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Research report within the context of the project:  
**Making Environmental Regulation Work for the People**

## **PERFORMANCE OF LOCAL GOVERNMENTS IN REGULATING INDUSTRIAL WATER POLLUTION: AN EMPIRICAL STUDY ON NORM-SETTING, MONITORING AND ENFORCEMENT BY THE ENVIRONMENTAL AGENCIES OF EAST JAVA PROVINCE, AND THE DISTRICTS GRESIK AND MOJOKERTO**

### **Field Research**

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### **Summary**

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### **Introduction**

The Brantas River runs through East Java province, cutting through various districts, including Gresik and Mojokerto where many industries are located. Despite several regulatory efforts of regional government institutions, over the last 40 years, the water quality of the Brantas River has been poor. Due to water pollution, people can no longer consume the water for their household needs, and even mass fish death occurs on a regular basis. Industries that discharge their wastewater into the river are an important contributor to the poor water quality.

This research looks at regulation of industrial water pollution by the environmental agencies of East Java province, and of the districts of Gresik and Mojokerto. It concerns particularly the implementation of the rules regarding standard-setting, monitoring and administrative law enforcement, and other ways to follow up on violations such as giving 'guidance' to industries on how they can improve their environmental performance. The research also pays attention to complaint handling. It seeks to answer what problems occur in the regulatory practice of the three agencies and what causes these problems.

### **Methodology & Outline**

The researchers collected data through analysis of written sources –such as documents produced by the local governments, interviews and observing the daily practices at the environmental agencies. Difficulties in conducting the research occurred as the requested information was often not available or incomplete, particularly because the local governments do not keep good archives, or officials did not provide access to the data.

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The report looks at the legislative framework for standard-setting and the consequences for the division of tasks and authorities between the central government, the province and the district. It then focuses on the implementation of monitoring and enforcement by the three agencies, and describes characteristics of the organization that further explain why implementation occurs as it does, including factors such as the availability of 'Environmental Monitoring Officials', the existence of policies and the quality of the agencies' archiving systems.

### **Key Findings**

#### *1. Legal framework for standard-setting*

The paper discusses the division of authority between the central, provincial and district government to determine the quality standards for the river and wastewater standards by assessing Government Regulation 82/2001 (GR 82/2001) on 'Water Management and Water Pollution Control' and Minister of Environment Regulation 1/2010 on 'Procedures for Water Pollution Control'. It furthermore assesses to what extent the regional governments have carried out their standard-setting task, by looking at local regulations and other documentation, and how officials view their task.

According to Government Regulation 82/2001, it is the task of the provincial government to determine the water class of the Brantas River, to calculate the carrying capacity of the river and to set the general water standards concerning if and to what extent certain materials are allowed in the river water. It is the task of the districts to identify the sources of pollution along the river within its territory. Both Gresik and Mojokerto nevertheless do not have a complete inventory of potentially polluting industries. The district head should nevertheless formulate the concrete wastewater standards for individual industries in the wastewater license, taking into account the general water standards, and that are based on the river's carrying capacity and the inventory of (potentially) polluting sources. Because the latter is lacking, the districts are unable to set the standards in the wastewater licenses properly and in such a way that they relate to the carrying capacity of the river.

The paper furthermore discusses how following the Water Act of 2004, the Brantas river was declared a river of national strategic interest. As a consequence, regulatory authority shifted from the province to the central government level. This conflicted with GR 82/2001, which stipulated that -because the Brantas river crosses district borders-, the province was the authorized government level to determine the river's carrying capacity. In 2015, the Constitutional Court annulled the Water Act 2004. The Minister of Public Works thereafter issued a regulation stating that rivers of strategic interest nevertheless remain under the minister's authority. Officials of the provincial Environmental Agency in East Java still consider it the task of the central government to calculate the rivers carrying capacity, as they depart from the idea that the Brantas is a river of national interest.

