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Addressing industrial pollution in Indonesia: The nexus between regulation and redress seeking

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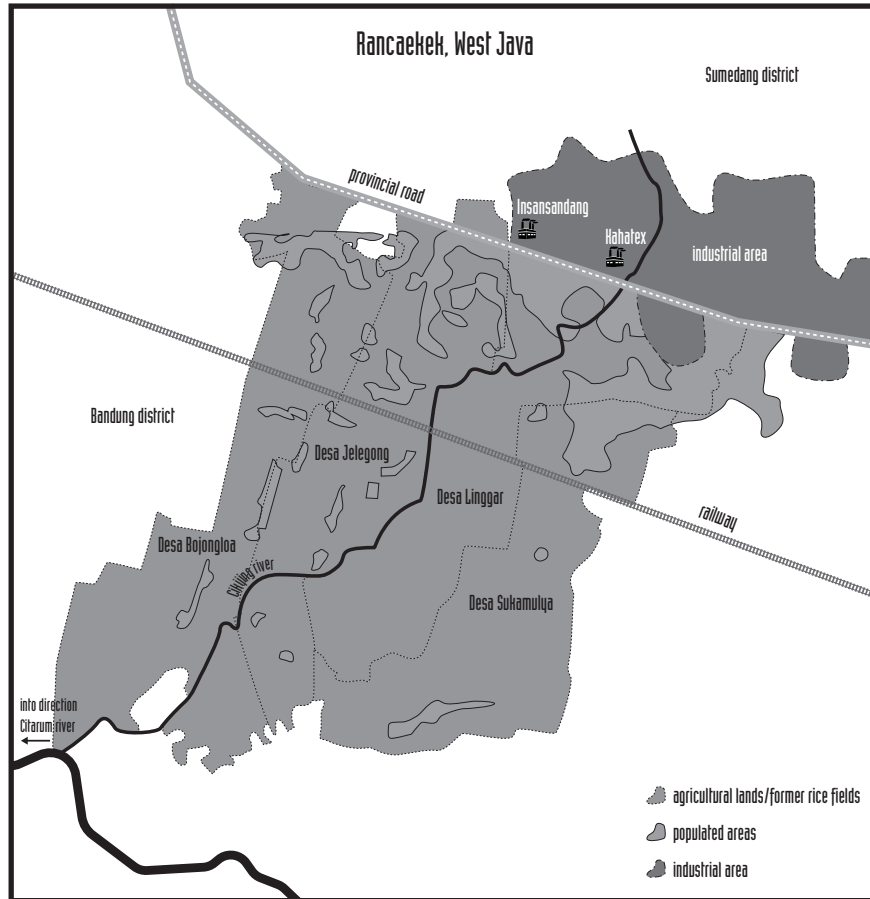
Title: Addressing industrial pollution in Indonesia: The nexus between regulation and redress seeking

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5 | Two decades of wheeling and dealing Regulating pollution in Rancaekek, West Java

This chapter is the first of two in-depth analyses of an industrial pollution case. The case is situated in the sub-district of Rancaekek, in the Province of West Java, approximately 30 kilometres from the Provincial capital, Bandung. Since the 1970s, many industries – including textile industries – have settled along the busy Provincial road that runs from east to west between Bandung and Tasikmalaya. The road forms the border between two districts: Sumedang in the north and Bandung in the south. Along the road, the densely populated areas of several villages stretch out. However, a few hundred meters further south, rice fields dominate the landscape.

The industries are located mostly on the north side of the road, in Sumedang district. However, it is the communities living on the south side of the road, downstream, that feel the environmental impact of industrial pollution. The pollution particularly affects the sub-district of Rancaekek, part of Bandung District. For more than twenty years, people there have complained about polluted wastewater. The often dark-blue coloured water flows through several *kampungs*, through the small Cikijing River and the connected irrigation system, affecting the rice production in the southern fields. The Cikijing River eventually flows into the infamous Citarum River, one of Indonesia's most polluted rivers, which supplies Jakarta with water.



Map 1: Rancaekek area, by author

This chapter seeks to understand why the government has not halted the pollution, how locals have responded to it, and how the pollution has impacted their lives. The first section sketches the environmental situation, demonstrating that there are many uncertainties regarding the pollution's precise environmental impact, the exact cause, and the timing of the pollution. At the time of fieldwork in 2012, government institutions held textile company Kahatex primarily accountable for causing the pollution. With 3500 employees, it is an important local job provider. However, before 2012, other industries had been accused of causing pollution as well.

Section 2 presents a reconstruction of regulation process developments that were still on-going after two decades and of how citizens attempted to seek redress throughout these years. It bases its reconstruction on an analysis of approximately 400 documents, as well as interviews with officials, interest

group members, and company representatives.¹ It explains why Rancaekek citizens have been unable to make the industry stop its polluting behaviour or pressure the government into taking adequate measures against pollution.

Section 3 bases its findings on ethnographic fieldwork in four Rancaekek villages that are considered the most affected by the pollution: Bojongloa, Jelegong, Linggar and Sukamulya. It shows how the outcome of the redress seeking process resulted in complex social relations within the villages. The outcome had a disruptive impact on social cohesion, and the inequality between villagers increased. In the end, the pollution exerted the highest price upon the most vulnerable people within the communities in an unexpected way.

1 RIVER WATER POLLUTION AND ITS CAUSES

The first public complaints about pollution in Rancaekek date from 1992. The sub-District Head of Rancaekek reported the issue to the District Head of Bandung, which a local newspaper reported on. For two decades afterwards, the pollution was the subject of many news reports, discussion papers and meetings with officials, industries, interest groups and citizens. Which industry or industries had caused the pollution? What was the extent of it, and when was it caused? Who was affected and how? The following section illustrates the problems in establishing the relevant facts of the case.

In 2011, the Provincial environmental agency, in cooperation with Bogor Agricultural University (*Institut Pertanian Bogor* or IPB), inventoried the soil quality in the affected area. The agency planned to use this study as a basis for seeking compensation for affected rice farmers (see sub-section 2.9). The assessment of ground samples allowed the agency to determine the depth to which particles from the wastewater had penetrated the soil in a 752-hectare area. The soil to the southeast of the Cikijing River had been especially polluted. The assessment found 14 per cent of the land to be heavily polluted, as waste particles had penetrated more than 60 centimetres into the soil. It found that 51 per cent qualified as moderately polluted, as the waste particles had penetrated 30 to 60 centimetres into the soil.

However, the soil quality assessment did not provide a full picture of the physical consequences of the pollution. Respondents indicated that the extent to which the pollution had affected the quality and quantity of the local rice

1 I recovered most documents regarding this case from the archives of the West Java provincial environmental agency. However, when available, I also used documents from other government agencies, non-government organisations and newspaper articles. I conducted interviews with officials and stakeholders during my fieldwork at the West Java environmental agencies in 2011 (see chapter 4), and during additional fieldwork in April and May 2012, which focused on this case. I have, on file, a fully annotated version of this chapter, with references to all documents and interviews.

production varied considerably, and did not fully match the soil quality assessment. Some areas where the soil had not or had barely been contaminated were almost entirely unproductive. Other heavily polluted soil areas still yielded approximately 25 per cent of normal rice production levels. Some non-assessed areas had also been affected.

Furthermore, the soil quality assessment did not specify when the pollution occurred and for how long it had been affecting the rice production. For example, in 2012, an irrigation channel had leaked, causing Cikijing's water to suddenly flow onto farming fields. According to some respondents, this had immediately affected the rice yield. Farmers explained that the size of their harvest was mostly determined by the quantity of rainwater and the quantity and quality of the irrigation water. The soil quality had no such direct impact.

Accounts differed on when the pollution began. Most of the 56 respondents said it became noticeable immediately after, or soon after, the textile company Kahatex had settled in the area in 1989. Conversely, some said the rice yields began to decrease only years later.

In short, there appeared to be no linear correlation between the outcomes of the soil quality assessment, the effects on the quantity and quality of the rice production over the years, and the financial damage that people in Rancaekek had suffered. This assessment could also not clarify who had caused the pollution and who was responsible for recovering the damages. Nevertheless, the Provincial environmental agency did use the assessment to try and arrange compensation for those affected by the lower rice yields.

Moreover, respondents did not merely complain about the financial damage that they had suffered. Some were worried about the cassava, which now had a salty flavour, instead of its normal, sweet taste. Also, before the pollution problems, Rancaekek had been famous for its fish. A species called *ikan mas*, bred in local ponds, had long disappeared because it had not survived in the poor-quality water. Many people also expressed concerns about health. Some mentioned the water was no longer drinkable. Others had noticed that it had become difficult to wash off the dark colour of one's feet after working barefoot in the fields, and some complained about irritable skin. Others mentioned that some children had experienced breathing problems. Some had not yet noticed any health implications but were worried about potential future problems. For example, some were concerned about the children who played on the contaminated soil and they were uncomfortable growing garden vegetables for consumption. Several respondents claimed that Cikijing's water often had a dark blue – almost black – colour, and a peculiar smell. They claimed they could sometimes see steam coming from the water. These conditions often occurred at night.

The textile company Kahatex admitted that in the past, it might have caused pollution. However, it claimed it had never violated any environmental standards. The Sumedang District government agreed that Kahatex had always

complied with the environmental regulations on wastewater. By contrast, the Bandung District government, the Provincial government and the Ministry of Environment all claimed that Kahatex had been noncompliant (see section 2).

There are many local industries in the area, which raises questions about who caused the pollution, and to what extent. In the past, textile industries PT Insan Sandang, PT Five Star, and Kahatex had been accused of causing pollution. All three industries were located next to each other on the north side of the provincial road. Nevertheless, in 2012, government institutions primarily blamed Kahatex. One Kahatex representative claimed that this blame stemmed from his company being the largest in the area. The representative pointed toward other potential polluters, such as small car repair workshops along the busy road and the densely populated areas' domestic waste.

To conclude, government institutions involved in regulating the local industries were unable to provide accurate information on the extent, the causes and the impact of the pollution, information they would need to develop accurate policies and take proper regulatory measures against (potential) polluters.

