

The Idea of Legal Pluralism in Dispute Resolution of Village Head Election in Madura

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ABSTRACT

The purpose of this study is to find a solution to the weakness of the dispute resolution regulation on the results of the village head election, which is considered to have caused ongoing problems due to the existence of a legal vacuum related to the mechanism for fulfilling the rights of the people who are harmed by the determination of the results of the Village Head Election. This research contributes to creating a dispute resolution model for the election of village heads based on local wisdom values in Indonesia. This study uses empirical legal research methods with socio-legal and anthropo-legal approaches. The results of this study reveal that the proposed model, which involves the existence of judicial institutions at the village level that apply informally and are used as a legal tradition of the Madura community, can be a game-changer in resolving disputes over the results of village heads. This method is considered able to resolve Village head election disputes more quickly and peacefully because they are determined by figures who influence the socio-cultural structure of the Madura community. The results of this study can be used as a reference in implementing policies and legal arrangements related to the dispute resolution mechanism for the results of the Village head election, either independently by the village government or by the Pamekasan Regency Government in making Regional Regulations (Perda) related to the settlement of disputes over the results of the Village head election in Pamekasan Regency.

Introduction

The settlement of village head election disputes in the legislation has encountered several serious problems, especially issues related to the mechanism for resolving Village head election disputes. Among others: a) The legislation has not fully explained the mechanism for resolving disputes regarding village head election results. b) There has been no further legal effort when the dispute resolution process is unresolved. c) Simultaneous village head election disputes

will experience obstacles in the resolution process because there is only one regent and mayor, and the dispute will last for a short duration.¹

In terms of state structure, the existence of the Regent and Mayor, who are given the authority to resolve Village head election disputes, also does not place the primary function of the executive branch of power as it should.² This is because legal disputes should be resolved by institutions in the judicial branch of power. This is contrary to the Indonesian state's presidential form and system. The implications of such regulations relate to legal certainty in resolving village head election disputes.³

Apart from the description above, in Pamekasan, several Village head election implementations ended in disputes over Village head election Results, which caused anarchic actions between supporters, and some of them experienced delays in the inauguration of the elected village head. Some of these villages are as in the table below:

Table 1: Village Head Election Results Dispute in Pamekasan

No	Location of Dispute	Location of Dispute	Years
1	Kacok	Palengaan	2017
2	Nyabulu	Proppo	2013
3	Branta Pesisir	Tlanakan	2013
4	Klompang Barat	Pakong	2013

Source: Zaini, Regulation of Village Head Election Results Dispute Resolution in the Concept of Indonesian Legal State, <https://journal.trunojoyo.ac.id/shi/article/view/6380>

Several scientific studies state that village communities have mechanisms for resolving legal disputes by utilising institutions, agencies, and community leaders, such as Bhabinkantibmas, Babinsa, Village Head, and community leaders and religious leaders. The synergy of these institutions dramatically helps the community in finding legal solutions to the problems they experience.⁴ The existence of institutions in the village that function as judicial institutions will be utilised in efforts to resolve disputes over the results of the Village Head Election by involving Bhabinkantibmas, Babinsa, Village Consultative Body (BPD), and

¹ Adhi Putra Satria, "Analisis Penyelesaian Sengketa Pemilihan Kepala Desa Di Indonesia," *Kosmik Hukum* 20, no. 1 (August 19, 2020): 13, <https://doi.org/10.30595/kosmikhukum.v20i1.6991>.

² Ahmadi Abdul Shomad FN, "Penyelesaian Sengketa Hasil Pemilihan Kepala Desa Di Desa Wonorejo Kecamatan Sumbergempol Kabupaten Tulungagung," *Ahkam: Jurnal Hukum Islam* 8, no. 1 (July 1, 2020): 25–44, <https://doi.org/10.21274/ahkam.2020.8.1.25-44>.

³ Deki Azhari, Syamsir Syamsir, and Firmansyah Putra, "Pengaturan Penyelesaian Perselisihan Hasil Pemilihan Kepala Desa Di Indonesia," *Limbago: Journal of Constitutional Law* 2, no. 2 (June 30, 2022): 200–215, <https://doi.org/10.22437/limbago.v2i2.20380>.

⁴ R Mukhlis, Safi, Yulianti, "A Three-Pillar Synergism Reinforcement Model in Judicial Function Policy at Village Level," *Untag Law Review* 2, no. 1 (2017): 19.

community leaders. This idea is intended to present a more humane settlement mechanism based on the legal wisdom of the community.

Meanwhile, the specific objective is to analyse the legal weaknesses in resolving local election disputes from the perspective of statutory regulations. And analyze the existence of local wisdom in resolving legal disputes in village communities by utilising judicial institutions at the village level. With such objectives, the urgency of this research proposal is considered essential to overcome the legal vacuum related to the resolution of village head election disputes so as not to cause anarchic actions in Madura. This research is also expected to be a reference in resolving Village head election disputes based on local wisdom. Until now, no legal instrument has regulated it in detail.

The author realises that research on resolving village head disputes, including Madura, is not new in Indonesia. Many previous studies have reviewed this theme. Earlier studies include First, Research by Safi', Paul Atagamen Aidonojie, Muwaffiq Jufri, and Evis Garunja entitled "Bhag-Rembhag Sabhala'an as a Method of Resolving Religious Conflicts in the Madura Legal Tradition". This study discusses the mechanism of resolving religious-based disputes in Madura with a local wisdom value approach. This study reveals that several informal figures can resolve religious-based disputes and conflicts in Madura. The dispute resolution process emphasises the values of peace and respect for differences. No one is accused of being the guilty party in the dispute resolution process and results.⁵

Second, research by Belachew Getnet Eneyew and Merasha Ayalew entitled "The Role and Challenges of Indigenous Conflict Resolution Mechanism: The Case of Aboled in Borena Woreda, northeast Ethiopia" and published by Heliyon Journal Volume 9 No. 6 in 2023. This research reveals the increasing use of local wisdom-based conflict resolution methods in Ethiopia, commonly called "Aboled". The growing use of Aboled is due to the Ethiopian people's dissatisfaction with the conflict resolution system carried out by state institutions. This Aboled method resolves conflicts by involving relatives, shamans, and religious leaders as essential actors in conflict resolution.⁶

Third, research by Zaini in 2019 entitled "Regulation of Dispute Resolution of Village Head Election Results in the Concept of the Indonesian Legal State". This research also criticises the current village head dispute resolution system, which is considered to have many weaknesses. It proposes ideas about the importance of including Pancasila values in Indonesia's village head dispute resolution system. Zaini believes the current concept of village head dispute

⁵ Safi' et al., *Bhag-Rembhag Sabhala'an as a Method of Resolving Religious Conflicts in the Madura Legal Tradition*, *El-Mashlahah*, vol. 14, 2024, <https://doi.org/10.23971/el-mashlahah.v14i1.7819>.