In conclusion, the environmental standard setting instruments and mechanisms have not been established and/or are not determined properly. The carrying capacity of the river has not yet been calculated, and the

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required information on the real conditions in the field –the potential- sources of pollution, is unavailable. As a result, the wastewater permit cannot be based on the true accumulative impact of industries on the river water quality. Therefore the standard setting instruments are not utilized optimally to limit the industrial water pollution to an acceptable level. The division of authority to set the standards is unclear and encourages further confusion on who has authority over the Brantas River, also in the areas of monitoring and enforcement.

### *2. Accessibility and consistency of data*

It proved difficult to gather sufficient data on monitoring and enforcement efforts of the agencies concerning specifically industrial wastewater along the Brantas river. Therefore the research takes into account regulation of environmental issues more in general. Despite this broader focus, it remained difficult to obtain sufficient, complete and accurate data on the monitoring and enforcement activities of agencies. Particularly the complex bureaucracy of the Mojokerto agency and the hesitance among officials to share information out of fear the information would be misused, for example to sue the agency, complicated research. The agencies of East Java province and Gresik district were more willing to provide information, but the data was often incomplete or even contradictive. For example, none of the agencies had complete or accurate overviews of industries they were to monitor, much less did they have accessible archives that could provide insights into industries' past performance or how government institutions had followed up on violations in the past.

Data provided by the environmental agency of East Java sometimes indicated inconsistencies, even though this agency has repeatedly been rewarded for the quality of its 'Regional Environmental Status' report <sup>1</sup> suggesting it keeps its administration well organized. For example, the 'Environmental Agency's Report on Accountability' <sup>2</sup> reported that in 2015 the agency had monitored 345 industries. Some 30 percent (or 105 companies) were found to be incompliant. In contrast, the Regional Environmental Status report stated only three industries were found incompliant that year. Both reports claim that in 2015 only one administrative sanction was imposed. In contrast, a report on complaint handling stated that in 2015 24 companies were found to violate the law and that the governor had taken direct measures to stop the violation in two occasions and in several other cases a written warning was given.

East Java nevertheless has a relatively good database, even though not sufficiently qualified for supporting regulatory efforts. The fact that the agency's Regional Environmental Status report has been awarded several times for its the high quality has created enthusiasm among officials to report extensively on their activities. The experience and routine of reporting may be a window of opportunity to further extent the agency's archiving and documentation.

### *3. The division of tasks and authority between the districts and province*

Although the district head has considerable licensing authority –issuing all wastewater licenses and many environmental licenses -, in practice the province plays an important role in monitoring and enforcement. It is not always clear when the district, province or central government is authorized to monitor or follow up on violations related to wastewater discharge, or what the formal basis for their involvement is. For

<sup>1</sup> Status Lingkungan Hidup Daerah, or SLHD.

<sup>2</sup> Laporan Akuntabilitas Kinerja Pemerintah, or LAKIP

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example, when the province issues an environmental license, its monitoring efforts may also concern an industry's wastewater discharge. It then, however, remains unclear who is authorized to impose a sanction, for the environmental license was issued by the governor and the district head issued the wastewater license. In practice, when the province detects a violation of the wastewater standards, it usually will only send a recommendation to the district.

Furthermore, officials from Mojokerto remarked that they often accompany monitoring activities by the Ministry or the province that take place within its territory, for example within the context of the Ministry's program PROPER that assesses the environmental performance of industries. The Mojokerto agency occasionally cooperates with the province, mainly in response to the province's invitation to join the 'Water patrol' initiative. Although the district is formally authorized to regulate in these cases, the Mojokerto officials assume that the government body—Ministry or Governors—which carries out the monitoring is also responsible for imposing a sanction.

The Environmental Agency of Gresik appears to function more independent from the province in its monitoring activities. Every year the agency of Gresik actively coordinates the monitoring efforts with East Java agency to prevent overlap.

