



Badung's Environment and Cleanliness Agency Law Enforcement Competency Certification Procedure: A Comparative Study with The Department of Environment in Australia

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Abstract

This research aims to develop quality human resources in the Environment and Cleanliness Agency of Badung Regency. The research also compares the Badung Environment and Cleanliness Agency workforce with the Environment Agency officers in Australia. As a law country, Indonesia requires support from various stakeholders, especially law enforcement officials. The definition of law enforcement officers in a narrow sense is the police, prosecutors, and judges, while in a broad sense it is defined by all officers in law enforcement institutions who have the authority to inspect, supervise or enforce laws. The holistic quality of law enforcement officers will build an ideal work ecosystem. In the current condition, many of them are involved in criminal actions such as corruption thus, they do not receive trust from the public. In addition, they are also considered less swift in supervising the community's actions. That is because of the economic welfare, lack of education, and lack of workers at work. The legal research method used is normative, using a comparative approach and a statutory approach. Nowadays, Badung Regency conditions currently have many lodgings in Bali, Hence the challenge for the Badung Regency Environment and Cleanliness Agency to supervise the construction of the lodging place. The research findings show a challenge in the unequal quantity between officers in the field of supervision who have obtained certificates of competence at the Badung Regency Environment and Cleanliness Agency and the construction of thousands of hotels there. The total shortage of workers at the Badung Regency Environment and Cleanliness Agency is 12 (twelve) workers. While In Australia has sufficient labor and equal pay, especially in the environment department.



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A. Introduction

Indonesia is implementing State of Law, in accordance with the mandate in article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia that refers to

all the state officials and every citizen should obey the rules of law that are currently in force.¹ There are two legal system in the world, principally the doctrine of *rechtsstaat* and the concept of rule of law.²

The concept of *rechtsstaat* define law as a part of State structure.³ It doctrine also imply codified law refer to European continental (civil law system). The rule of law (common law system) is a legal system that used Jurisprudence as the main source.⁴

According to Article 28 I paragraph (5) of the 1945 Constitution of the Republic of Indonesia confirms that Indonesia is a democratic country of law.⁵ Indonesia has combined the concept of *rechtstaat* and the concept of rule of law. ⁶Establishing a code of ethics / professional code is a State of law implementation. ⁷ Environmental define by Fulton that as an expression of normative or in other words *das sollen* to pertain environment.⁸ Besides that, law enforcement is all the process regarding to the function of norms as a guideline to behave in the society.⁹ the relation between environmental

law and law enforcement is the environment law as a norm it needs the law enforcement as the implementation of it's law. To make it happen environmental officers as one of the factor that support the law enforcement of environment law. The roles of the environment officer are monitoring and evaluating the legal permission of the construction the building. They play a part in maintaining sustainable development, with that important role they need the competency certificate to strengthen their skills.

According to the Minister of the Environment Regulation No.P55/MENLHK/SETJEN/KUM.1/11/2017 Article 1 number 11 on Standards and Competency Test for the Functional Positions of an Environmental Supervisors "Competency Test is a process of assessment both technical and nontechnical through the collection of relevant evidence to determine a person competent or incompetent in a particular competency unit." Law enforcement competency certification programs are important to obtain excellent competent environment officers. Nowadays there are lack of certified worker in the environmental and cleanliness agency in Badung, If we compared to the number of hotels in Bali it is beyond capacity of it workers. Retired employees are one of the obstruct their working process as the new employee has not been certified yet. The purpose of this study is for reflection materials to improve the quality and quality of employees at DLHK Badung regency. The systematics of this paper will discuss the procedure for certifying the competence of DLHK law enforcement in Badung Regency, the National Law that regulates and also the implementing rules, appropriate Provincial Regulations, related Regency/City Regulations. the research also compare with the Australian Department of the Environment, identify the factors that cause of non-running the certification process, legal factors, and non-legal factors.