⁶ Belachew Getnet Eneyew and Merasha Ayalew, "The Role and Challenges of Indigenous Conflict Resolution Mechanism: The Case of Aboled in Borena Woreda, Northeast Ethiopia," *Heliyon* 9, no. 6 (June 2023): e16884, <https://doi.org/10.1016/j.heliyon.2023.e16884>.

resolution tends to favour the dispute resolution team towards the candidates in dispute. This kind of settlement model is certainly not good for democracy at the village level, which should be the spearhead of the development of a democratic system in Indonesia.⁷

The three previous studies above do have similarities, both in terms of resolving village head disputes and in terms of resolving disputes based on local wisdom. However, none of the three studies examined the model of resolving village head disputes based on local wisdom values, especially the local knowledge of the Madurese community. So, the difference in scope and focus of the research is very apparent between the authors and the three previous studies mentioned above. Thus, the novelty of this study is the idea of resolving village head election disputes by applying the values of local wisdom of the Madurese community. This resolution model is considered capable of resolving disputes more quickly and efficiently and does not cause further disputes because the mechanism is resolved amicably and upholds the values of peace.

Method

This study uses an empirical method approach and uses a socio-legal approach.⁸ The use of this approach is because this study seeks to describe the facts related to the practice of resolving village head election disputes and the factors faced so that, in the end, it can explain the concept of an ideal resolution in the region. In addition, the anthropo-legal approach is also used in this study due to the formulation of the dispute resolution pattern for the results of the village head election, which explicitly examines the values of local wisdom of the Madurese community in resolving disputes and conflicts. The primary and secondary data needed in this study are primary and secondary data. Primary data in verbal expressions (words) were obtained from informants/resource persons selected in this study.⁹ The location of this research was the jurisdiction of the High Prosecutor's Office and the Police Jurisdiction. The materials in this study were analyzed using qualitative descriptive and content analysis. Qualitative descriptive data analysis was used to analyse the settlement of village head election disputes based on the local wisdom of the Madurese community.

⁷ Zaini, "Pengaturan Penyelesaian Sengketa Hasil Pemilihan Kepala Desa Dalam Konsep Negara Hukum Indonesia," *Simposium Hukum Indonesia* 1, no. 1 (2019): 217–29, <https://doi.org/https://journal.trunojoyo.ac.id/shi/article/view/6380>.

⁸ Victor Imanuel W. Nalle, "The Relevance of Socio-Legal Studies in Legal Science," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 27, no. 1 (February 15, 2015): 179, <https://doi.org/10.22146/jmh.15905>.

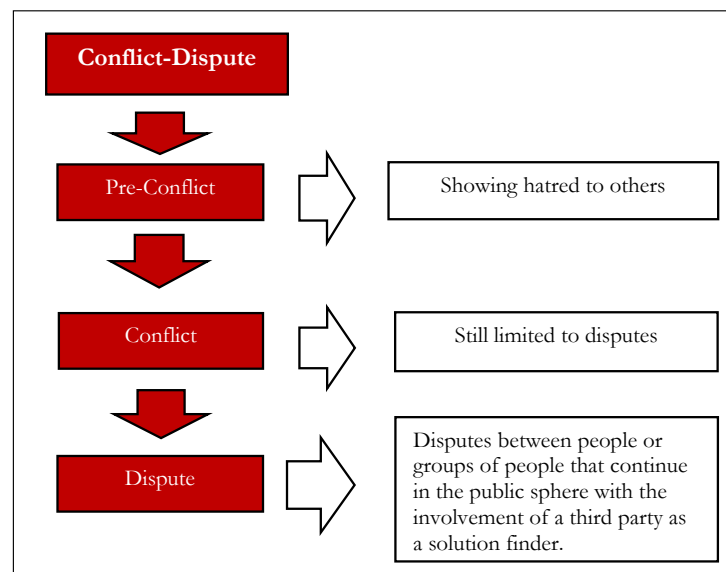
⁹ Jonathan H. Choi, "How to Use Large Language Models for Empirical Legal Research," *Journal of Institutional and Theoretical Economics* 180, no. 2 (2023): 214–43, <https://doi.org/10.1628/jite-2024-0020>.

Discussion

The Urgency of Legal Pluralism in Settling Disputes over Village Head Election Results in Madura

It is usually complicated to distinguish between disputes and conflicts. Therefore, it is essential to convey the opinions of Laura Nader and Harry Todd regarding the stages of disputes consisting of 3 (three) phases, namely the Pre-Conflict phase (grievance/conflict), conflict (conflict), and dispute (dispute). The description of these stages is contained in the figure below:¹⁰

Figure 1: Stages of Dispute



Source: Muwaffiq Jufri, *Metode Penyelesaian Konflik Agama*, 112

The figure description explains that a dispute is a situation in which there is a dispute between people or groups of people. Then, the dispute continues in the public domain by involving a third party as a solution seeker. In other words, a dispute can occur when disputing parties increase the level of their dispute by conveying it to the public or involving a third party in the resolution process.¹¹

So far, no standard definition related to disputes over the results of village head elections is explained by laws and regulations. Even the material of the articles in laws and regulations related to this matter is tough to find. This can be understood if disputes over the results of the village head election have not been fully considered in formulating and preparing village head election legal regulations. To develop this understanding, field research is needed related to Village head election disputes, which is expected to be able to provide a scientific definition of Village head election disputes. The Village Head Election Dispute is

¹⁰ Safi', Muwaffiq Jufri, and Ansori, *Filsafat Hukum; Mengurai Esensi Hukum Berbasis Multi-Prespektif* (Jakarta: Prenada Media, 2023), 79.