The following sections will explain how the processes of regulation and redress seeking developed over two decades, and how this impacted the lives of people living in the Rancaekek area.

2 TWO DECADES OF REGULATING AND SEEKING REDRESS FOR POLLUTION

This section presents a reconstruction of the regulation and redress seeking processes as they developed between 1989 (i.e., when Kahatex arrived in the area) and April 2012 (i.e., the time of fieldwork). It provides insight into the many actors that were involved in these processes over the years, and how their attempts to deal with the pollution transformed over time.

Before commencing with the chronological account of developments, it should be noted that the approximately 400 documents I used for this reconstruction did not come from orderly archives. Instead, I recovered most documents from various folders at the West Java environmental agency, which contained bits and pieces of documentation. The agency had produced chronological case overviews, but these lacked many relevant details and references to important events, especially regarding the more distant past. This absence of a nuanced and detailed perspective on the case is characteristic of how the various government institutions dealt with the case over the years.

The available documents are often short on relevant details, for example on why government institutions took particular decisions, or who precisely represented Rancaekek's population in certain claims to redress. Despite these gaps, the chronology below indicates that during many different phases in the regulatory process, the behaviour of both government institutions and private parties was inconsistent. For example, governments did not follow

up on sanctions consistently, and NGOs radically shifted from critical to supportive of companies without clear reasons. However, none of these NGOs was held to account.

2.1 The first complaints during a period of centralisation (1989-1997)

In 1989 and 1990, the two textile companies PT Kahatex and PT Insan Sandang started their activities in the area. In 1992, a local newspaper first reported the local population's concerns regarding the environmental impact of the industrial activities. Around the same time, the Village Head of Rancaekek requested Bandung's District Head to assess the wastewater quality of Kahatex and Insan Sandang. Bandung's District Head then asked West Java's Governor to do so. At the same time, the textile industry Kahatex and the villagers of Jelegong agreed that the company would provide the villagers with clean water, funding to build sanitation facilities and that the industry would finish the construction of its wastewater treatment installation within two years. In return, Jelegong's villagers agreed not to complain again about the wastewater that was flowing through their village.

For several years, not much happened. However, in February 1997, the Minister of Environment requested that West Java's Head of police investigate complaints about pollution in Rancaekek against Kahatex, Insan Sandang, and the textile company Five Star. In 1998, a local NGO also accused these three textile companies, as well as textile company Banon, of causing the pollution.² The NGO asked to meet with these four companies. No concrete results were reported. Reports regarding the pollution did not mention the NGO again.

2.2 Unused regulatory authorities by the regional governments (1999)

The regional authorities' inaction also characterises the period that followed.

In 1999, research by the agricultural department of Bandung's Padjadjaran University concluded that the local soil pollution had led to a decrease of rice production and that the rice's absorption of heavy metals posed health threats. The media also reported that the pollution was leading to decreased rice harvests.

By this time, the decentralisation process had started, and regional governments obtained more powers to regulate industries. Bandung insisted that Sumedang impose administrative sanctions on the industries near Rancaekek. When the Sumedang district government did not follow the request after a month, Bandung's District Head called upon the Governor to take action. The

2 This NGO was named *Forum Dinamika Masyarakat Rancaekek (Dynamic Forum of the Rancaekek Community)*.

Provincial environmental agency informed the Governor that five textile companies (i.e., Kahatex, Insan Sandang, Five Star, Banon and Supratex) were neglecting their duties administratively and technically. However, the Governor could have halted the pollution under the revised Environmental Management Act (EMA) of 1997. The industries were in the Sumedang district, while the environmental impact was primarily occurring in Rancaekek, Bandung's sub-District. Therefore, this was certainly a 'transboundary' case, legitimating a regulating authority shift from the District to the Provincial level. However, the Governor refused to take adequate measures. The Provincial environmental agency actually recommended the Governor mediate the case, but the documentation did not explain which parties should be involved. The mediation suggestion marked the beginning of a long trajectory where the Provincial government repeatedly attempted to solve the issue through consensus, rather than using its administrative authorities to promote public environmental interests.

In its advice, the Provincial environmental agency anticipated that mediation would fail. In that case, it recommended that the matter be brought before a criminal court. The agency suggested creating four working groups on licensing, technical, social and legal matters to gather sufficient evidence for criminal prosecution. The Governor followed this advice, but the results were disappointing. One of the working groups recommended that the industries optimise their wastewater treatment systems, but it remained unclear what that meant in practice. Another working group made a fairly useless suggestion about sending a letter to the President to mediate between the industries and 'the community'.

In short, the Provincial government attempted to reach a consensus between the industries and the affected population, while the working groups aimed to organise the many involved government institutions. This consensus-seeking strategy would continue for years to come, without a serious threat of sanctions against violations of environmental standards.

2.3 Public demand to halt noncompliant behaviour (2000)

In 2000, the pressure on the government to take more concrete measures to halt the pollution increased. Media reported that Rancaekek's citizens had organised protests and requested the Provincial government take action. The military and the police were accused of using violence against the protesters, and a community representative complained about this matter to the national Parliament.

The West Java public prosecutor advised the Governor to establish a team to investigate whether the costs for environmental recovery could be reclaimed from the industries through a private lawsuit. If so, the public prosecutor

offered to represent the affected citizens. However, the suggestion was apparently put aside, since nothing happened.

Yet, the unrest in Rancaekek did not cease. The Provincial environmental agency tried to settle the discontent among rice farmers who had complained about decreasing yields. The agency organised a meeting with the farmers' group – *Forum Komunikasi Para Petani Rancaekek* (FKPPR) – together with government institutions from the Sumedang and Bandung Districts. The farmers demanded the rehabilitation of the Cikijing River and the affected rice fields.

In a press statement, a Rancaekek resident accused the companies Vonex, Indopon and Asia Agung of bribing protesters to halt their protests. The statement was also sent to numerous government institutions, from the President to the District Heads to Bandung's Parliament. The national Parliament received reports of a representative of Insan Sandang and a West Java police officer intimidating protesters. The Parliament asked the Minister of Environment, the West Java police and the Bandung police to handle the case. The statement somehow ended up at the Provincial environmental agency. In an internal letter, the agency's Environmental Impact unit asked the agency head for his permission to verify the complaints, and if they proved accurate, to take measures under the law. The unit did not refer to Padjadjaran University's 1999 research, which indicated that the pollution complaints were valid.

Meanwhile, Bandung's environmental agency issued a report that attributed the pollution to three industries – Kahatex, Insan Sandang and Five Star – and suggested that the case should be settled through mediation. Rancaekek's sub-District Head would consult with community leaders, NGOs and the farmers' group. Bandung's environmental agency would inventory all of the claims. Eventually, the Provincial environmental agency assisted the District in these efforts.

In this kaleidoscopic scenery of government institutions, companies and community members, another party entered the stage. The 'Combined Team for Waste Treatment of Rancaekek' or '*Tim G*' consisted of six Village Heads within Rancaekek and claimed to represent the interests of Rancaekek's population. In a joint statement with the farmers' group FKPPR and Rancaekek's sub-District Head, the team announced it would take over all regulatory tasks from the authorised government institutions at District, Provincial and Central government level. It announced itself as a monitoring body as well as the coordinating body organising the claims of institutions, community groups and others against the industries.

2.4 A private law agreement that resembles an administrative law approach (2001-2002)

In June 2001, the Provincial environmental agency issued an official investigation report, stating that it suspected Kahatex of disposing of half of its unprocessed wastewater through an illegal, hidden pipe. The report wrote that Insan Sandang was continuously disposing of wastewater without treatment. The agency recommended the Governor take administrative action, as 'shock therapy'. The agency's report also mentioned that locals demanded a supply of clean water and the 'normalisation' of the Cikijing River. I could not find evidence that the Governor acted upon the report's suggestions.

In the meantime, the Bandung government surveyed 225 people in the villages of Bojongloa, Jelegong, Linggar and Sukamulya. The government asked them what they considered a priority in response to the industries' environmental impact. The respondents prioritised compensation for the loss of income from lower rice yields (26 per cent of respondents), clean water (20 per cent), health care services (20 per cent), improved wastewater treatment systems (14 per cent), improved Cikijing River water (14 per cent), and a job at one of the plants (6 per cent).³ This outcome served as a basis for mediation between the companies Kahatex and Insan Sandang and *Tim G*. The latter had proclaimed itself as the representative of Rancaekek's population and the governments at various administrative levels accepted it as such. Apart from *Tim G* and representatives of the industries, a somewhat bewildering range of government institutions took part in the mediation: the Provincial environmental agency, the Provincial water management body, the Sumedang and Bandung environmental agencies, and Rancaekek's sub-District Head. They participated in the meeting in a 'coordinating' capacity, not as regulators with enforcement responsibilities.

On 6 August 2002, the industries and *Tim G* reached an agreement. The companies would improve the functioning of their wastewater treatment systems following the standards set by the Provincial environmental agency. Sumedang would monitor the implementation. The industries would also manage their sludge following the legal requirements for hazardous and toxic waste and would provide the Rancaekek communities with clean water. Finally, the industries would pay 'compensation' to restore the Cikijing River. Kahatex, Insan Sandang and Five Star would pay 100 million rupiah, 8 million rupiah and 7.5 million rupiah (around € 8000, € 640 and € 600).⁴

The industries and community representatives made the agreement based on private law principles. However, the agreement also focused on administrat-

3 The survey did not explain its methodology, but the percentages adding up to 100 suggests that the respondents were only allowed to mention one desire.

4 As a currency rate, I use 12.500 Indonesian Rupiah=1 Euro, reflecting the average currency rates in September-December 2012.

ive law standards. Various government institutions, notably regulatory authorities, signed the agreement. However, they did so as witnesses to a private law agreement rather than as regulators with authority and responsibility based on public law. The agreement was, therefore, a peculiar mix between private and administrative law approaches to dealing with the pollution problems. Did the agreement mean that the institutions did not have the authority to enforce the law independent of the private agreement? What was their role in monitoring industrial compliance with the environmental standards in the private agreement?

