Reflecting Pancasila in Environmental Crimes Enforcement: Diffusing Values to Indonesia’s Laws

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Abstract

Pancasila and the 1945 Constitution play crucial roles in shaping Indonesia’s governance, societal values, and legal framework, particularly in safeguarding the right to a clean and healthy environment. However, environmental destruction persists due to inadequate corporate accountability enforcement and systemic flaws. Hence, the article examines Indonesia’s regulatory approach to holding corporations accountable for environmental crimes through the lens of Pancasila. It explores how Pancasila’s principles influence environmental regulations, emphasizing nature harmony, fair treatment, and social justice. Effective enforcement aligned with these principles can promote sustainable development and environmental protection. Challenges like regulatory gaps and corruption need addressing. Building an optimal framework entails integrating Pancasila values into preventive and punitive measures, ensuring transparency, community participation, and fair enforcement. Success hinges on robust legal structures and public involvement, with initiatives like corporate collaboration, transparency, and strict liability enforcement. Implementation requires the establishment of mechanisms such as an Environmental Court and community oversight for victim recovery. This article uses a normative approach elaborated through a conceptual and statute approach.
A. Introduction

According to Law Number 12 of 2011 on the Formation of Legislation, Pancasila is affirmed as the foundational source of all legal principles within the state. Pancasila and the 1945 Constitution are pivotal to Indonesia, shaping its governance, societal values, and legal framework. Pancasila provides philosophical principles guiding policy and societal cohesion, while the 1945 Constitution establishes the structure of government and fundamental rights, reflecting Pancasila’s values in Indonesia’s identity and legal system. The Constitution of the Republic of Indonesia establishes the right to a good and healthy environment as a fundamental human right, ensuring every individual’s access to a prosperous life and healthcare services. This legal protection reflects the extensive recognition of environmental rights within the country’s legal framework. Upholding this right is integral to national development and community empowerment, with Indonesia’s economic organization guided by environmentally conscious principles outlined in Article 33(4) of the Constitution. However, despite its significance, many Indonesians perceive the environment narrowly, associating it primarily with nature. Yet, the environment encompasses all living entities and must be considered in all activities and initiatives to ensure its preservation and the well-being of all Indonesians.

The environment is an inseparable space within the human life system. In Indonesia, there are regulations regarding the environment, namely Law Number 32 of 2009 concerning Environmental Protection and Management. The law defines the environment as a unity of all objects and living creatures. As a pillar of the ecosystem, the environment guarantees life and health for the entire ecosystem. However, recent exploitation of the environment has led to inequalities and a decline in quality of life, evidenced by troubling incidents such as forest fires, environmental pollution, and deforestation. Indonesia ranks 22nd out of 25 Asia-Pacific countries or 8th out of 10 ASEAN countries. The country receives low scores for all indicators in this report, with ecosystem vitality at 34.1, environmental health at 25.3, and climate change mitigation policy at 23.2 out of 100. Environmental pollution and destruction are caused by various industries, including manufacturing, agriculture, plantation, and other corporate-managed sectors. The implementation of corporate criminal liability in Indonesia has not been maximized due to issues with attribution and unclear regulations regarding corporate criminal responsibility. For instance, in two similar court rulings against corporations, there were significant differences in sentencing. This condition creates a gap between what is considered ideal (das sollen) and what is the reality (das sein). If Indonesia already has Pancasila as a ground norm and embraced in each regulation, then why is the system not working? Should there be an evaluation of how far Pancasila is truly reflected in environmental crime enforcement, especially corporations’ liabilities? Based on this introduction, the research will discuss two main problems which are (1) Indonesia’s regulation towards corporate accountability enforcement in environmental crimes according to Pancasila’s perspective and

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4 “Pelestarian Lingkungan Indonesia Tergolong Buruk Di Asia Pasifik,” n.d.
Pancasila’s Influence in Constructing an Ideal Framework for Corporate Accountability towards Environmental Crime in Indonesia