¹¹ Muwaffiq Jufri, "Metode Penyelesaian Konflik Agama; Optik Hukum, HAM, Dan Nilai Kearifan Lokal" (2021), 112.

a dispute related to the results of implementing a village head election in the stages of voting, counting, and determining the most votes. The general objects of this dispute are around a) money politics in the implementation of the election, b) the lack of neutrality of the election committee, and c) the existence of vote inflation.

Furthermore, this paper will review the importance of resolving disputes over the election of village heads through local wisdom values that have developed as customary law and still exist in Indonesian society. So, legal pluralism still applies to resolve this dispute.¹² According to John Griffith, Legal Pluralism is used as a response to the understanding of legal centralism, even though the social conditions in a country are very likely to be different. Therefore, the theory of legal pluralism was born with its brilliant idea of recognising the validity of laws, not only those enacted by the state but also the concept of law in society's life.¹³

Legal pluralism is a situation where two or more legal systems apply and work in the same field of social life.¹⁴ Griffith emphasises the existence and interaction of legal systems in society, where there is state law, folk law, and even religious law. The existence of three legal rules that apply simultaneously is defined as legal pluralism.¹⁵

Hooker views legal pluralism as a unique situation when state law recognises the existence of customary law. Hooker divides legal pluralism into three things, including 1) The national legal system is politically powerful because it has authority above customary law; 2) The state legal system is valid because it has the political power to be implemented, but customary law also remains valid as long as it is permitted by state law; 3) Every study of customary law that is carried out must follow the legal classification adopted by the state legal system. The three definitions above can be concluded that legal pluralism is a situation where the state provides space for the recognition of the existence of customary law.¹⁶

That is why, according to I Nyoman Nurjaya, legal pluralism recognises that the community adopts local laws in addition to state law. National law is not the only legal institution in Indonesia; there are still people's legal institutions (local

¹² Mukhlis Mukhlis et al., "The Legal Culture to Prevent Radical Islamism by a Pesantren in Madura," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 1 (June 24, 2024): 58–87, <https://doi.org/10.18860/j-fsh.v16i1.26216>.

¹³ N. D. Masyitoh, "Dilaketika Pluralisme Hukum: Upaya Penyelesaian Masalah Ancaman Keberagamaan Dan Keberagamaan Di Indonesia," *Jurnal Walisongo* 2, no. 24 (2016): 369–70.

¹⁴ Michael W. Dowdle, "Do We Really Need A 'Pluralist Jurisprudence'?", *Transnational Legal Theory* 8, no. 4 (October 2, 2017): 381–90, <https://doi.org/10.1080/20414005.2017.1446416>.

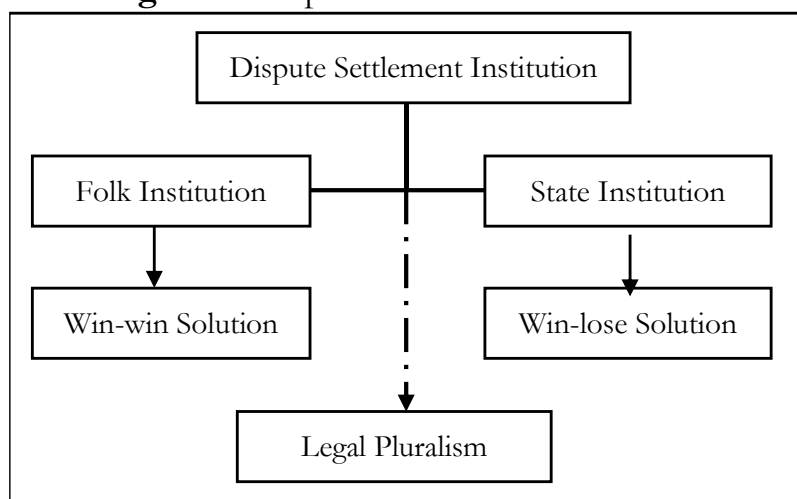
¹⁵ Keebet von Benda-Beckmann and Bertram Turner, "Legal Pluralism, Social Theory, and The State," *The Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (September 2, 2018): 255–74, <https://doi.org/10.1080/07329113.2018.1532674>.

¹⁶ J. H. H. Weiler, "The Political and Legal Culture of European Integration: An Exploratory Essay," *International Journal of Constitutional Law* 9, no. 3–4 (October 1, 2011): 678–94, <https://doi.org/10.1093/icon/mor054>.

laws) that are used to answer various problems that occur in the community, which is the philosophy of life he believes in.¹⁷

The advantages of the existence of customary law or customary law in resolving legal disputes can be seen in the figure below:

Figure 2: Dispute Settlement Institution



Source: I Nyoman Nurjaya, <https://doi.org/10.30742/perspektif.v16i4.86>

Furthermore, the settlement of Village head election disputes is generally charged to the regional head in each district/city holding the Village head election. This is based on the provisions of Article 37 paragraph (6) of Law No. 6 of 2014 concerning Villages (Village Law), which explains that if there is a dispute regarding the results of the Village head election, the settlement is carried out by the regent or mayor with a maximum duration of 30 (thirty) days.

In addition, the provisions of Article 41 of Government Regulation No. 47 of 2015 provide regulations that continue that disputes over Village head election results that arise after the Village head election are held are the responsibility of the regent/mayor to resolve them within a duration of 30 (days). In the explanatory provisions, the limits of the village head election result in disputes that can be resolved by the regent/mayor and are not included in the type of criminal disputes.

These two provisions do not provide clear and detailed regulations relating to the mechanism for resolving disputes over the results of the Village Head Election because both only make the regent/mayor an official who is given the authority to determine the results of the Village Head Election. The decision of the regent/mayor is final, which results in the closure of further legal efforts when the settlement leaves legal losses for each party.

¹⁷ I Nyoman Nurjaya, "Memahami Kedudukan Dan Kapasitas Hukum Adat Dalam Politik Pembangunan Hukum Nasional," *Perspektif* 16, no. 4 (2011): 236, <https://doi.org/10.30742/perspektif.v16i4.86>.

