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

D'Hondt, L.Y.

7 The nexus between regulation and redress seeking

Most of Indonesia's rivers are polluted. This pollution directly affects the lives of millions of people because they use the river water for consumption or irrigation. Pollution's indirect effects include people depending on groundwater (instead of river water). Groundwater extraction can lead to subsidence and subsequently to floods. Generally, river water quality has deteriorated across the country, despite legal and institutional regulatory frameworks for industrial pollution advancing substantially and opportunities increasing for citizens to address industrial water pollution problems.

This thesis has tried to understand why this is so. The central question is how affected citizens and interest groups, as well as authorised government institutions, engage in processes of regulation and redress seeking for industrial pollution; why they do so; and what effect does this have on the environment and social relations within affected communities. In answering this question, this study takes two angles: the regulation and redress seeking process. While these processes are often studied and understood in relative isolation, this study concludes that in order to answer the central question, they need to be understood in conjunction.

Regulation and redress seeking processes each have different goals, key actors and trajectories. The key actors in the regulation process are the regulatory government and the regulatee, in this case, an industry. The government can stimulate, discourage or even enforce certain regulatee behaviour to promote a particular public interest, such as clean river water. By contrast, the redress seeking process departs from the perspective of a citizen confronted with the problem of water pollution.

In cases of industrial river water pollution, one may assume that the goals of the two processes are the same: clean(er) river water. It seems obvious that increased opportunities to regulate and seek redress will increase the likelihood of achieving cleaner river water. The processes appear to simply complement one another. When regulation proves to be ineffective, citizens seeking redress may still lead to a cleaner river. Alternatively, when citizens are unable to achieve redress, regulation may lead to cleaner water. Redress seeking is particularly appealing as an alternative option in situations where the government falls short of executing its regulatory tasks. Apparently, the worst that can happen is that both processes fail. Therefore, it is understandable that most studies and debates focus on the processes in relative isolation, aiming to identify and understand the strengths and weaknesses of each process indi-

vidually. It seems reasonable to expect that increased possibilities to regulate and seek redress will lead to cleaner rivers, or at least will not hinder the achievement of that objective.

This thesis nevertheless demonstrates that the interactions between regulation and redress seeking processes are complex and that they do not automatically complement one another. An improved understanding of the nexus between them has become even more relevant since the processes seem to converge in practice. Recent debates on regulation and redress seeking suggest that the roles of the government, citizens and interest groups in these processes are quite similar. Chapter 2 explained that strict 'command and control' regulation, in which the government commands strict norms and controls compliance through enforcement, became a less popular regulatory approach. Although some scholars argued that having a minimum level of 'command and control' regulation remains vital, many scholars, policy-makers and officials have emphasised the virtues of alternative regulatory approaches, citizen participation in regulation processes and redress seeking. Consequently, the government's room to respond to violations has increased, alongside the role of citizens as regulatory participants and redress seekers. However, the positions and responsibilities of the government and citizens in these processes have become less clear.

This thesis contributes to existing debates on regulation and redress seeking processes by stressing the importance of identifying and understanding the nexus points between the two processes. Instead of just assuming the processes complement one another, this study offers a more sophisticated way of understanding the effects of their interactions. It also helps explain why confusion exists in Indonesian reactions to industrial pollution about the roles the government and citizens (should) play in the promotion of a cleaner environment, and why this confusion has negative consequences for the environment and beyond.

Before exploring the nexus between regulation and redress seeking processes, this thesis first identified the weaknesses and strengths of each in turn. These analyses provided an initial answer to why industrial water pollution remains a severe problem in Indonesia.

The false dichotomy between command and control regulation and its alternatives

The goal of the regulation process is to promote a particular public interest. Chapter 2 explained that in the early days of environmental regulation, the dominant regulatory approach was 'command and control'. The government has the authority, to be found primarily in administrative law, to command strict norms (e.g., by setting norms in a license) with which the licensee needs to comply. It controls the licensee's behaviour by monitoring it and enforcing the law in cases of violation. In recent decades, the limitations of 'command and control' regulation have been widely acknowledged. Such regulation

requires that the government has large capacity in terms of resources, expertise and staff. Moreover, if the government is more responsive to the licensee and involves non-state parties (e.g., market-actors, civil society and citizens) in the regulation process, it is often assumed that it can more effectively promote the public interest. Consequently, both international and Indonesian debates about regulation have stressed the virtues of alternative regulatory approaches and increased citizen participation.

