

Identifying the Use of Smart Enforcement in Citarum River Environmental Law Enforcement

Nadia Astriani*, Andri Gunawan Wibisana**, Anindrya Nastiti***, An Nissa Ayu Mutia****, Hajriyanti Nuraini*****

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Abstract

The Citarum River is one of the most strategic rivers in West Java Province, Indonesia. It has been a major water supplier for various agricultural and industrial needs. Unfortunately, human activity increases around the watershed. Thus, the water quality of the river decreases due to pollution. The central and regional governments launched the Citarum Harum program to reduce pollution in the Citarum River. One of the main issues of the program is related to environmental law enforcement. A lengthy process, high case costs, and light sanctions make law enforcement through the courts ineffective. This study discusses whether the environmental law enforcement in the Citarum River is smart enforcement. The study used normative empirical legal analysis with a juridical approach. This study concludes that the government should plan the law enforcement by means of Smart Enforcement strategy to make the enforcement more effective and efficient. It will provide clearer directions to law enforcement officers in the law enforcement. In addition, the efforts to carry out effective and efficient environmental law enforcement need more human and financial resources.

Keywords: citarum, environmental law enforcement, smart enforcement.

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- * Assistant Professor, the Department of Environmental, Spatial, and Agrarian Law, the Faculty of Law, Universitas Padjadjaran Jalan Raya Bandung-Sumedang Km. 21, S.H. (Padjadjaran University), M.Si. (Padjadjaran University), Dr. (Padjadjaran University), nadia.astriani@mail.unpad.ac.id.
- ** Professor, State Administrative Law Organization, the Faculty of Law, Universitas Indonesia, Jl. Prof. Mr Djokosoetono, Depok, S.H. (University of Indonesia), LL.M. (Utrecht University), Ph.D. (Maastricht University), Prof. (University of Indonesia), andri.gunawan@ui.ac.id.
- *** Assistant Professor, Member of Environmental Management Technology Research Group, the Faculty of Civil and Environmental Engineering, Institut Teknologi Bandung, Jalan Ganesa, No. 10, Bandung, S.T. (Bandung Institute of Technology), M.T. (Bandung Institute of Technology), Dr. (Bandung Institute of Technology), anindrya@tl.itb.ac.id.
- **** Graduate Student the Department of Environmental, Spatial, and Agrarian Law, the Faculty of Law, Universitas Padjadjaran, Jalan Banda 42, Bandung, S.H. (Padjadjaran University), nissa15001@mail.unpad.ac.id.
- ***** Undergraduate Student, the Department of Environmental, Spatial, and Agrarian Law, Faculty of Law, Padjadjaran University, Jalan Raya Bandung-Sumedang Km. 21 Universitas Padjadjaran, hajriyanti18011@mail.unpad.ac.id.

A. Introduction

The Citarum River is one of the most strategic rivers in Indonesia. It is 297 km long and passes through 13 districts/cities in the West Java Province.¹ The river has a strategic function for the surrounding communities in the Provinces of West Java and The Special Capital Region of Jakarta. It supports various industries, feeds an irrigation system that covers one hundred thousand acres of rice paddies, and provides the resource for a national power plant.² Unfortunately, various human activities around the Citarum Watershed have decreased the river's water quality over time.³

According to the Blacksmith Institute and Green Cross Switzerland, in 2013, Citarum was the third dirtiest and most polluted place in the world.⁴ The most significant contributor to the heavy contamination is *faecal coli*.⁵ Due to the absence of domestic wastewater management and waste management for residents along the river border, high levels of *faecal coli* bacteria and garbage in the river significantly increased. On the other hand, industrial, agricultural, fisheries, and livestock wastes that are not treated and do not meet quality standards worsen the decline of water quality.⁶

The Decree of the Minister of Environment and Forestry Number SK.300/Menlhk/Setjen/PKL.1/6/2017 on the Determination of Water Pollution Load Capacity and Allocation of Citarum River Water Pollution Burden shows that the capacity of water pollution burden in the BOD is 127.443,79 kg/day. The latest data shows that the load condition of existing BOD polluters reaches 430.996

¹ Citarum Watershed Pollution and Damage Control Task Force, "Executive Summary, Action Plan for Pollution and Damage Control of the Citarum Watershed," last modified April 4, 2021, https://citarumharum.jabarprov.go.id/eusina/uploads/docs/ringkasan_renaksi.pdf.

² Yanti Setianti, (et.al.), "The Information Distribution of Citarum Fragrant Program to the Community and People of Bandung Regency of West Java Indonesia," *Library Philosophy and Practice (e-journal)* 3616 (2019): 2 (Introduction Section), <https://digitalcommons.unl.edu/libphilprac/3616>. See also Anita Kamilah, "Pelaksanaan Tri Dharma Perguruan Tinggi Melalui Kerjasama Penta-Helix Dalam Percepatan Pengendalian Pencemaran dan Kerusakan Wilayah Sungai Citarum," last modified October 15, 2020, <https://prosiding-pkmcsr.org/index.php/pkmcsr/issue/download/3/7>.

³ Yusa Djuyandi and Dhuwi Hendradjaja, "Military Operation Other Than War (MOOTW): Military and Civilian Synergy to Support the Citarum River Revitalization Program," *Turkish Journal of Computer and Mathematics Education* 12, no. 7 (2021): 2122, <https://doi.org/10.17762/turcomat.v12i7.3354>.

⁴ Blacksmith Institute and Green Cross Switzerland, "The World Worst 2013: The Top Ten Toxic Threats, Clean Up, Progress, and Ongoing Challenges," last modified November 4, 2013, <https://www.worstopolluted.org/docs/TopTenThreats2013.pdf>. See Gabriel Titiyoga, "Citarum, Sungai Paling Tercemar di Bumi," last modified November 7, 2013, <https://m.tempo.co/read/news/2013/11/07/173527891/citarum-sungai-paling-tercemar-di-bumi>.

⁵ Iman Herdiana, "Bandung Belum Bebas Buang Air Besar Sembarangan, Ada Pandangan yang Salah Pada Sungai," accessed on November 5, 2022, <https://bandungbergerak.id/article/detail/14654/bandung-belum-bebas-buang-air-besar-sembarangan-ada-pandangan-yang-salah-pada-sungai>.