Competency certification as the main supporting supervision of environmental documents, especially for Environmental Impact Analysis or Environmental Impact Assessment (EIA). EIA is the process that includes information and guidelines for human activity, for

- 1 The 1945 Constitution of the Republic of Indonesia.
- 2 Akmal, Diya Ul. "Indonesian State of Law Is an Aspired Concept," *Nurani Hukum* 4, no. 1 (June 2021): 77.
- 3 Krygier, Martin. "Rule of Law and Rechtsstaat," *Encyclopedia of Toxicology* 50, (December 2014): 782.
- 4 Rokilah. "Dinamika Negara Hukum Indonesia: Antara Rechtsstaat Dan Rule Of Law," *Nurani Hukum* 2, no. 1 (May 2020): 12.
- 5 The 1945 Constitution of the Republic of Indonesia.
- 6 Widayati. "Penegakan Hukum Dalam Negara Hukum Indonesia Yang demokratis" (2018): 511–523.
- 7 Khakim Mufti. "Penegakan Hukum dan Implementasi Pasal 27 Ayat (1) Undang-Undang Dasar 1945 tentang Persamaan Kedudukan di Hadapan Hukum" *Proceeding Conference National Citizenship III* November 11, 2017, no. November (2017): 353–357.
- 8 Rahmadi Takdir "Hukum Lingkungan di Indonesia" (2015)
- 9 Rozi, Fachrul. "Penegakkan Hukum Lingkungan Hidup Ditinjau Dari Sisi Perdata Dan Pidana Berdasarkan Undang-Undang No. 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup" 1, no. 32 (2018): 34–54.

example hotel development which has an impact on a sustainable environment.¹⁰ According to Article 1 number 11 of the Law of the Republic Indonesia Number 32 of 2009 about Environmental Protection and Management give clear definition of Environmental Impact Analysis is a study of the important impacts of a business and/or planned activity on the environmental that necessary for the decision making process regarding the implementation of the business and/ or activities. The EIA terminology also stated on the Article 22 number 11 Law Number 6 of 2023 about the Stipulation Of Government Regulation In Lieu Of Law Number 2 Of 2022 Concerning Job Creation Into A Law, EIA means assessment of the essential impact on the Environment of a planned business and/or activity and contained in the Business Permit or approval of the Central Government or Regional Government.

B. Methods

Khotari argues that methods are all methods used in conducting research or in other words all the techniques used by researchers during the study of issues in the study.¹¹ In order to find solutions to legal issues in a legal research in general, it is divided into two types of research methods, the first is the normative / doctrinal type of research and the second is the empirical / sociological type of research.¹² The type of legal research used is a type of normative legal research, by taking the problem of the existence of a vacuum or at least a blurring of norms in environmental law.¹³

According to the Galilean-Newtonian Concept explains that in this universe nothing is eternal, change is a necessity derived from

the principle of random cause and effect. A science will always shift over time so that no theory is finite, finished dynamic is called the concept of state of the art. the concept will be implemented in this research.¹⁴

Previous Studies

In this study, we will discuss how important the State Civil Apparatus certification test is to the quality of the environmental document permit produced.

Karawoi, Yakin and Sumadi (2017)

With the title that has been translated to English "*Environmental Impact Assessment (AMDAL) as an Instrument for Preventing Environmental Pollution and Destruction*". The research result is the development of environmental (EIA) documents from delivery to issuance of permits. Then it is also necessary to improve the capabilities of environmental officers such as periodic supervision and evaluation.¹⁵

Herlina, Nina and Supriyatin, Ukilah (2021)

The title of this previous studies is "AMDAL as an instrument for controlling impacts in sustainable and environmentally sound development" that the title has been translate to English. the research result is environmental impact analysis functions as an early warning system because it is the basis for the environmental management system, preventive instruments, references and suggestions on a development.¹⁶

C. Results and Discussion

Badung Regency nowadays has increasingly every year, according to BPS bali data the total hotel in Badung Area in 2020 is 289 hotels, In 2021 there are 308 hotels and In

10 Monaco, Sophie. "Environmental Impact Assessment: Insights from across the Country." *Environmental Management: Issues and Concerns in Developing Countries*, April (2019): 253–283.

11 Efendi A'an, Susanti, Ochtorina and Indra, Tektona. *Penelitian Hukum Doktrinal* (Yogyakarta: LaksBang JustiTia, 2019) : 21.

