

GREENWASHING AS CONTRACTUAL FRAUD: EXAMINING ITS LEGAL IMPLICATIONS AND IMPACT ON CONTRACT VALIDITY UNDER INDONESIAN LAW

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Abstract

Greenwashing, the practice of making false or exaggerated environmental claims to deceive consumers, has emerged as a pressing issue in various industries. This study explores the legal implications of greenwashing under Indonesian law, particularly its impact on the validity of contracts. Utilizing a normative legal research methodology, this paper examines the gap in Indonesian regulations regarding greenwashing, highlighting its connection to deceptive marketing and contractual fraud. According to the Indonesian Civil Code, contracts are only valid if there is mutual consent between the parties. Greenwashing, by distorting the truth about a product or service's environmental impact, undermines this essential element of consensus, potentially rendering contracts voidable. This research draws parallels between greenwashing and contractual fraud, explaining how deceptive claims can mislead parties, disrupting their agreement and affecting the contract's legitimacy. Furthermore, the paper analyzes how greenwashing can be classified as fraud under the Indonesian Criminal Code, with implications for both civil and criminal liability. Despite the lack of specific regulations addressing greenwashing, the study proposes that its deceptive nature should be treated as a distinct legal issue, separate from general fraud. It also emphasizes the need for legal reforms to protect consumers and ensure that companies are held accountable for their environmental claims. The study concludes by advocating for stricter regulations and oversight mechanisms to mitigate the environmental and financial harm caused by greenwashing in Indonesia.

Keywords: *Greenwashing; Fraud; Contract Validity; Indonesian Law; Sustainability.*

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1. Introduction

Greenwashing has emerged as a critical issue at the intersection of corporate and business sustainability as well as consumer trust. In 2014, Nestlé faced criticism for promoting a customized recycling program for its coffee pods, which had minimal impact on overall waste reduction.¹ Similarly, Unilever was targeted by a Twitter campaign accusing it of misrepresenting its environmental impacts through a collaboration with *The Guardian* to host an online sustainable living platform.² The fashion industry has also been repeatedly put on the spotlight for allegations

¹ Frances Bowen and J Alberto Aragon-Correa, "Greenwashing in Corporate Environmentalism Research and Practice: The Importance of What We Say and Do," *Organization & Environment* 27, no. 2 (June 1, 2014): 107–112, <https://doi.org/10.1177/1086026614537078>.

² Bowen and Aragon-Correa.

of greenwashing practices and sustainable claims,³ with the negative impact of waste resulted from fast fashion towards the environment and Sustainable Development Goals being discussed by multiple scholars.⁴

Despite the recent resurgence, greenwashing is not a new phenomenon. The concept of greenwashing had emerged in the mid-1980s, where it gained broad recognition and acceptance to describe the practice of making unwarranted or overblown claims on environmental friendliness or sustainability performance to gain a higher market share.⁵ In 2023, the European Union adopted a proposal for a Directive on Green Claims, which ensured reliable and verifiable product information in relation to its environmental labels and claims.⁶ Greenwashing refers to the practice of misleading consumers or other parties on the image of environmental practices conducted by a company or the environmental positive impact of a product or a corporation, which may include various deceptive marketing strategies aimed at creating a false impression of environmental responsibility.⁷ The implications and legal consequences of greenwashing encompass various sectors, such as consumer protection, contractual obligation, as well as environmental and corporate liability.

The concept of greenwashing has also started becoming the focus of research in Indonesia. Irawati et al.⁸ has highlighted the urgency to regulate greenwashing as a misleading marketing concept in Indonesia, comparing it to *inter alia* the United States Federal Trade Commission Green Guide. On a similar account, Sena Pradipta⁹ has also raised the issue of greenwashing as a public policy problem in Indonesia. Furthermore, as mentioned before greenwashing has impact on various sectors, and this is for example exhibited in the research of Iis Alviya et al.¹⁰ which links it to land-based private sector participation in carbon trading. The authors elaborated on the land-based private sector's intentions to engage in Indonesia's carbon trading, driven by economic gains, green branding opportunities, and technological innovation, while highlighting the significant risk of greenwashing due to legitimacy gaps, and proposes strict carbon performance disclosure and validation measures to mitigate unethical practices. Additionally,

³ Julia Adamkiewicz et al., "Greenwashing and Sustainable Fashion Industry," *Current Opinion in Green and Sustainable Chemistry* 38 (2022): 100710, <https://doi.org/https://doi.org/10.1016/j.cogsc.2022.100710>.

⁴ For example, see: Valencia Ardella, "Fast Fashion Dan Implementasi SDGS 12.6.1 Di Indonesia: Kewajiban Laporan Keberlanjutan Perusahaan," *Moda: The Fashion Journal* 5, no. 2 SE-Articles (December 8, 2023), <https://doi.org/10.37715/moda.v5i2.4107>.

⁵ Dahl Richard, "Green Washing," *Environmental Health Perspectives* 118, no. 6 (June 1, 2010): 246–252, <https://doi.org/10.1289/ehp.118-a246>.

⁶ European Commission Directorate-General for Environment, "Green Claims," Energy, Climate change, Environment, 2023.

⁷ Thomas P Lyon and John W Maxwell, "Greenwash: Corporate Environmental Disclosure Under Threat of Audit," *Journal of Economics & Management Strategy* 20, no. 1 (2011): 3–41, <https://doi.org/10.1111/j.1530-9134.2010.00282.x>; Jako Volschenk, Charlene Gerber, and Bruno A d. Santos, "The (In)Ability of Consumers to Perceive Greenwashing and Its Influence on Purchase Intent and Willingness to Pay," *South African Journal of Economic and Management Sciences* 25, no. 1 (2022), <https://doi.org/10.4102/sajems.v25i1.4553>; Riccardo Torelli, Federica Balluchi, and Arianna Lazzini, "Greenwashing and Environmental Communication: Effects on Stakeholders' Perceptions," *SSRN Electronic Journal*, 2019, <https://doi.org/10.2139/ssrn.3470659>.

⁸ Irawati, Paramita Prananingtyas, and Retno Catur Wulan, "Regulation Urgency of the Misleading 'Greenwashing' Marketing Concept in Indonesia," in *IOP Conference Series Earth and Environmental Science*, vol. 1270 (Semarang: IOP Publishing, 2023), <https://doi.org/10.1088/1755-1315/1270/1/012007>.