In attempting to identify the strengths and weaknesses of the existing regulatory approaches, questions arise about their legal and institutional arrangements. To what extent do these arrangements contribute to the promotion of cleaner river water? Chapters 3 and 4 identified some of the main strengths and weaknesses of the current legal and institutional frameworks for the regulation of environmental matters in Indonesia. Chapter 3 demonstrated that in the last decades, there have been improvements in many respects. The Environmental Management Act (EMA) of 2009 covers a wide range of issues and leaves room for innovative regulatory approaches. Environmental agencies have also been established in all districts and provinces. Santosa's (2014) seminal study on the functioning of environmental agencies at regional government levels has argued that the legal framework offers a sufficient basis for the effective promotion of environmental interests, but that the regional government agencies' implementation requires improvements. Chapter 4 confirmed Santosa's findings that a lack of budget and staff hampers the environmental agencies' implementation. However, it also found that the limited resources that are available for regulation have not been used to their full potential. This underuse is largely due to inconsistencies in norm-setting, monitoring and enforcement. The inconsistencies hamper the effectiveness of the regulation process, particularly in the phases of monitoring and following up on detected violations. For example, data gathered through various monitoring and enforcement activities are poorly archived and inefficiently used.

The legal framework reflects – or perhaps is at the root of – the inconsistencies in the regulatory practice. Comparing the EMA 2009 to its predecessor, the EMA 1997, the legal arrangements for command and control regulation based on administrative law have been weakened in specific vital aspects. The EMA 2009 no longer stresses the importance of a consistent sequel between the phases of norm-setting, monitoring and enforcement in the regulation process. Furthermore, the arrangements in the EMA 2009 for administrative law enforcement have actually limited the government's authority to take concrete action to halt violating behaviour and recover damages at the expense of the violator.

The legal framework is also unclear about how command and control regulation based on administrative law relates to other regulatory approaches. These approaches include ad hoc programmes such as PROPER, which is run by the Ministry of the Environment. This programme exists parallel to the

basic regulatory mechanism, based on command and control, in which primarily the district governments are authorised to regulate the environmental behaviour of industries. The lack of clarity about how the regulatory approaches relate to one another leads to an unclear division of authority between the Ministry and the regional government. For example, it is unclear whether the Ministry or the regional government is authorised to enforce the law after the Ministry detects a violation through PROPER. Other alternative regulatory approaches, such as the use of economic instruments, are also poorly integrated with the basic regulatory mechanism. Wibisana (2016) has argued that many Indonesian scholars and policy-makers consider such alternative regulatory approaches as opposing command and control regulation and that therefore the alternatives can replace the poorly functioning command and control regulation. They do not see a need to improve command and control regulation or to integrate the alternatives with command and control. However, this is a false opposition because alternative regulatory approaches often depend on the basic regulatory system based on command and control to function effectively.

The lack of clarity in the legal framework also concerns the relation between the administrative, criminal and private law frameworks relevant for addressing environmental pollution. This vagueness is particularly problematic when it comes to following up on detected violations. While the quality of the administrative law framework for regulation declined in some vital aspects, the EMA 2009 expanded and emphasised the importance of the criminal and private law arrangements to follow up on violations. In theory, administrative law measures for regulation allow the authorised government to halt violations as soon as possible. Criminal law enforcement only punishes behaviour after it has taken place, usually after a long and costly court trial. It can only indirectly influence future behaviour through its potential deterrent effects.

The EMA 2009 partly prescribes the conditions under which a particular approach is suitable. However, it fails to emphasise that administrative law arrangements aim to halt violations swiftly and to recover the damages done to the public good. The emphasis on criminal and private law arrangements reflects and justifies that, in practice, responses to violations are often based on criminal and private law frameworks, even though these frameworks are generally less suitable to effectively protect the public interest in a clean environment.

Bureaucratic behaviour in environmental regulation

When exploring the regulatory practices of provincial environmental agencies and identifying their strengths and weaknesses, one must first note that there are considerable differences between the agencies in how they monitor and respond to violations. For example, the regulatory efforts of the East Java agency have more characteristics of command and control regulation than

the efforts in West Java. The former conducts regulatory inspections and occasionally takes concrete measures to halt a violation, while the latter does not.

Empirical research nevertheless indicated that, overall, officials were poorly aware of the differences between administrative, criminal and private law frameworks for responding to violations. For example, in both East and West Java, officials considered imposing an administrative sanction to be an unsuitable approach in response to a serious violation that was causing considerable damage. In fact, they often avoided imposing administrative sanctions. Particularly in West Java, officials preferred to respond to violations by seeking criminal prosecution possibilities against the violator. Alternatively, when citizens filed complaints, officials would often try to settle those cases by mediating between the complainants and the violator. In this way, cases were subjected to private instead of administrative law frameworks.