12 Sonata, D.L., "Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Meneliti Hukum" *Fiat Justitia Journal Science Law*, (2014): 25.

13 Padmawati Tari. "Konsekuensi Status Kenegaraan Afganistan Di Bawah Penguasaan Taliban Dalam Perspektif Hukum Internasional" 2022.

14 Suteki and Taufan Galang. *Metodologi Penelitian Hukum (filosofi, Teori and Praktek)*. Depok: Rahawali Press, (2018) : 4-5

15 Karawoi, Yakin dan Sumadi. "Analisis Mengenai Dampak Lingkungan (AMDAL) Sebagai Instrumen Pencegahan Pencemaran Dan Perusakan Lingkungan." *Badamai Law Journal* (2017).

16 Herlina, Nina, and Ukilah Supriyatin. "AMDAL Sebagai Instrumen Pengendalian Dampak Lingkungan Dalam Pembangunan Berkelanjutan Dan Berwawasan Lingkungan." *Jurnal Ilmiah Galuh Justisi* 9, no. 2 (2021): 204.

2022 it increase into 380 Hotels.¹⁷ This means that the infrastructure must on the same track with the number of environmental officer. Unfortunately the lack number of environmental officer made it improper compare to the number of the hotels in Badung.

National Law Regulating and Also Its Implementing Rules

Indonesia National Law has been ruled that state civil apparatus employee competency development is the basis for granting competency certification for their positions (Article 12 of the State Administrative Institutions Law Number 5 In 2018 about the Development of State Civil Apparatus Employees Competencies). The meaning of it rules is the civil officers need the competency development as one of their requirements to get their position in the governmental work.

a. Bali's Provincial Rules

The supporting rules of civil officer clearly stated any person and/ or entity shall not prepare an environmental impact assessment without having a certificate of competence of the environmental impact assessment compiler (Article 46 letter h Bali Provincial Regulation Number 1 of 2017 On Environmental Protection and Management). As refer to it law, the public service for Bali government obligations to have capacity in making several environmental documents like environmental impact assessment. To fulfill their capacities, it's important for them to had certificate of competence as main essential part to their job. The rule itself also intended the public service could responsible for some situations when they proceed EIA document.

b. Badung Regency Regulation

The compiler of the EIA as referred to in Article 21 clause (1) and Article 22 must have a certificate of competence of the EIA compiler (Article 23 clause (1) of Badung Regency Regional Regulation Number 23 of 2013 concerning Environmental Protection and Management). This rule determine the

Badung environmental officer should had competency certification before they had duty on environmental impact assessment.

The next following rules regulated that the criteria for obtaining a certificate of competence for EIA compilers as referred to in paragraph (1) include: a. mastery of the methodology for the preparation of the EIA; b. ability to conduct scoping, forecasting, and impact evaluation and decision-making; and c. Ability to develop management and monitoring plans

Environment. (Article 23 clause (2) of Badung Regency Regional Regulation Number 23 of 2013 about Environmental Protection and Management).

The upcoming rules (1) the Regent shall establish an EIA Assessment Commission in charge of assessing the EIA Document. (2) the EIA Appraisal Commission must have a license from the Regent in accordance with its authority. (Article 24 clause (1) and (2) of Badung Regency Regional Regulation Number 23 of 2013 about Environmental Protection and Management). The Badung's Regent has authority to create the appraisal commission for EIA audit. the commission has responsibility to do their job as the receive license from the Regent.

The membership of the EIA Assessment Commission as referred to in Article 24 consists of representatives from the following elements: a. Environmental agencies; b. relevant technical agencies; c. experts in the field of knowledge related to the type of business and/or activity being studied; d. experts in the field of knowledge related to the impact arising from a business and/or activity being studied; e. representatives of potentially affected communities; f. Environmental organizations. (the Article 25 clause (1) of Badung Regency Regional Regulation Number 23 of 2013 about Environmental Protection and Management). This article refers to criteria of commission to be able to audit the EIA documents.