Government institutions indeed started using the agreement of 6 August 2002 as a basis for their monitoring activities. After the inspections, the Sumedang environmental agency concluded that the industries had attempted to improve the functioning of the wastewater treatment systems, but with no 'optimal' result. West Java's water resource management agency – a branch office of the Ministry of Public Works – reported that it had restored the Cikijing River and the polluted area. Some respondents had noticed that for a few years, the restoration had had positive effects on the productivity of a few rice fields. However, the effects were limited because the budget had allowed the agency to sanitise only a small part of the polluted area. A few years later, the positive effects of the agreement waned altogether: the industrial wastewater had polluted the area once again, and the industries never kept their promise to provide clean water to the community.

It also became evident that *Tim G's* claim to be the legitimate representative of Rancaekek's communities was not undisputed. A farmers' group named *KCD Petanian* complained that the agreement of 6 August 2002 did not cover compensation for the loss of income due to the decrease in rice production. In response, Bandung's environmental agency inspected the Cikijing River and found that its water was still black and smelly. The agency contacted Kahatex and Sumedang's agency. That exchange resulted in yet another agreement, this time between the industries and *KCP Petanian*. The agreement's content was similar to the agreement made with *Tim G*, but it had another implementation arrangement. The Bandung government, the Sumedang environmental agency, Rancaekek's sub-District government, the Village governments, the companies and community representatives would all monitor the agreement's implementation. This agreement was primarily between private parties, but also involved government institutions and focused on environmental compliance. As a result, it seemed that environmental compliance was a matter to be arranged first and foremost between private parties. Consequently, the agreement undermined the independent and primary duty of government institutions to regulate the environmental performance of the industries to promote the public interest.

2.5 Administrative sanctions based on a private law agreements (2002-2003)

Soon after the private parties made their agreements, the Ministry and Province both took action against the companies.

In 2002, the Ministry of Environment assessed both Kahatex and Insan Sandang within the context of its PROPER programme.⁵ It rated Insan Sandang as 'red', indicating non-compliance. It rated Kahatex as 'black', indicating severe violations.⁶ However, the Ministry imposed no sanctions on either company.

However, in 2003, West Java's Governor gave a 'first warning' to Kahatex, Insan Sandang and Five Star based on the 6 August 2002 agreement between *Tim G* and the industries. The warning stated that the industries had not carried out the agreement and that the case could proceed to court if they made no improvements. Thus, a private law agreement became a basis for administrative law enforcement, and the court reference probably referred to the possibility of criminal law enforcement.

Five Star responded that it had not violated any standards, that it had optimised its wastewater treatment system, that the 'normalisation' of the Cikijing River was 'in process', and that it had supplied the people living near the Cikijing River with clean water. By contrast, Kahatex confirmed that it had not yet fully implemented the agreement. The company stated that it was trying its best.⁷ Insan Sandang did not respond to the warning at all. The Province did not take further action against any of the companies. Paradoxically, one year later, Sumedang's District Head granted permission to Insan Sandang to dispose of wastewater in the Cikijing River.

By basing the administrative sanctions on a private law agreement, the government institutions further entangled private and administrative approaches to addressing the violations. They did not follow any clear administrative law procedure. This approach understated the government's duty to promote environmental interests – regardless of any private law agreement – and it became unclear which institution was authorised to regulate the indus-

5 The ministerial monitoring and public disclosure programme PROPER was previously discussed in chapters 3 and 4.

6 The lists with PROPER ratings from various years are accessible through the website of the Ministry of Environment: <http://proper.menlh.go.id/portal/?view=28&desc=1&iscollps=0&caption=PUBLIKASI> (Last assessed on 10 July 2018).

7 It stated it was still working on improving its wastewater treatment system to meet the standards. It had provided clean water to Rancaekek's population, but the people in the area had not yet arranged storage facilities for the water. Therefore, Kahatex had not been able to carry out this point of the agreement. Kahatex did not mention if it had acted to 'normalise' the Cikijing River.

tries.⁸ The institutions may have been reluctant to take adequate enforcement measures due to political pressure not to sanction the companies harshly. It is also possible that officials sincerely preferred mediation, as it allowed for citizen participation and created an opportunity to avoid the barriers and weaknesses of the institutional and legal framework. In any case, the chosen approach made it appear as if the government was dependent on the private law agreements to take enforcement actions. Above all, the approach proved rather ineffective. The mixing of private and administrative approaches made it difficult to hold any particular institution accountable for ineffectiveness or inaction.

2.6 Interest groups as regulators (2004-2007)

Since 1998, various local interest groups complained about the pollution in Rancaekek and negotiated with industries to come to a solution. Often, the precise outcomes of these meetings were not made public, but the increasing number of interest groups that wanted to negotiate with the industries suggests that the efforts paid off.

Tim G remained an active interest group. In February 2005, almost three years after it had come to an agreement with the industries, it complained to the Provincial environmental agency about the industries' poor execution of their promises. It stated that the industries had not yet optimised the wastewater treatment systems, provided the population with clean water, paid the 'compensation' for restoration, or provided medical services for the population.⁹

Other NGOs also became involved. NGO *Balepo* reported to Rancaekek's sub-District Head that it had taken water samples on 18 March 2005, indicating that Kahatex had violated the wastewater standards. It demanded that the company would fulfil its agreement with *Tim G* and asked the Minister of Environment and the public prosecutor to take measures against Kahatex. It also wished to participate in the discussions about improving the wastewater treatment systems and proposed a particular consultancy agency to be employed for this effort.

8 In 2003, the director of Kahatex was convicted by the Garut State Court for his involvement in the dumping of hazardous waste in the form of sludge in two villages near the city of Garut. A newspaper reported that the director was given a suspended prison sentence of two months and a fine of 5 million rupiah (approximately €400). The public prosecutor had demanded eight months in prison, but because of the director's good behaviour and all of the company's social activities in the neighbouring communities, the sentence was lowered. Remarkably, documents from the archives of the provincial environmental agency did not refer to this criminal conviction.

9 Notably, this issue had not been part of the agreement of 6 August 2002.

The NGO *KMPL* organised an 'open dialogue' in Rancaekek. Community representatives from Rancaekek, local environmental NGOs and Rancaekek sub-District officials attended the meeting. The participants decided that an integrated team should be established to examine the environmental situation, monitor the industries, and enforce the law in a 'firm and just' manner. The team would consist of Sumedang and Bandung environmental agency officials, District Parliamentarians, Provincial Parliamentarians, *KMPL* members and two 'community representatives'. In this way, non-state parties obtained some regulatory authorities.

In October 2005, the Province reported that the industries and the 'community of Rancaekek' had come to a new agreement. It is unclear who represented the community on this occasion, or whether members of *Tim G*, *KMPL* or *Balepo* were involved. The new agreement was largely similar to the one from 6 August 2002, but contained one addition: if the companies did not execute the agreement, the case would be taken to court. However, the agreement did not specify who would do so and whether the case would be brought to a private, criminal or administrative law court.

These developments indicate that NGOs' roles in regulating industrial environmental behaviour became substantial, but to whether this contributed to a cleaner environment is questionable. Even though one NGO explicitly requested the government use its authority to ensure corporate compliance, the NGOs eventually negotiated directly with the industries about their compliance, acting as private parties with no special administrative authority, while the authorised institutions failed to use their authority.

Furthermore, the Province did not specify the members of 'the community of Rancaekek'. The agreement suggested that community members agreed with its content, including the procedure for dealing with the polluting industries. However, the following incident showed that this was not the case.

Shortly after the new agreement was signed, an inhabitant of Rancaekek complained to the Minister of Environment, West Java's Governor and West Java's Parliament about the pollution, requesting that the government take action against the industries. *Tim G* informed the Minister, the Governor and the Provincial Parliament that it did not recognise this person as a member of the Rancaekek community and that the complaint should not be taken seriously because Kahatex was doing its best to improve its environmental performance.

There are no reports about whether these institutions responded to the inhabitant's request and I was unable to reconstruct precisely what caused *Tim G*'s change in attitude towards Kahatex. Nevertheless, this incident shows that different views existed among the inhabitants of Rancaekek. It also suggests that *Tim G* – which the District and Provincial governments accepted as a representative community group – had a sudden interest in excluding other community members from participating in the process and limiting the pressure on the polluting company.

2.7 Parallel regulatory approaches: Sanctioning and mediating (2007-2008)

In 2007, two parallel processes developed. The regional government institutions continually tried to arrange an agreement between the industries and complaining citizens. Simultaneously, the Minister of Environment intervened in the process by imposing administrative sanctions on Kahatex and Insan Sandang. The legal basis for the Minister's attempts at increased control over the case remained unclear. It was also unclear how the private law agreement process related legally to imposing administrative sanctions. As a result, it became uncertain who could and should take certain actions if neither the sanctions nor the agreement led to compliance.

Sanctions by the Ministry of Environment

In March 2007, a Ministry of Environment team inspected Kahatex and Insan Sandang. The Bandung and Sumedang environmental agencies accompanied the Ministerial team. The minutes of a follow-up meeting legitimise the inspection by referring to a citizen complaint that the Ministry had received. They do not state who filed this complaint or when they did so.

The team found that Kahatex's sludge license did not meet the legal requirements and that it also did not comply with the fly and bottom ash standards. Kahatex's wastewater, which it had treated in wastewater treatment systems, did not meet the standards, and the team discovered illegal outlets that discharged untreated wastewater. The team found that Insan Sandang discharged untreated wastewater directly into the Cikijing River and that its wastewater treatment system was not working optimally. The team also found that no properly licensed party was processing the fly and bottom ash, and sludge.¹⁰

Three months later, the Minister imposed administrative sanctions on both Kahatex and Insan Sandang.¹¹ The sanctions were referred to as 'administrative coercion'.¹² The Minister ordered the companies to end the violations

10 One year earlier, in 2006, the provincial environmental agency had already inspected Insan Sandang and had detected several violations. The flow meter had not been functioning properly, and during the final months of 2005, the quality of the discharged wastewater had not been sufficient. However, these findings did not lead to any enforcement measures.