In handling complaints, the province frequently plays an important role in cases in which the district in principle is authorized. It may do so when it receives a complaint itself, or when the Ministry of Environment and Forestry receives a complaint and asks the province to take up the case. When the complaint falls under district authority, the province will send the file to the district. According to the implementing regulation on complaint handling, when the district has not responded within 10 days, the complaint may be sent to the province. The province is however not consistent on how it then handles detected violations. On one occasion in 2015, the province itself imposed an administrative sanction while the case fell under the authority of the district of Mojokerto. On other occasions it recommended the district head to impose a sanction by taking concrete measures, and close an industry's outlet. On five occasions, the provincial agency recommended the district head to impose an administrative sanction, and in two other cases the province asked for clarification from the Mojokerto agency.

A final remark related to the unclear division of authority between the district and the province concerns the issue of self-monitoring reports. Some industries send their self-monitoring reports to the environmental agencies of both administrative government levels because they are not sure under whose authority they fall. One of the potential effects is that both agencies will assess the reports, which is an inefficient use of the limited resources of the agencies.

#### 4. Changing names from 'badan' to 'dinas'

Following the Regional Government Act of 2014, environmental agencies will change from being a 'badan' to a 'dinas'. Although the formal rules do not suggest this will cause substantive changes in the position or function of the institution, a 'badan' is generally understood to have merely a coordinating task, while a



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'dinas' would have implementing tasks. The change leads to significant reorganization of the three agencies, but in the near future this will most likely merely concern internal shifts of tasks between the units of the environmental agencies themselves. Further research is recommended regarding the reasons behind the change from 'badan' to 'dinas' and what the precise consequences will be in the regulatory practice of the environmental agencies.

The paper discusses the current organizational situation of the agencies, prior to the reorganization. It shows that the various units at provincial agency have different regulatory approaches, particularly regarding how violations are followed up. These approaches often lack coherency. Furthermore, each agency has specific obstacles that affect the regulatory practices. Gresik, for example, has a considerable lack of officials to monitor and handle complaints, and the Mojokerto agency lacks clear policy which results in too much discretionary power for the officials.

#### *5. Monitoring and following up on violations*

##### *5.1. East Java Environmental Agency*

Within the Environmental Agency of East Java, three units have monitoring tasks and in some way follow up on detected violations. The approaches of these units differ considerably, particularly in how violations are followed up.

The unit 'Communication and Community Participation Enhancement' handles complaints, including verification of complaints by conducting field inspections. When a violation is detected, the unit will refer the case to either the district, or to one of the units that will be discussed below. The procedure for complaint handling is well described in a Standard Operational Procedure (SOP), but the process of complaint handling stops at the moment that the complainant is informed about the result of the complaint verification. The SOP does not describe how a detected violation is to be followed up. Officials noted that the complaint handling mechanism has occasionally been misused which make the officials hesitant to share information on particular cases.

The unit 'Monitoring and Control of Environmental Pollution' is responsible for 'routine' monitoring of industries that hold a license from the province. Industries that are part of the Ministry's PROPER program will not be included in the routine monitoring activity. The unit furthermore evaluates self-monitoring reports sent in by the industries.

The 'Environmental Management' unit also evaluates self-monitoring reports. In fact, some companies send their report to both departments, as they do not know which unit handles their case. While some industries send their self-monitoring report even to multiple administrative levels, not all industries that are required to send reports to the province do so, or fail to do so on a regular basis. The province has never sanctioned a

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company for not sending a self-monitoring report.

The units ‘Monitoring and Control’ and ‘Environmental Management’ differ considerably in how they respond to detected violations. While the former is more inclined to seek for possibilities to impose an administrative sanction, the latter responds to violations by providing guidance to an industry on how it can improve its behavior.

The agency does not have policies that provide criteria or considerations that describe which case will be dealt with according to a particular approach –or which unit will take on a case. It is part of the officials’ discretion to decide which unit will take on the case, and thereby which regulatory approach an industry receives. Officials gave some of their considerations that influence how a certain violation is followed up. They said that they will immediately stop a violation when possible, for example when an illegal pile of hazardous and toxic waste or a bypass of an outlet is found. In case of less serious violations, such as a missing sign indicating the storage place of toxic waste, the officials prefer to give guidance. When deciding on the follow up, the impact on workers for an industry is taken into account. Contrary to the statements of the officials, the researchers nevertheless did not find clear criteria or find patterns that determined or predicted what kind of follow up is given to a particular kind of violation or a type of violator.