There are several reasons why officials avoided imposing administrative sanctions. First, the weak legal arrangements offered limited support for using administrative law enforcement instruments effectively. In particular, the EMA 2009's definition of administrative coercion weakened the government's regulatory position, suggesting that the government could not take concrete measures to halt a violation. Secondly, policies detailing the government's tasks (e.g., the frequency of regular monitoring and how to respond to certain violations) were often lacking. Thirdly, officials were confronted with an unclear division of authority between various involved institutions. This concerns the horizontal division between sectors and vertical division between administrative levels. Taking intrusive but effective measures to halt a violation could lead to confrontations with institutions that had other interests in the case. Therefore, officials from the many involved institutions preferred to seek consensus among themselves. Often, this internal consensus seeking resulted in lengthy deliberations euphemistically referred to as 'coordination'.

Although the Water Patrol in East Java is an example of the potential benefits of 'coordination', the case studies in West Java and North Maluku demonstrate that 'coordination' can also carry serious negative implications. The involvement of many institutions resulted in regulatory processes that were long, inconsistent, costly and inefficient. In addition, their involvement made it increasingly difficult to hold a particular government institution accountable for taking insufficient regulatory measures, allowing more room for corruption. The lack of accountability mechanisms led to a situation in which the government had few incentives to improve its regulatory performance

Officials also often avoided administrative law enforcement because of their assumptions about its limited deterrence effect compared to other regulatory approaches, specifically criminal law enforcement. However, there are strong indications that regulatory initiatives are fairly effective when they have features of command and control regulation and are based on administrative

law. Officials and scholars have often praised the ministerial programme PROPER and the Water Patrol in East Java for their effectiveness. These programmes are characterised by rather consistent monitoring and enforcement efforts by the government. These command and control features offer an explanation for the relative success of the programmes, but are seldom acknowledged as such. Instead, the Ministry as well as some scholars consider the programmes to be alternative regulatory approaches, opposite to command and control.

As mentioned earlier, the West Java environmental agency often opted to respond to complaints by mediating between complainants and violators. The resulting agreements frequently served the private interests of the complainants. For example, in the Rancaekek case, complainants negotiated for positions as 'job brokers', recruiting industrial labourers in return for payments from these recruits. That the agreements often included environmental measures that the violator promised to implement, suggested that the negotiations between the private parties also led to less pollution. Therefore, the agreements appeared to be an adequate replacement of an administrative decision. However, in practice, they often did not lead to compliant behaviour. Instead, they affirmed the government's lack of enforcement and even undermined the government's independent authority to take regulatory measures.

Thus, when violations were detected as a result of complaint handling, cases were often side-tracked to a twilight-zone between the administrative and private law framework. As a result, the regulatory government's authority and responsibility became unclear. Its position further weakened when it seemed dependent on private agreements to take monitoring and enforcement actions. Hence, it made private parties – and citizens in particular – responsible for the promotion of the public interest in a clean environment. Furthermore, the replacement of a formal administrative decision with a private agreement made it more difficult for citizens to object to a government decision and demand – if necessary, through court – that the government take enforcement measures.

Overall, across Indonesia, complaint handling and mediation as alternative dispute resolution are promoted and are generally assumed to go hand in hand; mediation is considered the proper way to deal with violations brought up by a complaint. However, this overlooks the negative implications of a private agreement replacing an administrative law response. It realises the possibilities of citizens acquiring private gains, industries cheaply buying off the investments they should have complied with, and governments barely being held accountable for insufficiently promoting the public interest in a clean environment.

So what are the strengths and weaknesses of the legal and institutional arrangements for regulation? We can conclude that both the legal framework as well as the environmental agencies' practices reflect the tendency to address industrial pollution by depending on alternative regulatory approaches instead

of administrative law-based 'command and control'. Officials, policy-makers as well as scholars appear not to be well aware of the different characteristics of the various regulatory approaches. Most importantly, many are unaware that administrative law instruments aim to empower the executive to promote the public interest in a clean environment. To the contrary, encouraged by international and national debates, they reject the idea that administrative law-based command and control can be effective. As a counterpoint, this thesis has demonstrated the negative consequences of relying on other regulatory approaches without properly integrating them with the basic command and control mechanism for regulation. At the same time, the relative successes of PROPER and the Water Patrol in East Java strongly indicate that regulatory approaches that have administrative law-based command and control regulation characteristics are effective in promoting a clean environment.

