetyo, 2024). They have continuously appealed to voluntary Corporate Social Responsibility (CSR) guidelines, international non-binding human rights norms, and broad ethical standards of conduct. When forced into the domestic legal system to seek material justice, they have been restricted to fighting highly asymmetric battles in regional civil courts, relying entirely on the fundamentally flawed, heavily conditional, and administratively burdensome recognition of customary rights within the UUPA (Lumban Gaol, 2024; Mahendra, 2025).

As the Sendawar District Court precedents unequivocally and repeatedly demonstrate, relying exclusively on civil litigation and the outdated UUPA to combat modern, multi-national mining empires is a mathematically failed strategy that consistently results in indigenous disenfranchisement and the legalization of land theft (Kusuma, 2022). The critical legal argument, and the absolute jurisprudential novelty posited by this research, is the immediate, non-negotiable necessity of a "Hard Law" pivot. A violation of customary land specifically the documented failure to obtain Free, Prior, and Informed Consent (FPIC) before destroying ancestral territories must no longer be viewed exclusively as a localized agrarian tort or a standard civil land dispute to be settled with tali asih (Yulianto, 2024).

When a public corporation successfully annexes customary land through coercion, and subsequently conceals, sanitizes, or deliberately misrepresents this highly coercive acquisition within a mandatory sustainability report submitted to the Financial Services Authority (OJK) and the Indonesia Stock Exchange (BEI) pursuant to POJK 51/2017, the legal nature of the crime fundamentally mutates (Wijaya, 2024). It automatically transcends the limited boundaries of agrarian law and becomes a severe, federal violation of Capital Market Law. By formally publishing a fabricated ESG report that claims harmonious communal partnerships and absolute FPIC compliance while simultaneously burying the coercive realities of its land acquisitions, the corporation commits explicit public disclosure manipulation, material misrepresentation, and actionable securities fraud (Abdullah, 2024).

This represents the crux of the necessary legal paradigm shift. In the modern era of sustainable finance, ESG metrics are no longer voluntary philanthropic newsletters meant for public relations; they are highly material, legally binding financial disclosures relied upon by global institutional investors, pension funds, and sovereign wealth funds to allocate trillions of dollars in capital (Susanti, 2023; Siregar, 2025). When a coal corporation falsifies its "Social" pillar to successfully secure inclusion in the MSCI ESG Leaders Index, or to obtain significantly lower interest rates on green bonds, it is actively and maliciously defrauding the global financial market. It artificially inflates its corporate valuation by intentionally hiding severe human rights liabilities, ongoing agrarian conflicts, and profound social risks from the investing public (Hidayat, 2024; Santoso, 2025; MSCI ESG Research, 2025).

### 3.3. Formulating a Sustainable Legal Certainty Framework

The current Indonesian regulatory architecture, operating in a highly fragmented state, treats Environmental, Social, and Governance (ESG) compliance and customary agrarian land administration as completely disjointed, mutually exclusive legal universes (Indrati, 2024). This artificial bifurcation has permitted multinational coal empires to exploit the structural weaknesses of the Basic Agrarian Law (UUPA) while simultaneously harvesting the financial rewards of the sustainable finance ecosystem governed by the Financial Services Authority (OJK) (Lumban Gaol, 2024). To permanently eradicate the systemic practice of social washing and to ensure absolute, intergenerational sustainable legal certainty for the indigenous Dayak communities in Kutai Barat, the Indonesian state must execute a radical jurisprudential pivot. The legal system must unconditionally abandon its historical reliance on reactive, localized civil litigation a domain where indigenous communities are inherently and structurally disadvantaged by rigid evidentiary burdens and pivot toward a proactive, systemic administrative and financial penalization framework orchestrated directly by federal capital market regulators (Yulianto, 2024).

The historic reliance on the UUPA alone has proven completely obsolete and demonstrably ineffective against modern, well-capitalized public corporate entities. These entities command immense legal resources and effortlessly exploit state-backed administrative mechanisms to bypass ancestral property rights (Bedner, 2022). Therefore, the locus of legal enforcement must be decisively shifted away from overburdened, highly politicized regional land offices and district courts, and redirected to the federal financial regulators who exclusively control the corporations' ultimate lifeblood: capital market access, liquidity, and institutional investment flows (Santoso, 2025). By targeting the financial architecture that funds these agrarian annexations, the state can neutralize the corporate incentive to engage in forced land acquisitions. This transition requires the immediate implementation of severe administrative sanctions paired with an uncompromising standardization of ESG audit methodologies.