As mentioned earlier, different sources provide different numbers on the quantity of monitored industries and number of imposed sanctions, varying between 105 and 3 in-compliant companies, and that merely in one case an administrative sanction was imposed. Data on complaint handling on the other hand states that in 2015 the province received 76 complaints. Some were referred back to the district level or were taken up by other institutions. In 24 cases the province however detected violations itself. In two cases the governor took concrete measures to end the violation (administrative coercion), in the other cases he gave a warning or sent a recommendation to the district head to follow up on the violation.

In 2009 the governor established the Water Patrol, a monitoring initiative in which many different institutions –and even NGOs and press- were involved to inspect the industries along the Brantas. The water patrol initially appeared successful, but recently the (political) interest tended to diminish which led to a decrease of the budget for this initiative.

### *5.2 Gresik Environmental Agency*

The Environmental Agency of Gresik consists of four units and since 2015 it has a laboratory. The unit Environmental Impact Control is most relevant in regulating industries. Its tasks include take care the process of issuing the environmental licenses, monitoring and following up on violations by coaching and enforcement. The unit has an extensive task; 1606 industries are located in Gresik, of which 125 have a wastewater permit. The unit’s budget is however limited to approximately €113,000,-. In comparison, it is 29 times smaller than the unit responsible for the maintenance of green spaces such as parks.

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Apart from the relatively small budget, Gresik has only three officials assigned in the unit of monitoring and enforcement, indicating monitoring and enforcement does not receive much priority.

The officials often accompany the province and ministry in their monitoring initiatives, such as in PROPER. In 2015, the Gresik environmental agency itself monitored 48 industries, 3 of which were selected after the government had received a complaint. The agency received 23 complaints in total. The results of the monitoring efforts are unclear. However, in 5 cases the complaints led to actions such as (temporary) suspension of the activities or mediation. Most detected violations will be followed up by a warning or guidance. However, according to data available at the East Java agency, in 2014 administrative coercion was imposed 5 times.

### *5.3 Mojokerto Environmental Agency*

The Mojokerto environmental agency consists of four units. A special unit focuses on mining activity. The unit 'Monitoring and Environmental Quality' monitors the general water quality of the Brantas river. The 'Environmental Impact Assessment' unit calculates the standards in the wastewater licenses, and finally, the 'Pollution Control and Environmental Damage' unit is responsible for monitoring of industries and enforcement. The agency has no clear complaint handling procedure, and it depends on the decision of the agency's head which of the units will handle a particular complaint.

The agency conducts no routine monitoring on industries that obtain a license from the district. Monitoring by the agency only takes place to verify a complaint or when the agency accompanies monitoring initiatives by the province or central government.

Detected violations are followed up either by giving guidance to companies or by administrative sanctioning, but no data was available on the frequency these types of follow up were given. Officials explain that there are no clear criteria to determine which approach will be taken. However, in practice administrative sanctions are rarely imposed because small-scale industries are not expected to be able to comply with the requirement anyway, and officials are hesitant to impose administrative sanctions upon large-scale industries for they fear the impact it has on the industry's laborers. Nevertheless, on one occasion the agency immediately closed an outlet.

### *6. Availability of Environmental Monitoring Officials*

In order to conduct monitoring tasks, an official must have a position as a 'Regional Environmental Monitoring Officials' or 'PPLHD' (*Pejabat Pengawas Lingkungan Hidup Daerah*). The number of PPLHDs is however limited, in part this is due to the fact that there are limited opportunities to follow the required training. Another important cause is that those who have received the training eventually do not want to become PPLHD because the position is unattractive in terms of career opportunities and allowances.