At first glance, the position of citizens and interest groups in the regulation process seems to have improved. They have more opportunities to participate in the regulation process. The government needs to consult them when licenses are issued, and they have increased opportunities to file complaints. In recent debates – for example, about the revised Government Regulation on River Pollution Control – there has been a tendency to further expand citizen participation in monitoring and enforcement of the regulation process. However, such expansion only further delegates the government's regulatory responsibility to citizens. A closer look at the redress seeking process explains the risks of addressing environmental pollution by individually compensating damages to citizens instead of promoting the public interest in a clean environment.

The options for citizens to seeking redress for pollution

When citizens are faced with river water pollution, it is appealing to assume that they will always want a cleaner river as redress. If so, increased redress seeking opportunities for affected citizens increase the likelihood of achieving cleaner rivers. Such likelihoods seem particularly true when the government fails to execute its regulatory task adequately. Even if the redress seeking process does not lead to a cleaner environment, it may still lead to some compensation for the affected, which seems fair enough. The worst that can happen, or so it seems, is that victims fail to obtain any redress at all.

In the Indonesian context, it is understandable that one would stress the potential benefits of increased redress seeking opportunities, whatever those benefits may be. The preference for relying on citizens and civil society organisations, rather than on the government, is not merely a consequence of a government failing its regulatory duties. The authoritarian regime only recently made way for a new era, in which democracy is highly valued. The attention to participation in regulation and the fact that 'Access to Justice' is currently a prominent policy goal can be seen as a reaction to an authoritarian past. Therefore, it is relatively uncommon to find a critical attitude in Indonesia

towards the roles of citizens and interest groups, at least when it comes to addressing industrial pollution.

Nevertheless, this thesis demonstrated that the process of seeking redress is not straightforwardly geared towards achieving cleaner rivers. To better understand the dynamics of the process, one needs to ask what the 'real life problem' is that people face. Do they frame this problem as a grievance? How so? Which 'paths to justice' are available? If they eventually achieve redress, what consequences does this have?

Chapters 5 and 6 answered these questions through case studies in West Java and North Maluku. The cases differ in several respects. First, in the West Java case, the textile industry's pollution was the most prominent problem for nearly all citizens living downstream from the industry. On the other hand, in North Maluku, citizens felt that the mining company caused other injustices alongside environmental damages. For example, the indigenous people felt that the mining company did not respect their indigenous rights. Many respondents also complained about the unfair distribution of Corporate Social Responsibility (CSR) funding that the mining company provided to nearby villages. Only a relatively small part of the population was directly affected by pollution. Thus, the variety of stakeholders with differing interests was greater in North Maluku. Finally, in North Maluku, more people questioned whether environmental pollution was occurring or had occurred in the first place. As a result of these factors, the redress seeking process in the North Maluku was more complex than in West Java.

Despite these differences, there are also striking commonalities between the redress seeking processes in both cases. First of all, in both cases, the local population hoped to profit from the economic benefits of the industrial activities, particularly in the form of jobs and CSR funding. As a result, citizens often did not seek redress that would endanger these benefits, and many accepted the pollution in return for them. For many people, poverty appeared to be a more urgent real-life problem than pollution.

Furthermore, the case studies demonstrated the importance of distinguishing between the variety of stakeholders in the affected communities. The community members were quite heterogeneous. The industrial plant's neighbours were affected by the pollution in different ways. They had different interests and the grounds on which they could base their claims to redress also varied. For example, in West Java, the rice farmers argued that they had suffered particular damages because the pollution had caused a decline in the harvest. At the same time, land labourers found it more difficult to find work after many rice fields became unproductive.

Nevertheless, the labourers never made compensation claims, perhaps finding it difficult to pinpoint the extent of the damages and proving any causal relations. They were also less capable of raising their voices than the often more educated and relatively more powerful farmers.

The case study in North Maluku also exemplifies how not all affected citizens can base compensation claims on similar grounds. Representatives of the village Balisosang claimed that their village and all of its inhabitants had suffered from pollution. They managed to have water wells installed, providing access to clean water. They also claimed CSR funding that would benefit all of Balisosang's inhabitants. However, not everyone in the village had been directly affected by the pollution. Meanwhile, people from other villages who had suffered from the pollution directly were unable to present themselves as victims. They did not receive anything.

These examples demonstrate that affected complainants do not necessarily seek halting pollution. Instead, those who sought redress usually demanded economic compensation. It served their private, short-term interests, but did not offer a solution to the long-term impact of widespread pollution. Hence, increasing the possibilities to seek redress for those directly affected by pollution does not necessarily contribute to the promotion of the public interest in a clean environment.