Previous research on this matter has been reviewed to understand the novelty provided by this research. Before this research, Hanafi Amrani, Ayu Izza Elvan, and Iryadi Suparno discussed on urgency of corporate criminal accountability as environmental crime’s perpetrator and their punishment patterns. According to Amrani et al.’s research, criminal accountability for corporate environmental crimes is urgent due to their wide-ranging negative impacts. These crimes not only harm society and the environment but also disrupt the country’s financial stability and economy. To address this, laws should include provisions for conservation-based criminalization, such as fines, their implementation, and sanctions for remedial actions. What makes this research different to Amrani et al.’s research is that this research does not discuss the ideal model of environmental crime only. Instead, it will propose ideas regarding the ideal model for enforcing environmental crime laws and then analyze the issue of corporate accountability through the evaluation, incorporation, and potential of Pancasila values. A normative legal research method with a statute and concept approach involves analyzing the applicable legislation (statute) as well as relevant legal concepts. In this research, the researcher explores and interprets legal texts to understand the meaning, purpose, and application of these rules. Research with a statute approach focuses on an in-depth study of laws, regulations, and other legal provisions, while the concept approach involves examining legal theories and doctrines underlying these regulations. The combination of these two approaches allows researchers to identify legal gaps, test the consistency of rules with legal principles, and provide recommendations for better legal development.

B. Discussion.
1. Challenges to Enforce Corporate Accountability in Indonesia’s Environmental Crimes

In Indonesia, the regulation of corporations as subjects of criminal law is found in various laws and regulations outside the Criminal Code which specifically include corporations as subjects of criminal law. The first statutory regulation that placed corporations as subjects of criminal law and could be directly held criminally accountable was Law Number 7/Drt of 1955 concerning the Investigation, Prosecution and Trial of Economic Crimes. Thus, in Indonesia, since 1955 corporations have been recognized as subjects of criminal law limited to legislation outside the Criminal Code. Legal regulations relating to corporations as perpetrators of environmental crimes are regulated in Article 116 paragraph (1) and paragraph (2) and Article 118 of the Environmental Protection and Management Law or Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup (UUPPLH). Furthermore, it is regulated in the provisions of Article 56 paragraph (1) and paragraph (2) of Law No. 22 of 2001 concerning Oil and Gas as well as Article 48, Article 50, Article 51, Article 52 and Article 53 of the 2023 Criminal Code. Corporate responsibility for environmental crimes can be implemented through civil sanctions, criminal sanctions and regulations, each of which is regulated in Article 1365 and Article 1366 of the Civil Code of the Civil Code, Article 87 paragraph (1), paragraph (2), 5

Challenges regarding legal enforcement towards environmental crimes are categorized as follows:

### Table 1 Challenges of Legal Enforcement towards Corporate Accountability in Environmental Crime

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<th>No.</th>
<th>Challenges</th>
<th>Descriptions</th>
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<td>1.</td>
<td>There are no legal provisions that regulate the definition of a corporation, or sanctions for corporations that commit environmental crimes.</td>
<td>Although corporate criminal accountability for environmental crimes is regulated in the Environmental Protection and Management Law (UUPPLH), the regulations do not adequately address when corporate criminal acts can occur and who can be held accountable. This is due to the lack of uniformity in corporate terminology explicitly defined in legal sources to replace the term “legal entity”. Additionally, there is no clear formulation governing the sanctions that can be imposed on corporations as perpetrators of environmental crimes. Section c Article 119 of UUPPLH regulates additional penalties for environmental crime offenders, including “remediation due to criminal acts”. However, there is no official explanation of what is meant by remediation due to criminal acts, as the law's explanation simply states it as “sufficiently clear”.</td>
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<td>2.</td>
<td>Law enforcement is still offender oriented without any legal protection for victims.</td>
<td>Sanctions imposed on environmental crime perpetrators in Indonesia mainly focus on the offender. Indonesia's criminal law orientation has traditionally been offender-oriented, with the perpetrator being the primary focus. However, imposing sanctions on offenders alone is insufficient without considering the victims' circumstances. Referring to the legal concept of &quot;protector,&quot; where the law should protect everyone, whether as suspects, defendants, or convicts (offenders), as well as victims, offenders in criminal law, in their status as suspects, defendants, or convicts, are already protected under the Criminal Procedure Code (KUHAP), while victims of crimes, whether as complainants, witnesses, or injured parties, have not yet received legal protection.</td>
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<td>3.</td>
<td>The weakness of evidence and the scarcity of expert witnesses.</td>
<td>The difficulty in proving corporate criminal accountability is due to weak evidence obtained by investigators and the limited capacity of judges handling environmental cases, despite the existence of Supreme Court Decree No. 134 of 2011 regarding Certification of Environmental Judges, Supreme Court Decree No. 26 of 2013 regarding the Selection System and Appointment of Environmental Judges, and Supreme Court Regulation No. 13 of 2016 regarding the Procedure for Handling Corporate Criminal Offenses. Additionally, the scarcity of expert witnesses in the field of environmental protection is also a contributing factor, resulting in many cases falling short of optimal resolution.</td>
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According to the table above, enforcing corporate accountability for environmental crimes presents three main challenges. However, beyond these issues, various other challenges can be analyzed through the lens of legal system theory. According to Lawrence Meir Friedman's Legal System Theory, the effective functioning of the law hinges on three key elements: legal substance, legal structure, and legal culture.\(^9\)