The existence of customary law in efforts to resolve legal disputes in village communities is expected to provide a solution to the legal vacuum of legal regulations related to resolving disputes over the results of the Village Head Election. In general, the existence of Bhabinkantibmas, Babinsa, Village Head, BPD, and community leaders are used as references for community law in determining various legal issues, both legal issues in the fields of government, business, and crime. This institution has existed since the Dutch era with the term *swapraja* court by assigning *dops rechter* as village judges. This village court institution was established based on the March 9, 1935 ordinance, Stb. 1935 No. 102 is still maintained by the Indonesian government with Emergency Law No. 1 of 1951 concerning Temporary Measures to Organize the Unity of the Power Structure and Procedures of Civil Courts. Unfortunately, the existence of this institution was abolished with the enactment of Law Number 14 of 1970 concerning the Main Provisions of Judicial Power.

Dispute Resolution Mechanism for Village Head Election Results from the Perspective of Indonesian Law

As stated at the beginning of this proposal, the existence of customary law in efforts to resolve legal disputes in village communities is expected to provide a solution to the legal vacuum of legal regulations related to resolving disputes over the results of the Village Head Election. In general, the existence of Bhabinkantibmas, Babinsa, the Village Head, BPD, and community leaders is used as legal references for the community in determining various legal issues, including those in government, business, and crime.¹⁸

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Meanwhile, the election of the Village Head, often abbreviated as village head election, is a forum for residents to carry out democratic governance, in this case, in the village. Implementing this Village head election is expected to fulfil

¹⁸ Ray Septianis Kartika, "Concurrent Village Head Election (Pilkades) Disputes (Analysis of Handling Pattern and Dispute Resolution Process in Tapos, Talagasari, and Dukuh Villages of Tangerang Regency)," *Jurnal Bina Praja* 8, no. 2 (November 30, 2016): 253–62, <https://doi.org/10.21787/jbp.08.2016.253-262>.

¹⁹ Arskal Salim, "Adat and Islamic Law in Contemporary Aceh, Indonesia: Unequal Coexistence and Asymmetric Contestation," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (December 25, 2021): 529, <https://doi.org/10.22373/sjhk.v5i2.11082>.

the desires and hopes of the village community to determine a trustworthy leader who can meet the community's needs. As a democratic state of law, the implementation of the election of the Village Head is an essential element that must be regulated by law.

Basically, Law Number 6 of 2014 concerning Villages was formed to protect and empower village communities so that they can create a strong foundation for implementing governance and development towards a just, prosperous, and prosperous village community. In terms of the election of Village Heads, Law Number 6 of 2014 concerning Villages only regulates it briefly so that the election mechanism is further regulated in implementing regulations, namely in Ministry of Home Affairs Number 112 of 2014 concerning the Election of Village Heads.²⁰

However, the content of the Minister of Home Affairs Regulation Number 112 of 2014 concerning the Election of Village Heads is still considered lacking because minimal rules accompany the regulation on the mechanism for electing Village Heads on the mechanism for resolving disputes over the results of the Village Head elections. The minimal regulation on the mechanism for resolving disputes over the results of the Village Head elections is feared to be unable to support the implementation of the democratic party at the most minor regional level. Given the still rampant social tensions that occur in society in every implementation of the Village Head elections, the mechanism for resolving disputes over the results of the Village Head Elections is a necessity that must be regulated in laws and regulations.

As is well known, the Spirit of the Pancasila rule of law, as stated by Satjipto Rahardjo, is that the heart of the idea of the rule of law offered is a state with a conscience or a state that makes its people happy. Oemar Senoadji also added that the Pancasila rule of law has distinctive Indonesian characteristics, where Pancasila is seen as the main basis of law in Indonesia.

The characteristics of the Pancasila rule of law include: 1) Human rights as an essential element of the rule of law by respect for human dignity (human dignity) are emphasised in the balance of protecting the interests of individuals and society; 2) Freedom of religion by the principle of Belief in the One Almighty God is guaranteed by the Constitution. In other words, firmly rejecting anti-religious propaganda and atheism; 3) Responsible freedom of thought and speech (free opinion and free press); 4) In a state of emergency (*staatsnoodrechts*), although human rights can be set aside, the deviation must not exceed what is

²⁰ Dewi Iriani et al., "Perbawaslu Analysis Number 4 Year 2020 Concerning Resolution of Disputes of Regional Head Election in the Pandemic Time Covid-19," in *Proceedings of the 1st International Conference on Education, Humanities, Health and Agriculture, ICEHHA 2021, 3-4 June 2021, Ruteng, Flores, Indonesia* (EAI, 2021), 431–47, <https://doi.org/10.4108/eai.3-6-2021.2310831>.

necessary to deal with extraordinary circumstances. Consequently, the state of emergency must qualify for valid State Administrative Law.²¹

The essential characteristics of the Pancasila Legal State are based on the principle of kinship, deliberation based on customary law, and protection of human rights with the principle of balance between rights and obligations and the function of protective law. In addition, what distinguishes the characteristics of the Pancasila legal state from other legal states can be seen in the uniqueness of the structure of Indonesian society, with the Pancasila state foundation derived from the values that live in the order and structure of Indonesian society.

The concept of recognition and respect for customary law community units and their traditional rights is contained in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which reads, "The state recognises and respects customary law community units and their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law".

The provisions in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia were then realised in Law Number 6 of 2014 concerning Villages. The central concept contained in Law Number 6 of 2014 concerning Villages can be seen in its considerations that, First, Villages have original rights and traditional rights in regulating and managing the interests of the local community and play a role in realising the ideals of independence based on the 1945 Constitution of the Republic of Indonesia, Second, that in the course of the constitutional state of the Republic of Indonesia, Villages have developed in various forms so that they need to be protected and empowered to become firm, advanced, and democratic so that they can create a strong foundation in implementing governance and development towards a just, prosperous and prosperous society.²²

Historically, the village was the forerunner of the formation of legal communities and government in Indonesia long before this unitary state in the form of a republic was formed.²³ Meanwhile, etymologically, the village comes from the Sanskrit language, "deca", which means homeland, land of origin or birthplace. From a geographical perspective, a village is defined as "a group of houses and shops in a country area, smaller than a town."

²¹ Agung Ali Fahmi, Muwaffiq Jufri, and Ansori, "The Implementation of Islamic Value Absorption in Regional Regulations on Districts at Madura," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 15, no. 1 (2020): 157–58, <https://doi.org/http://doi.org/10.19105/al-ihkam.v15i1.2682>.