Dealing with pollution by compensating a few local community members had negative consequences beyond the environmental impact. Social relations became tense within the affected communities. Inequality increased because the compensation did not benefit all community members. In West Java, mediation between the industries and farmers and other powerful community figures resulted in the latter two receiving privileged positions as 'job brokers', recruiting labourers for the industries. Former land labourers needed industrial jobs and now had to pay the job brokers a high 'entry fee' to receive them. They thereby indirectly compensated the farmers for the environmental damage the latter had suffered.

In reality, the redress seeking process resulted in more powerful community members, such as the farmers, exploiting the more vulnerable community members who had been unable to engage in the process. Inequality increased within the affected community, while the pollution problem remained unresolved. In North Maluku, interest groups began competing with one another for CSR benefits. Social tensions increased between the indigenous community members and migrants, as the former strongly advocated in favour of making indigenous rights the basis for redress. Such advocacy even led to violent incidents between the indigenous and migrant population.

These case studies illustrate that those engaged in the redress seeking process often have a higher social status within the affected communities. They can frame their interests in appealing ways. Unlike the poorer community members, they have time, money and knowledge to engage in the process actively. The increase of interest groups engaged in the redress seeking processes in both cases indicates that the process became a lucrative business of presenting oneself as a 'community representative'. The government often uncritically accepted those who claimed to legitimately represent the community interests, even though officials admitted they were aware that redress

seekers were often merely involved for their private gains. Government documentation usually referred to these people and groups as 'the community' (*masyarakat*), without precisely specifying who they were. Referring to them as 'the community' seemingly legalised any claim they made. Institutions usually provided plenty of opportunities for interest groups and 'community representatives' to make claims for redress, even if such claims did not serve the public interest in a clean environment and worked to the disadvantage of other community members. The West Java environmental agency mediating positions for the 'job brokers' exemplifies this. Hence, when addressing pollution was not considered a matter of collective interest, power differences within communities increased.

A final common feature of the redress seeking processes in both case studies in West Java and North Maluku is that they have continued for over two decades without closure. Citizens continuously made redress claims while their initial reason – the pollution – was not halted. The redress seeking processes did not develop linearly. The process did not begin with one static real-life injustice and neatly evolved until redress was achieved for it. Particularly in the North Maluku case, redress seekers, grievances and redress claims changed continuously. Often these changes did not stem from situational shifts (e.g., a worsening of the pollution's impact). The changes usually occurred as a response to new redress seeking opportunities. For example, photos of a broken pipe strengthened Balisosang's representatives in their claims for water wells and more CSR funding. Nevertheless, this was barely related to the larger problem of continuous river pollution. Furthermore, as indigenous rights became a popular theme, this became a new basis for redress claims, even though few people considered their indigenous status to justify such claims.

To conclude, the redress seeking process seldom contributed to cleaner rivers. Representing the interests of the whole community proved to be problematic. Encouraged by the idea that citizen participation benefits the regulation process, government institutions were uncritical towards those who claimed to represent the community's interests and even supported quests for redress that merely served personal interests. As long as the environmental problems continued to exist, so did the basis for related claims for redress. In fact, as redress seeking evolved into an opportunity for citizens to acquire compensation, it contributed to increased social tensions and inequality within the affected communities. In North Maluku, people competed with one another over compensation and emphasised their ethnic differences, as ethnicity became a basis for claims. In the West Java case, farmers exploited their less fortunate community members in their positions as 'job brokers', a position that they negotiated through mediation with the industries. Rather than acting as a regulator and halting the violations, the government facilitated the mediations that had led to this outcome.

Exploring the nexus between regulation and redress seeking

We have looked at the processes of regulation and redress seeking separately. We have concluded that the regulation process has considerable weaknesses and that redress seeking is not a straightforward process towards achieving cleaner river water. With this in mind, which interconnections and interdependencies exist between the processes? What trade-offs, if any, are there between the roles that government institutions, citizens and interest groups play in regulation and redress seeking processes related to addressing industrial pollution?

The most apparent nexus point between the two processes is complaint handling. By filing a complaint, affected citizens can try to seek redress by pressuring the government to execute its regulatory responsibility to detect violations and take enforcement measures. This option assumes that citizens merely seek redress in the form of cleaner river water and that they can count on the government to take adequate regulatory measures. If true, the only relevant questions are whether citizens have access to the authorised government institution and whether this institution properly halts the violation or restores the situation to its prior condition. If the regulation and redress seeking process are merely interconnected in this way, then increased possibilities for Indonesian citizens to file complaints and expanded regulatory approaches are likely to increase the probability of cleaner river water.