a) Legal Substance

Currently, numerous laws designate corporations as subjects of criminal law. Muladi and Diah Sulistyani state that there are 62 regulations in Indonesia governing corporate criminal liability. In essence, corporations can be held accountable like individuals under the principle of identification. For example, if a company is accused of a “common law” offence like conspiracy to embezzle or defraud, the court assumes the actions and mental states of specific officials reflect the corporation's own. Thus, proving corporate wrongdoing is challenging, as individuals are typically recognized as culpable. To streamline corporate accountability, lawmakers may need to consider adopting doctrines such as “strict liability” and “vicarious liability” in Criminal Law. Integrating the principle of strict liability into Indonesia's legal framework has been implemented in Law No. 32 of 1997 concerning Environmental Management, as amended by Law No. 32 of 2009 concerning Environmental Protection and Management. Article 35(1) stipulates that entities responsible for activities causing significant environmental impacts, involving hazardous substances or waste, are strictly liable for any resulting damages, requiring immediate compensation for pollution or environmental damage. This provision was reiterated in Article 88 of the 2009 Law, stating that individuals or entities using hazardous materials, producing or managing hazardous waste, or posing serious threats to the environment bear absolute responsibility for damages without proof of fault. However, this strict liability provision in both laws pertains solely to civil liability, not criminal accountability. Thus, in cases of corporate environmental crimes, proving intent or negligence is still necessary. Despite these legal provisions, corporations, as non-state actors, often enjoy legal immunity for their offenses, hindering effective prosecution in criminal proceedings.\(^10\)

b) Legal Structure

Corporations act in their own interests through systematically structured management, and based on this view, supported by theories such as Strict Liability and Vicarious Liability, corporations can be subject to criminal prosecution. Corporate criminal liability is extensively addressed through specialized criminal laws in Indonesia, alongside various theories on the subject. However, despite its theoretical framework, it lacks comprehensive legal regulation, leading to scepticism among investigators and public prosecutors regarding corporations’ criminal accountability. This uncertainty often results in hesitation or reluctance to prosecute corporations, attributed to the challenge of establishing malicious intent (mens rea) within


corporate entities. Enforcing the law against corporations engaged in environmental crimes proves exceptionally challenging. Several factors contribute to this difficulty. Firstly, law enforcers remain entrenched in the principle of “no crime in the absence of fault” as upheld by Indonesia's general criminal law. Secondly, investigators or prosecutors often overlook including corporations in prosecution letters or indictments, thereby failing to hold them criminally accountable. The prosecutor's struggle to substantiate corporate wrongdoing reflects a broader reluctance among investigators, prosecutors, and judges to fully embrace the concept of corporate criminal responsibility.

c) Legal culture

Corporations often do not pay attention to the condition of the surrounding environment in their production and business, resulting in enormous pollution both in terms of quantity and quality. The pollution resulting from corporate production processes is usually much greater than individual human production. Corporate problems in the form of violations in the environmental sector tend to be difficult and complex. Masrudi Muchtar discussed the subject of criminal law in environmental crimes as stated in Article 1 point 32 of Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) which states that “Every person is an individual or business entity, whether a corporate body legal or non-legal entity” The terminology “business entity” can be interpreted as a corporation which is hereby part of the subject of an environmental crime and can be subject to criminal liability as formulated in the UUPPLH. In Indonesia, law enforcement against corporations as perpetrators of criminal acts in the field of environment and natural resources is not easy because it is a highly organized crime, so it is often not easily uncovered. Apart from this, crimes in the field of environment and natural resources involving corporations as perpetrators of criminal acts are often related to public officials who hold and use their political authority to protect the perpetrators of these criminal acts. Then there is also limited knowledge about problems, facilities, infrastructure, funds and understanding of the substance of the law because on average the victims are people with low education and weak economic conditions.