⁹ Sena Pradipta, "Greenwashing as Public Policy Problems: Reflections from Indonesia" (Oregon State University, 2023), https://ir.library.oregonstate.edu/concern/graduate_thesis_or_dissertations/p2677358n.

¹⁰ Iis Alviya et al., "Greenwashing Practices Threat in Indonesian Land-Based Private Sector's Participation in Carbon Trading," in *Proceedings of the 9th World Congress on Civil, Structural, and Environmental Engineering (CSEE 2024)* (London: Avestia Publishing, 2024), <https://doi.org/10.11159/icept24.201>.

there is also the research of Ni Putu Bayu Widhi Antari and Daniel Connell¹¹ that connected greenwashing practices with ecotourism in Tukad Bindu, Bali. Greenwashing or overclaim in environmental performance can also take place in corporate reporting frameworks such as the annual and sustainability reporting procedures required for publicly listed companies under the auspices of the Indonesian Financial Services Authority.¹²

Greenwashing and the lack of regulation governing the topic is typically linked to false claims written in a company's mandatory disclosed report such as discussed in Eugene Kang and Nguyen Bao Lam¹³, as well as Mark Smyth and Edward Einfeld¹⁴. This trend is taking place because several countries have started to put mandatory disclosure of sustainability and/or climate related performance as part of a company's obligations. This includes Indonesia's Financial Services Authority mandatory sustainability report for Indonesian public companies that has been in effect since 2017¹⁵, as well as upcoming applicable regulations such as the Australian mandatory climate reporting, which was made under the Corporations Act that will take place in 2025¹⁶. Nevertheless, the exaggerated or untrue claims uttered in greenwashing marketing or communication can also become grounds for contractual disputes since one party may feel deceived by the marketer's environmentally pretentious assertion.

Such risk for example, is discussed by Barbara Ballan and Jason J. Czarnecki¹⁷ which explored the rise of lawsuits targeting businesses for misleading ESG disclosures, focusing on greenwashing claims. The article examines consumer and investor litigation under federal and state laws in the United States, as well as regulatory enforcement by the Federal Trade Commission and the Securities and Exchange Commission, highlighting cases involving deceptive advertising, false sustainability claims, and unsubstantiated climate pledges. The article also emphasizes the growing legal and financial risks for companies, particularly as consumer protection and securities litigation increasingly overlap in the environmental, social, and governance space. Such a risk of lawsuit based on exaggerated and/or untrue environmental claims also exist under Indonesian law despite the absence of a study that connected the two elements. Indonesian civil code requires consensus as one of the subjective requirement of contract, and consensus based on false claims may to some extent become a ground to invalidate a contract.

When false claims are intentionally made, the existing elements of deceit and lies may fall under the definition of fraud under Article 378 of the currently in force Indonesian Criminal Code and at the same time qualifying for Article 1328 of the Indonesian Civil Code which also regulates about fraud,¹⁸ giving rise to possible consequences under both criminal and civil law realms.

¹¹ Ni Putu Bayu Widhi Antari and Daniel Connell, "Tukad Bindu in Bali, Indonesia: Ecotourism or Greenwashing?," *International Journal of Tourism Cities* 7, no. 4 (January 1, 2021): 1049–75, <https://doi.org/10.1108/IJTC-12-2020-0285>.

¹² See further for example: Ulya Yasmine Prisdani, "Public Companies and Sustainability through Regulatory Reform in Indonesia," *International Journal of Environmental Studies* 80, no. 1 (January 2, 2023): 32–50, <https://doi.org/10.1080/00207233.2021.2017182>.

¹³ Eugene Kang and Nguyen Bao Lam, "The Impact of Environmental Disclosure on Initial Public Offering Underpricing: Sustainable Development in Singapore," *Corporate Social Responsibility and Environmental Management* 30, no. 1 (January 1, 2023): 119–133, <https://doi.org/https://doi.org/10.1002/csr.2342>.

¹⁴ Mark Smyth and Edward Einfeld, "Operating in the Context of Evolving Climate Disclosure Practices and Frameworks," *Australian Energy Producers Journal* 64, no. 2 (2024): S202–205, <https://doi.org/10.1071/EP23091>.

¹⁵ Financial Services Authority Regulation Number 51/POJK.03/2017 on the Implementation of Sustainable Finance.

¹⁶ Australia Securities & Investment Commission, "ASIC Urges Businesses to Prepare for Mandatory Climate Reporting," Media Release, 2024, <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-205mr-asic-urges-businesses-to-prepare-for-mandatory-climate-reporting/#:~:text=Published 18 September 2024,>.

¹⁷ Barbara Ballan and Jason J. Czarnecki, "Disclosure, Greenwashing, and the Future of ESG Litigation," *Washington and Lee Law Review* 81, no. 2 (2024): 545–654.

¹⁸ Roknel Maadia, "Tindak Pidana Penipuan Dalam Hubungan Kontraktual Menurut Hukum Pidana Indonesia," *Lex Crimen* IV, no. 2 (2015): 73–79.

Article 378 of the old Indonesian Criminal Code states that “Any person who with intent to unlawfully benefit himself or another, either by assuming a false name or a false capacity, or by crafty artifices, or by a web of fictions, induces someone to deliver any property or to negotiate a loan or to annul a debt, shall, being guilty of fraud, be punished by a maximum imprisonment of four years.” The new National Indonesian Criminal Code will come into force starting from 2026, three years after its promulgation in 2023. Further, Article 1328 of the Indonesian Civil Code states that “Fraud shall form grounds for nullification of an agreement, if the deceit by one of the parties is of such nature that it is apparent that the other party would never have concluded the agreement without such deceit. Fraud shall not be presumed, but must be proven.”

The work of Yonatan et.al.¹⁹ also emphasized that the difference between fraud and default under the civil law legal system lies on the existence of bad intention, and that civil settlement can be made based on unlawful acts. Fraud has also been theoretically linked to a defect in consent for example elaborated by Francesco Paolo Patti²⁰ and Egzonis Hajdari²¹, and it is based on this understanding that the Indonesian Civil Code can be more relevant. In light of this, the research aims to provide further insights on the matter by examining the extent to which greenwashing has been regulated under Indonesian law and exploring the legal nexus between greenwashing and the validity of contracts under Indonesian law.

