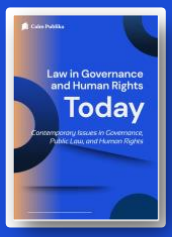
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RESEARCH ARTICLE

Warnings Without Reach: Administrative Sanctions and Cross-Boundary River Pollution in the Elo River Basin, Magelang Regency, Indonesia

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ABSTRACT

Residents along the Elo River in Borobudur District, Magelang Regency, report that the river no longer supports fishing or irrigation, and they and the local environment office attribute the pollution to wastewater from a textile company in a neighbouring regency. This article asks how the regency's environmental regulation is used against this pollution and why enforcement has stopped at warnings. It uses empirical legal research: analysis of Magelang Regency Regulation No 4 of 2016 on Environmental Protection and Management, which replaced the earlier Regulation No 21 of 2001, interviews with residents and a senior official of the regency environment office, and Soerjono Soekanto's five factors of legal effectiveness. The article finds that the regulation gives the office strong tools: monitoring of water quality at least every six months, supervisory officials with powers to take samples and to stop violations, and a ladder of sanctions that runs from a written warning to government coercion, suspension and revocation of permits. According to the official, only warnings were issued, the company reported poorly, its effluent was mixed with other water and hard to supervise, supervision was thin and staff were few. The article also finds that the source does not explain how a regency can sanction a company that lies in another regency, which may be the main reason the sanctions stop. The evidence is one official, some residents and a secondary study, with no water-quality data and no account from the company, so the findings are indicative only. The article recommends use of the supervisory powers to collect evidence, written coordination with the neighbouring regency and the province, more trained supervisors and a stronger role for the community.

Keywords: environmental law; administrative sanctions; river pollution; regional regulation; legal effectiveness

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1. Introduction

Industrial growth brings jobs and products, and it also brings waste. In Indonesia the Constitution gives every person the right to a good and healthy environment (Article 28H), and Law No 32 of 2009 on Environmental Protection and Management defines sustainable development as a conscious and planned effort that integrates environmental, social and economic aspects so as to protect the integrity of the environment and the well-being of present and future generations.[1] Water is the medium through which many of the consequences of industry reach people, because rivers carry waste across administrative boundaries.

This article takes up a case that the thesis behind it describes. A textile company in Pringsurat District, Temanggung Regency (the Company), is said by the thesis and by a local official to have discharged liquid waste into a river that flows through Temanggung into Magelang Regency. The thesis says that the river system in Borobudur District, Magelang, is fed from this flow, which passes through Temanggung, Kranggan and Windusari and meets two other rivers, the Tangsi and the Elo, in Borobudur. The thesis reports that fish have largely disappeared from the Elo, that people who used to fish and irrigate their rice fields from it no longer can, and that some residents suffered skin complaints that they attribute to the water. A study cited by the thesis reported in 2021 that the river had turned dark.[2] The thesis dates the pollution to the period 2020 to 2022. The article refers to the company in neutral terms and does not name it, because the allegations rest on one official's account and on a secondary study and have not been tested in a proceeding.

The thesis asks how effective Magelang Regency Regulation No 21 of 2001 on Environmental Management is in controlling this pollution. That regulation was revoked: Article 141 of Magelang Regency Regulation No 4 of 2016 on Environmental Protection and Management states that on the entry into force of the later regulation the earlier one is revoked and no longer valid.[3] The events the thesis describes took place between 2020 and 2022, so the rules that applied to them were those of 2016. This article therefore analyses Regulation No 4 of 2016 and treats the thesis's remarks about the 2001 regulation as historical background. Its questions are: what tools does the current regulation give the regency against river pollution; how were they used, according to the evidence; why did enforcement stop at warnings; and which authority could act against a polluter outside the regency?

[1]Law No 32 of 2009 on Environmental Protection and Management, Article 1(3), as quoted in the thesis. The Law has since been amended by the Job Creation reforms (Law No 6 of 2023), which, among other things, changed the environmental permit into an environmental approval; the thesis does not discuss these changes.

