



## Reconstruction of Village Head Election Dispute Settlement

Septi Nur Wijayanti<sup>1</sup>, Nanik Prasetyoningsih<sup>2</sup>, Tanto Lailam<sup>3</sup>, Kelik Iswandi<sup>4</sup>

<sup>1</sup>Faculty of Law Universitas Muhammadiyah Yogyakarta, E-mail: [septinurwijayanti@umy.ac.id](mailto:septinurwijayanti@umy.ac.id)

<sup>2</sup>Master of Law Universitas Muhammadiyah Yogyakarta,

E-mail: [nanikprasetyoningsih@umy.ac.id](mailto:nanikprasetyoningsih@umy.ac.id)

<sup>3</sup>Faculty of Law Universitas Muhammadiyah Yogyakarta/ Faculty of Law, Universität zu Köln, Germany, E-mail: [tanto\\_lailam@umy.ac.id](mailto:tanto_lailam@umy.ac.id)

<sup>4</sup>Pengadilan Negeri Sengkang, E-mail: [kelik.iswandi@mahkamahagung.go.id](mailto:kelik.iswandi@mahkamahagung.go.id)

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#### Corresponding Author:

Septi Nur Wijayanti, E-mail: [septinurwijayanti@umy.ac.id](mailto:septinurwijayanti@umy.ac.id)

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### Abstract

The resolution of disagreements regarding the outcomes of the village head election is still a topic of debate. The resolution of complaints over the outcomes of the village head election must comply with Law Number 6 of 2014 Concerning Villages, however, the regent holds a political office and is therefore particularly susceptible to the independence of conflict resolution. Therefore, this study examines whether it is appropriate for the regent to have the authority to resolve disputes over the results of village head elections? In this study, the regent's handling of village head election issues was examined using the principle of the separation of powers. This normative legal research looked at elementary, secondary, and tertiary legal materials to address these issues. The results of this study indicated that the position of the regent is part of the executive branch of power, so it does not have the authority to judge. Dispute resolution must also consider each village's unique characteristics. Therefore, the regent must form a dispute resolution team consisting of community leaders who have the capability to resolve disputes. The decision from the team is binding, and if there is still a candidate for village head who does not accept it, they can submit a legal process to the State Administrative Court.

## I. Introduction

General elections in a small-scale context occur in village head elections.<sup>1</sup> Village head elections have become a routine in changing village leaders.<sup>2</sup> The implementation of the Village head election is left to each village government.<sup>3</sup> In implementing the Village

<sup>1</sup> Feri Fariyanto, Suaidah Suaidah, and Faruk Ulum, "Perancangan Aplikasi Pemilihan Kepala Desa Dengan Metode Ux Design Thinking (Studi Kasus: Kampung Kuripan)," *Jurnal Teknologi Dan Sistem Informasi* 2, no. 2 (2021): 52–60.

<sup>2</sup> Falua Jisokhi Haluana'a, Irwan Nasution, and Beby Masitho Batubara, "Analisis Tingkat Partisipasi Masyarakat Dalam Pemilihan Kepala Desa Orahili Kecamatan Pulau-Pulau Batu Kabupaten Nias Selatan," *Jurnal Ilmu Pemerintahan, Administrasi Publik, Dan Ilmu Komunikasi (JIPIKOM)* 2, no. 1 (2020): 46–52.

<sup>3</sup> Magda Ilona Dwi Putri et al., "Politik Dan Tradisi: Politik Uang Dalam Pemilihan Kepala Desa," *Jurnal ISIP: Jurnal Ilmu Sosial Dan Ilmu Politik* 17, no. 2 (2020): 72–81.

head election, various problems are often found in the form of fraud in voting or voter data.<sup>4</sup> Not only that, another form of fraud during the Village head election is money politics which can trigger kinship conflicts.<sup>5</sup> These various frauds can trigger disputes over the election results. The fraud case in the Village head election occurred in Pamaroh Village, Kadur District, Pamekasan Regency, East Java Province. The fraud occurred by adding 18 valid votes beyond the number of valid votes that should have been.<sup>6</sup> The most recent alleged fraud case in the village head election occurred in Cinta Damai Village, Percut Seituan District, Deliserdang Regency, North Sumatra Province. Because the election committee participated in one of the candidates, fraud is thought to have happened.<sup>7</sup>

Article 37 paragraph (6) of Law Number 6 of 2014 concerning Villages jo. Article 41 paragraph (7) Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages has regulated that any disputes over the outcome of the village election are resolved by the regents/mayors. This provision still leaves problems regarding the mechanism (procedure) for the fair settlement of Village head election disputes by the regents/mayors that can be accepted by all disputing parties. This is a new task and authority given by law to regents/mayors. In addition, regents/mayors are public officials and not judges in judicial institutions who can enforce law and justice.<sup>8</sup>

It is feared that the empirical implementation of the regulation will cause problems, considering that the Regent is a political official while the Village head election itself is a local democratization mechanism without involving political elements. In addition, each village in Indonesia has its characteristics that require resolving disputes or conflicts through local wisdom. Thus, the author's attention has been drawn to the clauses concerning the regent's or mayor's ability to adjudicate disagreements regarding the outcome of a village head election. The existence of these facts raises questions about whether the authority of dispute resolution by public officials is not judges. These problems are raised and reviewed using the concept of *trias politica* theory. This article examines which institutions should have the authority to resolve disputes over the village election results.