⁶ Citarum Task Force, "Revised Action Plan for Pollution control and Damage of Citarum Watershed, Action Plan - 2021-2025 Appendix I to Regulation of the Governor of West Java Number 37 of 2021 concerning Amendments to Regulation of the Governor of West Java Number 28 of 2019 concerning Action Plans to Control Pollution and Damage to the Citarum River Basin in 2019-2025," last modified April 4, 2021, <https://citarumharum.jabarprov.go.id/renaksi/>.

kg/day.⁷ The condition shows that the pollution load has exceeded the required capacity. The Citarum Action Plan shows that the Water Quality Index in 2018⁸ constitutes a moderate polluter status. Ideally, in conditions of polluted water quality, the government should no longer grant liquid waste disposal permits. In practice, the government still permits liquid waste disposal that aggravates the existing pollution.⁹

The Citarum watershed contains 2.347 large, medium, and small industries. Of these, 1.304 have environmental permits/documents, while 1.043 industries are not yet known.¹⁰ In numbers, Small and Medium Micro Enterprises (MSMEs) quite dominate in some areas, especially in the Bandung Regency, where the field survey found a high pollutant burden originating from MSMEs. However, in terms of regulation, the imposition of administrative sanctions on MSMEs is practically unworkable because most of them do not require environmental permits. If an MSME commits violations, it is only required to participate in environmental development without sanctions as a deterrent effect. Consequently, the MSMEs sector often repeats the same violations repeatedly.

Pollution in a Citarum Tributary, Cikijing, is estimated to have caused losses of IDR11 trillion from 2004 to 2015.¹¹ The community and NGOs have made various efforts to stop the pollution. One of them is to sue several companies holding liquid waste disposal permits in the State Administrative Courts.¹² The effort was successful when the State Administrative Court of Bandung City granted a lawsuit in the Decision Number 178/G/2015/PTUN-BDG and ordered the Regent of Sumedang to revoke the liquid waste disposal permits of three companies: PT Kahatex, PT Five Star Textile, and PT Insan Sandang Internusa.¹³ Although it was strengthened in the Supreme Court, six months after, PT Kahatex regained its

⁷ Direktorat Jenderal Pengendalian Pencemaran dan Kerusakan Lingkungan Kementerian Lingkungan Hidup dan Kehutanan, *Buku Kajian Daya Tampung dan Alokasi Beban Pencemaran Sungai Citarum* (Jakarta: KLHK, 2017), 71.

⁸ Neneng Zakiah and Yogi Suprayogi, "Strategi Tata Kelola Dinamis dalam Pola Pengendalian Pencemaran dan Kerusakan di Tepian Sungai Citarum (DAS)," *Jurnal Ilmu Pemerintahan: Kajian Ilmu Pemerintahan dan Politik Daerah* 5, no. 2 (2020): 57, <https://doi.org/10.24905/jip.5.2.2020.56-71>.

⁹ Governor of West Java Regulation Number 28 of 2019 Concerning Action Plan for Control of Pollution and Damage to the Citarum River Flows for 2019-2025.

¹⁰ Citarum Task Force, "Revised Action Plan for Pollution Control and Damage of Citarum Watershed, Action Plan - 2021-2025."

¹¹ Donny Iqbal, "Aksi Menanti Putusan 'Melawan Limbah' Rancaekek," last modified April 30, 2016, <https://www.mongabay.co.id/2016/04/30/aksi-menanti-putusan-melawan-limbah-rancaekek/>.

¹² The State Administrative Courts are part of the judiciary under the Supreme Court, along with General Courts, Religious Courts, and Military Courts.

¹³ Teuku Muhammad Guci Syaifudin, "Sungai Cikijing Tercemar Puluhan Tahun, Ini Dampak yang dirasakan Masyarakat," last modified April 28, 2016, <http://www.tribunnews.com/regional/2016/04/28/sungai-cikijing-tercemar-puluhan-tahun-ini-dampak-yang-dirasakan-masyarakat>.

Wastewater Discharge Permit.¹⁴ The company even said that the Sumedang Provincial Government never revoked its permit.¹⁵

Indeed, there are law enforcement and licensing supervision. However, pollution in the Citarum River still exists. The problems of implementing and enforcing environmental legislation may vary because of the lack of political commitment, inadequate institutional development, overlapping administrative responsibilities, and limited human and financial resources.¹⁶ In the case of the Citarum River, which involves 2.347 industries, the human resources of law enforcement are very limited. For instance, West Java has only one civil servant investigator (PPNS-*Penyidik Pegawai Negeri Sipil*) and six environmental supervisory officials (PPLH-*Pejabat Pengawas Lingkungan Hidup*). On the other hand, at the city or district level, the number of officials is even smaller. Some cities or regencies do not even have the PPNS. Thus, they rely heavily on the police to cover up pollution cases. In terms of budget, the portion of the environmental law enforcement budget is also small because it shares the budget with other environmental management programs.¹⁷ In 2019, the target surpassed 250 industries to be handled, namely 468 industries. In 2020, the target was 497; and yet there were 870 industries.¹⁸ Therefore, environmental law enforcement in the Citarum River is ineffective with the lack of human resources and budgeting.

To solve the pollution and damage in the Citarum Watershed, on March 14, 2018, President Joko Widodo established the Presidential Regulation Number 15 of 2018 on the Acceleration of the Control of Pollution and Damage to the Citarum Watershed. The regulation was designed to integrate programs of government agencies and stakeholders of the Citarum Watershed Pollution and Damage Control Team, known as the Citarum Task Force. Through the Citarum Work Program, the Water Quality Index is expected to be at the position of light pollution by 2025. The target demands tremendous efforts and support from law enforcement policies and strategies.