[2]The thesis cites an earlier study (Pambudi, 2021) for the dark colour of the water and for discharge into irrigation channels over a long period; the article has not seen that study. The residents' statements were collected in pre-research interviews in 2022; none is quoted in this article by name.

[3]Magelang Regency Regulation No 4 of 2016 on Environmental Protection and Management (Regional Gazette 2016 No 4), Article 141, which revokes Magelang Regency Regulation No 21 of 2001 on Environmental Management (Regional Gazette 2001 No 72 Series D No 7). The thesis quotes Articles 85 and 122 of the 2016 regulation alongside the 2001 regulation without noting that the second replaced the first.

2. Method and Source

The research is empirical legal research with a sociological approach. The norms are the national environmental law and the regency regulations, and the practice is described through interviews and the thesis's account of events. Two kinds of primary data are used. The first are interviews with residents living along the river in Borobudur District, carried out as pre-research in 2022. The second is an interview, on 15 January 2023, with a senior official of the Magelang Regency environment office (the sub-coordinator for the control of water, air and soil pollution), who is referred to here by post. Secondary data are the regulations, the literature on environmental law and an earlier study of the Company. The data are analysed qualitatively against Soerjono Soekanto's five factors of legal effectiveness: the law, the law enforcers, facilities, the community and culture.[4]

The limits of the evidence should be clear at the start. There is one official and an unspecified number of residents; the Company was not interviewed, nor was the environment office of Temanggung Regency, the provincial environment agency or the national ministry. No water-quality measurement is reported, so the thesis cannot say what substances are in the river or whether they exceed standards. The statements that the Company discharged effluent directly into the river, that its treatment plant could not cope and that the pollution continued after warnings come from the official's interview and are reported here as the official's account. Statements that the pollution caused illness are reported by residents and are not medically verified. The findings describe how the system looks from the side of the regency environment office and a few residents, not how much the river is polluted.

3. The Tools the Regulation Gives

Regulation No 4 of 2016 is a comprehensive environmental regulation of 142 articles. For river pollution it provides a chain of tools, summarised in Table 1.

Stage	Provision	What it provides
Prevention	Articles 18 to 21	Prevention of water pollution through water-class designation, permits for discharge of wastewater into water sources (issued by the Regent), wastewater treatment facilities and monitoring of water quality; permit holders must comply with their permit conditions
Monitoring	Article 23	The head of the environment office coordinates monitoring of water quality at least every six months and, if a source is polluted, coordinates the relevant offices and businesses in handling the pollution and restoring quality
Supervision	Article 121	Regional environmental supervisory officials appointed by the Regent may monitor, ask for information, copy documents, enter premises, photograph and record, take samples, inspect equipment and installations, and stop certain violations; the person in charge of a business must not obstruct them

[4]Soekanto S, *Efektivitas Hukum dan Peranan Sanksi* (20th edn, Remaja Karya 2015), as used in the thesis.

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Stage	Provision	What it provides
Sanctions	Articles 122 to 126	Administrative sanctions in four steps: written warning; government coercion; suspension of the environmental permit; revocation of the permit. Coercion applies if conditions of the permit are breached and/or the activity causes pollution; suspension if coercion is not carried out; revocation if most coercion is not carried out or the pollution endangers human safety and health
Remedies	Articles 127 to 130	Settlement of environmental disputes in or out of court; the polluter must pay compensation and/or take specified action
Community	Articles 85 and 86	Social supervision, complaints, information, and the right of villages to regulate activities that may pollute through village regulations

Table 1. Tools in Magelang Regency Regulation No 4 of 2016 against river pollution. Source: the text of the regulation (Regional Gazette 2016 No 4), summarised for this article.

Three features of this chain matter below. First, the ladder of sanctions does not require the pollution to be proved to have caused a particular harm before coercion can be applied: Article 124(1)(b) allows government coercion where the activity causes pollution or damage, in addition to the case of a breach of permit conditions. Second, the supervisory officials have strong evidence-gathering powers, in particular to take samples and to stop certain violations. Third, the permit for discharging wastewater into a water source is issued by the Regent, so the regulation's sanctions presuppose a permit issued under the regency's own authority.