However, in the Indonesian practice of addressing industrial pollution, the nexus between the processes is more complex. This thesis argues that the actual roles that citizens, interest groups and the government play in regulation and redress seeking processes do not align with the theory that increased opportunities to regulate and to seek redress inherently contribute to a better promotion of the environmental interests. This disparity is importantly related to the changing ideas about regulation and redress seeking. Alternative regulatory approaches for command and control have been introduced that created more room for the government to choose its regulatory approach. Moreover, increased citizen and interest group participation in regulation processes, as well as the expanded opportunities for citizens to seek redress, have off-loaded the responsibility to promote the public interest in a clean environment from the government onto citizens.

In order to highlight the crucial nexus points between the two processes, the next section will zoom in on the three phases of the regulation process. It will explain the roles of citizens, interest groups and the government in these phases, from the perspectives of both regulation and redress seeking, and will highlight the differences between their theoretical and actual positions in Indonesia.

Participation in the norm-setting

Increased citizen and interest group participation in the regulation process is particularly relevant in the phase of norm-setting. For example, the government should consider the viewpoints of citizens and interest groups, as well as other stakeholders, before it issues a license. By weighing all interests properly, the government can prevent citizens from facing problems after an industry becomes operational.

In the Indonesian legal framework, the arrangements for participation in the norm-setting phase have improved. With the introduction of environmental impact assessments, industries are required to consult with communities that may be affected by operations. Nevertheless, at least two concerns remain. First, few guidelines dictate whom the government should accept as a representative stakeholder of community interests, and how the government should weigh the concerns these representatives raise. This study demonstrated that proper representation of community interests could be highly problematic. Interests within communities are usually diverse, and citizens often focus on the potential economic benefits of an industry, rather than on its long-term environmental impact. Therefore, increased citizen participation in norm-setting far from guarantees that industries will respect environmental interests.

Second, in cases such as in North Maluku and West Java, the government issued licenses decades ago. Citizens and interest groups usually only have an opportunity to influence the norm-setting process when industries need to acquire new licenses or renew old ones. In this respect, that environmental licences do not have an expiration date is a considerable weakness of the current, relevant legal arrangements. A lack of a set moment to reconsider previous norms makes it difficult to adjust to the norms in response to newly expressed viewpoints from citizens, or to technological developments that allow for setting stricter norms.

The monitoring phase: who is responsible for detecting violations?

In the system of command and control regulation, the role of citizens and interest groups in the regulation process becomes limited after the norm-setting phase. The authorised government institution is primarily responsible for monitoring whether the industry complies with the set norms, and for enforcing norms if necessary. However, the regulation and redress processes overlap when citizens file complaints. The citizen tries to seek redress by calling upon the government to execute its regulatory task of detecting and halting violations and taking measures to restore the situation. As such, citizens are the government's extra eyes in the monitoring phase. Nevertheless, the government remains legally responsible for regulating licensee behaviour.

However, in practice in Indonesia, the role of citizens in the monitoring phase has increased. Over the last years, both legally and in practice, complaint

handling gained a prominent place in the regulation process. At first sight, this appears to be a positive development from the perspective of redress seeking. However, two reservations arise. First, filing a complaint does not mean that a citizen can express their concerns and count on the government to take adequate monitoring and enforcement measures. Since complaint handling became an important issue in policies and practice, the number of complaints is growing. To properly process these complaints, the government tends to require complainants to deliver proof of the violation before taking regulatory action. The monitoring responsibility thus moves from the government to citizens. Such a move weakens the citizens' position considerably.

Enforcement or other ways to follow-up on violations?

Over time, the legal framework has provided the government with more administrative law enforcement instruments for promoting the public interest in a clean environment. However, the government has poorly implemented such instruments. Due to this ineffectiveness, and encouraged by international debates on regulation, Indonesian policymakers, officials and scholars perceived administrative law enforcement as undesirable by definition. Their attention on further developing the legal framework for command and control regulation ceased, both in general and in particular for administrative law enforcement. As a result, the quality of the legal arrangements for command and control regulation diminished, which in turn confirmed the notion that command and control was indeed an ineffective regulatory approach.