2. Reflecting Pancasila in Environmental Crime Liability: Does Indonesian Laws Recognize Pancasila’s Value in its Enforcement?

Pancasila exerts a profound influence on both Indonesian culture and law. Culturally, it shapes the collective identity and values of the nation, emphasizing principles such as unity, diversity, social justice, and religious harmony, which are deeply ingrained in various facets of society. In the legal sphere, Pancasila serves as the guiding philosophical framework, informing

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the development and interpretation of legal principles such as justice, equality, and human rights, ensuring their alignment with the fundamental tenets of the nation. Additionally, Pancasila plays a pivotal role in governance and policymaking, guiding the formulation of policies aimed at promoting national development, welfare, and sustainability, while fostering active citizen participation in decision-making processes. Thus, Pancasila’s enduring influence underscores its integral role in shaping Indonesia’s cultural identity, legal system, and governance framework. Generally, the values of Pancasila will always be identified in Indonesian regulation, for example, each laws are always started by “dengan Rahmat Tuhan Yang Maha Esa” or “Under the Blessings of God Almighty” before its preamble. However, not all values of Pancasila are explicitly written. Therefore, to review Pancasila’s value in enforcement regarding corporation environmental crime liability, this research will elaborate on relevant regulations:

Table 2 Pancasila’s Value in Enforcement Regarding Corporation Environmental Crime

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<td>Divinity of God</td>
<td>Article 8: Emphasizes the importance of protecting and preserving the environment as a form of belief in God Almighty.</td>
<td>Article 2: Affirms the right of every individual to a clean, good and healthy living environment, as a gift from God.</td>
<td>Article 3: Establishes corporate obligations to make efforts to protect and preserve the environment following religious teachings and beliefs held.</td>
<td>Article 4: Encourage corporations to consider religious values in any activities that have the potential to damage the environment.</td>
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<td>Fairness and Civilization of Humanity</td>
<td>Article 23: Protects people’s rights to a good and healthy living environment.</td>
<td>Article 1: Affirms that every individual has the same right to a clean, good and healthy living environment.</td>
<td>Article 4: Requires corporations to act fairly towards society and the environment in all their activities.</td>
<td>Article 9: Ensure that every corporate action takes into account the interests and welfare of society in a fair and civilized manner.</td>
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<tr>
<td>Unity of Indonesia</td>
<td>Article 15: Encourage the active participation of all parties, including corporations, in safeguarding and preserving the environment for the sake of the nation’s sustainability.</td>
<td>Article 4: Emphasizes the importance of cooperation and unity in preserving the environment, regardless of differences in status or position.</td>
<td>Article 3: States that environmental preservation is a shared responsibility of all elements of society, including corporations.</td>
<td>Article 6: Strengthen collaboration between government, corporations and society in protecting and preserving the environment.</td>
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<tr>
<td>Democracy Guided by the Wisdom of the Representative</td>
<td>Article 16: Requires the government to involve the</td>
<td>Article 4: Ensure active participation of the community in the</td>
<td>Article 5: Emphasizes the importance of community</td>
<td>Article 7: Ensure community involvement in decision-making</td>
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</table>
Based on this table, the influence of Pancasila's values on environmental enforcement in Indonesia is significant. Laws reflecting these values prioritize spiritual connection to nature, fair treatment of individuals, unity in environmental protection efforts, participatory decision-making, and social justice in environmental policies. Effective enforcement aligned with Pancasila's principles can promote sustainable development, protect the environment, and uphold social justice. However, the effectiveness of Pancasila's influence depends on factors such as the strength of legal frameworks, enforcement capacity, political will, and public participation. Challenges such as regulatory loopholes and corruption may hinder effective implementation. Continuous efforts are needed to ensure that environmental policies and enforcement actions uphold Pancasila's principles and effectively protect the environment and the well-being of all Indonesians.