The duties of commission itself are helped by some qualification worker as regulated below (2) In carrying out its duties, the EIA Assessment Commission is assisted by a technical team consisting of Independent

17 Badan Pusat Statistik Provinsi Bali " Banyaknya Hotel Bintang Menurut Kelas dan Kabupaten/Kota di Provinsi Bali 2020-2022. "https://bali.bps.go.id/indicator/16/222/1/jumlah-hotel-bintang.html (Accessed February, 2 2023)

Experts who conduct technical studies and a secretariat established for it. (3) The Regent shall appoint an Independent Expert and a secretariat as referred to in paragraph (2). the Article 25 clause (2) and (3) of Badung Regency Regional Regulation Number 23 of 2013 about Environmental Protection and Management). This third clause stated that Regents that will be determinate the Independent Expert and the secretariat.

Competency certification procedure for Environment And Cleanliness Agency Law Enforcement for Badung Regency

The national regulation has regulate the competency certification procedure of environment and cleanliness agency law enforcement valid throughout Indonesia territory including Badung Regency. According to PERMEN LHK No.P.55 of 2017 concerning Standards and Competency Testing Functional Position of Environmental Supervisor. the regulation has been determine " The level of functional position of environmental supervisor skill level as referred to in paragraph (1) includes a. Functional Position of Environmental Supervisor first expert; b. Functional Position of Environmental Supervisor young expert; and c. Functional Position of Environmental Supervisor". associate expert. The rule has divided the position level for the environmental agency into (first expert, young expert and associate expert) for the functional position. (the p letter article 4 paragraph (2)).

Furthermore, the Competency Test Procedure is regulated as follows (1) Prospective Competency Test participants who come from work units a. center that has met the requirements as referred to in Article 9, is proposed by the head of the prospective participant's work unit to the Secretary of the Directorate General. This means that the candidates must has recommendation letter from the head department of environment. the next clause (2) regulates that The Secretary of the Directorate General as referred to in paragraph (1), verifies the proposal of the competency test participants. the rule means the next step after the Head of department

send the name of potential candidate to receive the certification. the Clause (3) refer the results of the verification as referred to in paragraph (2), submitted to the Head of the Bureau of Personnel and Organizations as the basis for determining prospective participants in the competency test. the next clause (4) The determination of prospective competency test participants as referred to in paragraph (3), shall be submitted to the Board. Center for Human Resource Development Planning to conduct a Competency Test (Article 10). the brief explanation about Article 10 is the process to assigned the prospective worker to had competency certification.

The next step is the competency test participant candidates who have fulfilled the requirements will occupy the first and young expert Environmental Supervisory Functional Position and the intermediate expert Environmental Supervisory Functional Position verified by the head of the work unit. Subsequently determined as competency test participants by the Bureau of Personnel and Organizations of the Ministry of Environment and Forestry (Article 11). The following phase they will tested for the competency (Article 12). the duration of Implementation the Environmental Supervisor Competency Test two times in a one year for every level of office (Article 13). the duties of Assessor competency are compiled test materials; conducting tests; and process and recommend test results. (Article 15 Clause (2)). The method that shall be used are portfolio verification; written test; oral tests; interviews; and/or simulation/demonstration. (Article 15 Clause (3)).

The Impact on the community of the environment officer enforcement certification policy is firstly, environmental law enforcement officers who already have a certificate of competence could provide the best service to the community with their special expertise. Their virtuosity for instance monitoring water quality index, air quality index, land cover index. Secondly, the law environmental officers could provide utmost legal protection to the community. They conducting analysis of pollution prevention and environmental damage, Assess and implement of EIA technical

controls, organizing environmental quality monitoring and restoration to preserving environmental functions. With those obligation the law environmental officers in Badung Regency had a crucial roleplay for the society to ensure the Legal certainty.

Major contributing factors behind ineffective certification process

In essence, Good Governance is a principle that has characteristics that will be discussed as follows participatory, oriented, consensus, accountable, transparent, responsive, effective and efficient, fair and inclusive and follows the rule of law.¹⁸ a level of formal education, expertise and qualified skills for an employee will certainly bring in adequate compensation. The factors supporting the work certification of the state civil apparatus according to Payaman's point of view that work motivation, education level, accumulated exercise, work experience, work ethic, mental attitude and physical fitness.¹⁹ Meanwhile, the inhibiting factors that affect the non-running of the competency test certification process can be divided into two, namely legal and non-legal factors.