2. Method

The method used in writing this article is the normative legal research method. The normative legal research method employed in this research is based on primary and secondary legal sources, although the majority of which consist of secondary legal sources due to the absence of complete laws on the matter of greenwashing. With regard to analyzing the validity of contracts under Indonesian law, the author primarily refers to the Indonesian Civil Code with a particular focus on Book III regarding agreement and contract. Secondary legal sources are referred to provide a deeper understanding or expert interpretation of the articles on the validity of contracts in the current research. Given the novelty of greenwashing as a topic of discussion in the Indonesian legal landscape, this research studies various secondary legal sources, including include peer-reviewed academic articles, textbooks, media opinions, as well as other scholarly references that are authored by both Indonesian and international legal and non-legal scholars.

In addition to analyzing greenwashing context within the realm of Indonesian law, a minor comparison is also conducted towards another jurisdiction, namely the United States, to see how greenwashing has been settled and dealt with. This article provides an example of a governmental institution that helps supervise greenwashing practices in the United States, while also stating several cases that are related to unsubstantiated or frivolous environmental claims, to ultimately compare it to Indonesia.

3. Results and Discussion

3.1. Validity of Contract under Indonesian Law

The provisions in a contract that is legally made by the parties apply as a special law that binds the parties who agree to it, or also known as *lex specialis derogate legi generalis*. Further, the validity of an agreement or contract as a law can only bind the contracting parties once a contract is rendered valid and legal. As a consequence, the emphasis on validity becomes a very

¹⁹ Yonatan et al., “Criminalizing Civil Law Actions of Default into Criminal Acts of Fraud: A Human Rights Perspective,” *Yuridika* 39, no. 3 SE-Civil Law (September 25, 2024): 303–328, <https://doi.org/10.20473/ydk.v39i3.51329>.

²⁰ Francesco Paolo Patti, “‘Fraud’ and ‘Misleading Commercial Practices’: Modernising the Law of Defects in Consent,” *European Review of Contract Law*, 12, no. 4 (2016): 307–334, <https://doi.org/doi:10.1515/ercl-2016-0017>.

²¹ Egzonis Hajdari, “The History and Origin of Fraud as a Defect in Consent in Contractual Relationships,” *Brawijaya Law Journal* 8, no. 1 (2021): 15–35, <https://doi.org/https://doi.org/10.21776/ub.blj.2021.008.01.02>.

important initial step to ensure in a contract formation. If the contract does not fulfill all of the requirements required for the validity of an agreement, it will give rise to problems with the legality of the contract.²² The validity of contracts under Indonesian law is primarily governed by Article 1320 of the Indonesian Civil Code, which outlines four essential requirements. First, there must be mutual consent between the individuals involved, indicating their agreement to be bound by the contract. Second, the parties involved must have the legal capacity to enter into a contract. Third, the contract must have a specific subject matter, ensuring clarity and focus on the object of the agreement. Lastly, there must be an admissible cause, meaning that the purpose or reason for the contract must be lawful and not contrary to public policy. These requirements ensure that contracts are both legally sound and enforceable under Indonesian law.

Article 1321 of the Indonesian Civil Code further states that consent cannot be accepted if it is based on an error or obtained by way of duress or fraud. Three theories can be used to analyze the validity of contractual bounds from the perspective of contractual intention or statement, namely the will theory (*wilsleer* or *wilstheorie*), statement theory (*verklaringsleer* or *verklaringstheorie*), and trust theory (*vertrouwensleer* or *vertrouwenstheorie*). The will theory basically sees the establishment of a contractual relation solely based on the extent of the statement (which must correspond with the intention), the statement theory holds a party bound to their statement disregarding the intention, and last but not least, the trust theory holds the party's statement that is objectively trustworthy.²³ The element of trustworthiness in a contract is further elaborated by Elly Erawaty and Herlien Budiono²⁴, who explain that even if the parties involved have not read or are unaware of the content of a deed, whether partially or in full, they have consciously intended to be "bound" by the content of the deed that applies to them. They highlight that in many cases, standard agreements are signed without the parties fully understanding or reading the exact content. However, the very act of signing the agreement establishes a basis for trust, implying that the signee is aware of and intends to accept what is stated in the agreement by virtue of their signature.

In examining the validity of contracts under Indonesian law, it is important to understand the nuanced distinction between subjective and objective requirements, as outlined in the Indonesian Civil Code. These two categories of requirements are fundamental in determining whether a contract is legally binding or void. The subjective requirements, which include the consent of the parties involved and their legal capacity to enter into a contract, are critical in ensuring that the agreement is based on mutual agreement and understanding. If either of these subjective conditions is not met, the contract may be deemed voidable, meaning that it can be annulled by the party whose consent was not properly obtained or whose capacity was lacking.²⁵

On the other hand, the objective requirements pertain to the substantive elements of the contract itself, such as the specification of the subject matter and the presence of a lawful cause. These requirements are designed to ensure that the contract's terms are not only clear but also legally permissible. If these objective conditions are not fulfilled, the contract will be considered null and void. This distinction is essential because it separates issues of form and intention from the underlying legality and fairness of the agreement itself.

To better understand these concepts, it is helpful to look at the historical context provided by the Old Netherlands Civil Code, which serves as the foundation for much of Indonesia's contract law. The drafters of the Old Netherlands Civil Code emphasized the importance of clear and unambiguous language in contracts, arguing that the intention of the contracting parties should be disregarded if the contract's terms are already explicitly and comprehensively stated. This approach was based on the belief that a written contract, when clear and complete, should stand on its own without requiring further interpretation based on the parties' personal intentions.

²² Ricardo Simanjuntak, *Teknik Perancangan Kontrak Bisnis*, Revised (Jakarta: Kontan Publishing, 2011).

²³ See further: Ulya Yasmine Prisdani, "The Significance of Contractual Intention: A Comparative Analysis on English and Indonesian Law," *Jurnal Hukum IUS QUIA IUSTUM* 25, no. 3 SE-Articles (January 17, 2019): 494–514, <https://doi.org/10.20885/iustum.vol25.iss3.art4>.