²² Ilham Yuli Isdiyanto, "Village Sovereignty in Dispute Resolution after Law No 6 of 2014 Concerning Village," *Jurnal Media Hukum* 26, no. 2 (2019), <https://doi.org/10.18196/jmh.20190136>.

²³ Teuku Muttaqin Mansur, Sulaiman Sulaiman, and Hasbi Ali, "Adat Court in Aceh, Indonesia: A Review of Law," *Jurnal Ilmiah Peuradeun* 8, no. 2 (May 30, 2020): 423, <https://doi.org/10.26811/peuradeun.v8i2.443>.

Furthermore, the definition of a Village as contained in Article 1 of Law Number 6 of 2014 concerning Villages, is a village and traditional village or what is called by another name, from now on referred to as a Village, is a legal community unit that has territorial boundaries that are authorised to regulate and manage government affairs, local community interests based on community initiatives, original rights, and/or traditional rights that are recognised and respected in the government system of the Unitary State of the Republic of Indonesia.

Then, the Village government, as regulated in Article 1 of Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages, is the implementation of government affairs and local community interests in the government system of the Unitary State of the Republic of Indonesia. What is meant by the village government itself is the village head or what is called by another name assisted by the village apparatus as an element of the village government organiser. According to Unang Sunardjo, the village head is the organiser and main person responsible for government, development, community, and general government affairs, including fostering peace and order. In addition, the village head also has the task of building the mentality of the village community both in the form of fostering and developing a spirit of development inspired by the principles of joint effort and family.

Meanwhile, according to Ramlan Subakti, the village head is the sole ruler in the village government, implementing and organising village household affairs and, in addition, government affairs. However, he has certain limits in carrying out his duties; he cannot follow his own wishes.²⁴

Furthermore, related to the Village Head election system, as we know, the Village Head election mechanism provisions are regulated in Ministry of Home Affairs Number 67 of 2017 concerning Village Head Elections. The election of Village heads as stated in Article 3, is carried out once or in waves. In the case of wavy village head elections, it is carried out with several considerations, namely: (a) considering the end of the term of office of the Village Head in the Regency/City area; (b) regional financial capacity; and (c) the availability of civil servants in the Regency/City environment who meet the requirements as Village Head officials.²⁵

Furthermore, the Village Head Election is carried out by the Village Head Election Committee, formed by the Village Deliberative Body. The

²⁴ Herry Febriadi, "The Supervisory Performance of Bawaslu Hulu Sungai Utara in The 2019 Election," *International Journal of Law, Environment, and Natural Resources* 1, no. 2 (January 10, 2022): 74–80, <https://doi.org/10.51749/injurlens.v1i2.18>.

²⁵ Sahran Raden, "The Adjudication Function of the Election Supervisory Body (ESB) in Realizing Election Justice," *International Journal Paper Public Review* 2, no. 4 (September 15, 2021): 9–19, <https://doi.org/10.47667/ijppr.v2i4.105>.

implementation of the Village Head election by the election committee is divided into four (four) stages: Preparation, nomination, voting, and Determination. In the preparation and nomination stages, the election committee is tasked with determining voters, determining candidates, and announcing Village Head candidates. After the Village Head candidate announcement process, the Village Head candidate can campaign before the voting process.

As regulated in Article 33, voting is carried out by ballot papers containing the candidate's number, photo, and name or based on the local village community's customs. In addition, the voting method is done by marking one of the candidates on the ballot paper. The concept of voting is the same as the general election concept in Indonesia, namely "one man, one vote."

In the final stage, the Village Head Election Committee submits the results of the Village Head election to the BPD, which is then submitted to the Regent or Mayor through the sub-district head. The results of the Village Head election contain a report on the elected Village Head Candidate, the Candidate who obtained the most votes from the total number of valid votes. Furthermore, the Regent or Mayor determines the ratification and appointment of the Village Head with a Regent or Mayor's decision.

Regarding the mechanism for resolving disputes and disputes over the results of the Village Head election, currently, the applicable law governing Villages is Law Number 6 of 2014 concerning Villages. The mechanism for resolving disputes over the results of the Village Head election is regulated in Article 37 paragraph (6) of Law Number 6 of 2014 concerning Villages as explained above, namely: "In the event of a dispute over the results of the Village Head election, the Regent/Mayor is obliged to resolve the dispute within the period as referred to in paragraph (5)".

Then, Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages regulates the time period for settlement, and the officials authorised to resolve it. This provision is contained in Article 41 paragraph (7), namely: "In the event of a dispute over the results of the Village Head election, the regent/mayor is obliged to resolve the dispute within 30 (thirty) days". From these provisions, the regulation regarding the mechanism for resolving disputes over the results of the Village Head election is limited to which official is authorized and the period for resolving the conflict. So, the process of resolving disputes over the results of the Village Head election has not been accommodated.²⁶

In addition, resolving disputes over the results of the Village Head election, which is submitted to the Regent/Mayor, raises concerns. As a government organiser who a political party can nominate, the role of the Regent/Mayor in

²⁶ Dede Sri Kartini, "Demokrasi Dan Pengawas Pemilu," *Journal of Governance* 2, no. 2 (2017): 146–62, <https://doi.org/10.31506/jog.v2i2.2671>.

resolving disputes over the results of the Village Head election is feared to give rise to interests, namely that the winning candidate is a candidate who has connections with the regent/mayor with the hope of political favours. The power of connections arises from relationships established with influential people, both outside and inside the organisation.²⁷ With the change in institutions that have the authority to resolve disputes over the results of the Village Head election after the enactment of Law No. 6 of 2014, it must guarantee that the village head election dispute can be resolved based on the principles of legal certainty and legal protection.

Settlement of Village Head Election Results Disputes Through Synergy of Judicial Institutions at the Village Level

The idea of strengthening election supervision at the village level, especially related to the settlement of disputes over the results of the Village Head Election, was initially inspired by the history of the legal system in the past which provided regulations on the existence of legal institutions at the village level, which were used as a means of access to justice for the community without being presented with various lengthy and time-consuming judicial procedures. The existence of legal institutions in the village is a community need for the presence of legal institutions and/or courts at the village level so that all legal problems the community faces can be resolved quickly, accurately, and with legal certainty.