Based on the cause of pollution in Citarum River, a strategy is required to perform law enforcement effectively and efficiently. Therefore, this study starts the discussion from environmental law enforcement in Indonesia; then the

¹⁴ Nadia Astriani and Yulinda Adharani, "Fungsi Izin Dalam Pengendalian Pencemaran Lingkungan Studi Kasus: Gugatan Penerbitan Izin Pembuangan Limbah Cair di Sungai Cikijing," *Jurnal Hukum Lingkungan Indonesia* 3, no. 1 (2016): 124, <https://doi.org/10.38011/jhli.v3i1.36>.

¹⁵ Agung Kurniawan Sihombing, "Penegakan Hukum Terhadap Pencemaran Lingkungan di Sungai Cikijing, Jawa Barat Akibat Aktivitas Industri Tekstil PT Kahatex," *Jurnal Hukum Lingkungan Indonesia* 7, no. 1 (2020): 102, <https://doi.org/10.38011/jhli.v7i1.209>.

¹⁶ Ben Boer, "Environmental Law in Southeast Asia," in *Routledge Handbook of The Environment in Southeast Asia*, Philip Hirsch (eds.) (Abingdon: Routledge, 2018), 124.

¹⁷ R Arif Budhiyanto, Head of the Environmental Law Management Division at the West Java Province Environment Service Interview by Author, Bandung, August 4, 2021.

¹⁸ Citarum Task Force, "Revised Action Plan for Pollution Control and Damage of Citarum Watershed, Action Plan - 2021-2025."

settlement of Citarum River pollution; and finally, identify the characteristic of environmental law enforcement in Citarum River.

B. Law Enforcement to Water Pollution in Indonesia

The UNEP and the China ASEAN Environmental Cooperation Centre define enforcement as the range of procedures and actions employed by a state, its competent authorities, and agencies. It aims to ensure that organizations or individuals, which potentially fail to comply with environmental laws or regulations, can be brought or returned into compliance and/or punished through civil, administrative, or criminal actions.¹⁹ In most countries, environmental degradation is increasing. The existing enforcement of environmental laws has not been effective as expected. There are many reasons for this, including constraints on human capacity and access to technology experienced by developing countries; rapid economic growth and poverty alleviation in developing countries; and, crucially, weak international communication and lack of awareness of possible solutions.²⁰

Environmental law enforcement aims to sanction polluters or perpetrators of environmental destruction. In addition, it also aims to prevent actions that may cause damage or pollution. Therefore, environmental law enforcement in Indonesia is applied repressively and preventively.²¹ Article 1 Number 14 of Law Number 32 of 2009 on Environmental Protection and Management states that environmental pollution is the entry or inclusion of living things, substances, energy, and/or other components into the environment by human activities to exceed the standards of environmental quality that have been established.²² Related to water pollution, Articles 25 and 32 of Law Number 17 of 2019 on Water Resources expressly prohibit activities that can damage water sources and infrastructure or result in water pollution.

Measurement of the environmental quality standard and the damage standard criteria is often used to determine pollution. Water pollution happens if the water quality does not meet the water quality standards. Measurements results for the Environmental Quality Standard and the damage standard to determine pollution must be scientifically proven by an expert statement or test results from an accredited laboratory. Even though the forestry and environmental

¹⁹ United Nations Environment Programme and China ASEAN Environmental Cooperation Centre, "Enforcement of Environmental Law: Good Practices from Africa, Central Asia, ASEAN Countries and China," last modified May 19-22, 2014, <https://www.unep.org/resources/report/enforcement-environmental-law-good-practices-africa-central-asia-asean-countries>.

²⁰ United Nations Environment Programme and China ASEAN Environmental Cooperation Centre, "Enforcement of Environmental Law: Good Practices from Africa, Central Asia."

²¹ Andi Hamzah, *Penegakan Hukum Lingkungan* (Bandung: PT Alumni, 2016), 90.

²² I Made Ari Permadi and R.A. Retno Murni, "Dampak Pencemaran Lingkungan Akibat Limbah dan Upaya Penanggulangannya di Kota Denpasar," *Jurnal Kertha Negara* 1, no. 6 (2013): 3.

pollution/destruction, issues considered the results of both standards, judges differ in determining the standards in a trial.²³

In the beginning, Environmental law was designed to prohibit or to restrict environmental pollution. It mainly used the command and control mechanism by identifying the target to limit emissions (the command) and imposing penalties if the limit were to be breached (the control).²⁴ The scale obligations of the command and control approach range from limited restrictions to complete prohibition.²⁵ Unfortunately, the command and control mechanism in the present time can turn out to be a costly and inefficient approach since there are heterogeneous enterprises.²⁶

In Indonesia, the first step of law enforcement in environmental pollution is administrative law enforcement. there are administrative requirements to prevent environmental pollution and damage. The requirements must be met during business activities. Business activities can run only if the requirements are met, and the permit has been granted. If business activities breach the requirements or do not meet their obligations, causing pollution or damage, it means administrative violations. When it happens, the government can impose administrative sanctions. The Law Number 32 of 2009 states that administrative sanctions are imposed if, based on search and supervision, it is found that the activities carried out by the person in charge of the business do not comply with the laws and regulations in the field of environmental protection and management or with the provisions of environmental permits.²⁷

The administrative sanctions, according to Article 76 paragraph 2 on the Law Number 32 of 2009, comprise written warning, government coercion, suspension of environmental permits, and the revocation of environmental permits. A written warning is given because the person in charge of the business violates the terms and obligations listed in the permit. In a written warning, business actors are required to comply with the requirements or carry out the obligations. Failure to comply with a written warning may trigger government's coercion. Coercion represents a concrete action by the administrative officer against the actions of the

²³ Nur Syarifah (et.al.), "Assessment Report on Court Decisions on Environmental Cases," last modified July 2020, https://leip.or.id/wp-content/uploads/2021/01/Buku-ASSESSMENT-REPORTON-COURT-DECISIONSON-ENVIRONMENTAL-CASES_ISBN.pdf.

²⁴ Neil Gunningham and Cameron Holley, "Next Generation Environmental Regulation: Law, Regulation, and Governance," *Annual Review of Law and Social Science* 12, no. 1 (2016): 1.3, <https://doi.org/10.1146/annurev-lawsocsci-110615-084651>.