²⁴ Elly Erawaty and Herlien Budiono, *Penjelasan Hukum Tentang Kebatalan Perjanjian* (Jakarta: PT. Gramedia, 2010).

²⁵ Muhammad Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)* (Bandung: CV. Mandar Maju, 2012).

This principle is further reinforced in Article 1342 of the Indonesian Civil Code, which stipulates that a contract's validity is determined by the clarity of its terms. The article strictly limits the need to consider the subjective intention of the parties when the contract's terms are already explicitly articulated. The purpose of this limitation is to promote certainty and stability in contractual relationships, ensuring that contracts are not easily undermined by claims of misunderstood or undisclosed intentions. This strict interpretation aims to protect the integrity of the contract as a binding agreement, which is essential in maintaining trust and consistency in legal transactions.

In practical terms, this means that if a contract is written with clear and precise language, the courts will generally rely on the document's terms rather than delving into the intentions of the parties. For example, if a party later attempts to invalidate the contract based on a claimed misunderstanding or misrepresentation of their intentions, such arguments are typically not entertained unless there is a clear legal reason to do so, such as fraud or duress.

The current construct of contract validity under the Indonesian Civil Code has faced considerable scrutiny and ongoing debate among legal scholars and practitioners. In their analysis, Natasya Yunita Sugiastuti and Dian Purnamasari²⁶ highlight a key shortcoming in the Indonesian Civil Code: the lack of a clear explanation regarding when consent is deemed to have occurred and how it can be established. For instance, it remains unclear whether consent arises through the classic mechanism of offer and acceptance, and, if so, which theory of offer and acceptance applies in the context of modern contract law in Indonesia. This gap in clarity leaves room for varying interpretations and, consequently, practical uncertainty.

However, this viewpoint is not universally accepted. Shawn J. Bayern²⁷ presents a contrasting opinion, arguing that the traditional offer and acceptance theory does not align with modern contracting practices. According to Bayern, the rigid application of this theory serves more as an obstacle than a useful framework in contemporary commercial transactions. He suggests that the theory, which originated in earlier contract law frameworks, fails to reflect the complexities and flexibility needed in today's business environment. As a result, Bayern contends that reliance on this classical theory can introduce unnecessary complications in contract formation, potentially hindering the fluidity and efficiency required in modern legal and commercial dealings.

In light of these differing views, the current understanding of contract validity under Indonesian law continues to depend heavily on various doctrines and the opinions of legal scholars. These perspectives draw from several foundational theories of contract law, including the statement theory, the will theory, and the trust theory. Each theory offers a different approach to understanding consent and the binding nature of agreements. The statement theory, for example, focuses on the external expression of consent, while the will theory emphasizes the internal, subjective intent of the parties involved. The trust theory, on the other hand, highlights the importance of the trust placed by one party in the promises or conduct of the other. These theories are frequently referenced to interpret and apply the principles of contract law in situations where the law itself lacks clarity.

Another area of criticism raised by scholars pertains to the term "permissible cause" (*causa yang diperbolehkan*) as used in the Indonesian Civil Code. This term, found in Article 1337, has been a source of practical ambiguity in contract law. *Causa* is commonly understood as the common purpose or the content of the agreement, but the term itself is often left undefined or inadequately explained in legal practice. While Article 1337 refers to causes that are contrary to the law, decency, or public order as impermissible, the lack of a precise definition of what constitutes a "permissible cause" creates room for confusion. The vagueness of this term can complicate contract formation, particularly in cases where the content or purpose of the contract might fall into a gray area or when the purpose of the agreement is not immediately clear.

²⁶ Natasya Yunita Sugiastuti and Dian Purnamasari, "Improvement Of Substantive Provisions Of The Validity Of Agreement In The Indonesian Civil Code," *Diponegoro Law Review* 8, no. 1 (April 30, 2023): 124–140, <https://doi.org/https://doi.org/10.14710/dilrev.8.1.2023.124-140>.

²⁷ Shawn J Bayern, "Offer and Acceptance in Modern Contract Law: A Needless Concept," *California Law Review* 103, no. 1 (August 11, 2015): 67–101, <http://www.jstor.org/stable/24758468>.

This practical uncertainty surrounding the concept of “permissible cause” poses challenges for legal practitioners and contract drafters. Without a more specific and consistent definition, the application of this provision can vary from case to case, depending on judicial interpretation or the opinions of legal experts. As such, the lack of clarity surrounding the concept of *causa* under the Indonesian Civil Code further complicates the overall framework for determining the validity of contracts.

Nevertheless, to make the suggestion on whether or not the recent construct of greenwashing can fit under the current regulation under the Indonesian Civil Code, an exact definition and further understanding on the topic may need to be presented. This is important to be able to create deeper analysis, for example whether or not greenwashing constitutes as something that violates a contract, or is it merely an unethical conduct of one of the parties. The context of greenwashing needs to be seen, especially in relation to its positioning under Indonesian Law.

3.2. Greenwashing and its Context under Indonesian Law

Greenwashing is a relatively new concept that has not been discussed extensively yet in Indonesian research, therefore it will be useful to first understand the concept in general from researches abroad. As a starting point, Eric L Lane²⁸ gives examples of the two forms of environmental marketing claims: one where companies brand themselves as guardians of the environment by promoting sustainable business practices, and one where companies promote certain pro-environment products for individual customers. Some of these claims later on turned out to be merely gimmicks, and some others failed to deliver the previously claimed environment benefits, and these failures may constitute as greenwashing, subject to fulfilment of certain conditions. One notable reference on the definition of greenwashing is provided by Thomas P Lyon and A W Montgomery²⁹, who described greenwashing as “communication that misleads people into forming overly positive beliefs about an organization’s environmental practices or products”. This definition made a point on the intentionality behind the false claims made by companies to enhance their public image.

