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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 NORTH SUMATRA PROVINCE, AND THE DISTRICTS MEDAN AND DELI SERDANG

Field Research

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Summary

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Introduction

The Deli river in North Sumatra is relatively short, running through only three districts. The industrial activity that takes place along it is nevertheless considerable. Communities living on its borders have many times protested and filed complaints against the poor river water quality that is partially caused by the industry. An important contributor to the pollution is the industrial area KIM (Kawasan Industri Medan), which hosts many industries that allegedly discharge their wastewater without proper treatment. Although the government has verified the complaints and affirmed that violations take place, it has not taken measures to halt the in-compliant behavior.

The research looked at the practices of three environmental agencies involved in regulating the industries along the Deli River, namely the agencies of North Sumatra province and of the districts Medan and Deli Serdang. It provides insights into the practices of standards-setting, monitoring, complaint handling and following up on violations, including enforcement, taking into account some of the organizational features of the agencies that influence the regulatory practice. The researchers however did not get easy access to the agencies and had difficulty collecting relevant data on these issues.

General Findings

Standard-setting

Government Regulation 82/2001 stipulates that the carrying capacity of a river is the basis for planning and

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licensing. The governor of North Sumatra, who is responsible for calculating the carrying capacity of the Deli River, has however not yet carried out this task, arguing that since the Deli River has been appointed as a river of national strategic interest, the calculation of the carrying capacity falls under the authority of the central governments' authority. Because the governor has not calculated Deli's carrying capacity, national standards of effluent that are applicable in each licenses does not take into account the particular characteristics of the Deli River. The standards that are currently used as a basis for planning and licensing are consequently in fact inappropriate to guarantee that the environmental conditions of the Deli river are in line with its actual carrying capacity.

Division of authority

The research furthermore found that the division of authority to establish the standards is incoherent, and not only because the districts depend on calculation by the governor for the issuing of the wastewater license. The Deli river has been identified as a river of national interest, which implies that besides the regional governments, the central government has regulatory authority as well. This results in overlapping authority. Although a Constitutional Court decision resulted in the annulment of the Water Act of 2004, that is the basis for the concept of 'rivers of national strategic interest', other –lower- legislation issued by the Ministry of Public Works still builds on this concept. Officials of the provincial agency still hold that there is overlap in authority because of this legislation. At the same time, when it comes to enforcement, the province denies having authority over industries located along the Deli river. When a violation is detected, the province coordinates with the districts and advises on the use of administrative sanctions.

To overcome the problems relating to the division of authority, the province has established a programme entitled the 'Deli River Rescue Movement' that aims to regulate pollution, recover the damage and maintenance. So far, the programme has not been able to achieve its goals that include making the river waste-free, recover the damage and maintenance.

The paper briefly describes the legal framework for complaint handling and administrative sanctions. Regarding the former, environmental agencies must execute several steps in the complaint handling procedure; they must receive the complaint that can be filed orally or in writing, analyse and verify the complaint, and report on the outcome and on how the complaint is followed up. The paper furthermore highlights what Regulation of the Minister of Environment 2/2013 states on administrative sanctions, and when a particular sanction –the warning, administrative coercion and suspension and revocation of the environmental license- may be imposed. What stands out is that the warning may only be imposed in case there is no environmental impact, and that suspension and revocation of the license may be imposed when administrative coercion has not been carried out, which suggests that the violator is responsible to carry out administrative coercion, rather than the government.

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Findings from Practice in the Field

The Environmental Agency of North Sumatra

The environmental agency of North Sumatra consists of four units, two of which have tasks related to the regulation of industries. The unit Environmental Planning and Communications is responsible for the handling of complaints. The unit Environmental Pollution Control and Waste Management is responsible for routine monitoring including the assessment of self-monitoring reports-, as well as for executing of the ministerial programme PROPER. The efforts to carry out inspections for PROPER interfere with the agency's task to carry out regular monitoring because the agency has limited capacity to monitor the industries. The research furthermore found that the two units involved in regulating industries do not cooperate optimally as relevant information is not exchanged.

The total budget of this Environmental Pollution Control unit is Rp. 600 million, of which 10 percent of the agency's total budget. Rp. 150 million is reserved for law enforcement. This includes the activities related to civil and criminal law enforcement. The budget of the unit Environmental Planning and Communications amounts to Rp. 450 million, which is insufficient to carry out the required verification of the complaints the agency receives. To overcome the budgetary problems, the agency has turned to international aid organizations.

The agency's monitoring activities, including the verification of complaints, are furthermore constrained by the limited number of Environmental Monitoring Officials (PPLH) who is authorized to conduct monitoring. Five officials at the provincial agency are trained as PPLH, but only one of them in practice takes up this position.

No data is available on how many complaints the agency received in recent years, but research by Zahari Zen showed that in 2010 it received 16 complaints. The agency states that it receives most complaints through text messages. The agency also has a desk at the office's entrance, where complainants are received and then are guided to the right unit. The agency however lacks facilities that make it possible to file complaints via email or the website.

After a complaint is received, the agency assesses which institution is authorized to further handle the complaint, and if necessary refers the case to the appropriate institution. If the province is authorized, and verification of the complaint confirmed violating behavior, the head of the agency decides whether the complaint is to be followed up by giving guidance to the violator, or by law enforcement. The officials involved in the complaint verification are not involved in this decision, and there are no guidelines for how cases are to be followed up. Nevertheless, in merely one occasion a warning was given to a violator.