Legal Factors (Empty Norms)

In general, the definition of a legal vacuum is spelled out as follows, according to the Dictionary legal law is interpreted as a law. The book *De Jure Belliac Pacis* (1625) by Grotius that the law is the regulation of moral deeds that guarantees justice. Van Vollenhoven in "*Het Adatrecht van Ned Indie*" reveals that "the law is a symptom in the constant turbulent association of life in a state of bumping and hitting incessantly with other symptoms."

Emptiness or vacuum, according to the Big Indonesian Dictionary, "emptiness is the matter (state, nature and so on) of emptiness or emptiness," which in the legal dictionary is defined by vacuum which is translated or interpreted the same as "empty or empty"

18 Sheng, Yap "What is Good Governance?" <https://www.unescap.org/sites/default/files/good-governance.pdf> (Accessed February 2, 2023).

19 Londong, Christine. Saerang, David. Cholery, Rosalina. "Faktor-Faktor Yang Mempengaruhi Kinerja Pegawai Negeri Sipil Kota Manado" 5, No. 3 (2020): 248–253.

From this explanation, narrowly "legal vacuum" can be interpreted as "a state of emptiness or absence of legislation (the law that regulates (certain) order in society, " So that the legal vacuum in positive law is more accurately said to be "the vacuum of legislation or legislation."²⁰ In this study, there is an empty norm, namely the minimum regulation of work experience from a state civil servant in a government agency. This is crucial in the competency test. In addition, the norm that needs to be regulated is the minimum number of workers in a government department.

Income Factors as Non-Legal Factor

It is universally that the performance of an organization will largely depend on the individual performance of its employees. Meanwhile, individual performance in organizations results from a combination of efforts accompanied by motivation with the abilities, skills, and experiences of the person concerned (Gibson, et al, 2008). Therefore, to improve the individual performance of local government officials, it can be done, among others, by increasing motivation, enthusiasm and enthusiasm for work.

It is undeniable that one of the main motivations for a person to become a Civil Servant is to get decent and adequate compensation in the form of salaries, benefits, incentives, and other financial rewards to meet the needs and welfare of his life and family.

How important is decent and adequate compensation for Civil Servants that the government continues to strive to improve the Civil Service compensation system periodically. Law Number 43 of 1999 concerning Amendments to Law Number 8 of 1974 concerning the Principles of Personnel, in article 7 mandates: (1) Every Civil Servant (Public Service member, Military member, Indonesian Police member) is entitled to receive a fair and decent salary in accordance with the burden of work and his responsibilities; (2) Salary received by Civil Servants must be able to spur productivity and guarantee its well-being.

In Law Number 5 of 2014 concerning
20 Nasir, Gamal Abdul. "Kekosongan Hukum & Percepatan Perkembangan Masyarakat." *Journal Law Replies* 5, no. 2 (2017): 172–183.

the State Civil Apparatus it is reaffirmed, that to improve performance and ensure the salary of civil officer. the public services entitled to a fair and decent salary in accordance with their workload, responsibility, and job risks. In addition, civil workers are entitled to social security. The government have to consider the governmental officer salary increase in every year. In addition to salary, the environmental officer also could receive benefits and facilities such as allowances performance allowances and expensive allowances.²¹

The size of the workforce

workers who have passed the competency test certification of the State Civil Apparatus are one of the obstacles to the running of the Environmental Impact Analysis (EIA). According to the results of the Interview that has been attend with Mrs. Andayani that the number of business activities must be in line with the amount of Manpower Supervisor of environmental documents.

According to the conversation, there are three categories in the field of supervision, namely Main Intermediate and Old. In 2020, the number of workers the supervision field was 18 (eighteen) workers. Currently, the environment and cleanliness agency for a Supervision in Badung area is experiencing a shortage of twelve (12) workers seeing the spacious area of Badung regency.