²⁵ Laurent Neyret, "France" in the *Oxford Handbook of Comparative Environmental Law*, Emma Lees and Jorge E. Viñuales (eds.) (Oxford: Oxford University Press, 2019), 7.

²⁶ Neil Gunningham and Cameron Holley, "Next Generation Environmental Regulation: Law, Regulation, and Governance," 1.4.

²⁷ Andri Gunawan Wibisana, "Tentang Ekor yang Tak Lagi Beracun: Kritik Konseptual atas Sanksi Administratif Dalam Hukum Lingkungan di Indonesia," *Jurnal Hukum Lingkungan Indonesia* 6, no. 1 (2019): 43, <https://doi.org/10.38011/jhli.v6i1.123>.

person responsible for efforts to prevent the violations. Government coercion, according to the Law Number 32 of 2009, can be carried out by temporarily halting production activities, moving production facilities, closing sewerage or emissions facilities, demolition, temporary suspension of all activities, and taking other actions to halt violation. If government coercion does not change the nature of the business activities, then the suspension and revocation of environmental permits are invoked.

According to Article 87 paragraph 1 of the Law Number 32 of 2009, any person in charge of a business that commits unlawful acts in the form of pollution and environmental damage must pay compensation or take certain actions. The environmental compensation includes any person responsible for unlawful acts of environmental pollution or damage and adversely affecting others.

Law Number 32 of 2009 regulate that environmental crime is a criminal offense based on the laws and regulations. The related laws typically deem certain administrative violations as criminal offenses. For example, the Law Number 32 of 2009, after the establishment of the Law Number 11 of 2020 on Job Creation, considers business operations without an environmental permit causing in casualties/damage to health, safety, and/or the environment as a criminal offense.

However, the effectiveness and the efficiency of pollution reduction do not depend on the existence of casualties/damage to health, safety, and/or the environment. There should be clearer parameters on the forms of administrative offenses that are subject to criminal sanctions.²⁸ According to Faure, the relation between environmental criminal law and administrative law should be retained to protect the environment.²⁹ For example, the admissibility of certain polluting acts should remain under the administrative authorities; and when the violation exceeds the scope of administrative law, it uses criminal law.³⁰ According to Heine and MPI Scholarship, an effective environmental criminal law should be able to punish violations of administrative obligations and unlawful emissions; and should equally contain an independent pollution crime in case serious consequences occur.³¹

According to Blanc and Faure, smart enforcement means an enforcement strategy that both supervision and enforcement agencies and prosecutors focus their efforts on specific categories of supervised entities and of (potential or confirmed) violations to increase efficiency and effectiveness. Since the pollution in Citarum River is mainly caused by industries around the river, the focus of law enforcement should be on the industries by identifying the entities and the violations.

²⁸ Nur Syarifah (et.al.). "Assessment Report on Court Decisions on Environmental Cases."

²⁹ Sollund, Ragnhild, Christoph H. Stefes, and Anna Rita Germani (eds.), *Fighting Environmental Crime in Europe and Beyond: The Role of The EU and Its Member States* (London: Palgrave Macmillan, 2016), 24.

³⁰ Ragnhild Sollund, Christoph H. Stefes, and Anna Rita Germani (eds.).

³¹ Ragnhild Sollund, Christoph H. Stefes, and Anna Rita Germani (eds.).

C. Settlement of Citarum Pollution Cases

A single approach is not enough to enforce environmental law in Citarum River cases. Administrative, civil, and criminal law enforcements are frequently applied simultaneously as shown in the following cases.

1. PT How Are You Indonesia

In the case of PT (*Perseroan Terbatas* –Public Limited Company) How Are You Indonesia (PT HAYI), the company conducts Toxic and Hazardous Wastewater disposal without the use of a Wastewater Treatment Plant. In this case, the Mayor of Cimahi imposed administrative sanctions on PT HAYI on January 30, 2012, based on the Decree Number 862.1/60/KLH/2012 on the written warning to the defendant.³² The decree states that the company: first, failed to conduct optimal wastewater management; second, did not conduct Toxic and Hazardous Wastewater management according to required provisions; and third, operated a coal boiler emission chimney, air pollution control facilities, and infrastructure that did not follow the provisions.³³

For these violations, the defendant was given two months to optimize Wastewater Treatment Plant for all wastewater, in accordance with the Decree of the Governor of West Java Number 6 of 1999.³⁴ On 5 March 2012, further supervision was carried out based on the warning to the defendant. However, the defendant had still failed to carry out most of the obligations to optimize Wastewater Treatment Plant so that it was able to treat all wastewater produced and meet quality standards based on the Decree of the Governor of West Java Number 6 of 1999 on Liquid Waste Quality Standards for industrial activities in West Java.

Instead, the company's Wastewater Treatment Plant Outlet originated from sedimentation tub did not go through biological processes. Thus, it was not properly processed. Then, it became a spill from the water storage unit to be recycled via the outlet channel.³⁵ Therefore, the Environment Office of Cimahi City followed up by asking the Ministry of Environment and Forestry to verify the implementation of obligations in terms of liquid waste management. Verifications I, II, and III show several points. First, there was a pile of Wastewater Treatment Plant sludge at the location of the polling station.³⁶ However, in the location, in addition to Wastewater Treatment Plant and stored sludge, the bottom ash also contained building debris that should be non-toxic category. Second, sludge was

³² Ministry of Environment and Forestry v PT How Are You Indonesia (2018) District Court of North Jakarta Decision Number 735/PDT.G-LH/2018/PN. Jkt.Utr, 82.

³³ Ministry of Environment and Forestry v PT How Are You Indonesia, 82-83.

³⁴ Ministry of Environment and Forestry v PT How Are You Indonesia.

³⁵ Ministry of Environment and Forestry v PT How Are You Indonesia.