Another one would be Peter Seele and Lucia Gatti³⁰ which provided a comprehensive overview of greenwashing, noting that it encompasses “disinformation disseminated by an organization” aimed at misleading consumers. They highlight the intentionality of deceit as a critical component of greenwashing, aligning with the notion that false claims are central to this practice. Ulun Akturan³¹ provides the definition of greenwashing as “disinformation disseminated by an organization so as to present an environmentally responsible public image” which further supports the idea that false claims are a core aspect of greenwashing, as companies often exaggerate or fabricate their environmental efforts to mislead consumers. Brigitte Naderer, Desirée Schmuck, and Jörg Matthes³² further discussed how companies have historically engaged in misleading advertising that presents “deceptive or confusing truths or even false promises” regarding their environmental claims. This historical context reinforces the ongoing issue of false claims in green marketing.

Greenwashing, a term that has gained traction in recent years, refers to the practice where companies use misleading marketing tactics to present themselves as environmentally

²⁸ Eric L Lane, “Greenwashing 2.0,” *Columbia Journal of Environmental Law* 38, no. 2 SE-Articles (October 10, 2013): 279–331, <https://doi.org/10.7916/cjel.v38i2.3503>.

²⁹ Thomas P Lyon and A W Montgomery, “The Means and End of Greenwash,” *Organization & Environment* 28, no. 2 (2015): 223–249, <https://doi.org/10.1177/1086026615575332>.

³⁰ Peter Seele and Lucia Gatti, “Greenwashing Revisited: In Search of a Typology and Accusation-Based Definition Incorporating Legitimacy Strategies,” *Business Strategy and the Environment* 26, no. 2 (2015): 239–252, <https://doi.org/10.1002/bse.1912>.

³¹ Ulun Akturan, “How Does Greenwashing Affect Green Branding Equity and Purchase Intention? An Empirical Research,” *Marketing Intelligence & Planning* 36, no. 7 (2018): 809–824, <https://doi.org/10.1108/mip-12-2017-0339>.

³² Brigitte Naderer, Desirée Schmuck, and Jörg Matthes, “2.3 Greenwashing: Disinformation Through Green Advertising,” 2017, 105–120, <https://doi.org/10.1515/9783110416794-007>.

responsible, even when their actual business operations or products do not live up to these claims. This practice has been highlighted by Irawati et al.³³ in their study on the legal landscape surrounding environmental claims in Indonesia. According to their research, greenwashing is a strategy adopted by companies aiming to create a false impression of environmental friendliness. This can take the form of marketing efforts that depict a product or service as eco-friendly, promoting corporate values that suggest a commitment to sustainability, even though there are no substantial or real environmental benefits behind these assertions. The tactic primarily serves to attract environmentally-conscious consumers who are increasingly seeking out brands that align with their values.

However, Irawati et al. argue that the practice of greenwashing is closely tied to green marketing, which seeks to capitalize on consumers' growing environmental awareness and concerns. In essence, while green marketing attempts to highlight a company's positive environmental impact, greenwashing manipulates this very idea to create an illusion of environmental responsibility without delivering any meaningful change. This deceptive practice misleads consumers, potentially undermining the trust they place in brands that genuinely commit to sustainable practices.

One of the key insights from the work of Irawati et al. is that, despite the significant rise in greenwashing, Indonesia's regulatory framework remains insufficient in addressing and curbing such deceptive practices. While other countries have implemented stronger laws to regulate misleading environmental claims, Indonesia has yet to develop comprehensive legislation that specifically targets greenwashing. In the absence of such regulations, companies are not held accountable for their actions, which allows them to continue exploiting the growing demand for sustainable products without being penalized for their dishonesty.

The lack of regulation creates a gap that allows greenwashing to thrive, which ultimately harms consumers who are misled into believing they are making environmentally responsible choices. Irawati et al. highlight that the lack of clear and enforceable rules around green marketing and greenwashing in Indonesia is a significant concern. Without these regulations, the country risks fostering an environment where companies can manipulate consumer sentiment for profit, thereby undermining the efforts of those companies that genuinely strive to adopt sustainable practices.

In light of this, there is an urgent need for specific regulations to address the deceptive nature of green marketing. These regulations should not only protect consumers from misleading claims but also ensure that companies that make environmental claims are held accountable for their actions. By enforcing such standards, Indonesia can foster a more transparent marketplace and encourage companies to adopt truly sustainable practices. Therefore, the legal framework must be updated to reflect the growing importance of environmental responsibility and to prevent the rise of deceptive practices like greenwashing that undermine consumer trust and environmental goals.

Another insightful study that delves into the concept of greenwashing and its implications in Indonesia is the work of Agustina Fitrianingrum and Selly Celsya³⁴, which focuses on its impact on Indonesian millennial consumers' purchasing decisions. Specifically, the study explores how greenwashing affects consumer behavior towards bottled drinking water products that are labeled as "eco-friendly." This investigation reveals significant findings about the detrimental effects of greenwashing on both consumer perceptions and purchasing behavior. The research highlights that when consumers recognize misleading environmental claims, it erodes brand credibility, which in turn negatively impacts brand equity and purchase intentions.

Brand credibility, as the study suggests, is a crucial element in building consumer trust and loyalty. When a brand is perceived as trustworthy and authentic, it strengthens its equity—an essential factor that influences whether consumers decide to purchase its products. However,

³³ Irawati, Prananingtyas, and Wulan, "Regulation Urgency of the Misleading 'Greenwashing' Marketing Concept in Indonesia."

³⁴ Agustina Fitrianingrum and Selly Celsya, "Greenwashing, Does It Work Well for Indonesian Millennial Buyers?," in *Proceedings of the International Conference on Management, Accounting, and Economy (ICMAE 2020)* (Atlantis Press, 2020), 157–62, <https://doi.org/10.2991/aebmr.k.200915.037>.

when consumers discover that a company is engaging in greenwashing, they tend to lose trust in the brand, reducing its overall equity. This loss of credibility not only diminishes the likelihood of consumers purchasing that brand's products but also casts a shadow over the entire brand, making it harder for the company to regain consumer confidence.

The findings from Fitrianingrum and Celsya's study reveal that consumers, particularly millennials, have become more discerning and skeptical of environmental claims. This heightened awareness means that they are less likely to fall for deceptive tactics, and more likely to scrutinize whether a product's "eco-friendly" label truly aligns with the company's actions. This skepticism suggests that greenwashing, far from being a harmless marketing strategy, can have long-term negative consequences for companies that choose to engage in it.