The focus is on the adjudicatory power of public officials rather than judges. This study can provide an overview of which governmental organizations should be permitted to resolve disputes and what procedures should be. Adhi Putra Satria has researched how village head election disputes are settled.<sup>9</sup> That study focuses on measures for resolving

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<sup>4</sup> Susmanto Susmanto et al., "Perancangan E-Voting Pemilihan Kepala Desa Untuk Transparansi Informasi Di Kecamatan Lueng Bata Kota Banda Aceh," *Jurnal Serambi Engineering* 7, no. 1 (2022): 2833-40.

<sup>5</sup> Lesmana Rian Andhika, "Bahaya Patronase Dan Klientelisme Dalam Pemilihan Kepala Desa Serentak," *Kajian* 22, no. 3 (2019): 205-20.

<sup>6</sup> Abd Aziz, "Ratusan Orang Berunjuk Rasa Protes Kecurangan Pilkades Di Pamekasan," *antaranews.com*, 2019, <https://www.antaranews.com/berita/1089196/ratusan-orang-berunjuk-rasa-protos-kecurangan-pilkades-di-pamekasan>.

<sup>7</sup> Sumutpos, "Dugaan Kecurangan Pada Pilkades Deliserdang, Warga Datangi Kantor Bupati," *sumutpos.jawapos.com*, 2022, <https://sumutpos.jawapos.com/daerah/19/05/2022/dugaan-kecurangan-pada-pilkades-deliserdang-warga-datangi-kantor-bupati/>.

<sup>8</sup> Adhi Putra Satria, "Analisis Penyelesaian Sengketa Pemilihan Kepala Desa Di Indonesia," *Kosmik Hukum* 20, no. 1 (2020): 13-20.

<sup>9</sup> Satria.

disputes over village head elections following the implementation of Law Number 6 of 2014 concerning Villages.<sup>10</sup> In addition, that study also recommended a special court for the resolution of village head election disputes.<sup>11</sup> This research is necessary to identify alternatives because the proposal of establishing a special election court in Indonesia has not yet been implemented. Using the theory of *trias politica*, this study investigates the power to settle disagreements over the outcomes of village head elections, setting it apart from previous research. Furthermore, this study argued that rather than depending entirely on their judgment, the regent should appoint competent community leaders to a dispute resolution panel. This mechanism does not violate the provisions of Law Number 6 of 2014 concerning Villages. In addition, in resolving these problems or disputes can be developed using the local wisdom of each village. Due to each village has an identity and uniqueness that is not the same.

## 2. Method

This research applied the normative juridical method to enrich the materials in this academic manuscript. This method was carried out by studying documents, reports, laws, regulations, and other literature relevant to the issues to be discussed in this academic paper. This method is very useful, especially for matters relating to the development and application of theories and supporting data to answer existing problems.

## 3. Result and Discussion

### 3.1. Village Government Overview

The word "*desa*" (village) is etymologically derived from the Sanskrit word "*swadesi*," which means a place, part, or region that is autonomous and independent.<sup>12</sup> Various mentions of the term village in Indonesia, such as *desa* for the people of Java, Madura, and Bali, *gampong* or *meunasah* for the people of Aceh, *Kuta* or *Huta* for the Batak people, *Nagari* for the Minangkabau community, *Dusun* or *Marga* for the people in South Sumatra, and others.<sup>13</sup> Due to the village's status as a legal community unit, village institutions are profoundly understood to be both administrative and legal entities that must be acknowledged, protected, and preserved in Indonesian government systems<sup>14</sup>. This is established in the 1945 Constitution's Article 18B, paragraph 2.

The intention of implementing the constitutional mandate in the form of regulating customary law communities to be regulated in the composition of government.<sup>15</sup> To

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<sup>10</sup> Satria.

<sup>11</sup> Satria.

<sup>12</sup> I Ketut Gede Rudiarta, I Wayan Arthanaya, and Luh Putu Suryani, "Pengelolaan Alokasi Dana Desa Dalam Pemerintahan Desa," *Jurnal Analogi Hukum* 2, no. 1 (2020): 63–67, <https://doi.org/10.22225/.2.1.1619.63-67>.

<sup>13</sup> Siti Azizah, "Inisiasi Pembentukan Desa Toleransi Sebagai Wujud Pencegahan Paham Radikal Terorisme," *Jurnal Sumbangsih* 1, no. 1 (2020): 51–57.