11 Ironically, on the same day Kahatex was sanctioned by the Ministry of Environment for not having a license to process its sludge, another department of the Ministry issued a licence allowing Kahatex to use the sludge as fuel for its boiler. This timing indicates that there was a lack of coordination within the Ministry.

12 The EMA's concept of 'administrative coercion' was discussed in chapter 3. It explained that while 'administrative coercion' in the 1997 EMA had referred to concrete government actions to halt a violation, the 2009 EMA gave a more ambiguous definition of the concept. It could be interpreted as concrete government action as well as orders to the violator to take certain measures. However, the 2009 EMA had not yet been promulgated when the Ministry imposed the sanctions on Kahatex and Insan Sandang in 2007.

within one month, or 'sanctions in line with the law would follow'. The Ministry, the Provincial environmental agency and Sumedang's environmental agency would monitor the company's implementation of the orders. Sumedang's environmental agency would also play a 'coordinating' role between the institutions and the industries. Notably, the Bandung district would not play any monitoring role. However, the Ministry did summon the heads of the Provincial and Bandung environmental agencies to coordinate the investigation of damages the farmers and fishermen had suffered, and to facilitate Kahatex and Insan Sandang's compensation for these people. The Minister also asked the agencies to seek alternative water sources to irrigate the rice fields and to sanitise the rice fields and fishponds.

Kahatex objected to the sanction. It stated that it had always taken care of its environmental management, and argued that the Ministry of Environment's PROPER team could confirm this. This argument was unpersuasive, as Kahatex's PROPER ratings had been problematic. Although Kahatex had been compliant in 2006-2007, PROPER rated it 'red' in 2005. In 2002 and 2004, PROPER had even rated it 'black', meaning Kahatex was committing severe violations.¹³

Kahatex's reference to PROPER illustrates how it tried to use the existence of parallel monitoring initiatives to undermine the government institution's findings; an institution that was authorised to enforce the law. At the same time, neither the Ministry nor the Provincial or District environmental agencies considered Kahatex's response as a formal objection to the sanction and felt no need to provide a motivated response.

Another agreement between the industry and citizens

Around the same time, leaders of two Sumedang neighbourhoods submitted a complaint about Kahatex to the Provincial environmental agency. In response, the agency started a mediation process between the neighbourhood leaders and the industry, instead of opting for enforcement.

The neighbourhood leaders demanded the industry restore the land and clean water sources and offer 20 per cent of the available industrial labour jobs to people from the two neighbourhoods. They also requested positions as 'job brokers' on behalf of the industry. Kahatex declined the 20 per cent employment request but agreed to implement the environmental claims and to recruit personnel via the neighbourhood leaders. In return, the neighbourhood leaders would withdraw all of their environmental complaints and claims.

Representatives from at least six groups signed the agreement, namely neighbourhood representatives, Kahatex representatives, and officials from

13 See footnote 5 for a link to the relevant publications of PROPER ratings. Notably, Insan Sandang had been rated 'red' in 2002, 2004 and between 2006-2007, meaning it had been noncompliant. In 2005, it had been rated 'blue', i.e., compliant.

the Provincial environmental agency and eight officials from other Provincial, District, and Village institutions. The government officials signed the agreement in their capacity as witnesses. The Sumedang, sub-District, and Village governments would monitor the company's implementation of the agreement. Those governments would inform the Province of their findings. If any problems arose, all signatories would be involved in discussing the matter.

The agreement was remarkable for several reasons. First, the leaders' neighbourhoods were located upstream from Kahatex, and were, therefore, not as severely affected by the wastewater pollution as several villages in downstream Rancaekek. The leaders used the pollution issue for claims related to labour, and no one – including the government – seemed to object.

Second, the agreement stated explicitly that the Provincial environmental agency should act as a 'neutral third party'. However, because this was a 'transboundary' case, this agency was primarily responsible for regulating the industry and acted against the law by assuming neutrality. Indeed, the agency did not act neutrally in this private dispute. It expressed an interest in Kahatex complying with the environmental regulations and in preventing local social unrest.

Thirdly, the agreement's layout suggested that it was a government decision. It was even printed on the Provincial environmental agency's writing paper, and various government institutions signed the agreement. The agreement's formulations even resembled a law, starting with considerations and referring to several (administrative) laws, while continuing with chapters and articles. This layout might have given weight to the agreement, but it was not very helpful in delineating the regulatory duties of the various government institutions. The involvement of multiple institutions further blurred each institution's responsibility towards implementing its public duties.

By signing the agreement, Kahatex appeared to acknowledge it had caused pollution. However, by framing the agreement as being part of its CSR programme, it communicated its concessions as a community donation rather than compensation for its wrongdoing. Furthermore, the neighbourhood leaders seemed to have been bribed through their acceptance of job broker position in return for dropping environment complaints.

Finally, this agreement showed that government institutions were aware that community representatives used environmental arguments to bid for jobs and positions as job brokers. Section 3 of this chapter will demonstrate the devastating effects of this practice.

2.8 Local interest groups: attacking versus defending the industry (2007-2008)

In 2001, *Tim G* severely criticised Kahatex. However, over the years, the relation between the two improved. In May 2007, when the neighbourhood leaders made the aforementioned agreement with Kahatex, *Tim G* signed its own agreement with this company. It included Kahatex's consent to provide medical services, construct water wells and dredge the Cikijing River. *Tim G* then informed the Provincial environmental agency about this positive result, supposedly on behalf of Rancaekek's communities.

However, *Tim G* faced resistance from other local groups. One of them, *Pelangi*, requested the Sumedang and Bandung District Heads to investigate the organisation, accusing it of, among other things, unfairly distributing industrial donations amongst the community.

In response, *Tim G* reported all its activities included in its 413 million rupiah budget (approximately € 33.000). It argued that it had cooperated with government institutions to improve the river quality and had worked together with the industries – mainly Kahatex – to construct clean water wells and schools. It claimed that it had helped distribute small industrial donations to Rancaekek's population, e.g., through prayer mats and rice seeds. Together with Kahatex and another local NGO, it had distributed rejected textile materials from the companies to small home industries. *Tim G* had also cooperated with another NGO to recruit industry labourers.

As Section 3 will explain, the distribution of rejected textile materials amongst small local businesses and the recruitment of industry labourers became problematic local issues.

By the end of 2007, *Tim G* became less supportive of Kahatex. It complained to the Provincial government that Kahatex had not implemented the 2002 agreement, and requested that the Province verify this. Another local interest group, *LPLH*, defended Kahatex. The group asked Indonesia's President, the Minister of Environment and a national Parliamentary commission to revoke all charges against Kahatex because of its great work.

Other local interest groups continued to critique the industry and focused on the industry's environmental impact. Local NGO *Rancunit* was the most outspoken. They repeatedly asked the government to perform its duties, inspect the wastewater discharges and the river water quality, and supply the communities with clean water. It tried to force the Ministry of Environment to clarify how it had followed up on sanctions. It asked critical questions about the procedures. What would happen if the industries remained noncompliant? Would the industries only be sent a letter asking them to improve their behaviour? It also asked the Ministry for an environmental audit. It complained that the 'community' should be involved in inspections and should receive

compensation, rather than only hearing about the results.¹⁴ In short, it raised all of the relevant issues, but never received a reaction from the Ministry.

In summary, Rancaekek's local interest groups often had contradictory and changing standpoints. It shows how the Rancaekek community was divided in their approach to the industries and in how to deal with the pollution they caused. Although it is difficult to know the precise reasons behind the varying and changing positions of the interest groups, the process was characterised by government institutions failing to perform their duties to promote the public interest, giving considerable power to citizens instead. Due to the non-transparent negotiation process between the industries and the interest groups, and the representation problems of the community members' interests, interest groups could opportunistically use their positions.

This research found few instances where interest groups were critically asked to explain their position. It seemed that starting an interest group could be a lucrative business and that the chances of being held accountable for unjustly claiming to represent community interests were small. At the same time, while some NGOs appeared to operate out of opportunism, several other interest groups genuinely seemed to call upon government institutions to take measures against pollution.

Section 2.10 will demonstrate that in the years to come, there was a further increase in the number of interest groups, many of which seemed not to be motivated to halt the pollution, but rather used the opportunity to promote their personal interests.

2.9 The regulation process 'muddles through' (2007-2012)

The inspection that led to the detection of violations in March 2007 and the sanctions that the Ministry imposed afterwards looked like milestones in the regulation process. However, not much happened when the sanctions did not lead to compliance. As the number of institutions involved in the case increased, it was unclear whether there was an institution that was ultimately responsible for protecting the public interest, or what regulatory authority each institution had. Therefore, it was difficult for citizens to force any of the institutions to act adequately and institutions could point the finger at each other for the lack of adequate measures.

As section 2.7 mentioned, in 2007, the Minister of Environment imposed administrative sanctions on Kahatex and Insan Sandang. One month later,

14 Article 7 of the 1997 EMA states that the community should play a considerable role in environmental management. However, it seems unlikely that the legislator intended this to imply that any environmental inspection or other assessment could become invalid when an individual or interest group argued it had not been present during the inspection or assessment.

the Provincial environmental agency met with the Bandung and Sumedang environmental agencies, and the Provincial water management agency to write an 'action plan', requesting the Ministry of Environment to conduct an environmental audit. One may consider this odd since the March inspection had already detected violations. The proposal also established an integrated team to arrange compensation for the affected farmers and the corporate social responsibility programme. The Provincial environmental agency would coordinate the team. Rancaekek's citizens would also be involved in the process, but the action plan did not specify the method of their involvement.

The involvement of more institutions

Bandung District officials had accompanied the Ministerial team on their March 2007 inspection visits, but the District Head had little trust in the inspection's effects. Therefore, he approached the Human Rights Commission to put pressure on other institutions to finally implement their regulatory tasks.

In response to the District Head's request and complaints from two local interest groups, the Human Rights Commission addressed the Kahatex and Insan Sandang directors directly, accusing them of violating the human right to a clean and healthy environment.