Moreover, the study emphasizes the importance of authentic sustainability practices. Companies that genuinely commit to environmental responsibility build a positive brand reputation and strengthen consumer trust. In contrast, those that resort to greenwashing risk not only alienating their customers but also damaging their reputation in the long run. In a market where consumers increasingly prioritize sustainability, the failure to deliver on environmental promises can be detrimental, as consumers will seek out brands that demonstrate genuine efforts in sustainability rather than relying on superficial claims.

Additionally, other works such as Andrea Renina Sudirja et al.³⁵, Rafael Arvy Ginting et al.³⁶, Wahdatun Thoibah, Muhammad Arif, and Rahmat Daim Harahap³⁷, and Maria Agustini et al.³⁸ have also touched upon the concept of green marketing despite not yet connecting or using the term 'greenwashing'. Green marketing and greenwashing are interrelated concepts that have gained significant attention in recent years, particularly as businesses increasingly adopt environmentally friendly practices in their marketing strategies. However, the line between genuine green marketing and misleading greenwashing can often be blurred. Green marketing refers to the promotion of products and services based on their environmental benefits, aiming to attract consumers who are environmentally conscious. In contrast, greenwashing involves companies portraying an exaggerated or false commitment to environmental practices, often to enhance their public image without implementing substantive changes.³⁹ All in all, specific regulations to prevent greenwashing and its undesirable effects have not been enacted in Indonesia. Despite of this, the concept of greenwashing can be linked or covered by a more general concept, such as contractual fraud, despite its specific environmental element.

3.3. Greenwashing as Contractual Fraud and its Legal Nexus under Indonesian Law

Mismatched contractual intention or 'absence of the meeting minds' can cause agreements to be voidable under Indonesian law,⁴⁰ and in the case of greenwashing, one party overly claims its environmental performance, inducing the other party to enter into the agreement. Contract law

³⁵ Andrea Renina Sudirja et al., "Indonesian Consumers and the Green Marketing of Eco-Friendly Personal Care Products," *Kajian Branding Indonesia* 5, no. 2 (2023): 141–66, <https://doi.org/10.21632/kbi.5.2.141-166>.

³⁶ Rafael Arvy Ginting et al., "Pengaruh Green Marketing, Inovasi Produk Dan Brand Awareness Terhadap Keputusan Pembelian (Studi Kasus: PT Unilever Indonesia Tbk)," *Jurnal Ilmu Multidisiplin* 1, no. 4 SE-Articles (March 30, 2023): 986–992, <https://doi.org/10.38035/jim.v1i4.198>.

³⁷ Wahdatun Thoibah, Muhammad Arif, and Rahmat Daim Harahap, "Implementasi Green Marketing Pada UMKM Upaya Memasuki Pasar Internasional (Studi Kasus Pada Creabrush Indonesia)," *Jurnal Ekonomika Dan Bisnis* 2, no. 3 SE-Articles (November 30, 2022): 798–805, <https://doi.org/10.47233/jeb.v2i3.290>.

³⁸ Maria Agustini et al., "Green Marketing Practices and Issues: A Comparative Study of Selected Firms in Indonesia and Philippines," *Journal of Asia-Pacific Business* 22, no. 3 (July 3, 2021): 164–181, <https://doi.org/10.1080/10599231.2021.1943807>.

³⁹ Irawati, Prananingtyas, and Wulan, "Regulation Urgency of the Misleading 'Greenwashing' Marketing Concept in Indonesia"; Seda Yildirim, "Greenwashing: A Rapid Escape From Sustainability or a Slow Transition?," *LBS Journal of Management & Research* 21, no. 1 (2023): 53–63, <https://doi.org/10.1108/lbsjmr-11-2022-0077>.

⁴⁰ Prisdani, "The Significance of Contractual Intention: A Comparative Analysis on English and Indonesian Law."

usage as a tool for mitigating greenwashing for example has been proposed in Federica Agostini⁴¹ with the context of standard clauses along the lines of Master Agreements for bond derivatives. The problem with over-claiming in this regard can cause two issues in relation to validity of contract under Indonesian law, with the main concern being consensus but to some extent it can also affect the legality of its cause. With regard to the validity of contracts, invoking Article 1320 vis-à-vis Article 1321 of the Indonesian Civil Code, a contract that is tainted with greenwashing on its provisions of course will not be valid if the greenwashing in question reaches the level of fraud.

Fraud is an important legal concept under Indonesian contract law, and its implications for the validity of contracts are clearly outlined in the Indonesian Civil Code. As regulated in Article 1321, fraud is one of the grounds for annulment of a contract. When fraud occurs, it can invalidate a contract that has been formally agreed upon because it deprives the injured party of the opportunity to make a true and informed decision regarding the terms of the contract. Essentially, fraud interferes with the free will of the party, as the fraudulent actions distort their ability to assess the agreement fully and fairly.⁴²

Article 1328 of the Indonesian Civil Code further elaborates on this principle, stating that fraud can serve as grounds for the nullification of an agreement, but only if the deception by one of the parties is so significant that it is clear the other party would never have entered into the contract had they been aware of the true facts. This provision underscores the importance of the intent behind the fraudulent act—if the deceit is severe enough to influence the decision-making process of the other party, the contract may be considered void.

However, the Civil Code also places a significant burden of proof on the party alleging fraud. As stated in Article 1328, fraud is not presumed but must be proven. This means that the party seeking to annul the contract due to fraud must provide clear evidence of the deceptive actions. The burden of proof is crucial because it ensures that claims of fraud are not made frivolously or without sufficient backing. It also emphasizes the importance of maintaining the integrity of contracts, ensuring that parties cannot easily invalidate agreements on the basis of mere allegations without demonstrating the presence of deceit.

In practice, proving fraud in a contract can be challenging, as it requires showing that the deceitful actions directly influenced the injured party's decision to enter into the contract. This often involves demonstrating that the fraud was material to the agreement and that, had the truth been known, the deceived party would not have agreed to the contract's terms. The evidence required may include documentation, witness testimony, or other forms of proof that show the fraudulent actions and their impact on the agreement.