³⁶ Ministry of Environment and Forestry v PT How Are You Indonesia, 18-19.

caught in the sack for too long and was not unloaded. Thus, the surface of the sludge exposed to sunlight became overgrown with moss.³⁷ Therefore, the Ministry of Environment and Forestry sued PT HAYI for its disobedience in the imposition of sanctions and evidence of pollution.³⁸

The panel of judges decided that PT HAYI had committed water pollution through strict liability. They are fined to pay compensation for IDR12.013.501,184. PT HAYI had further to pay a cash penalty (*dwangsom*) for IDR10.000.000 per day for delay in carrying out the verdict, since the verdict had permanent legal force.³⁹

2. PT Kawi Mekar

PT Kawi Mekar is another company that failed to carry out its obligations. It was given written warning by the Environment Office of Cimahi City to act on administrative sanctions that it was known to have largely failed to implement. Furthermore, on May 9, 2012, the Head of the Environment Office of Cimahi City asked the Ministry of Environment and Forestry to verify the administrative sanctions. On March 6, 2014, a team from the Ministry of Environment and Forestry verified a Resolution of Environmental Disputes document. The document states that PT Kawi Mekar did not have a liquid waste disposal permit, a temporary storage permit for hazardous and toxic materials waste, or a water collection permit. In addition, it was proven that PT Kawi Mekar disposed wastewater that did not meet the wastewater quality standard; and that the company threw sludge directly into the Cibaligo River. Therefore, the Ministry of Environment and Forestry sued PT Kawi Mekar for not executing the administrative sanctions. On December 27, 2019, the panel of judges decided that the Ministry of Environment and Forestry and PT Kawi Mekar should settle via a deed (*van dading*). It requires PT Kawi Mekar to pay the Ministry of Environment and Forestry IDR375.200.000 compensation for their environmental pollution between 30 January 2012 and 6 March 2014.⁴⁰

3. PT Bina Usaha Cipta Prima

Based on Documents of Environmental Management and Environmental Monitoring Efforts, the textile industry business activities of PT BUCP produced waste in the form of sludge, which is categorized as Toxic and Hazardous Wastewater. However, in 2001, the Environmental Management and Environmental Monitoring Efforts of the Regional Office of the Ministry of Industry and Trade, West Java Province was no longer relevant to current conditions of the company. The monitoring report in 2011 did not follow the real conditions. In

³⁷ Ministry of Environment and Forestry v PT How Are You Indonesia, 81.

³⁸ Ministry of Environment and Forestry v PT How Are You Indonesia, 28-29

³⁹ Ministry of Environment and Forestry v PT How Are You Indonesia, 115.

⁴⁰ Ministry of Environment and Forestry v Kawi Mekar District Court of Bale Bandung Decision Number 247/Pdt.G/LH/2019/PN.Blb. 1.

addition, the Toxic and Hazardous Wastewater permit was expired in February 2009.⁴¹ In 2012, PT BUCP was given administrative sanctions through the Letter Number 862.1/42/KLH/2012 in the form of a written warning for not carrying out optimal wastewater management or toxic and hazardous wastewater management based on the laws and regulations. Furthermore, in the supervision of the administrative sanctions, PT BUCP continued its failure to carry out the obligations under the sanctions.⁴² Therefore, the environment office of Cimahi City wrote to Deputy V of the Ministry of Environment and Forestry to follow the case up. In 2014, the dispute verification team found that the waste has failed the wastewater quality standard and had caused environmental pollution.⁴³ In its lawsuit, the Ministry of Environment and Forestry stated that the business activities of PT BUCP had produced toxic and hazardous wastewater. It resulted in environmental pollution based on strict liability.⁴⁴ Therefore, the defendant had to pay compensation. The panel of judges ruled that PT BUCP was responsible for losses due to business and/or activities producing toxic and hazardous wastewater resulting in environmental pollution. It ordered PT BUCP to pay environmental damages to plaintiffs for IDR838.230.057.⁴⁵

4. PT Grand Pioneer Industry

In the Decision Number 333/Pid.B/LH.2020, the defendant was PT Grand Pioneer (*Perintis*) Industry (PT GPI), represented by the head, Tan Djioe Han Als Djohan. One of the business activities of PT GPI is a dipping process in textile dyeing. The process generates residual wastewater and toxic and hazardous wastewater in the form of fly ash, bottom ash, and sludge.⁴⁶ Fly ash, bottom ash, and sludge constitutes toxic and hazardous wastewater. PT GPI stored the rest of the production in the area around the plant; and was not submitted to third parties. The waste and the wastewater were channeled into the Cikiley River, which is integrated into the Citarum River.⁴⁷ PT GPI did not treat the wastewater optimally. Thus, it failed to meet the required wastewater quality standards and must receive administrative sanctions, the Government Coercion Number 800/3393-DLHK/2018. PT GPI did not conduct requirement to improve wastewater treatment for a maximum of 45 days. The Environmental Office Bandung City then verified and supervised the company for three times, on October 9, 2018; July 15, 2019; and September 11, 2019. In March 10, 2020, samples of wastewater were taken twice at the outlet point channel. They show the exceeded wastewater quality

⁴¹ Ministry of Environment and Forestry v Kawi Mekar, 11.

⁴² Ministry of Environment and Forestry v Kawi Mekar, 12-13.

⁴³ Ministry of Environment and Forestry v Kawi Mekar, 13-14.

⁴⁴ Ministry of Environment and Forestry v Kawi Mekar, 133.

⁴⁵ Ministry of Environment and Forestry v Kawi Mekar, 138.

⁴⁶ District Court of Bandung, Decision Number 333/Pid.B/LH/2021/Pn.Bdg.