At the same time, alternative regulatory approaches were embraced. Such a reaction even extended to diverting cases to the private law framework, where the authorised government institution mediated between complainants and violators. Officials in West Java believed that by acting as an alternative dispute settler, they were applying an alternative regulatory approach. They also believed this approach responded to calls for increasing citizen participation and thereby created more opportunities for seeking redress. Meanwhile, such mediation allowed the government to avoid taking potentially controversial enforcement measures. Officials preferred to avoid confrontations with both licensees and other stakeholder government institutions.

However, side-tracking cases from the administrative to the private law framework has considerable downfalls. There is no guarantee that participants will prioritise environmental interests. The case studies demonstrated that participants might primarily promote their private interests. This approach can have negative implications for other community members whose interests are not well represented. The government did not critically assess who represented the community interests or whether the requested redress promoted a public interest. The lack of sufficient criteria outlining eligible individuals and complaints resulted in a lucrative business of referring to environmental wrongdoings to promote one's private interest. Such actions were only open

to those who were able to make their voices heard. These people were often not the most vulnerable individuals within the affected communities. Furthermore, in West Java, that complaining about environment pollution was likely to result in private gains led to a situation where the environmental agency was bombarded with complaints. Handling these complaints through mediation took up considerable regulatory capacity from the government. A vicious circle ensued, with environmental pollution continuing as the basis for new claims.

It should be noted that mediation agreements often do not only serve the complainant's private interests. The agreements also often address environmental measures that the violator should take. Private agreements can arguably thus contribute to a cleaner environment. However, the alleged importance of such agreements contributes to undermining the administrative authorities' legitimacy. In West Java, officials have made themselves dependent on private agreements for taking monitoring and enforcement measures. The environmental agency's administrative law authorities somehow insufficiently legitimise such regulatory action. Such a perceived dependency demonstrates the confusion that exists among officials about the differences between private and administrative law approaches to addressing pollution.

Additionally, when violations are diverted from the administrative to the private law framework, the possibilities decrease for demanding the government take adequate regulatory measures. During my fieldwork, I never encountered a case where the government considered a complaint as an objection against a previous government decision to (not) take regulatory measures. I also did not meet citizens calling upon the administrative court to force the government to take regulatory actions. Instead, mediations were mushrooming.

Blurred boundaries between regulation and redress seeking

This thesis asked how citizens and interest groups affected by pollution, as well as authorised government institutions, engage in processes of regulation and redress seeking for industrial pollution, why they do so and what effect this has on the environment and on social relations within affected communities. In answer to this, we can conclude the following.

This study demonstrated that regulation and redress seeking processes related to addressing industrial water pollution in Indonesia have specific complications and dynamics. However, the processes have become more intertwined. Such increased interconnectedness stems mainly from national and international debates amongst scholars, policymakers and officials. The debates encourage the development of alternatives for administrative law-based command and control regulation. Meanwhile, increased citizen engagement opportunities focus on the regulatory and redress seeking processes.

As a result, the distinctive features of these processes have become less obvious. Affected citizens and the government have, in some respects, switched

positions. Citizens are responsible for monitoring and following up on violations, while the government retreats from its regulatory responsibilities by avoiding the use of its administrative law regulatory powers to promote the public interest. The government often relies on the private law to mediate conflicts between affected citizens and violators, ignoring the fact that such an approach promotes neither environmental interests nor the interests of the affected community, due to the goal displacement that takes place. The goal of those who claim to represent the community members' interests is no longer promoting the public interest in environmental protection, but the private interest share in the financial benefits of the industry. A vicious circle now exists where pollution continues and serves as a basis for interest groups and individuals to make claims that serve their private interest.

The parties who have a relatively privileged position in regulation and redress seeking processes – the government, the industries and the citizens with relatively powerful positions within their communities – have an interest in maintaining the status quo. All of them can profit, or can at least avoid confrontations with other powerful players, as they continue to seek consensus amongst one another. Neither government actors nor community representatives can be held accountable for the inadequate protection of environmental interests. Meanwhile, the most vulnerable people cannot participate in regulation and redress seeking processes. They remain unheard and invisible. They cannot count on the government or on the people who claim to represent them to promote their interest in a cleaner environment.

Besides the inadequate protection of the environment, side-tracking violations to the private law framework can even lead to more inequality and social tensions within the affected communities. The impacts of environmental pollution also travel further downstream, affecting the lives of many others. This broader impact makes addressing industrial pollution an eminent public interest issue, for which occasional individual compensation is an inappropriate kind of redress. At the same time, the alleged dichotomy between command and control regulation and other regulatory approaches -and the negative connotations with the former and the positive with the latter- is so strong amongst Indonesian officials, policy-makers and scholars, that it hinders a more nuanced reflection on how various regulatory and redress seeking processes relate to one another, in both theory and practice.