3. Pancasila's Influence in Constructing an Ideal Framework for Corporate Liability Towards Environmental Crime Enforcement in Indonesia

Pancasila's influence in shaping a comprehensive framework for corporate liability in environmental crime enforcement in Indonesia is significant. It emphasizes principles such as social justice, environmental harmony, and collective responsibility, guiding the development of laws and regulations to hold corporations accountable. This framework prioritizes fairness, transparency, and community involvement to ensure corporate behaviour aligns with societal values and environmental preservation, promoting sustainability and accountability.

a) Urgency of constructing an Ideal Framework to Enforce Corporate Liability in Indonesia’s Environmental Crime

Pancasila Legal Theory constitutes a jurisprudential framework grounded in the values inherent to Pancasila, serving as its ontological, epistemological, and axiological foundations. At its core, the ontological essence of Pancasila resides in humanity, which possesses an unequivocal mono-pluralistic\textsuperscript{16} nature, comprising elements of a “natural order” encompassing both physical and metaphysical dimensions, “innate characteristics” of individual-social beings, and a “natural state” as autonomous individuals-creations of the Supreme Being. The

\textsuperscript{16}“Monopluralistic” refers to a concept that emphasizes the existence of a singular, unified essence within a diverse or pluralistic context. In the context of Pancasila and its legal theory, “monopluralistic” refers to the idea that within the diverse fabric of society, there exists a fundamental unity or essence that unifies individuals despite their differences. It suggests a recognition of diversity within a framework that emphasizes a singular essence or core principle.
lineage of Pancasila embodies the essence of the mono-pluralistic human, functioning as an organic unity, thereby endowing the Pancasila principles with an inherently organic coherence. Humans are the principal proponents of the Pancasila principles, characterized by their belief in the Supreme Being, commitment to equitable and cultured humanity, unity, democratic governance guided by deliberation or representation, and a fundamental dedication to social justice. These principles are intrinsically aligned with the essence of humanity.

The epistemological foundation of Pancasila essentially cannot be separated from its ontological foundation, which is the essence of humanity. Three fundamental issues emerge in its epistemological basis: first, regarding the sources of human knowledge; second, concerning the theory of truth in human knowledge; and third, about the nature of human knowledge. The axiological foundation of Pancasila explains that the principles, as a system, have a unified basic axiological unity, thus the values contained within Pancasila essentially form a unity. These values encompass spiritual values, within which other values are fully and harmoniously integrated, including material values, truth (reality), aesthetics, ethics, and religious values. These values are hierarchically arranged, with the value of divinity as the highest, followed by humanity, unity, democracy, and justice. Despite their varying degrees and scopes, these values as a whole form a unity and are not mutually contradictory. In their implementation (realization) in daily societal, national, and state life, for example, in legislation, the value of divinity is the highest and absolute; hence positive law (legislation) must not contradict the value of divinity.

The fourth principle of Pancasila embodies the concept of democracy, which prioritizes equality of rights and obligations as well as equal treatment for all citizens. Environmental destructing activities have detrimental effects on the surrounding community. Environmental destruction can result in haze that directly and seriously impacts the health of nearby communities, disrupts community activities, and causes environmental damage, including violations of human rights as stated in Article 9 (3) of Law Number 39 of 1999 concerning Human Rights. This article declares that everyone has the right to a clean, good, and healthy environment. As for the second principle, which is humanity that is just and civilized, this principle serves as evidence that Indonesia respects human beings and treats them fairly, not only fairly, but also civilized. Burning forests and land is an act that disregards humanity because it prioritizes personal interests without considering the detrimental effects on the surrounding community.

b) Utilizing Pancasila's Potential to Establish an Ideal Framework: Holding Corporations Accountable in Indonesia's Environmental Crime Enforcement

Pancasila profoundly influences both Indonesian culture and law. Culturally, it shapes collective identity and values, emphasizing unity, diversity, social justice, and religious harmony, which permeate various aspects of society. In law, Pancasila serves as the guiding philosophy, informing the development and interpretation of legal principles such as justice, equality, and human rights, ensuring alignment with the nation's core principles. Moreover,


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Pancasila influences governance and policymaking, guiding the formulation of policies that promote national development, welfare, and sustainability while fostering citizen participation in decision-making processes, thus reflecting its pivotal role in shaping Indonesia's identity, values, and legal framework.