⁴⁷ District Court of Bandung, Decision Number 333.

standards.⁴⁸ In addition, PT GPI does not yet have a temporary toxic waste storage permit from the minister, the governor, or the mayor covering sludge, fly ash, and bottom ash, according to the authority. Further, according to PT GPI disposal permit, it has placed fly ash, bottom ash, and sludge waste at several points around the plant, the warehouse, and the boiler room in an open and non-watertight state, without the permit.⁴⁹

In this case, the Public Prosecutor pressed alternative charges. First, the defendant had violated the wastewater quality standard, emissions quality standard, or the quality standard of impairment, based on Article 100 paragraph (1) in conjunction with Article 116 paragraph (1) of the Law Number 32 of 2009.⁵⁰ Second, the defendant had carried out toxic and hazardous wastewater management without permit as stipulated in Article 102 in conjunction with Article 116 paragraph (1) of the Law Number 32 of 2009.⁵¹ Third, the defendant did not conduct management of toxic and hazardous wastewater as stipulated in Article 103 in conjunction with Article 116 paragraph (1) of the Law Number 32 of 2009.⁵²

Fourth, the defendant dumped waste and/or materials into environmental media without permit as stipulated in Article 104 in conjunction with Article 116 paragraph (1) of the Law Number 32 of 2009.⁵³ Fifth, the defendant oversaw business and/or activities that did not fulfill the government coercion as stipulated in Article 114 in conjunction with Article 116 paragraph (1) of the Law Number 32 of 2009.⁵⁴ The court ruled that PT GPI, represented by Tan Djioe Han Als Djohan, committed a criminal offense by violating the provisions of dumping waste and/or materials into environmental media without permit, carried out by, for, or on behalf of, business entities. In addition, the judge imposed a fine of IDR75.000.000 on PT GPI.⁵⁵

5. PT Antelas

PT Antelas, represented by the head of the factory is engaged in textile activities. At the time of examination by the Directorate of Special Criminal Investigation of the Police and the Environment Office of Bandung City, the Wastewater Treatment Plant sludge waste was found in a location for temporary storage of toxic and hazardous wastewater. There was no permit; and the sludge waste was not managed. The wastewater was discharged into the Cibaligo River⁵⁶. In addition, fly ash and bottom ash waste were also found in temporary storage areas for toxic

⁴⁸ District Court of Bandung, Decision Number 333.

⁴⁹ District Court of Bandung, Decision Number 333, 58-59.

⁵⁰ District Court of Bandung, Decision Number 333, 8.

⁵¹ District Court of Bandung, Decision Number 333, 11.

⁵² District Court of Bandung, Decision Number 333, 14.

⁵³ District Court of Bandung, Decision Number 333, 16.

⁵⁴ District Court of Bandung, Decision Number 333, 18.

⁵⁵ District Court of Bandung, Decision Number 333, 70.

⁵⁶ District Court of Bandung, Decision Number 700/Pid.b-LH/2020/PN.Bdg ,19.

and hazardous wastewater.⁵⁷ PT Antelas did not yet have a temporary storage permit for toxic and hazardous wastewater issued by the investment office and one door integrated service of Cimahi City.⁵⁸ These findings violate Article 102, penalizing the management of toxic and hazardous wastewater without permit. Article 103 states that anyone who produces toxic and hazardous wastewater and does not manage it can be punished. Then, Article 104 states that anyone who dumps waste and/or materials into environmental media without permit can be punished.

In this case, the Public Prosecutor offered alternative charges. First, that PT Antelas, in storing toxic and hazardous wastewater, must have a permit as stipulated in Article 102 in conjunction with Article 59 paragraph (4) in conjunction with Article 116 paragraph (1) letter a in conjunction with Article 118 the Law Number 32 of 2009. Second, Oeji Khek Jong, in carrying out activities to produce toxic and hazardous wastewater, did not manage the waste as stipulated in Article 103 in conjunction with Article 59 in conjunction with Article 116 paragraph (1) letter a in conjunction with Article 118 of the Law Number 32 of 2009. Third, Oeji Khek Jong carried out activities to dump waste and or materials into environmental media without permit, as stipulated in Article 104 in conjunction with Article 60 in conjunction with Article 116 paragraph (1) letter a in conjunction with Article 118 of Law Number 32 of 2009.⁵⁹

The panel of judges chose the third formal accusation. First, the defendant was guilty of the criminal act of dumping waste and/or materials into environmental media without permit. Second, the court imposed a criminal fine against PT Antelas for IDR100.000.000 with the provision that if the company could not pay the fine within one month, it would be replaced by the seizure of property/assets belonging to PT Antelas to be sold through the state auction office to pay the intended amount. Third, as additional criminal sanctions, PT Antelas must clean up the toxic and hazardous wastewater on fly ash, bottom ash waste, and on it is sludge area; and submit it to a licensed third party.⁶⁰

Based on the five examples, Naibaho points out that the application of administrative sanction is not effective because it is applied weakly. It is unproportionate with the effect of the violations. Furthermore, it does not cause a deterrent effect for the perpetrators of such violations.⁶¹ Further, a civil lawsuit occurs when the victims claim the damage, even if the compensation is admissible, it does not directly restore the damage that has occurred. Related to criminal

⁵⁷ District Court of Bandung, Decision Number 700/Pid.b-LH/2020/PN.Bdg.

⁵⁸ District Court of Bandung, Decision Number 700/Pid.b-LH/2020/PN.Bdg.

⁵⁹ District Court of Bandung, Decision Number 700/Pid.b-LH/2020/PN.Bdg, 5-8.

⁶⁰ District Court of Bandung, Decision Number 700/Pid.b-LH/2020/PN.Bdg, 21.

⁶¹ Natalia Naibaho, "Rethinking the *Ultimum Remedium* Principle to Support Justice and Strong Law Enforcement Institutions on Environmental Crimes," *Journal of Environmental Science and Sustainable Development Symposium* 716, no. 1 (2021): 1, <https://doi.org/10.1088/1755-1315/716/1/012068>.

sanctions of the two verdicts, the imposed fines are relatively light, around one billion Indonesian Rupiah, with the maximum criminal sanction through a fine being three billion Indonesian Rupiah. Since imprisonment is not imposed, administrative law enforcement, civilly, and criminally has not been effective.

D. The Law Enforcement Program of the Citarum Task Force

In the implementation of the Presidential Regulation Number 15 of 2018 on the Acceleration of Pollution Control and Damage to the Citarum Watershed, the central and regional governments launched the Citarum Harum program with a seven-year target. The commander of the Governor of West Java's task force leads the program. The commander deputy of the task force is the commander of Regional Military Command III Siliwangi, and the chief of West Java Regional police. The strategy carried out by the Siliwangi Military District Commander was to "declare war" on the damage of Citarum with 1.700 soldiers. The flow of Citarum river is divided into 22 sectors. A colonel leads each sector. Communication was developed among various parties, including institutions/ministries, academics, students, communities, scholars, cultural figures, media, and activists. The involvement of the army in the Citarum River revitalization program is the fulfillment of the military operations duties.