Most studies in the fields of regulation and redress seeking (or 'access to justice') have viewed these processes in relative isolation, assessing the stages, the enabling and disabling factors, and the outcomes in each process separately. They focus primarily on questions such as: did the redress seeking process lead to a satisfactory result in the eyes of the redress seeker, or did the regulation process lead to compliance by the regulatee? When departing from the assumption that redress seeking for public interest issues (e.g. environmental protection) will inherently be directed towards a similar outcome as the regulation process that aims to protect that same public interest, assessing the

processes in isolation seems fair. However, this study demonstrated that the outcomes of both processes do not necessarily go hand in hand, due to complex interaction between the regulation and redress seeking processes.

Some scholars have pointed out that regulation and redress seeking processes can interrelate. e.g. when redress seekers are able to force the government or the regulatee to take measures that promote a certain public interest, or -just the opposite- when they are unable to play a regulatory role, for example when caught in a compensation trap (Van Rooij, 2012), or when citizen involvement in regulation can lead to governments offloading their responsibility to protect the public interest to citizens (Chhotray and Stoker, 2009b and Mascini, 2013).

This study builds on these studies, and contributes to the ongoing debates on regulation and redress seeking (or access to justice) by arguing that in cases where redress seeking processes concern public interest issues and regulation processes involves citizen participation, it is crucial to assess both processes separately as well as in conjunction, and to do so systematically. This involves looking at the roles of all actors and stakeholders in different stages of both processes, as well as the impact of processes, also beyond the original purpose of regulation (i.e. environmental protection) and of redress seeking (coming to a satisfactory result in the eyes of the person or group that seeks redress).

By acknowledging the many links between the processes, this study tries to develop a more sophisticated approach to understanding how and why citizens, interest groups and state institutions address industrial pollution in Indonesia, and the adverse effects this has on the environment and beyond. By doing so, this study concluded, amongst other things, that in this case of addressing industrial pollution in Indonesia, the conjunction between the processes resulted in confusion amongst policy makers, officials and scholars with regard to concepts related to the two processes, false assumptions about their impact, and a diminished quality of the legal framework to address industrial pollution cases. It also demonstrated that the involvement of citizens and interest group in regulation contributed to poor regulation, as well as to shifting power structures within affected communities, increased inequality and social tensions.

To conclude, this study calls for a critical debate on how, in Indonesia, the regulation process can become more effective in promoting a clean environment, and how citizens can seek redress in the form of halting pollution and restoring the environment. This debate should focus on how various regulatory approaches relate to one another and should question the role of citizen participation. This thesis argues for renewed attention to the administrative law framework for command and control regulation because its vagueness and inconsistencies breed ineffectiveness in alternative regulatory approaches. Premature normative judgements should not inform the debates on, for example, the effectiveness of specific regulatory approaches or on the positive effects of increased possibilities for citizens to seek redress. Instead, socio-legal

research can provide improved insight into the challenges of acting against river pollution. A better understanding of the interaction between law and practice is crucial to identifying opportunities for improvement. The empirical research in this thesis has also shown that there are considerable differences in how industrial pollution is addressed in Indonesia.

Many questions remain about the implications of various regulatory approaches and about how environmental interests can be effectively promoted. How do, in other cases across the country, government institutions at different administrative levels deal with industrial pollution, and how do they interact with each other, as well as with NGOs, citizens and the industries? How effective are they, and why? Are there examples of cases where citizens or NGOs were successful in protecting the environmental public interests, and which factors prevented that goal displacement took place? Which adjustments in the Environmental Management Act would be suitable to provide a more adequate legal framework to protect the public interest in a clean environment, and which institutional measures could contribute to this goal? Other remaining questions stretch beyond the Indonesian and beyond the public interest in a clean environment. For example, does goal displacement take place in other cases of redress seeking and regulation processes, and why or why not? Are directly affected citizens and grass root organisations more susceptible to goal displacement than interest groups that have more distance to the case? Did in other cases, positive normative assumptions about citizen participation in regulation hinder the critical assessment of the real consequences of this participation among officials and scholars?

Throughout the research, time and time again, officials, scholars, NGOs and donor organisations displayed their interest in these matters and more in general in the importance of conducting the empirical and socio-legal research to inform policy debates. An example is the realization and success of the MERW project. Continuing this research, to which this thesis has contributed, will be of eminent importance for regulating and preventing industrial pollution, and therefore for restoring cleaner rivers in Indonesia.