In July 2007, Bandung's District Head reported to the Human Rights Commission that an integrated team had been established and that an action plan had been drafted. He did not mention the mediation agreement or the administrative sanctions that had been imposed, nor did he request the Commission to take further action, possibly because he had faith in the action plan.

Three months later, the Provincial environmental agency responded to the Human Rights Commission's letter, stating it had handled the case by mediating the dispute between Kahatex and the two Sumedang neighbourhoods, that administrative sanctions had been imposed, and that an action plan had been drafted. This answer seemed to satisfy the Commission since it did not take any further action.

In September 2007, the Bandung environmental agency received complaints that Kahatex was taking considerable amounts of the river water that the community needed for irrigation. The District agency verified the complaints and found that Kahatex indeed had used 90 per cent of the river water. The Bandung agency requested help from the Provincial environmental agency but received no response.

Around the same time, the Head of the Provincial environmental agency's environmental impact assessment unit reported through an internal memo that both Kahatex and Insan Sandang had carried out all of the Minister's orders. The memo also said that the compensation for the farmers still needed to be arranged.

In October 2007, the national Parliament became involved. In response to complaints it had received, it asked the Bandung District Head to 'observe

the situation in relation to the environmental law'. Apparently, it was unaware that the Ministry of Environment had summoned the Provincial and Sumedang District governments – without the Bandung District government – to monitor the implementation of the orders the Ministry had given to the industries.

Furthermore, the national political party *Partai Demokrat* asked the President to revoke Kahatex's groundwater extraction license, while the Sumedang District had issued this license. Later that year, the party sent a complaint letter and a petition to Kahatex's director, stating that the farmers were suffering economic losses due to the industrial pollution. In the same period, the Pulp and Paper Board – an institution under the Industrial Department – took wastewater samples from both Kahatex and Insan Sandang. These samples indicated that Kahatex was compliant, but that in August, Insan Sandang's had not complied with the standards. The available documentation does not report what resulted from these actions.

The Province's strategy to seek consensus (2008)

In 2008, enforcement authority had apparently shifted to the Provincial government, since the Minister of Environment requested the Province to impose sanctions on Kahatex and Insan Sandang. However, instead of imposing sanctions, the Province continued to seek consensus among the involved parties, i.e., representatives of Rancaekek's population, the industries and the government institutions at all administrative levels. This approach was in line with the Province's previous strategy of mediating in the 2002 agreement between the industry and *Tim G*, and in the 2007 agreement between the industry and the Sumedang neighbourhood leaders.

In early 2008, the Provincial environmental agency invited eighteen institutions – from the Ministry down to the village level – as well as Kahatex and Insan Sandang, to discuss how they could accommodate the desires of 'the people of Rancaekek'. Initially, the focus was on improving the environmental conditions. These conditions could change through optimising the wastewater treatment systems, 'normalising' the river, properly managing hazardous waste and increasing the supply of clean water. Officials from all eighteen institutions and community representatives conducted an inspection visit. Most institutions concluded that Kahatex, Insan Sandang and Five Star were noncompliant. Insan Sandang was found to be the worst performing.¹⁵ Only Sumedang District disagreed, as it found that both Insan Sandang and Kahatex were 'making

15 Furthermore, the level of two parameters assessed to determine the wastewater quality – sodium and chloride – had not yet been regulated by provincial regulations, even though the Ministry of Environment had suggested this in 2008 because particularly high levels of these chemical elements caused damage in Rancaekek. Despite the lacking regulation, the high level of these elements would later form part of the reason to impose an administrative sanction on these industries.

good progress'.¹⁶ A few months later, Kahatex asked Sumedang's environmental agency to formally acknowledge that it had complied with the wastewater quality standards. This request confirmed that the Province was not the sole regulator in this case, but that multiple governments with different interests had taken on regulatory tasks.

Just as in 1999, in July 2008, West Java's Governor established working groups to handle the case, focusing on its technical, legal and social aspects. Over twenty departments from various institutions across all administrative levels of government participated. Later on, industrial, academic and NGO experts joined. After some time, they requested the Governor to extend the working groups' authority to be able to enforce the law. If the Governor had granted this request, multiple institutions and non-state actors would have shared enforcement authority. It would have made it even more difficult to hold any of them accountable if their approach failed to halt the pollution. The Governor never responded to this request.

Yet another agreement (2008)

Initially, the working groups merely aimed for the industries to improve their environmental performance. However, the groups' focus shifted after the officials of twenty different institutions witnessed a new agreement between Kahatex and Insan Sandang.

This agreement involved representatives of the four Rancaekek villages: Bojongloa, Jelegong, Linggar and Sukamulya. It focused less on environmental measures and more on economic compensation and villager benefits. The industries agreed to provide health care, deliver rejected industrial textile materials to local businesses, and recruit industrial labourers from these villages.

Although the agreement was primarily based on private law, it did have features of administrative law. For example, the institutions that witnessed the signing also monitored whether it was implemented correctly. Furthermore, the agreement included a 'sanctions' section, which noted that if industries did not implement the agreement, they would receive a 'warning'. If they did not react appropriately, 'other sanctions in line with the law would follow'. These sanctions appeared to refer to an 'enforcement pyramid' that was discussed in chapter 2. However, the precise consequences of non-implementation were unclear, along with how responses based on private, administrative and criminal law would relate to one another. This lack of clarity created legal insecurity for both the citizens and the industries involved in this agreement. The agreement and unclear 'enforcement pyramid' policy gave

16 Later that year, the Sumedang district government argued that Insan Sandang had been nearly compliant and that Kahatex's wastewater had been fully compliant between August and November 2008.

a considerable degree of discretion to the officials and allowed them to avoid taking decisions that could lead to conflict with other institutions or industries.

The Province imposes sanctions (2009)

Soon after the agreement was signed, the working groups focused on arranging compensation for the damages that the farmers in the four villages had suffered. They estimated that since 2001, 415 hectares of land had been damaged at the cost of over 132 billion rupiahs (approximately € 10,5 million).

At the same time, the working groups recommended that the Provincial legal bureau impose sanctions. Various government institutions also expressed their support for the Provincial environmental agency to impose sanctions on Kahatex and Insan Sandang.

By contrast, other institutions stated that the industries were compliant. The Pulp and Paper Board reported that in 2008 and 2009, Kahatex's wastewater quality met the legal standards. According to PROPER ratings, Kahatex and Insan Sandang had been compliant between 2008-2009, both scoring a 'blue minus'.¹⁷ The divergence between sanctions and rankings illustrated not only unclear divisions of monitoring and enforcement authorities but also how institutions disagreed with one another on environmental performance.

In March 2009, the Provincial environmental agency ordered Kahatex and Insan Sandang to optimise their wastewater treatment systems, build wastewater ponds, install monitoring tools and study alternative rivers through which they could discharge their wastewater. Sumedang's environmental agency ordered both companies to follow these Provincial agency instructions.

Kahatex objected to the sanction, arguing that it had already attempted to improve its environmental management and that implementing the orders would lead to higher costs. It claimed that the government was obliged to assist industries in making further improvements. The Provincial environmental agency invited both Kahatex and Insan Sandang to present their views. After that meeting, the agency made minor adjustments to the orders.

In November 2009, eight months after the imposition of the sanctions, the Provincial environmental agency inspected whether the industries had implemented the orders.¹⁸ The agency concluded that Kahatex had not executed any, while Insan Sandang had executed half. The agency then organised a meeting with five industries, including Kahatex and Insan Sandang, where the industries were allowed to explain which measures they had taken to improve their environmental performances and ask the government for technical advice. The industries presented their plans to build an integrated wastewater treatment system. Kahatex and Insan Sandang declared that they would

¹⁷ See footnote 5 for a link to the relevant publications of PROPER ratings.

¹⁸ However, during this inspection, the adjustments that the Province had made to the orders after meeting with the industries were not taken into account.

postpone assessing the possibility of discharging wastewater into another river.¹⁹ Insan Sandang also requested advice from the agency on how to discharge the wastewater into another river. The Provincial environmental agency co-signed the declaration, seeming to consent to this alteration.

An incident leading to another agreement (2009)

In April 2009, a dam burst, causing wastewater to flow directly into the Cikijing River. The Provincial environmental agency informed the Governor about the incident, and sent copies of the letter to twelve institutions, as well as to Kahatex and Insan Sandang. Although it did not specify if or which industries were responsible for the incident, the agency closed the letter by stating that an administrative sanction had already been imposed recently. Thereby it suggested that Kahatex and Insan Sandang carried responsibility for the incident and that no further measures needed to be taken.

The incident also led to another agreement between community members of Rancawaru and Kahatex. Kahatex would repair the dam and employ fifteen people from Rancawaru, including the people who had represented the village during the negotiations. Seemingly, this was a compensation for the damages. It exemplifies how environmental issues were used to negotiate for economic benefits, and particularly for those who were present in the negotiations on behalf of a particular community.

The Province taking a tougher stand? (2010)

Early 2010, Insan Sandang informed the Ministry about its efforts to improve its environmental management. The Sumedang environmental agency declared that Insan Sandang had maintained proper wastewater quality, as per the 2007 agreement with Sumedang neighbourhood representatives. The District agency stated that these representatives were content with the discharged industrial wastewater because the farmers could use the groundwater that the industry extracted for irrigation purposes, particularly in the dry season.

Nevertheless, on the same day, the Provincial environmental agency announced that it would not suspend the 2009 administrative sanctions on Kahatex and Insan Sandang until the industries had optimised their wastewater treatment systems. At the request of the Sumedang environmental agency, Kahatex and Insan Sandang reported to the Provincial environmental agency their efforts to execute the orders, including constructing an integrated wastewater treatment plant. The industries even asked the Province for more detailed guidelines on what was expected from them.

¹⁹ Insan Sandang also requested advice from the agency on how to discharge the wastewater into another river.

However, the Provincial environmental agency seemed impatient. It called upon the Provincial police to discuss the possibilities for criminal prosecution. In its explanation to the police, it emphasised that none of the mediation efforts or administrative sanctions had resulted in any effects, contradicting their previous conclusions that Insan Sandang had carried out half of the orders.