The understanding of fraud in this case must be related to the substantial provisions in the contract or the essence of the main point of the agreement. Therefore, fraud can be defined as a statement or action carried out to hide or distort the actual facts, and if it is only an assessment or opinion regarding the facts, it cannot be qualified as fraud.⁴³ For example, if the seller of goods promotes his goods with very attractive language, it cannot be said to be fraud because what appears is more in the language that is based on the seller's opinion rather than the actual facts of the goods being traded. For instance, if the seller of the goods does not correctly explain the ingredients of the goods, only then it can be said as a fraud. It does not constitute as fraud referred to in Article 1328, if for example, the seller only says that his goods are number one quality.⁴⁴ So, the emphasis of fraud herein should be put on the existence of mis-disclosure or distortion of facts that may affect the buyer's decision to buy the goods.

⁴¹ Federica Agostini, "From 'Green Bond Principles' to 'Green Bond Clauses': Mitigating Greenwashing Through Contract Law BT - Quo Vadis Commercial Contract?," ed. Mads Andenas and Maren Heidemann (Cham: Springer International Publishing, 2023), 151–177.

⁴² Simanjuntak, *Teknik Perancangan Kontrak Bisnis*.

⁴³ Simanjuntak.

⁴⁴ Simanjuntak.

Fraud as a basis of invalidating contracts under Indonesian law has also been discussed in for example Marhaeni Ria Siombo⁴⁵ and Catur Erwin Setiawan, Suwarti, and Nam Rumkel⁴⁶. Marhaeni Ria Siombo⁴⁷ defines fraud as a condition when one party intentionally misleads another, resulting in a contract that would not have been agreed upon had the truth been known. This aligns with the general legal principle that a contract entered into under fraudulent circumstances can be declared void or voidable, depending on the severity and nature of the fraud involved.

Catur Erwin Setiawan, Suwarti, and Nam Rumkel⁴⁸ further elaborated on this by discussing the legal framework surrounding fraud in business contracts in Indonesia. They emphasize that the Indonesian Civil Code provides specific provisions that allow for the annulment of contracts when fraud is proven. This research highlights that the burden of proof lies with the party claiming fraud, necessitating substantial evidence to support their allegations. This requirement highlights the importance of maintaining integrity in contractual dealings and the legal system's role in protecting parties from deceitful practices. Erwin Suryoprayogo⁴⁹ provides a specific context of fraud in the form of tender conspiracy that may jeopardize the validity of a work construction contract. The study found that contracts that are formed through collusive tenders will result in imperfect formation, and further, can be subject to cancellation. The study suggests termination of the contract by the Committing Officer as a procedural step that can be taken if tender conspiracy takes place. Additionally, reiterating Article 1322 of the Indonesian Civil Code, an error will only render a contract invalid if the error is on the subject matter of the agreement. In such a case, such a contract will then be nullable as a consequence.⁵⁰ Under Indonesian law, it is also possible for the disadvantaged contracting party who did not receive truthful information to submit a request to void the contract.⁵¹

Treating greenwashing as a general contractual fraud will lead to regular dispute settlement mechanism without acknowledging its special character. Greenwashing claims made between sustainable investment agreements or sustainable financing, for example, cause deeper damage compared to regular contractual fraud due to the absence of certain environmental or sustainability performance. The fundamental impact of greenwashing in sustainable financing is highlighted in Juan Dempere, Ebrahim Alamash, and Paulo Mattos⁵² include deterioration of investment as well as distrust amongst the investment communities since investors genuinely seek to match their ecological value with investment to the right companies and products. This also links to the fact that some investors actually seek to provide measurable remedy or positive impact to the environment, and the action of greenwashing undermine their targeted environmental performance that may serve as a non-fulfillment in other contracts.

As a result of this, the possibility of greenwashing in commercial agreements need special attention and if needed, defined and regulated specifically under the laws and regulations especially in the financial or commercial sector. This is due to the risks of financial damages as

⁴⁵ Marhaeni Ria Siombo, "the vulnerability of proving fraud as the basis for cancelling agreements in the digital era," *Jurnal Bina Mulia Hukum* 7, no. 2 SE-Articles (March 31, 2023): 243–258, <https://doi.org/10.23920/jbmh.v7i2.708>.

⁴⁶ Catur Erwin Setiawan, Suwarti, and Nam Rumkel, "Analysis of Fraud in Civil on Agreements Resulting in Default," *Journal of Social Science* 2, no. 6 (2021): 760–70, <https://doi.org/https://doi.org/10.46799/jss.v2i6>.

⁴⁷ Siombo, "The Vulnerability Of Proving Fraud As The Basis For Cancelling Agreements In The Digital Era."

⁴⁸ Setiawan, Suwarti, and Rumkel, "Analysis of Fraud in Civil on Agreements Resulting in Default."

⁴⁹ Erwin Suryoprayogo, "Keabsahan Kontrak Kerja Konstruksi Yang Terbukti Dibentuk Dari Persekongkolan Tender," *Lex Renaissance* 7, no. 1 SE-Articles (March 8, 2022): 16–30, <https://doi.org/10.20885/JLR.vol7.iss1.art2>.

⁵⁰ Subekti, *Pokok-Pokok Hukum Perdata*, 16th ed. (Bandung: PT. Intermasa, 1982).

⁵¹ Prisdani, "The Significance of Contractual Intention: A Comparative Analysis on English and Indonesian Law."