The task force commander also formed a task force⁶² consisting of various agencies, in both levels of province and district/city to accelerate the control of the Citarum watershed pollution. The task force conducts various programs consisting of managements of critical land, domestic wastewater, sewage, industrial waste, livestock waste, floating nets, water resources, tourism, space utilization control, law enforcement, education, community empowerment, data, information and public relations, and research and development.

One of the task forces is the law enforcement task force. The special criminal director of the West Java Regional police leads the task force. It also comprises of the police, the provincial/regency/city environment office, the provincial/regency/city civil police unit and the prosecutor office in charge of running programs in the field of law enforcement.

Based on the background study document revision of the Citarum Watershed 2021-2025, the outline of the problem is the lack of optimal cooperation between the government, law enforcement, and the public to follow up cases of pollution and environmental damage.⁶³ Supervision through the role and function of the environmental supervisory officer is also less than optimal. There is a lack of information openness and public participation. To overcome these problems, the Citarum Task Force formulated law enforcement programs including increasing

⁶² The Working Group (*Kelompok Kerja-Pokja*) coordinates and implements law enforcement programs in Citarum.

⁶³ Citarum Task Force, "Revised Action Plan for Pollution Control and Damage of Citarum Watershed, Action Plan - 2021-2025."

criminal and civil law enforcement efforts against business actors/activities that cause violations, efforts to improve administrative law enforcement through complaints management, data and information development, and coaching and strengthening surveillance capacity. In turn, it can increase surveillance of businesses and activities.⁶⁴

Table 1.1 Programs, Indicators/Target Outcomes, and Indications of Citarum Task Force on Action Plan Activities⁶⁵

Law Enforcement Program /Directive	Indicator/Target Outcome in 2025	Indications of Activity
1. Increase Criminal and Civil Law Enforcement efforts for business actors/activities that cause violations.	Number of civil and criminal cases to handle: 29.	Criminal Law enforcement 1. Investigation and Examination activities. 2. Pre-prosecution, prosecution, and execution. 3. Investigation, title of investigation, and submission of case file Civil Law enforcement through verification, mediation, evaluation.
2. Improve administrative law enforcement efforts through complaint management, data, and information development, and coaching in and strengthening of supervisory capacity.	Number of administrative sanctions issued: 105 cases.	Administrative Law enforcement 1. Management and resolution of complaints. 2. Organization of administrative sanctions against business actors who do not comply with environmental regulations.

⁶⁴ Citarum Task Force. See also Governor of West Java Regulation Number 37 Of 2021 concerning Amendment to Governor of West Java Regulation Number 28 of 2019 concerning Action Plan for Control of Pollution and Damage to the Citarum River Flows For 2019-2025.

⁶⁵ Citarum Task Force.

		<ul style="list-style-type: none"> 3. Inventory and identification of unauthorized businesses/activities that do not meet the technical requirements of environmental damage control. 4. Data and information development. 5. Socialization, coaching, and strengthening of supervision, and law enforcement capacity.
<ul style="list-style-type: none"> 3. Increase surveillance efforts on business/activities. 	<p>Number of regular surveillance/complaints: 455 cases.</p>	<p>Supervision of businesses/activities</p> <ul style="list-style-type: none"> 1. Community based supervision 2. Supervision of business and/or activities that affect the environment, environmental management and protection permit issued by the district/city government. 3. Operationalization of environmental supervisory officer (<i>Pengawasan Pembangunan Lingkungan Hidup-PPLH</i>) and civil servant supervisor (<i>Penyidik Pegawai Negeri Sipil-PPNS</i>).

The law enforcement program is implemented through criminal, administrative, and civil laws, as well as business supervision and activities. In the process, the program targets some outcomes. It must handle up to 455 regular supervision/complaint, 29 civil and criminal cases, and must issue up to 105

administrative sanctions each year.⁶⁶ This program is prioritized for industries or companies that dump their waste into the Citarum River directly; or without first conducting a screening process; and do not comply with environmental protection and management obligations. The law enforcement process began with complaints from both the community and the findings of the West Java Provincial law enforcement task force.

It will be followed up by the Citarum Task Force that check the field and sampling waste. After that, the judicial team will conduct a review whether a case constituted a criminal act. If a case is considered a criminal offense, it is transferred to the West Java police, while administrative violations are handled by the environment office at the levels of province or regency/city. Law enforcement efforts need to be developed for other scopes besides industry, including controlling the utilization of space.⁶⁷

Many companies operated around the Citarum River are subjects to administrative sanctions. Based on data from the Law enforcement task force submitted to the Citarum law enforcement committee on September 22, 2021, and the Recapitulation of Annual Work Plan Citarum Watershed 2022, Administrative sanctions between 2019 and 2022 are summarized in the following table.

Table 1.2 Administrative Sanctions 2019-2022

Recapitulation of Companies with Administrative Sanctions in Citarum Watershed						
No	City/Regency	2019	2020	2021	2022	SUM
1	Sumedang Regency	1	4	0	0	5
2	Purwakarta Regency	4	2	0	5	11
3	Cimahi City	13	23	1	6	54
4	Karawang Regency	4	4	1	0	9
5	Bandung City	6	0	0	12	18
6	West Bandung Regency	9	3	1	0	13

⁶⁶ Citarum Task Force, "Revised Action Plan for Pollution Control and Damage of Citarum Watershed Action Plan - 2021-2025."

⁶⁷ Citarum Task Force.

7	Bandung Regency	0	22	1	27	50
8	Cianjur Regency	2	5	0	14	21
9	Bekasi Regency	0	0	0	0	0
10	Garut Regency	0	0	0	0	0
11	Sukabumi Regency	0	0	0	0	0
12	Subang Regency	0	0	1	0	1
13	Bogor Regency	0	11	0	0	11
14	Ministry of Environment	20	20	1	0	41
15	Environmental Office of West Java	1	2	2	0	5
Total		60	96	8	64	228

However, while the regent/mayor applies administrative sanctions, there are no instructions to report the results of implementation to the governor. It resulted in difficulties for the Environment Office of West Java Province to detect the effectiveness of the administrative sanctions. Therefore, there should be regional cooperation to track the effectiveness of the administrative sanctions.