Later that year, Insan Sandang and Kahatex requested the Sumedang District to extend their wastewater licenses. The meeting to discuss the matter occurred at one of the industries' offices. The Provincial environmental agency attended the meeting and in its report it noted that the industries had carried out all of the 2009 orders but it also claimed that both the companies had not complied with 'point 2 in the regulation' and that their wastewater license would not be extended. However, I did not find any accounts stating that the industries operated without this license.

Nearly three months later, various institutional representatives met at the Provincial environmental agency's office. They decided that the Provincial environmental agency, the Provincial legal bureau, the Districts, and environmental experts would monitor industrial behaviour together. They also decided that they would develop a 'cost-benefit instrument' that would help the government decide how to direct industries, particularly regarding wastewater treatment plant investments.

This episode leads to several conclusions. The imposition of sanctions seemed like a firm Provincial stance, but the later developments demonstrated that the sanctions were negotiable. In other words, the Province's strategy to seek consensus continued, yet this time its point of departure was an administrative sanction rather than a private law agreement.

Considering the options: administrative, criminal or private law approaches (2010)

Over the years, the Province alternated between mediating and imposing administrative sanctions addressing different industries. Neither approach had solved the pollution problem. Subsequently, the Provincial environmental agency began to focus on Kahatex, while scrutinising Insan Sandang to a much lesser extent, for unknown reasons.

In an internal memo, the Provincial environmental agency considered imposing another administrative sanction, since the Governor, the Sumedang and Bandung District Heads, the local Parliaments and the Minister of Environment were now all committed to the case. However, it noted that there was a considerable risk that the industries would 'not cooperate with the sanction'. Therefore, it ruled this option out. Criminal prosecution was ruled out for lack of evidence. The agency considered whether Kahatex could buy the polluted land and turn it into an industrial zone or residential area. However, the polluted area was extensive and too expensive. Another option was to try and arrange compensation for the affected communities, either through mediation or in court. The agency reasoned that if it mediated, it could influence the

outcome, potentially by including environmental measures in the negotiated outcome.

These considerations show how the Provincial agency simply ignored its authority to halt the violations and recover the damage at the expense of the violators through administrative legal processes. Instead, by opting to act as a mediator, it degraded its regulatory position, making its regulatory powers dependent on private parties.

The internal memo also revealed that there were disagreements within the Governor's working groups, in which multiple institutions from different administrative levels participated. The disagreement concerned the monitoring methodology and reliability of the industries' self-reporting data. Consequently, any monitoring of industrial environmental performance became problematic.

The working groups found that Rancaekek citizens were experiencing a 'crisis of trust' in the government, which the government tried to address by realising 'community demands'. In a meeting with 28 community representatives, the Provincial environmental agency established a list of demands. It is unclear how the agency selected the representatives. Five demands concerned environmental measures while the others concerned industry support for health posts, small business assistance, increased job opportunities and compensation for the land and harvest damages. On other occasions where institutions departed from the 'community demands', participants referred instead to the earlier agreement between Kahatex, Insan Sandang and the representatives of the four Rancaekek villages. In yet other meetings, institutions spoke of seven demands that only concerned environmental measures, such as optimising the wastewater treatment system, 'normalisation' of the river and rehabilitation of the polluted land. Other documents showed that community representatives focused mostly on economic benefits or compensation.²⁰

In short, by centralising the 'community demands' in their approach, it appeared that the working groups and, in particular, the Provincial environmental agency were unwilling or unable to use administrative law enforcement instruments. Thus, they made themselves dependent on the community representatives to legitimise the pressure they would put on the industries to take the required environmental measures.

20 By extension, in 2012, the Provincial environmental agency invested considerable time and budget in assessing the local soil quality. The agency inventoried the landowners to calculate who would be entitled to compensation, excluding a large section of the population from any compensation.

See section 1 and section 3.1 of this chapter.

Who is the regulator: the Ministry or the Province? (2010-2012)

In February 2010, the Provincial environmental agency announced it would stop its administrative law approach. It asked the Ministry of Environment for help handling the case, arguing that the case was too complex and was a 'national issue'. This announcement did not cause a complete shift of authority from the Province to the Ministry, but it began the Ministry's closer involvement.

Throughout 2010, the Provincial environmental agency kept monitoring the industries' wastewater quality. It concluded that during that year, both Kahatex and Insan Sandang were noncompliant several times, although the two firms were unwilling to acknowledge this.

In early 2011, the Provincial environmental agency once again found that Kahatex was violating wastewater quality standards and had not yet executed any of the orders imposed on it almost two years before. Insan Sandang had optimised its wastewater treatment system but failed to follow three other orders. Once again, both companies protested, arguing that they had implemented at least some of the measures.²¹

In April 2012, the Province found Kahatex noncompliant again. On top of this, during an unannounced inspection visit the Ministry of Environment found that one of Kahatex's wastewater treatment installations was not operational.

Despite the Ministry finding industries repeatedly noncompliant and not implementing orders, none of the involved institutions took concrete actions to halt the violations. Pressure from the Human Rights Commission and the national Parliament was ineffective. In short, there were no effective accountability mechanisms for incentivising government institutions to execute their regulatory tasks properly and for promoting the public interest in a clean environment.

2.10 The mushrooming of interest groups (2008-2012)

Meanwhile, people in Rancaekek knew that 'community representatives' could play a significant role in the developments.

21 In October 2010, various Kahatex's employees were prosecuted by the Sumedang public prosecutor for dumping hazardous waste in the Cimanggung sub-district, in Sumedang. Since this event did not take place in or near Rancaekek, this section does not discuss it here in detail. However, it should be noted that this criminal trial developed relatively fast. The employees were convicted one and a half years after the crime was committed. The trial preparations had been completely in the hands of Sumedang's public prosecutor. Unlike the pollution case in Rancaekek, the public prosecutor did manage to take a strong stand against Kahatex. Nevertheless, the criminal sanction did not contribute to improving environmental conditions.

Until 2007, only a handful of local interest groups had appeared. However, in 2008, the number of groups claiming to represent the community grew to more than fifty. They referred to themselves as, for example, 'citizens of Jelegong', 'citizens of Sukamulya', 'Forum of Concerned Villagers' and the 'Environmental Rescue Association'.

Some of these groups complained to the Provincial environmental agency about the employment situation, while others demanded compensation for farmers' losses. Others complained about the impossibility of breeding fish, the inability to consume polluted water, and the difficulty of selling contaminated land.

Sometimes these interest groups disagreed. For example, while the 'Environmental Rescue Association' advocated for a larger role of Rancaekek's sub-District Head, *Rancunit* filed a complaint against him to the Human Rights Commission. However, many organisations agreed that the government ought to improve its monitoring and enforcement. *Rancunit* even requested that the Human Rights Commission take over regulating from the authorised government institutions and impose sanctions on those who violated their economic and social rights.

Most groups used the strategy of sending letters to government institutions. Some also organised demonstrations at the Governor's and Provincial Parliament's offices. According to one respondent, some interest groups even covered the demonstrator's accommodation expenses. Most state institutions responded swiftly to the interest groups' demands, usually referring to them as 'the community'. They did not critically assess whom these interest groups represented and whether their demands perhaps merely served the group members' private interests. In 2012, one Provincial environmental agency official declared that the Ministry of Environment was now responsible for handling the case. Nevertheless, in daily practice, responding to the complaints and demands from the interest groups took up a considerable amount of Provincial agency officials' time.

2.11 Reflecting on two decades of regulating and redress seeking

Several patterns are noticeable when we reflect on the regulation and redress seeking processes as they developed in Rancaekek.

First, it had been unclear from the start which institution had the responsibility and authority to regulate the environmental behaviour of the industries in Rancaekek. Over the years, an increasing number of agencies became involved in the regulation process. Their coordination attempts led to even more confusion regarding decision-making responsibility. Even though inspections repeatedly showed that industries were violating the law, no institution could be held accountable for not taking adequate enforcement measures. Officials had an incentive to maintain good relations with their colleagues,

the powerful industries and the self-proclaimed community representatives. This approach often led to institutions making accommodations that offered short-term benefits to those directly involved in the process. Accountability mechanisms that would have incentivised the government to take adequate measures promoting a cleaner environment were lacking.

The institutions involved in the regulation process were particularly hesitant to take administrative law enforcement measures. They did impose administrative sanctions between June 2007 and March 2009, when the 1997 EMA was still in force. This law allowed the government to use administrative coercion, i.e., concrete action that would halt a violation immediately. However, the Ministry and Province merely imposed orders. It appears that officials generally believed that administrative sanctions always required industrial cooperation, as industries would have to implement the orders. The EMA 2009's definition of 'administrative coercion' reinforces this idea, implying that the government is not authorised to take concrete action to end violating behaviour immediately. Instead, the government often sought reconciliatory modes to handle the case.

Officials from the Provincial government tried to handle the case by mediating between Rancaekek interest groups and industries, which allowed them to circumvent the bureaucratic problems related to regulation and the (alleged) weaknesses of administrative sanctioning. One of the Provincial environmental agency's more remarkable efforts was acting as a mediator to have environmental measures included in private party agreements. This mediation was problematic for several reasons. First, there was no guarantee that the industries would implement the agreements. Since officials believed that the agreements were an adequate replacement for administrative sanctions, the mediation legitimised the government taking inadequate regulatory measures besides facilitating private law agreements. Finally, the agreements often did not merely address the environment and allowed those claiming to represent the 'community's interests' to promote their personal interests.

To summarise, the two decades of attempts to regulate the pollution in Rancaekek are characterised by continuous attempts to seek consensus amongst the directly involved institutions and private stakeholders, as well as by a lack of rigour amongst the responsible government institutions to take measures that, even in an early stage, could have halted the pollution. Regulatory and redress seeking processes became intertwined, as the government became dependent on citizens to take regulatory action and some interest groups used environmental arguments to seek compensation that served their private interests. It had negative consequences for the environment and severely damaged the social relations within the community. The next section will explain this phenomenon further.