The national framework sits above this. The thesis cites Government Regulation No 82 of 2001 on Water Quality Management and Water Pollution Control, whose Article 1(4) defines water pollution control as prevention, mitigation and recovery of water quality so as to keep it within the quality standard. That regulation has been replaced by later regulation under the Job Creation reforms, so the standards that apply today are those of the current regulation on environmental protection and management.[5] The thesis also cites a Temanggung Regency regulation of 2020 on environmental protection, which it quotes as requiring businesses that must have an environmental impact document to hold an environmental permit from the Regent of Temanggung.[6]

4. What the Official Reported

The environment office official said that the pollution came from the Company, which lacked proper technical waste management, and whose treatment plant (IPAL) could not cope with the effluent from production, so the Company took a shortcut and discharged directly into the river. The official said that the

[5]Government Regulation No 82 of 2001 on Water Quality Management and Water Pollution Control, as cited in the thesis. It appears to have been replaced by Government Regulation No 22 of 2021 on the Implementation of Environmental Protection and Management; this article has not verified the replacement or compared the provisions.
[6]Temanggung Regency Regulation No 9 of 2020 on Environmental Protection and Management, as quoted in the thesis; the text was not consulted for this article.

pollution still occurred but at low intensity, and that it did not always show signs; when it did, the river turned bluish with a strong smell, then whitish, with solid waste visible. For the Company, the sanction described was administrative and limited to a warning letter issued by the office's section for pollution control and damage recovery.[7]

The official also described a routine of reporting. Large companies such as textile factories must report their environmental performance: for those with an environmental management and monitoring document (UKL-UPL), a report every six months, and a monthly report on wastewater management, through an online application. In practice, the official said, many companies report once a year or not at all, and for those who do not report the office's sanction is again a warning letter. The thesis adds, on the strength of the same interview, that the Company did not carry out the reporting properly.

On supervision the official identified three obstacles. The first is technical: the Company's wastewater is not kept apart from other water, so it is not clear which pipe carries what, and the Company can claim that what is discharged is not wastewater; supervision of the discharge is difficult. The second is the amount of supervision: because there is little of it, the office finds it hard to apply a further sanction. The third is evidence: before applying a stronger sanction, the office has to show that the company is still polluting. The thesis also records that the office carries out coaching, monitoring and outreach to companies, but that few attend, and that it identifies and analyses sources of water pollution at least once a year and reports the results to the Governor, with a copy to the Minister, as the basis for pollution-control policy.

On the community the thesis reports a negative legal culture among residents, who, the thesis says, do not use their right to take part in supervision, and the thesis concludes that the regency's environmental management cannot be called effective: the office has applied only a written warning to the Company, which still discharges, and the office lacks staff, with too few supervisors for the number of factories in the regency. It recommends intensive training for the office's staff and more supervisors.

5. Assessment: Five Factors of Effectiveness

Table 2 sets out the thesis's evidence under the five factors, with the observation this article adds.

Factor	What the evidence shows	Observation
Law	Regulation No 4 of 2016 gives monitoring, supervisory powers and a four-step ladder of sanctions	The legal tools are strong on paper; the thesis analyses the revoked regulation of 2001 and does not apply the ladder of 2016 to the facts
Law enforcers	Only warning letters, no coercion, suspension or revocation; the office needs evidence of continuing pollution	The supervisory officials' power to take samples and stop violations is not reported as used
Facilities	Few supervisors for many factories; effluent not separated from other water; online reporting system not used by companies	No staff numbers, laboratory capacity or sampling records are given

[7]Interview with the sub-coordinator for the control of water, air and soil pollution, Magelang Regency environment office, 15 January 2023. The interviewee is referred to by post. The thesis does not say whether the interview concerns the Magelang or the Temanggung office; it is read here as the Magelang office, as the thesis states.

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Factor	What the evidence shows	Observation
Community	Companies' poor reporting; residents do not use their role in supervision	No complaint, dispute settlement or claim for compensation is reported
Culture	A negative legal culture among the community and companies	The thesis gives no evidence beyond the official's account and the observations of the author

Table 2. The five factors of legal effectiveness applied to the case. Source: the thesis, as synthesised by the authors of this article.