Starting from the Dutch East Indies government through its legal policy form of granting authority to village judges (*Drops rechter*) to resolve all legal problems within the village. This regulation was stipulated through Ordinance No. 102, dated March 9, 1935.²⁸ This policy was then maintained by the Government of the Republic of Indonesia, which had only celebrated its independence for a few years, as stated in Emergency Law No. 1 of 1951 (Emergency Law 1951). Article 3a paragraph (1) of the Emergency Law 1951 states that village judges are given the authority to decide all problems within the village.²⁹

Even the village judge's decision can be continued through an appeal mechanism to the district court with very strict provisions, such as the existence of a village judge's decision, which must be considered when deciding the case submitted. This shows that the existence of village judges (*Drops rechter*) has

²⁷ Hendra Setiadi, Mala Sondang Silitonga, and Edy Sutrisno, "The Strategy of The Election Supervisory Agency in The West Java Region in Increasing Community Participatory Supervision," *Dia* 21, no. 01 (June 3, 2023): 109–22, <https://doi.org/10.30996/dia.v21i01.7670>.

²⁸ Herlambang P. Wiratraman, "Adat Court in Indonesia's Judiciary System: A Socio-Legal Inquiry," *Journal of Asian Social Science Research* 4, no. 1 (August 12, 2022): 43–62, <https://doi.org/10.15575/jassr.v4i1.62>.

²⁹ Daniel S. Lev, "The Supreme Court and Adat Inheritance Law in Indonesia," in *Legal Evolution and Political Authority in Indonesia* (Leiden, The Netherlands: Brill | Nijhoff, 2000), 99–118, https://doi.org/10.1163/97890004478701_007.

received legal recognition from the state as part of an effort to create a method for resolving legal disputes among village communities quickly and accurately.³⁰

In addition, the reality in rural areas that is still maintained about the method of resolving legal cases amicably is an intellectual treasure in the field of law that has become a tradition across time and era. This method is then used as a basis for society to resolve all its legal problems. In the study of legal pluralism, the existence of a legal system that has developed in society is generally considered as an inevitability that there are other laws besides favourable laws stipulated by the state. In this study, this legal system is commonly referred to as living law and/or indigenous law.

However, such a legal concept has not been given sufficient space since the enactment of Law No. 14 of 1970, which stipulates that the criteria for judicial institutions are only those directly managed by the state under the auspices of the Supreme Court (MA). Thus, this legal policy has caused autonomous courts and customary courts to lose their function in resolving legal problems at the village level.³¹

Apart from the description above, the rules of election law provide their legal legitimacy in the election supervision process.³² The Election Law mandates Bawaslu to supervise the election process, and supervision at the village level; there is a supervisory institution tasked with overseeing the election at the village level; the institutions in question are the village election supervisory committee and TPS Supervisors who work hierarchically in supervising the election. Unfortunately, the institutional design and election supervision system have several weaknesses, as explained in the previous discussion.³³

As a follow-up to the evaluation of the election supervision, there is an initiative that wants to strengthen the existence of an election dispute resolution institution at the village level, namely by synergising the existence of an election supervisory institution at the village level with a village institution that has a judicial function to resolve all legal issues that occur in the village.³⁴ This method will be useful and contribute to new legal thinking related to the resolution of

³⁰ A. Ubbe, "Peradilan Adat Dan Keadilan Restoratif," *Jurnal Rechtsvinding* 2, no. 2 (2013): 168.

³¹ Jimly Asshiddiqie, "Konstitusionalisme Dalam Pemikiran Soepomo," in *Soepomo Pergulatan Tafsir Negara Integralistik Biografi Intelektual, Pemikiran Hukum Adat, Dan Konstitusionalisme*, 1st ed. (Yogyakarta: Thafa Media, 2015), 75–76.

³² Simon Butt and Fritz Siregar, "Multilayered Oversight: Electoral Administration in Indonesia," *Asian Journal of Comparative Law* 16, no. S1 (December 1, 2021): S121–35, <https://doi.org/10.1017/asjcl.2021.32>.

³³ Uu Nurul Huda, "The Position and Authority of The Election Supervisory Board In Indonesian Constitutional System," *Unifikasi: Jurnal Ilmu Hukum* 6, no. 1 (June 26, 2019): 71, <https://doi.org/10.25134/unifikasi.v6i1.1807>.

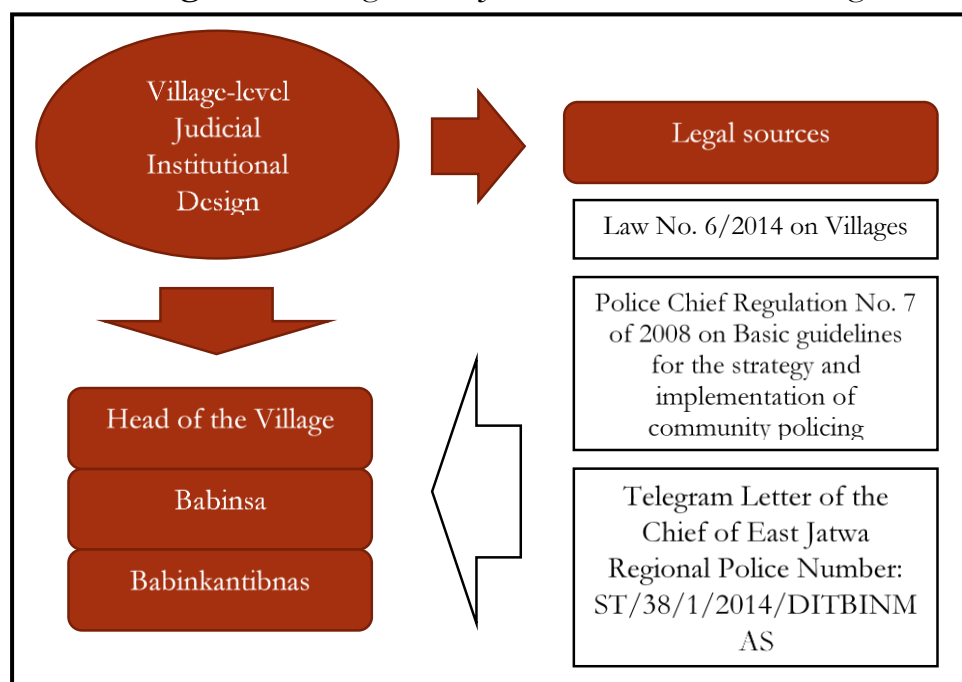
³⁴ Michael Buehler, Ronnie Nataatmadja, and Iqra Anugrah, "Limitations to Subnational Authoritarianism: Indonesian Local Government Head Elections in Comparative Perspective," *Regional & Federal Studies* 31, no. 3 (May 27, 2021): 381–404, <https://doi.org/10.1080/13597566.2021.1918388>.

election law at the village level, primarily related to the legal mechanism associated with resolving disputes over the results of the Village Head Election in Madura.