⁵² Juan Dempere, Ebrahim Alamash, and Paulo Mattos, "Unveiling the Truth: Greenwashing in Sustainable Finance," *Frontiers in Sustainability* 5 (2024): 1–14, <https://doi.org/https://doi.org/10.3389/frsus.2024.1362051>.

well as missing environmental benefit that can take place without proper sanctioning or supervising of a company's environmental claims. Not only harming the fundamentals of consent within contracts, greenwashing also poses as a serious challenge towards corporate social responsibility implementation.⁵³

The matter of greenwashing has been given special attention in various jurisdictions, such as the United States in which the Federal Trade Commission has been serving a highly active role as a governmental watchdog for deceptive environmental advertising practices.⁵⁴ Studies have proposed to widen the scope of greenwashing risk coverage. For example, Eric L Lane⁵⁵ suggested the shift from what has been focusing on business-to-consumer contracts that target green individual consumers to business-to-business commercial transactions which include bigger scale projects such as renewable energy systems or energy efficient equipment, whereby Alessandro Rizzello⁵⁶ provided the context of green financing. However, it is also important to note that in the United States, citizens have long fought against untrue environmental claims as well as greenwashing practices through litigatory methods. Greenwashing cases in the United States vary from unsubstantiated electronic-related claims in *inter alia LG Electronics U.S.A., Inc. v. U.S. Dep't of Energy* (2010)⁵⁷ regarding French door refrigerator claims, to daily consumer goods using plastic bottles in *California v. ENSO Plastics, LLC. (2011)*⁵⁸ regarding biodegradability claims, to multiple automotive-related suits such as *True vs. American Honda Motor Co. (2007)*⁵⁹, *Quiroz v. Kia Motors America, Inc. (2012)*⁶⁰, and *Klee v. Nissan North America, Inc. (2012)*⁶¹.

Ultimately, comparing the aforementioned set of affairs to the Indonesian setting, even though the Indonesian court has received various climate-change related lawsuits,⁶² all of them have a more direct nexus towards climate change and non are related to frivolous environmental claims. The Financial Services Authority also supervises merely with regard to sustainability reporting and not the greenwashing practices *per se*. This brings us back again to the limitation of treating greenwashing through the general procedure of fraud in contract. Moreover, referring to Eric L Lane⁶³ proposal of distinguishing different greenwashing relationship models, it is to be noted that the current Indonesian contract law regime does not distinguish between business-to-consumer and business-to-business contracts. Legal reforms may first focus on regulating and supervising greenwashing practices in general. This may include specifying which governmental institution, agency, or department has the authority to take measures to combat greenwashing practices.

4. Conclusion

Greenwashing, the practice of making false or exaggerated environmental claims to create a misleading image of corporate responsibility, remains largely unregulated under Indonesian law. Despite this lack of specific legal provisions, the deceptive nature of greenwashing aligns closely with the concept of contractual fraud in Indonesian law. The key factor is the intention to deceive, as companies use greenwashing tactics to mislead consumers or business partners into believing

⁵³ Miriam A. Cherry, "The Law and Economics of Corporate Social Responsibility and Greenwashing," *UC Davis Business Law Journal* 14, no. 2 (2014): 281–303.

⁵⁴ Lane, "Greenwashing 2.0."

⁵⁵ Lane.

⁵⁶ Alessandro Rizzello, "Beyond Greenwashing: An Overview of Possible Remedies BT - Green Investing: Changing Paradigms and Future Directions," ed. Alessandro Rizzello (Cham: Springer International Publishing, 2022), 107–132, https://doi.org/10.1007/978-3-031-08031-9_5.

⁵⁷ *LG Electronics U.S.A., Inc. v. U.S. Dep't of Energy*, No. 09-2297 (JDB), 2010 WL 151983 (D.D.C. Jan. 18, 2010).

⁵⁸ *California v. ENSO Plastics, LLC*, Case No. 00518019 (Cal. Sup. Ct. Oct. 26, 2011).

⁵⁹ *True v. American Honda Motor Co.*, Case No. 07-cv-00287-VAP-OP (C.D. Cal. Nov. 19, 2007).

⁶⁰ *Quiroz v. Kia Motors America, Inc.*, Case No. 12-cv-02091 (C.D. Cal. Dec. 3, 2012).

⁶¹ *Klee v. Nissan North America, Inc.*, Case No. 12-cv-08238 (C.D. Cal. Sep. 24, 2012).

⁶² See further: Linda Yanti Sulistiawati, "Climate Change Related Litigation in Indonesia," *Communications Earth & Environment* 5, no. 1 (2024): 522, <https://doi.org/10.1038/s43247-024-01684-1>.

⁶³ Lane, "Greenwashing 2.0."

they are more environmentally responsible than they truly are. This misrepresentation disrupts the mutual agreement, or "meeting of the minds," that forms the foundation of any valid contract. Without a truthful representation of facts, the contract's validity can be called into question.

Under the Indonesian Civil Code, fraud is one of the key grounds for the cancellation of a contract. The Code establishes that an agreement must be based on mutual consent, meaning that both parties must have a clear and accurate understanding of the terms they are agreeing to. When greenwashing is involved, the consent of one party is tainted by false claims, which means that the first requirement for a valid contract—consensus—has not been met. This failure of consensus is a subjective requirement under Indonesian law, and when it is not fulfilled, it opens the door for the disadvantaged party to request the cancellation of the contract. In practice, this could lead to legal disputes, as parties who have been misled may seek redress for the damages caused by relying on fraudulent claims.

Furthermore, greenwashing can expose companies to significant legal risks. Misleading environmental claims can lead to lawsuits, particularly when these claims are tied to the broader context of non-financial disclosures, such as sustainability reports. While Indonesian law has begun to address sustainability reporting for publicly listed companies, these regulations do not yet specifically target greenwashing. The lack of clear guidelines for environmental marketing claims allows companies to exploit regulatory gaps, which could undermine the integrity of non-financial reporting standards and lead to legal consequences. These risks are further compounded when greenwashing results in financial harm, such as loss of consumer trust or misallocation of investment in green initiatives.

When comparing greenwashing to traditional contractual fraud, it is clear that greenwashing carries additional complexities. While both involve deception and misleading claims, the environmental implications of greenwashing create distinct challenges that are not adequately addressed by existing fraud regulations. Greenwashing often involves claims that mislead not only consumers but also investors, governments, and other stakeholders concerned with environmental sustainability. As such, it is not just a matter of commercial dishonesty but also a failure to meet environmental targets, which can have broader societal consequences.

Given these unique challenges, greenwashing should be treated as a separate legal issue in Indonesia. There is a strong need for specific regulations that address this practice, distinguishing it from general fraud. Legal reforms could focus on defining greenwashing more clearly, establishing rules for environmental claims, and creating stricter penalties for companies that mislead the public about their sustainability practices. Moreover, an independent body or regulatory agency could be designated to oversee greenwashing practices, monitor environmental claims, and enforce penalties for violations. Such measures would help ensure that companies are held accountable for their environmental claims and would protect consumers and investors from deceptive marketing practices.

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