6. Discussion

The findings can be read against the five factors, and three points deserve more attention than the thesis gives them. The first is that the thesis measures the wrong instrument. A regulation that had been revoked cannot be effective or ineffective against events that occurred after its revocation. The right question concerns the regulation of 2016, and its answer could be quite different, because the 2016 regulation has more tools and a lower threshold for coercion. This is not a mere technicality: a study that evaluates the wrong regulation may blame a rule for what is a problem of use.

The second point is the escalation gap. According to the official, the office has to show continuing pollution before it can apply a stronger sanction, and the lack of supervision makes this hard. Yet Regulation No 4 of 2016 gives the supervisory officials the powers that produce exactly that evidence: they can enter, photograph, record, take samples, inspect the installation and stop certain violations (Article 121(3)). It also lets the Regent apply government coercion where the activity causes pollution (Article 124(1)(b)), so a documented discharge might suffice, without a separate finding of a breach of permit. If the account is accurate, the obstacle is less the power than its use, and one of the practical questions is whether the office has sampling equipment, trained officials and a protocol for taking samples at a discharge that is not separated from other water. The thesis does not give the facts needed to answer this.

The third point is jurisdiction, and it may be the most important. In the thesis's account, the Company is in Pringsurat, Temanggung, and it is Temanggung's regulation that the thesis quotes as requiring the environmental permit from the Regent of Temanggung. Regulation No 4 of 2016 is a regulation of Magelang Regency. Its permit for discharge into a water source is issued by the Regent of Magelang (Article 21), and its ladder of sanctions applies to the permits and obligations that this regulation creates. A regency's own regulation has no obvious application to a company in another regency. The thesis nevertheless says that the Magelang office issued the warning letters. It does not say on what basis: whether the Company has an operation in Magelang, whether the office acted for monitoring and coordination under Article 23, or whether the letters came from the Temanggung office, which would explain why the sanctions appear to stop at warnings. At one point the thesis also places the Company in Magelang Regency, which appears to be an error.

If the jurisdictional reading is right, the tools that the Magelang office has against a company in Temanggung are those of monitoring and coordination (Article 23), support for the community's role and for settlement of disputes and claims for compensation (Articles 85, 127, 128 and 130), and reports and requests to the authorities that can act: the Temanggung Regent and office, the provincial environment agency and the national ministry. The thesis mentions none of them, and no contact between the two regencies is reported.

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Seen this way, a warning from the office downstream may not be a failure of enforcement but the limit of what that office can do alone, and the question for law reform becomes how regencies on the same river should act together.

A fourth observation concerns the residents. The regulation gives them an alternative to waiting for the office: social supervision, complaints, village regulations and, for those who suffer loss, dispute settlement and compensation. The thesis reports none of these being used, and the official's account suggests that companies, too, ignore the online reporting system. Whether residents know their options, can afford to use them, or trust the process is a question of facts that the thesis did not ask.

7. Conclusion

Magelang Regency's Regulation No 4 of 2016, which replaced the regulation that the thesis evaluates, gives the regency's environment office a full set of tools against river pollution: monitoring, supervisory officials with powers to sample and stop violations, and administrative sanctions from a warning to revocation of a permit. In the case of the Elo River, the evidence reported shows that the office has used only written warnings, that the company in question reported poorly, that its effluent was not separated from other water, that supervision was thin and that staff were few. The evidence also leaves open a question the thesis did not ask: what authority a regency has over a company that is in another regency.

The authors' recommendations are therefore as follows. The office should use its supervisory powers to gather evidence of discharge, including samples, and consider government coercion where pollution is documented. The two regencies and the province should agree in writing how they will share monitoring data and act against pollution that crosses boundaries, and the office should report to the authorities that can sanction. The regency should add trained environmental supervisors in proportion to the number of discharging businesses, and it should explain to residents the remedies the regulation gives them and support them in using them. The study rests on one official, residents' statements and a secondary study, without water-quality data or an account from the company or from Temanggung, and it analyses the regulation of 2016 only from its text, so further research should add those sources and should test the account of the Company's discharge before any conclusion is drawn about it.

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