The monumental enactment of Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector (UU P2SK) provides the Financial Services Authority (OJK) with unprecedented, sweeping investigative and punitive powers over corporate financial crimes and market manipulation (Susanti, 2023; Quraisy, 2024). Historically, OJK has maintained a conservative, hands-off approach to agrarian disputes, viewing them as matters strictly under the jurisdiction of the Ministry of Agrarian Affairs and Spatial Planning (*Badan Pertanahan Nasional*/BPN) or the civil judiciary (Abdullah, 2024). However, this research proposes a revolutionary legal mechanism where OJK actively and aggressively utilizes the expansive statutory mandate of UU P2SK to bypass stagnant, structurally biased civil courts in agrarian matters entirely, treating the misrepresentation of these disputes as severe financial offenses (Wijaya, 2024).

It is argued that proven instances of ESG social washing specifically scenarios where a public coal corporation falsifies its mandatory sustainability disclosures under POJK 51/2017 to deliberately hide coercive customary land annexations must be legally codified and prosecuted as actionable securities fraud (Cahyani & Sugeng, 2023). When a corporation coerces an indigenous community into accepting a minimized tali asih payment using state apparatus, and subsequently reports to the Indonesia Stock Exchange (BEI) that it has successfully established a voluntary "communal partnership" in full compliance with Free, Prior, and Informed Consent (FPIC), it is actively disseminating materially false information to the investing public (Mahardika, 2023; United Nations Human Rights Office of the High Commissioner, 2023). This material misrepresentation artificially suppresses the corporation's true risk profile, defrauding institutional investors who allocate capital based on the assumption of strict ESG compliance and zero human rights liabilities (Hidayat, 2024).

Therefore, this research formulates a strict, uncompromising legal nexus: a formal finding of an FPIC violation or a coercive land acquisition by a regional judiciary (such as the Sendawar District Court), or by a verified independent human rights tribunal, must automatically trigger immediate, non-discretionary administrative sanctions under OJK's capital market purview (Siregar, 2025). These financial sector sanctions must absolutely not be limited to standard, nominal administrative fines. Multi-billion-dollar coal empires routinely absorb negligible fines as mere operational costs, rendering them entirely ineffective as deterrents (Prasetyo, 2024). Instead, under the authority of UU P2SK, the sanctions must aggressively escalate through a three-tiered punitive framework designed to cripple the offending entity's capital access (Quraisy, 2024).

The enforcement mechanism should operate on two levels. First, the Financial Services Authority (Otoritas Jasa Keuangan/OJK) should immediately suspend green bonds, sustainability-linked loans, and other ESG-based financial instruments issued by corporations involved in customary land violations, thereby restricting access to sustainable capital and imposing direct financial consequences (Tarigan, 2024; Widodo, 2024). Second, enforcement should extend to individual accountability by requiring OJK to publicly blacklist directors and commissioners responsible for ESG social washing, permanently prohibiting them from serving in publicly listed companies. This Good Corporate Governance (GCG) and Risk Compliance (RC) approach prevents executives from avoiding responsibility behind the corporate veil (Murwadji, 2025; Halim, 2024).

Ultimately, the third and final tier of this punitive framework is the mandatory, forced delisting of the public corporation from the Indonesia Stock Exchange (BEI). Delisting serves as the ultimate corporate death penalty in the capital markets (Siregar, 2025). If a mining corporation continuously demonstrates a pattern of gross human rights violations, customary land annexations, and persistent social washing in its sustainability reports, it forfeits its privilege to access public funds. By directly threatening the corporation's very existence in the public capital markets, the legal system creates a definitive, unavoidable financial deterrent (Santoso, 2025). This existential financial threat is the only language recognized by heavily capitalized corporate entities, forcing public boards to unconditionally respect indigenous sovereignty and rigorously adhere to FPIC protocols long before the first bulldozer arrives in Kutai Barat.

To operationalize these severe capital market sanctions and to proactively prevent social washing from occurring in the first place, there must be a complete overhaul and legally binding standardization of ESG verification processes (Hakim, 2024). Under the current, heavily flawed implementation of POJK 51/2017 and SEOJK 16, corporate sustainability reports are largely self-authored by internal public relations departments or compliant external consultants (Widjaja, 2024). This systemic lack of independent oversight results in the publication of glossy promotional pamphlets rather than objective, legally binding financial disclosures. The external assurance currently provided by traditional accounting firms is woefully inadequate; these auditors lack the sociological expertise, legal mandate, and investigative methodologies required to uncover coerced agrarian settlements buried deep within remote provincial territories (Nasution, 2024).