The existence of an institution in the village that has a judicial function is a follow-up to the mandate of Article 28 of the Village Law, which provides flexibility for the village head in resolving all legal issues within the village.³⁵ This is then supported by the East Java Regional Police Chief's telegram letter Number ST/38/I/2014/DITBINMAS. dated January 8, 2014, concerning Basic Guidelines for Strategy and Implementation of Community Policing in Carrying Out the Duties of the Republic of Indonesia Police, which contains recommendations to optimise Pre-Emitif activities by empowering judicial institutions at the village level in the form of Bhabinkantibmas, Babinsa, Village Heads, and Community Leaders.

The circular referred to above is to optimise the Regulation of the Chief of the Republic of Indonesia Police Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in Carrying Out the Duties of the Republic of Indonesia Police. Thus, the design and/or pattern resulting from the contents of the 2 legal instruments above are as shown in the figure below:

Figure 3: Village-level Judicial Institutional Design



Source: Compiled by researchers based on research results in Madura

Uniquely, in the period around 2013, although the Village Law has not mandated that the judicial institution at the village level handle the legal process

³⁵ Eugenia Brandao Da Silva et al., "A Model of Election Supervision Based on Village Judicial Institutions; A Review of Legal Anthropology in Madura," *Trunojoyo Law Review* 6, no. 1 (February 28, 2024): 96–119, <https://doi.org/10.21107/tlr.v6i1.23230>.

that develops in the village, village communities in several areas in Pamekasan Regency have carried out legal processes to resolve village head election disputes through judicial institutions at the village level. One occurred in Branta Pesisir Village, Larangan District, Pamekasan Regency.

In this case, the issue of the Branta Pesisir Village Head Election results dispute involving the elected village head candidate, Hj. Misbahul Laelah, where the vote-counting process was considered complete fraud. The victory of the elected village head candidate resulted from a counting process that was complete with irregularities. This irregularity was caused by a power outage for 15 minutes before the elected village head candidate's vote acquisition increased and outperformed the other village head candidates. This incident made residents furious, and they held demonstrations in front of the Branta Pesisir village hall and the Pamekasan Regent's Pendopo.

In the end, the Village head election dispute process could be resolved by maximising the existence of judicial institutions at the village level to hold deliberations to find a peaceful, fast resolution process and accommodate the aspirations of the parties who were disappointed by the Village head election dispute in Branta Pesisir Village. However, in the resolution process, the existence of judicial institutions at the village level was assisted by a steering team formed by the Pamekasan Regent.

In addition to the incident in Branta Pesisir Village, the dispute resolution mechanism for the results of the Village Head Election was also implemented in Kacok Village, Palengaan District, Pamekasan Regency in 2017. The dispute over the results of the Village Head Election in Kacok Village arose due to residents' dissatisfaction with the ballot counting system due to the lack of socialisation by the Village Head Election committee regarding the voting mechanism, which was recommended not to be symmetrically punctured. In its implementation, many ballots were symmetrically punctured, thus harming one of the Village head election candidates.

In this case, residents insisted because the counting process was odd because symmetrically punctured votes were declared invalid, whereas, in the provisions of laws and regulations and the Constitutional Court Decision, symmetrically punctured ballots were still valid.³⁶ Residents objected to the non-validation of this ballot counting model and asked the relevant agencies to follow up on this issue immediately. Although marked by several demonstrations at the Kacok Village office, the Pamekasan Regent's Office, and the Pamekasan Regency DPRD Office, this case did not lead to anarchic actions. The mechanism used to resolve the dispute over the results of the Village Head Election was carried out

³⁶ Teisar Arkida and Sumarlam Sumarlam, "Recontextualization of the Constitutional Court's Decision on the Presidential Age Limit in @Kompascom and @TVOneNews," *International Journal of Humanities, Education, and Social Sciences* 2, no. 1 (January 14, 2024): 26–47, <https://doi.org/10.58578/ijhess.v2i1.2493>.

with a judicial synergy approach at the village level and involved community leaders.

The existence of a judicial institution at the village level can overcome all weaknesses in the current election supervision system as a step to optimize institutions in terms of election supervision. It's just that there is not enough clear nomenclature regarding the legal umbrella for this idea. However, if viewed from the perspective of legal pluralism, this supervision mechanism can be justified as the views and/or legal customs of the community related to enforcing election violations.

From the perspective of legal pluralism, the state or legal mechanism that developed in society around the resolution of the Village head election results dispute that occurred in Branta Pesisir Village and Kacok Pamekasan Village emerged as a response to the understanding of legal centralism, even though the social conditions in a country are very likely to be different. Therefore, the theory of legal pluralism was born with its brilliant idea of recognising the validity of laws, not only those enacted by the state but also the concept of law in the life of society.

Legal pluralism is a situation where two or more legal systems apply and work in the same field of social life. Griffith emphasises the existence and interaction of legal systems in a society with state law, folk law, and even religious law. The existence of three legal rules that apply simultaneously is defined as legal pluralism.³⁷ From the perspective of sociological jurisprudence theory, the formalisation of the institutionalisation of judicial institutions at the village level can be done by determining the authority held by the judicial election institution to participate in resolving the implementation of the village head election results dispute that may occur again in the Madura region, especially in Pamekasan Regency.

It is important to emphasise that each region in the Unitary State of the Republic of Indonesia (NKRI) is very likely to have its legal system pattern and character, including the legal character, when faced with legal dispute cases that occur amid community life. The ongoing legal mechanism in resolving the Village head election results dispute in Branta Pesisir Village and Dasok Village, Pamekasan Regency, as described above, is proof that the legal character in each region is still sustainable even though it is often faced with the hegemony of the national legal system which is normative and rigid.