3 THE DIFFUSE IMPACT OF THE INDUSTRIES ON VILLAGERS' LIVES

The previous section explained how the regulation process in Rancaekek developed over two decades and how interest groups tried to seek redress for industrial environmental damage. This section takes the perspective of people who live in the four villages, who were those primarily affected by the industrial pollution.²² From west to east, these villages are Bojongloa, Jelegong, Linggar and Sukamulya (see map 1). People in these villages responded differently to the industrial activities and local pollution. As I will demonstrate, some managed to benefit from the industry-driven economy. Others suffered severely from both the failed regulation and the redress-seeking process that led to some villagers extorting others.

At first sight, the four villages seemed rather similar. At the time of my fieldwork, the number of inhabitants varied between 7,000 and 14,000 per village. The densely populated village areas were located along the busy provincial road, which also formed their northern border. Agricultural lands lay further south, occasionally with a small, old *kampung*. Close to the railway, real estate developers had recently constructed some housing complexes for lower-middle-class residents, many of whom had migrated to Rancaekek for industrial work. Across the railway, further south, there were more, rather isolated, *kampungs*. A few small, poorly maintained roads connected them to the more densely populated areas in the north. Many who lived here used to work on the surrounding rice fields, but their numbers diminished after the arrival of industries.

A second look, however, revealed that the four villages were quite different. Generally, the agricultural lands located in Linggar and Jelegong had been affected far more severely than those in Bojongloa and Sukamulya. The wastewater discharged into the Cikijing River entered Linggar's territory directly. The river and the connected irrigation channels then led the water directly onto some of Linggar's and Jelegong's rice fields. As a result, many fields were no longer productive.

Farther to the east, some of the fields in Sukamulya also depended on irrigation from the Cikijing, and production levels also dropped there. However, the Cimande River irrigated other fields in Sukamulya, and the quantities and quality of rice from those fields was said to be normal. The rice fields in Bojongloa that were irrigated by Cikijing's water were also affected by the

22 I interviewed 56 people in the four affected villages. However, the fieldwork in the villages was shortened to a period of ten days because conducting fieldwork in the area proved to be difficult. Respondents were frequently hesitant and even afraid to speak out, fearing the possible consequences of others within their villages noticing they were being interviewed. Some feared that they or a relative would lose their job at the industry or were afraid of a confrontation with *preman* (local thugs). Due to the tensions within the communities, it became increasingly difficult to find respondents.

pollution. However, many of Bojongloa's agricultural lands were at a higher altitude, so Cikijing's polluted water could not reach them.

Moreover, the village populations responded differently to the industrial presence. Linggar's and Sukamulya's inhabitants lived close to the industries. Many held a job there, owned *warungs* (eating stalls) where industrial workers came to eat, rented out rooms or houses to industrial labourers from outside the area, or ran small car repair shops. One particular type of business that developed mainly in Linggar was the trade in leftover textile materials, which the large textile industries sold at low prices to local businesses (e.g., home sewing shops).²³ Kahatex considered this part of its corporate social responsibility programme since it generated work for approximately 300 local people. Another source of income particular to Linggar and Jelegong landowners was the selling of unproductive rice fields to real estate developers who would then build housing complexes on them for immigrant factory labourers.

Bojongloa is located some four kilometres from the industries. Many people there continue to work in the agricultural sector. Bolongloa's village government focused on developing the village's service sector (e.g., by hosting bank offices). Bojongloa is also home to various groups or self-proclaimed 'NGOs' that provide 'recruitment services' to those looking for industrial employment.

In the areas south of the railway, the people from the villages responded differently to the industrial activities. Most inhabitants of the southern *kampungs* of Jelegong still work the rice fields. However, the pollution made this work more difficult. An official from Jelegong's village government explained that villagers prefer to keep working in the agricultural sector despite the pollution. In the southern parts of Bojongloa, where the impact of the pollution has been limited, many did the same. By contrast, the southern *kampungs* of Sukamulya and Linggar have become part of the industry-driven economy, with villagers working as industrial labourers or running small businesses such as catering services.

The villagers' professions and community social positions also influenced the industrial impact on their lives, perhaps even more so than their location. This section discusses different types of farmers, 'job brokers', and agricultural or industrial labourers. The final sub-section focuses on the role of interest groups and others who claim to represent the interests of the community.

23 This waste material was commonly referred to as 'DO', i.e., Delivery Order.

3.1 Farmers: 'land lords', small-holders and agricultural labourers

Newspapers and other documentation presented in section 2 suggest that Rancaekek's farmers are the primary victims of the industrial pollution. They made their voices heard by filing complaints, joining demonstrations and negotiating with the industries. Moreover, the Provincial environmental agency considers landowning farmers to be the primary victims. In 2012, the agency attempted to arrange compensation for them. It inventoried the landowners and assessed the soil quality. However, this approach was problematic in several ways.

First, it proved difficult to establish which landowner had suffered most from the pollution. As explained earlier, soil quality is not a good indicator of the damage done to yield production, which seemed more affected by the immediate water quality. Additionally, the landowner inventory did not mention where people owned land or their plot size. Government data on land ownership is contradictory. The Village governments registered land ownership in line with the cadastral agency registrations (*Badan Pertanahan Nasional Republik Indonesia* or *BPN*). However, the cadastral agency charged the Provincial environmental agency over a billion rupiah (approximately € 80 thousand) to provide information about land ownership. Therefore, the Provincial environmental agency made its own inventory, but without informing the Linggar Village government. The Provincial agency did so based on land tax data and information it had gathered during field visits to the area. The Provincial inventory listed over 2,300 landowners across the four villages, all owning relatively small plots of land.²⁴ However, fieldwork observations found several 'landlords' alongside 'small-holders' in the area. Among the 56 respondents, eleven identified as farmers. Ten of them owned between 3.7 and 7 hectares of land. One farmer explained that together with his brothers, his family owned 50 of the 752 hectares of polluted land. Two respondents said they owned a small plot of land.

It is common for local landowners to rent out land to a so-called *petani penggarap* or 'renting farmer'. The latter is entitled to the full profit from the yields. In some of these cases, the landowner lives far from Rancaekek, e.g., in Bandung or Jakarta. Sharecropping is also common. It means that local landowners, who are usually farmers themselves, lend some of their lands to a trusted community member, often a religious or neighbourhood leader²⁵ who would manage the land and cover the expenses. The landowner and the land manager share the revenues.

It should be noted that not all landlords are wealthy. For example, one man, who lives on the southern edge of the polluted area in Jelegong, owns

24 Linggar: 607 people. Bojongloa: 684 people. Sukamulya: 172 people. Jelegong: 840 people.

25 The religious leader was often the *ustadz* or the *guru ngaji*. The neighbourhood leader was the head of the 'RW or RT'.

a considerable amount of land. He manages 4.2 hectares, 1.15 of which had been affected by the pollution. No rice grew on it in the dry season and yields were half of the normal level during the rainy season. Although this farmer's house is bigger than that of others in the *kampung*, the living conditions are far less comfortable than those of most 'landlords' further north. The man, who spoke Sundanese, simply explained that his life had not changed much after the arrival of the industries.

Neither the Village government registers nor the Provincial environmental agency's inventory reflected these varieties in land tenure. The latter also did not consider whether the land was in a heavily or mildly affected area and whether the plots of land were even located within Rancaekek. Therefore, the Provincial environmental agency's inventory of landownership appeared inadequate as a basis for compensating all of the different types of farmers who had suffered from disappointing yields due to the pollution.

A second reason why the agency's inventory of landowners was unsuitable as a basis for compensation was that it overlooked the complexity of the social dynamics within the affected communities. Traditionally, farmers who own, rent or lend large plots of land have important positions within their communities and can employ other villagers as agricultural day labourers.²⁶ Patronage relationships between families that owned or managed land and families of land labourers existed for generations.

Almost all farming 'land lords' had complained about the pollution and the devastating effects on their yield and income. However, most of them seemed well off. They possessed relatively big and well-kept houses and smart clothes, and their children went to university. Some of these farmers explained that their relative wealth stemmed from their rice fields still producing normal yields, or from their land being in a non-polluted area. A few had managed to build small rice-processing factories next to their houses. One farmer said he had built the factory from the money he had received after selling a piece of unproductive land to a real estate developer who had constructed housing for migrant industrial labourers.

However, there is another source of income for these farmers, which is seldom openly discussed. One elderly, very poor looking farmer – who owned a small plot and cultivated it together with his wife – explained that one part of his land had become unproductive. He had sold it to a real estate developer, enabling him to pay for his children to get an industrial job. Paying a 'job broker' for recruitment as an industrial labourer had become a widespread practice in Rancaekek.

26 A daily fee for a day labourer would be approximately 25,000 rupiah (€2).

3.2 'Job brokers', NGOs and *preman*

The presence of the polluting textile industries created an intermediary market between the population and the industries. Almost all interviewees recognised that if one aspired to work in an industry, one could not directly apply. Instead, one had to go to a 'job broker', usually a community member with high social status. During pollution negotiations, the brokers had arranged with the industries that they would supply recruits, who had to pay the brokers for their services.

Some respondents believed the job brokers provided a noble service to their community members. They could arrange a job for those who no longer wanted to work as agricultural day labourers or who had trouble finding work on the unproductive fields. People who did not meet the industries' employment criteria benefitted especially from this approach. For example, most people in the *kampungs* had only a primary school diploma, while Kahatex required its workers to have a junior high school education. Furthermore, the industry preferred workers who were between 18 and 25 years old, and women to men, due to the delicate task of working with textiles. One woman explained that she did not meet the official education requirements, but a job broker had still been able to arrange a job for her.

However, most respondents were unsatisfied with this recruitment system, because they had to pay. The fewer requirements an aspiring industrial labourer met, the higher the fee he or she had to pay the job broker. Women paid an 'entry fee' of around 3 million rupiah, and men were said to pay approximately 8 million rupiah (respectively € 240 and € 640). That 'entry fee' is almost three to seven times a monthly income, which is around 1.2 million rupiah (€ 75). One respondent explained that some industrial labourers paid an additional monthly fee of 100,000 rupiah (€ 8). Some respondents complained that the job broker had occasionally been paid, but people still had to wait a long time before they were hired. Some even never got a job.