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The information on the number of PPLHDs at the East Java agency is not consistent, as information from different sources gives numbers that vary between 6 and 3 officials. The variation can be explained partially by the difference in those who have been trained as PPLHD, and those who actually carry out the task of a PPLHD. Of the 77 officials at the Gresik agency only one is a PPLHD. While hundreds of industries are located in Mojokerto, its environmental agency only recently appointed its only PPLHD. The lack of PPLHDs hampers the monitoring activities of this district severely. At least in one occasion in which a complaint was filed to the district agency, the province occasionally stepped in to handle the case.

### 7. Policies, archiving systems and accountability

The agencies lack clear policies for example in the form of Standards Operational Procedures that describe monitoring procedures –including the selection of industries and how self-monitoring reports are to be processes–, and how violations are to be followed up, by guidance, a particular kind of administrative sanction or otherwise. An exception is the East Java agency’s policy on complaint handling that is quite well structured, but which also does not clarify how detected violations are to be followed up.

As a result of the lack of policies, officials have considerable discretion in carrying out their task. Furthermore, the archiving systems of the agencies are not suitable to provide insights into the past behavior of companies or what the regulatory activities of the government have been. The poor archiving systems furthermore do not provide basic information on who is to be monitored and which standards the *regulatees* are to comply with.

The lack of policies as well as the lack of transparency on who the agency should monitor and how the government in the past has responded to a violating industry, makes it difficult to hold the government accountable for not carrying out its task properly. The concept ‘accountability’ as commonly understood, for example in the self-assessment report LAKIP (*Laporan Kinerja Instansi Pemerintah*, or Government Institution Performance Report) does not reflect on the choices the government has made in its regulatory efforts, explaining the considerations of the government to (not) take certain action. In contrast, the LAKIP-report merely ‘measures’ the government performance primarily by looking at to what extent the budget for a particular item has been spent. It does not raise issues such as why of the 105 industries that the provincial agency found be non-compliant, only in one case an administrative sanction was imposed. The research report argues that the LAKIP should reflect on such issues.

### Conclusions

The report concludes that the implementation of the regulatory tasks of setting standards, monitoring compliance, and enforcing the law by the three regional environmental agencies is not optimal. In part this can be explained by the lack of budget and human resources to carry out the heavy workload. Furthermore, environmental quality standards are often not established properly.



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Regarding monitoring and following up on violations, there is a lack of criteria or considerations -described in policy- that will provide guidelines on if and how a particular case will be handled. As a result, currently there is too much discretion for officials. This discretion concerns the selection of industries to be monitored, and also whether violations are followed up by sanctioning, guidance or otherwise.

Within one agency, different units may have overlapping regulatory tasks, but they may have different approaches, particularly regarding how detected violations are to be followed up. Here too, a policy lacks to determine what type of case will be handled by a particular unit.

Research shows that complaints have become an important incentive for the government to conduct monitoring activities. In several occasions this has led to concrete action by an institution to halt the violation. The policy on complaint handling does however not describe how a detected violation as a result of complaint verification is to be followed up, and research showed that the responses varied.

The division of authority between district, province and Ministry of Environmental and Forestry is not always clear. In some cases the monitoring activities are coordinated between the different administrative levels, but particularly regarding sanctioning it is not always clear what the legal basis is for the involvement of the sanctioning institution.

The agencies' archives are not suitable to provide insights into a company's compliance history, nor do they provide sufficient information on the *regulatees* and other information that is relevant for effective and coherent monitoring.

The report furthermore criticizes the concept of accountability as it is understood by the agencies itself and is reflected in the LAKIP report. Accountability should concern a critical assessment of the choices a government made in conducting its regulatory task.

Finally, the paper stresses the importance of empirical research for policy makers to be able to address the true problems that occur in regulation of industrial pollution by local governments.

This paper was prepared and written as part of the Making Environmental Regulation Work project, supported by Dutch Rule of Law Fund Indonesia, managed by IDLO. The project aims to improve the environmental framework and its implementation in Indonesia, by strengthening regulatory capacity of government, and enhancing the capacity of civil society and scholars to hold the government accountable. More information regarding this article is available by request to the Indonesian Center for Environmental Law and Van Vollenhoven Institute, Leiden University.