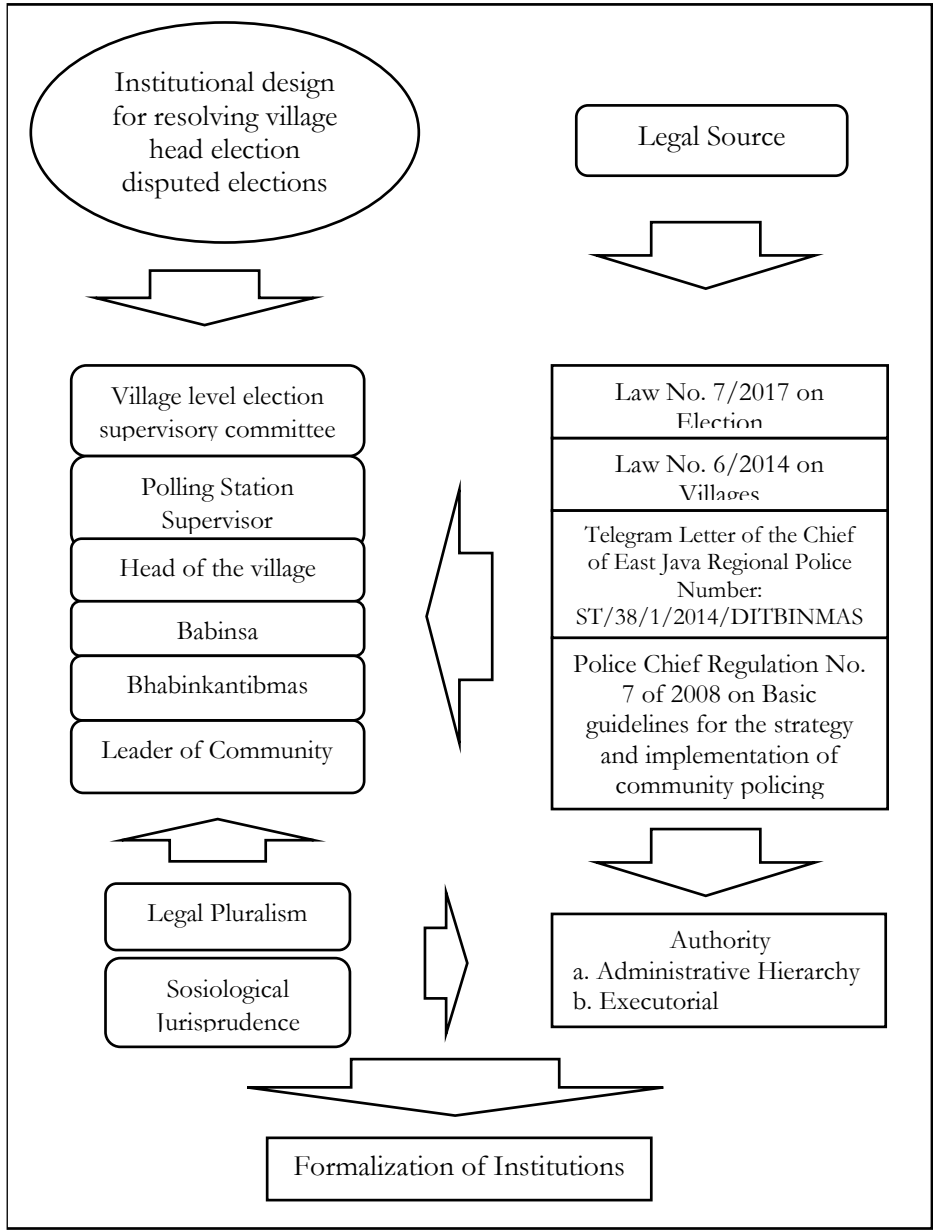
National law in the context of the Republic of Indonesia, which consists of regions with different social characters, requires legal rules that embrace all legal wisdom in a particular area. Regional legal wisdom has been going on for a long time and is derived from the noble values and teachings of the Indonesian people,

³⁷ Pan Mohamad Faiz et al., "Big Man, Bag or Ballot Box? Upholding Legal Pluralism through Noken as a Traditional System of Voting in Elections in Papua, Indonesia," *Legal Pluralism and Critical Social Analysis* 55, no. 3 (September 2, 2023): 339–65, <https://doi.org/10.1080/27706869.2023.2274167>.

who have differences in living and law.³⁸ The state's attitude of providing opportunities for the legal system that develops in society will make the Indonesian legal system unique and different from the legal systems in other countries.³⁹

In simple terms, the institutional design can be seen in the figure below:

Figure 4: Institutional Design for Village Head Election Dispute Resolution



Source: Election Law, Village Law, Police Chief Regulation No. 7 of 2008, and East Java Police Chief's telegram No. ST/38/I/2014/DITBINMAS.

³⁸ Zakiyah et al., "They Are Just the Same; Everyday Life of Terrorists' Families in East Java Indonesia," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 1 (June 1, 2023): 54–79, <https://doi.org/10.19105/al-lhkam.v18i1.8343>.

³⁹ Agung Ali Fahmi; Muwaffiq Jufri; Ansori, "Bentuk Penerapan Dan/Atau Penyerapan Hukum Islam Dalam Produk Hukum Daerah Di Madura," *Simposium Hukum Indonesia* 1, no. 1 (2019): 57.

Conclusion

The mechanism for resolving disputes over the results of the Village Head Election, according to Indonesian law, is carried out by the local Regent within thirty days after the determination is made. The regulation regarding the mechanism for resolving disputes over the results of the Village Head Election is limited to which officials are authorized and the period for resolving the dispute. So, the process of resolving disputes over the results of the Village Head Election has not been accommodated. In addition, resolving disputes over the results of the Village Head Election, which is submitted to the Regent/Mayor, raises concerns. As a government organizer who political parties can nominate, the role of the Regent/Mayor in resolving disputes over the results of the Village Head Election is feared to give rise to interests, namely that the winning candidate is a candidate who has connections with the Regent/Mayor with the hope of political favours.

Legal pluralism still exists in Madura for resolving disputes over the results of the Village Head Election by involving the existence of institutions in the village that have judicial functions. This method is considered faster and more efficient. In addition, the resolution using this model is more familial and consensus-based, as the Indonesian nation is consensus-based. This has been done in Kacok Village, Pademawu District, Branta Pesisir Village, Tlanakan District, Pamekasan Regency.

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