The recruitment system was a sensitive topic. Several respondents feared that they or a family member would lose their job if they would speak out against these practices. According to some, the job brokers were 'outsiders' who worked directly for the industries or were not from the region. Others said the job brokers were members of the local community who could be found in every village and neighbourhood. Only one respondent – a farmer – admitted that he was a job broker. Every one or two months he recruited about 20 people, although this depended on the industries' demand for new labourers. One respondent identified his brother – a neighbourhood leader – as a job broker. However, when I asked the brother, he denied he acted in this role.

Several respondents mentioned that Village government officials and neighbourhood leaders often also played a role in the recruitment process. One man explained that as a neighbourhood leader, he had the right to recom-

mend industrial labourers to the industry. However, he had never done so because he believed the industry could then prevent him from demonstrating. Another respondent said that in the past, Kahatex had indeed offered him money to not participate in a demonstration. Another said that demonstrating had enabled various family members to join the industrial workforce, without payment. One farmer explained that after a particular demonstration, each protesting farmer had five minutes to speak privately with an industry representative about what he needed to stop protesting. Another neighbourhood leader commented that protestors were always farmers and that children of industrial workers would not join the protests because their parents would then be fired. The farmer who admitted he was a job broker explained that he had often participated in demonstrations and considered his broker position as a fair trade-off between the industry and himself for the damage he suffered from the industrial pollution. By contrast, other 'land lords' and village and neighbourhood leaders denied that they had benefited from the demonstrations in which they had participated.

Village government officials certainly benefited from the situation. Kahatex claimed that 2,700 of its 3,500 employees were locals. This was a strong argument in favour of the industries' pleas about their positive local impact. However, an official from the Provincial environmental agency explained that it had become difficult to recruit locals because those who wanted a job and could pay the 'entry fee' were already hired. Job brokers now needed to recruit people from outside the region. The industry wanted immigrants to register themselves in one of Rancaekek's villages and apply for jobs so that it could maintain its record as a local job provider. Neighbourhood leaders and Village government officials could provide them with the required letters and identity cards, some of them allegedly charging a considerable fee for this service.

In sum, the recruitment system in which powerful community figures had gained positions as job brokers became a new source of income. The 'entry fees' indirectly provided them with compensation for the polluted rice fields. Those who used to work for the farmers as agricultural labourers on the rice fields now indirectly paid them the 'compensation' for the industrial pollution. At the same time, the recruitment system allowed the industries to control the community and prevent demonstrations, co-opting the community leaders. A legal advisor to Kahatex explained that companies were less afraid of the government and its measures, and more of negative publicity that protests could generate – particularly in the foreign countries to which they exported their goods.

NGOs and preman

Through the recruitment mechanism, the industry and the powerful community members kept a firm grip on each other. Both had an interest in keeping the status quo. Local NGOs were unable to break this balance and champion the interests of the most vulnerable within the Rancaekek communities, and the general public interest in a clean environment. Sadly, some NGOs even engaged in similar practices. The industries used the same strategy as with the farmers and neighbourhood leaders. They co-opted interest group leaders by offering them positions as job brokers. Various respondents declared that if one wanted a job, one could arrange this via an interest group, which they referred to as an 'NGO' (or *LSM*). Almost all respondents used the terms 'NGO' and 'job broker' (*calon tenaga kerja*) interchangeably.

Both a Kahatex representative and the leader of the NGO Rancunit, one of the few interest groups that persisted throughout the years in addressing the pollution problems, explained that most interest groups demanded redress in the form of jobs or positions as 'job brokers'. Several times, the leader of Rancunit witnessed another NGO filing a complaint, and – without any clear reasons – withdrawing it a few weeks later. He remarked that these NGOs were initially sincere but that their goals changed over time, with farmers focusing on compensation. That 57 interest groups were active in Rancaekek in 2012 may indicate that it was a worthwhile effort, despite the lack of environmental results. One of the Provincial environmental agency's officials only qualified the head of the NGO Rancunit as 'good'.

So over the years, interest groups, farmers and neighbourhood leaders managed to manoeuvre themselves into positions where they could arrange jobs for themselves, their family members and friends, or charge fees to outsiders who wanted such jobs. This arrangement was a relatively recent development. Most interest groups active a decade earlier had focused on obtaining rejected textile materials that the major industries had sold to smaller, local industries. This activity continued but also changed in nature. A woman who owned a small business reselling the rejected textile materials explained that in the early years, it was a fair business between the industry and local people. However, nowadays companies from Bandung and Jakarta bought the materials and resold them at a higher price to the small businesses in Rancaekek. Still worse, she now had to pay off *preman* who intimidated her on a regular basis. The fear of *preman* was widespread in Rancaekek. These *preman* reportedly often had good contacts with Kahatex. A few respondents even accused Kahatex of paying the *preman* to control the people who raised their voices against the company.

3.3 Agricultural and industrial labourers

The people who still worked on the (semi-)productive rice fields of Rancaekek were mostly elderly. Young people in Rancaekek preferred to work for the industry because it was 'modern'.

In the southern *kampungs* of Sukamulya, many – mostly women – had managed to get jobs in the industry. Their husbands, however, were often unemployed or did not have steady jobs. Some got involved in illegal activities, one respondent commented. These *kampungs* also attracted small credit companies from Bandung city, which saw a business opportunity in providing loans to those who wanted to acquire a job through a job broker.

In Jelegong's southern *kampungs*, fewer people worked for the industry, and many were underemployed. Some respondents explained that the possibilities to work as a day labourer on nearby rice fields had decreased due to the pollution. Currently, if they wanted to work as agricultural labourers, they would have to travel further away, spending some 10,000 of their 25,000 rupiah daily wage (€ 0.8 of € 2 daily wage) on transportation.

Although many youngsters dreamed of working in the industry, those who did were generally unsatisfied because of the bad labour conditions. They referred to the strict targets and rules and the tiring eight-hour shifts. They said they could easily lose their jobs, e.g., when they were caught drinking water during their shift. Furthermore, people were only offered one-year contracts, and few managed to stay longer than that.

Many of the migrants who came to Rancaekek to work for the industries lived in the newly built housing complexes, situated on former rice fields that had become unproductive due to the pollution. Several respondents from these complexes were unaware that their house was built on polluted soil, and some were cultivating vegetables in their front yards. Several people complained about the smell and colour of Cikijing's water that passed nearby the houses. The neighbourhood leader of one of the housing complexes said that he heard about the pollution only months after he had bought his house. However, he did not care much since he was glad to have been finally able to buy an affordable house for his family.

Most of the 56 respondents whom I asked about appropriate redress hoped for clean water, sometimes in combination with sanitation of the polluted soil. However, a considerable number of respondents just wished that the industry would provide work for them or their children. Some merely hoped that it would become possible to get a job without having to pay for it and that the government would arrange this. Only a few respondents said they wished the social relations within the community would become peaceful again.

4 CONCLUSION

The regulation and redress seeking processes in Rancaekek became entangled in a way that was destructive for both the environment and for the social relations within the affected communities. By analysing the roles that citizens, interest groups and government institutions played in these processes, this chapter explained how it was possible that the situation evolved in this manner over two decades of pollution.

This chapter began with the regulation process and explained why it had not resulted in halting the pollution. After years of industrial pollution, the monitoring efforts from the involved institutions had not established the facts regarding the extent of the pollution, the industries that caused it, when violations had occurred, and whether they were still occurring. The many institutions involved in monitoring industrial environmental performance gave contradicting statements. The complaints from citizens, interest groups and the Bandung District were insufficient reasons for the regulator to conduct adequate, intensive monitoring, let alone take adequate enforcement measures to halt the violations and prevent further damage.

Complaints did not contribute to better regulation of the pollution mainly because redress seeking became entangled with and finally replaced regulation. Admittedly, the administrative law framework posed many hurdles to regulating industries, including unclear divisions of authority between institutions, and the weaknesses in the regulation in the monitoring and sanctioning. The officials from the various institutions responded by continuously looking for consensus amongst each another and with other relatively powerful key players, such as the industries and community leaders.

Mechanisms were lacking for holding the government accountable for failing its regulatory task, and thus there were barely any incentives for the regulator to take a firm stand against the industry. Additionally, officials believed that mediating negotiations between the polluting industries and citizens was the preferred approach to handling environmental cases. It was an opportunity to increase citizen participation in regulation and allowed officials to circumvent the administrative law obstacles to regulation, and the many institutions with conflicting interests. However, by doing so, officials reduced the case to a private law dispute. Citizens became responsible for standing up for the public interest in a clean environment, and they could not rely on the regulating government institutions to do so. As complaints were sidetracked from the administrative to the private law framework, violators and citizens could look for solutions that served them, rather than the public interest.

This way of handling cases had devastating consequences for the environment. However, it had equally devastating consequences for the social relations within affected communities. Although complainants first sought redress in the form of halting pollution, they settled for indirect compensation after two

decades. However, not all of those who had been affected by pollution had been in the position to negotiate with the industries about individual redress. As a result, the community members who had been strong enough to raise their voices against the pollution came into a position where they could gain compensation by extorting their more vulnerable fellow citizens. This enabled the industries to refrain from taking adequate environmental measures or paying compensation for the damages they caused. By co-opting the community leaders, they were able to silence critical voices and exercise social control over the nearby communities. The regulatory government acted instead as a witness to these arrangements.

In conclusion, this case demonstrates that people affected by pollution do not necessarily seek redress in the form of halting the pollution. Increasing the possibilities to seek redress thereby does not necessarily contribute to the promotion of the public interest in a clean environment. As long as the pollution continued, it served as a basis for making claims. However, the claims concerned compensation that did not benefit all community members.

These findings are similar to the 'compensation trap' that Van Rooij (2012) found in China.²⁷ This case adds that the redress seeking process justified the government's inaction towards adequate regulatory measures to halt the pollution, and contributed to increased inequality within the affected communities.

²⁷ See chapter 2 for a more extensive discussion of this article.