Comparison with Australia's Department of Climate Change, Energy, the Environment and Water

In Australia there is a regulation about public services an agency head must not engage a person who is not an Australian citizen as the Australian Public Services (APS) employee 'unless the agency head considers it appropriate to do so. Basically, APS is non-corporate legal entity that responsible for develop workforce capability and integrity.²²

The discretion to engage a person who is not an Australian citizen is with the relevant agency head. An agency may have policies that limit the circumstances under which a person who is not an Australian citizen can be employed for example only where, as a condition of engagement, an employee must obtain Australian citizenship. (Australia Public Service Act 1999 Subsection 22(8)). The rule has been clarified that only Australia citizenship could be APS. the agency also has authority to limit the non-Australian citizenship, they only could be APS when they already acquire their Australian citizenship.

The next rule ascertains the purpose of an environmental audit is (a) to assess the nature and extent of the risk of harm to human health or the environment from contaminated land, waste, pollution or any activity; and (b) to recommend measures to manage the risk of harm to human health or the environment from contaminated land, waste, pollution or any activity; and (c) to make recommendations to manage the contaminated land, waste, pollution or activity. (Clause (2) of Authorised Version No. 009 Environment Protection Act 2017 No. 51 of 2017, Authorised Version incorporating amendments as at October 1, 2022). This rule has been concerning about the environmental effect e.g., harm the human health, land, waste and air. The audit should be done to prevent those bad effects.

The following rule also manage the legal subject to subsection (4), an environmental auditor must, before conducting an environmental audit, submit a proposed scope of the audit to the Authority together with any supporting documentation in a manner and form approved by the Authority. (Clause (3) of Authorised Version No. 009 Environment Protection Act 2017 No. 51 of 2017, Authorised Version incorporating amendments as at October 1, 2022). This rule means that before the auditor doing their job, they should give warning letter to the hotel management about their arrival. The purpose is to maintain and prepare legal and environmental document to be reviewed by the auditor. If the document is incomplete yet there will be some policy from Australia government.

21 Rempowatu, Syutrika Alden Laloma, And Rully Mambo. "Pengaruh Kesejahteraan Terhadap Kinerja Pegawai Di Inspektorat Daerah Kabupaten Bolaang Mongondow" 4, No. 1 (N.D.): 88–100.

22 Parliament of Australia " The Australian PublicServices", https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook46p/APS, (Accessed, July 21 2023).

The government also regulate the term and conditions as Subsection (3) does not apply if (a) a preliminary risk screen assessment has already been conducted; and (b) the Authority has previously endorsed a proposed scope or previously determined a revised scope of the environmental audit under section 206(2)(b); and (c) the environmental auditor has not proposed amendments to the proposed scope or the revised scope (Clause (4) of Authorised Version No. 009 Environment Protection Act 2017 No. 51 of 2017, Authorised Version incorporating amendments as at October 1, 2022). the rule established that there is exception for some condition such as already conducted and has been previously determine a revised environmental audit.

There is no specific research about the factor that influence performance for the Department of Climate Change, Energy, the Environment and Water Australia Despite of it According to Survey for Australia Public Services respondents about their competencies in formal or informal project management training. The 87.5% of respondents APS project practitioners have a recognized academic qualification and with 35% has achieved university-level qualifications. This means that the competencies relatively high placed on communication, accountability, business alignment, scope and deliverables, change, and project and programmed orientation.²³

D. Conclusion

Positive legal principles to be applicate for the law country need the certain quality standard of law enforcement. This study result every country must have different rules. Indonesia puts environmental documents requiring that there is a need for a competency test of the State Civil Apparatus to be able to supervise and issue a permit. The field of this research are comparing the basic law about environmental officers in Badung regency and Australia. Besides that, the distinguish between the certification process for envi-

ronmental officers in the Badung Regency with Australia, involves the legal factor and non-legal factors.

The measure in Australia's Department of Climate Change, Energy, the Environment and Water standard is that their rules require that to be able to become an APS it is necessary to be an Australian citizen. In addition, another difference is that the APS in Australia has higher competence.

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