Considering the sources of pollution, law enforcement programs cannot rely solely on handling cases that are the target of the law enforcement task force. Based on the smart enforcement approach, compliance efforts play an important role in achieving law enforcement. Scholz developed a targeted strategy that provides the law enforcement authority a choice between a deterrence-based and a collaborative enforcement style based on an entity's initial behavior.⁶⁸ At the outset, the entity will signal either cooperation or defection and, based on that, be treated with a cooperative or a deterrence-based enforcement style. Harrington modeled the targeting strategy. It shows law enforcement agencies' ability to improve compliance by categorizing companies into different groups based on their compliance performance in previous periods. Enforcement for the group that signals "good" behavior in the first period can be based on cooperation, while those in the "bad" group can face a more deterrence-based and, therefore, tougher approach.⁶⁹

⁶⁸ Blanc, Florentin and Michael Faure, "Smart Enforcement: Theory and Practice," *European Journal of Law Reform* 20, no. 4 (2018): 84, <https://doi.org/10.5553/EJLR/138723702018020004004>.

⁶⁹ Florentin Blanc and Michael Faure, "Smart Enforcement: Theory and Practice," 79.

To improve existing policies and programs in resolving pollution in the Citarum River, West Java Government has adopted a model used in other countries called the Penta-Helix concept. The concept involves the central or local governments, academics, business actors, the media, and the community to make changes together.⁷⁰ To tackle MSMEs pollution, cooperation between the government, communities, and business actors is required since most of them do not have to acquire environmental permits. The government, in this case, the task force of waste Industry supervises and coaches business⁷¹ actors seeking the target of the industrial waste handling program⁷², the construction of all industrial activities in Citarum. Meanwhile, the community monitors business actors who have the potential to commit environmental violations and takes action to make them stop.⁷³

In terms of livestock, agriculture, and fisheries, cooperation between governments, academicians, and communities has a positive impact on waste reduction. The government plays a role in drafting strong regulations, preparing good waste governance, creating incentives for those who obey, and establishing communal wastewater disposal plants and landfill sites. Academicians with research assist communities and governments in waste and waste management. Communities contribute directly to reducing waste by adhering to good waste practices and/or waste management.⁷⁴

Through a combination of various law enforcement approaches and the cooperation of academicians, communities, business actors, media, and the military, the Citarum Harum program gradually began to show results. In 2021, the better Water Quality Index for the Citarum River started to show an improvement. Several projects to build communal wastewater disposal plants and waste management sites have begun. Public and media surveillance increased; and news traffic about the Citarum River is quite high, making business actors more careful in carrying out their business.⁷⁵ It was not on purpose to use smart enforcement in Citarum River but the improvement began to show results. However, the law enforcement is only effective to industries with permits. The MSMEs pollution,

⁷⁰ Engkus (et.al.), "Pentahelix Perspective: The Pollution Control of the River Watershed (DAS) Citarum Indonesia," accessed on January 28, 2022, <https://sciendo.com/chapter/9788366675827/10.2478/9788366675827-035>.

⁷¹ Neneng Zakiah and Yogi Suprayogi, "Strategi Tata Kelola," 64.

⁷² Yusa Djujandi and Dhuwi Hendradjaja, "Military Operation Other Than War," 2128.

⁷³ Andri Gunawan Wibisana, "Instrumen Ekonomi, Command and Control, dan Instrumen Lainnya: Kawan atau Lawan," *Jurnal Bina Hukum Lingkungan* 4, no. 1 (2019): 192-193, <https://doi.org/10.24970/bhl.v4i1.104>.

⁷⁴ Eki Baihaki, "Citarum Harum dan Pentahelix yang Memudar," accessed on July 29, 2022, <https://regional.kompas.com/read/2022/07/29/12202981/citarum-harum-dan-pentahelix-yang-memudar?page=all>.

⁷⁵ Citarum Harum Juara, "Ridwan Kamil, Kesadaran Masyarakat Menjaga Lingkungan Citarum Semakin Tinggi," last modified January 27, 2021, <https://citarumharum.jabarprov.go.id/ridwan-kamil-kesadaran-masyarakat-menjaga-lingkungan-citarum-semakin-tinggi/>.

which relatively has a higher probability of violating environmental regulation, is still difficult to resolve.

Therefore, if smart enforcement is initiated from the beginning and supported by adequate human and financial resources, it can increase the effectiveness and efficiency of law enforcement and compliance in the management of Citarum River.

E. Conclusion

Environmental law enforcement in the Citarum River provides various challenges to be completed. The West Java Government has yet to determine the law enforcement approach as the guideline. In the process, the West Java Government has made collaborative efforts with various elements. It also involves the Central Government and other Regional Governments, academics, business actors, the media, and the related communities. Despite the collaboration, the Government also made another effort by forming a law enforcement task force. The task force is assigned annual targets in law enforcement efforts. The task force is also focused on law enforcement on pollution in the industrial sector. There have been 455 regular monitoring/complaint cases, 29 civil and criminal cases, and 105 administrative sanctions so far.

Consequently, the Government has unknowingly shown some strategies to adopt the approach of smart enforcement. They are targets in law enforcement, specific categories of supervised entities, potential or confirmed violations, and collaboration in the implementation. To this point, the task force has achieved some results in reducing pollution in the Citarum River. Despite the achievement, the efforts can be maximized to higher levels.

Therefore, this study concludes that law enforcement on the Citarum River has yet to use the smart enforcement approach as a planned strategy. Nonetheless, in practice, the Government has set targets for law enforcement based on contribution to pollution. In the Citarum case, the target of law enforcement is focused on large industries that are required to do the EIA. In the future, law enforcement can be more effective and efficient. The government should plan law enforcement using the Smart Enforcement strategy to achieve this purpose. It will provide more precise direction to officers in enforcing the law on the Citarum River management.

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