Establishing a new framework will indeed be a demanding and complex process. One of the primary ones is constructing the law. Dworkin has meticulously outlined an intuitive view of constructing legal theory. This paradigm acknowledges three phases in building law. The initial phase, known as the pre-interpretative phase, involves the initial identification of rules, standards, and decisions (generalized) that constitute law. At this stage, it can be considered as a process of inventorying rules and standards found in legislation, legal cases, and doctrinal literature. The second phase, the interpretative phase, involves identifying the principles (including values and policies) underlying, or forming part of, the legal phenomena identified in the first stage. Rules and the like identified in the first phase are considered means to actualize the principles identified in the second stage, although not always the optimal way to achieve them. The aim of the third phase, referred to as reform, is to formulate (relevant parts of) a set of rules, including decisions (generalized), that most effectively reflect the principles identified in the second stage.¹⁹

Regarding constructing a framework for an ideal corporate liability enforcement the first stage would be an evaluation of current laws including Indonesia’s 1945 constitution, environmental law, limited company law, management of toxic and harmful substance law, government regulation on social and environmental responsibility of limited companies and other regulation considered relevant. The second stage is to identify values, which is not an absence however Pancasila’s stance needs to be emphasised. The third stage is to formulate a set of generalized decisions which is divided into preventive, repressive, and visioned products. We will see the envisioned ideal framework below:

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The authors opine establishing an ideal framework is by making a clear line between preventive and repressive measures, and also its visioned product. The values of Pancasila will always be a repressive measure, as it is a paradigm that Indonesia is facing. However, these values needed to be directed to make an easier approach in the positive law forms. Corporations are urged to internalize religious values, recognizing their spiritual duty to protect the environment and refrain from activities that cause harm. Furthermore, corporate responsibility involves considering the welfare of affected communities, ensuring fair treatment, and upholding human dignity and rights, including efforts to remedy environmental damage and provide equitable compensation. Collaboration between the government, corporations, and society is deemed essential to environmental preservation, with active corporate participation in collective endeavours aimed at ensuring the sustainable management of natural resources for all Indonesian communities. Moreover, corporations are expected to engage the community in environmental decision-making processes, ensuring transparency and accountability in legal actions, thereby bolstering the legitimacy and efficacy of law enforcement. Finally, corporate accountability must ensure fair and equitable environmental protection for all Indonesians, addressing disparities in access to clean, safe environments, and ensuring equitable distribution of benefits and burdens across society. Adjacent to Pancasila preventive measures are repressive measures including terminating corporations, ensuring victim recovery, and implementing of strict liability in UUPLH provisions on environmental crime liability. The
connection between preventive and repressive measures is applicable if there is a visioned product to execute this. Therefore, the author proposed the establishment of an Environmental Court, a special institution for environmental crimes, and community supervision over victim recovery.

C. Conclusion

Indonesia’s regulation towards corporate accountability enforcement in environmental crimes according to Pancasila’s perspective is profound. Laws reflecting these values prioritize spiritual connection to nature, fair treatment of individuals, unity in environmental protection efforts, participatory decision-making, and social justice in environmental policies. Effective enforcement aligned with Pancasila's principles can promote sustainable development, protect the environment, and uphold social justice. However, the effectiveness of Pancasila's influence depends on factors such as the strength of legal frameworks, enforcement capacity, political will, and public participation. Challenges such as regulatory loopholes and corruption may hinder effective implementation. Continuous efforts are necessary to ensure that environmental policies and enforcement actions uphold Pancasila's principles and effectively protect the environment and the well-being of all Indonesians.

Pancasila’s Influence in Constructing an Ideal Framework for Corporate Accountability towards Environmental Crime in Indonesia involves distinguishing between preventive and repressive measures and aligning them with the values of Pancasila. Corporations should integrate religious values, consider community welfare, and collaborate with the government and society to ensure sustainable environmental management. Transparency and accountability in legal actions are crucial for effective law enforcement. Additionally, fairness and equity must be upheld in environmental protection efforts. Complementing preventive measures are repressive actions like corporate terminations and strict liability implementation. However, the success of these measures relies on the execution of a envisioned product, such as establishing an Environmental Court and implementing community oversight for victim recovery.

References

A. Journal