The limited budget is constraining complaint handling, and the agency has been critiqued for not sufficiently following up on complaints.

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The Environmental Agency of Medan

The Environmental Agency of Medan consists of three units; the unit Pollution and Environmental Damage, the Environmental Impact Assessment and Conservation unit, and the Counseling and Law Enforcement unit. Reorganization will however take place, following a Regulation of the Minister of Environment. For the regulation of industries this will have implications, as the unit Pollution and Environmental Damage will become responsible for managing domestic waste and toxic waste, and the Unit Counseling and Law Enforcement will in the near future split into two units; the unit for Pollution Control and Environmental Damage, and the unit Compliance and Capacity Building. But in practice the reorganization is not expected to lead to substantive changes because no major budgetary adjustments are planned.

The agency conducts routine monitoring on the basis of the self-monitoring reports that the companies write on the basis of their environmental management plan and environmental monitoring plan (RKL-RPL). The agency furthermore incidentally carries out monitoring to verify complaints. The agency receives between 8 and 15 complaints per year. Although complaints may be submitted through the agency's website, the agency's office at the time of field research did not have a special room to receive complainants, and there are no clear instructions on how to file a complaint.

When the agency receives a complaint, it assesses whether the district indeed is authorized to further handle the complaint. Monitoring is however hindered by the lack of officials who are authorized to monitor (PPLH). Although five officials of the agency are trained to monitor, no one actually has a position as PPLH due to a lack of budget.

When the verification of a complaint points towards violating behavior, the agency takes the initiative to facilitate mediation between the complainants and the industry. It does so because law enforcement is considered to be only the last option.¹

The Medan government nevertheless has occasionally given a warning, but prefers to give guidance to violators. Medan officials furthermore reason that law enforcement is not required in the case a company operates without a business license. In that case the government relies on the consequences imposed by the banks, since banks require a license to before they provide a loan. Officials consider that this justifies the government not taking action against violators.

The Environmental Agency of Deli Serdang

The Deli Serdang Environmental Agency consists of the unit Environmental Planning and Environmental Impact Assessment Management, the unit Environmental Damage and Restoration, the Environmental Pollution and Waste unit, and finally, the unit Compliance and Environmental Communication. The agency has been and still is in the process of reorganization; within one year the organization changed from being a 'Bapedalda' (*Badan pengendalian dampak lingkungan hidup*) to a being a 'BLH' (*Badan Lingkungan Hidup*), and will soon become a Dinas instead of a Badan. The agency will furthermore merge with the Forestry agency. This is expected to impact the position and performance of the officials, although it is unclear which implications it will have precisely.

¹ Editorial remark: In Indonesia, mediation between citizens affected by pollution on the one hand and the polluting industries on the other, is often considered to substitute government action to halt a violation using administrative law instruments (or variations to that such as offering guidance).

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Although the agency has a complaint desk and complaints can be brought through the agency's website, most complaints are reported by telephone. The agency received 10 complaints in 2015. In violation of the Regulation of the Minister of Environment on Complaint Handling, the agency nevertheless requires that to officially file a complaint, a complainant must send a letter that is accompanied by a stamp of Rp. 6000 rupiah and a copy of the complainant's identity card.

The agency claims to conduct routine monitoring, and incidental monitoring to verify complaints. Similar to Medan, although some officials have been trained to be monitoring officials (PPLD), none of them has a position and function as a PPLH because those who are trained as PPLH are not interested in this position given due to the unfavorable employment conditions. Monitoring nevertheless is carried out by other officials who carry a letter of the head of the agency when they go on inspection. This is however not in line with the EMA and may have implications for the authority of officials when a violation is detected.

Two of the ten complaints the Deli Serdang agency received in 2015, the agency referred to the police. The agency handled the other eight cases itself by giving guidance to the violators. The officials referred to this guidance as an 'out of court' settlement,² and preferred this over imposing an administrative sanction. Officials reason that most companies become compliant as a result of the provided guidance.

The research did not find data on the results of routine monitoring and if and how detected violations were followed up.

Conclusion

The paper concludes that the regulation of industries in the Deli watershed encounters problems in several areas; standard-setting does not occur properly (particularly because the carrying capacity of the river has not been determined), the division of authority is unclear, there is a lack of officials trained and positioned to conduct monitoring, and more in general, the budget for monitoring and following up on violations is insufficient. Furthermore, there are obstacles that hinder the public to file complaints.

The research furthermore concludes that the authority to impose administrative sanctions is not used optimally. As long as the local governments will prioritize the economic interest, they will lack the willingness to address the pollution issues, for example by imposing administrative sanctions.

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.

² Editorial remark: The use of the term 'out of court' settlement in this context is remarkable. The term is used to differentiate between administrative sanctioning and guidance while both do not require the involvement of a court. The use of this terminology suggests confusion among officials about the difference between administrative and private law approaches to deal with environmental pollution. As a private law approach, the Environmental Management Act offers the possibility of 'inside' and 'outside court dispute settlement'. The fact that officials mention court –or rather to an approach to avoid court- might also point towards the fear among officials of being sued in court as a result of imposing an administrative sanction.