Therefore, the regulatory framework must be immediately amended to mandate independent, third-party "Forensic ESG Audits." These audits must specifically target the "Social" pillar of the ESG triad, with an acute, hyper-focused investigation into all regional land acquisitions, civil settlements, and community engagement programs executed during the reporting period (Kurniawan, 2024). Crucially, these forensic audits cannot be based on internal corporate documentation alone. They must be measured strictly and uncompromisingly against the Global Reporting Initiative (GRI) standards and the FPIC protocols delineated within the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (Ginting, 2025).

Claims of "communal partnerships," successful Corporate Social Responsibility (TJSL) programs, or equitable land compensation must completely transcend corporate marketing brochures. Under the proposed framework, these claims must be rigorously validated through legally recognized, state-acknowledged investigative audits (Erviana, 2022). The methodology of a forensic ESG audit requires auditors to physically deploy to the concession areas in Kutai Barat. They must secure direct, uncoerced, and independently translated testimonies from indigenous councils, customary law leaders (*Ketua Adat*), and the directly affected Dayak farmers (Setiawan, 2025). These interviews must be conducted entirely free from the presence of corporate representatives, local government officials, or state security apparatus to ensure absolute transparency and to negate the pervasive climate of structural intimidation (Rachmat, 2025).

Furthermore, the burden of proof in forensic audits should be reversed, requiring corporations not indigenous communities to demonstrate that they obtained Free, Prior, and Informed Consent (FPIC) before any land alteration occurred (Qamar, 2022). This includes documented FPIC approvals, environmental consultations conducted in local languages, and evidence of fair compensation reflecting the intergenerational value of Tanah Ulayat (Simarmata, 2022). Such forensic verification should become a mandatory prerequisite for the approval of sustainability reports by the Financial Services Authority (Otoritas Jasa Keuangan/OJK). Where audits reveal coercive tali asih practices, the use of unauthorized security forces, or the destruction of customary forests, OJK should reject the sustainability report, thereby preventing access to green financing and triggering administrative sanctions under the Financial Sector Development and Strengthening Law (UU P2SK) (Abdullah, 2024; Susanti, 2023).

## 4. Conclusion

This study concludes that the annexation of customary land (Tanah Ulayat) in Kutai Barat is supported by a regulatory gap between Indonesia's agrarian law and sustainable finance framework. The findings show that mining companies have taken advantage of the limited legal recognition of customary land, particularly where communities do not possess formal land certificates, despite the protection provided under Constitutional Court Decision No. 35/PUU-X/2012. As a result, indigenous communities remain vulnerable to coercive land acquisition and receive limited legal protection in practice.

Beyond identifying this legal gap, this study demonstrates that the problem extends beyond an ordinary agrarian dispute. When the acquisition of customary land is presented in mandatory ESG sustainability reports as voluntary community partnerships or evidence of compliance with the Free, Prior, and Informed Consent (FPIC) principle, it creates a misleading picture of corporate social responsibility. Such practices represent ESG social washing because they conceal the actual conditions surrounding land acquisition while giving investors the impression that the company has complied with internationally recognized sustainability standards. Consequently, the issue should not be addressed solely through agrarian law but also through financial market regulation, particularly under the Financial Sector Development and Strengthening Law (UU P2SK), to strengthen corporate accountability and protect the integrity of sustainable finance.

Based on these findings, several regulatory improvements are recommended. The Financial Services Authority (OJK), together with the Ministry of Agrarian Affairs and Spatial Planning and the National Human Rights Commission, should establish an independent ESG–FPIC forensic audit mechanism to verify corporate claims regarding customary land acquisition before sustainability reports are approved. In addition, SEOJK No. 16/SEOJK.04/2021 should be revised to require companies operating in the extractive sector to disclose the legal status of the land they use and publish independently verified FPIC agreements for activities involving customary communities. The Supreme Court should also strengthen the implementation of Constitutional Court Decision No. 35/PUU-X/2012 to ensure that uncertified customary land receives equal legal protection in judicial proceedings. Future research is encouraged to examine the implementation of these recommendations and evaluate their impact on ESG reporting, investor confidence, and the protection of indigenous peoples' rights. Such efforts are expected to contribute to a more accountable sustainable finance system while improving legal certainty and corporate governance in Indonesia.

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