<sup>14</sup> Netty Netty, Nys Arfa, and Irwandi Irwandi, "Politik Hukum Administrasi Desa Di Desa Dataran Kempas Kecamatan Tebing Tinggi Kabupaten Tanjung Jabung Barat," *Sains Sosio Humaniora* 4, no. 2 (2021): 557–67.

<sup>15</sup> Pemerintah Republik Indonesia, "Undang-Undang Nomor 6 Tahun 2014 Tentang Desa" (2014).

regulate the exercise of customary rights, the authority of the community of customary law, however, refers to the pertinent sectoral laws and regulations.<sup>16</sup> It is envisaged that the customary law community unit, which historically belonged to the village area, will be set up in a fashion that combines the functions of the self-governing community and local self-government to create a village.<sup>17</sup> There are four main elements in the village concept: i. legal community unit; ii. autonomous; iii. based on regional roots and practices that the National Government system recognizes; iv. situated in the district.<sup>18</sup>

The concept of village autonomy is a concept that requires the ability and initiative of the village community to be able to regulate and carry out the dynamics of their lives based on their abilities.<sup>19</sup> This suggests that outside interference should be avoided, or at the very least minimize.<sup>20</sup> While the nature of village autonomy is pure autonomy – that is, it has been since the village first arose and is not a delegation of power from the state –.<sup>21</sup> In addition, Village autonomy is an acceptance of the freedom to manage its domestic affairs based on community initiatives, not statehood.<sup>22</sup> By itself, autonomy has the power to prevent involvement by institutions above it. Otherwise, it is not justified that the intervention process is all forced and sudden and does not see the reality of the community.<sup>23</sup>

The concept of government in a broad sense, as put forward by B. Hestu Cipto Handoyo, is all forms of activities or activities of state administration carried out by state equipment that have duties and functions as outlined by the constitution.<sup>24</sup> Referring to this, the state organs are a kind of executive, legislative, and judicial as the concept of *trias politica*, so village government politics determines the form of village government desired in the system of the Unitary State of the Republic of Indonesia, village government politics is a national village government legal policy, the outlines of legal policies adopted by state administrators to maintain, allocate, take advantage of,

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<sup>16</sup> Wimba Roofi Hutama, "Eksistensi Hak Ulayat Pasca Berlakunya Peraturan Menteri Agraria Nomor 18 Tahun 2019," *Notaire* 4, no. 3 (2021): 489–502.

<sup>17</sup> Rivaldy Salim, Hendrik Salmon, and Address Demy Bakarbesy, "Sistem Pemerintahan Desa Di Kabupaten Buru Selatan," *TATOHI: Jurnal Ilmu Hukum* 1, no. 8 (2022): 835–47.

<sup>18</sup> Zulman Barniat, "Otonomi Desa: Konsepsi Teoritis Dan Legal," *JASP* 5, no. 1 (2019): 20–33.

<sup>19</sup> Andri Widiyanto and Yeni Priatna Sari, "Otonomi Desa Dan Efektifitas Dana Desa (Studi Kasus Pada Desa Dukuhjeruk Kecamatan Banjarharjo Kabupaten Brebes)," *JURNAL ONLINE INSAN AKUNTAN* 4, no. 2 (2019): 209–22.

<sup>20</sup> Nosy Mayasari and Abdullah Abdullah, "Analisis Alokasi Dana Desa Di Kabupaten Lebong Tahun 2016," *Jurnal Akuntansi* 8, no. 3 (2018): 155–64.

<sup>21</sup> Yordan Gunawan, Barbara Gunawan, and Mohammad Bima Aoron Hafiz, "Pengolahan Susu Murni Menjadi Makanan Ringan (Stik Susu) Sebagai Alternatif Peningkatan Kesejahteraan Bagi Masyarakat Dusun Kebondowo, Boyolali," *Jurnal Pengabdian Masyarakat Ipteks* 6, no. 1 (2020): 39–47.

<sup>22</sup> Tri Yuniningsih and Sri Suwitri, "Pelayanan Publik Di Era Otonomi Desa Antara Harapan Dan Kenyataan (Sebuah Tinjauan Kritis)," *Journal of Public Administration and Local Governance* 3, no. 2 (2019): 143–55.

<sup>23</sup> Syamsu Alam, Ade Rahayu, and Nurdina Nurdina, "Efektivitas Badan Usaha Milik Desa (Bumdes) Dalam Meningkatkan Otonomi Desa Tammangalle Kecamatan Balanipa," *Journal Pegguruang* 2, no. 2 (2020): 15–20.

<sup>24</sup> B Hestu Cipto Handoyo, *Hukum Tata Negara Indonesia* (Yogyakarta: Universitas Atma Jaya, 2009).

regulate and manage village government and village communities as self-regulating communities.<sup>25</sup>

Article 1 number 2 of Law Number 6 of 2014 concerning Villages states that the Republic of Indonesia's system of government defines village government as the management of local government activities and community interests. The establishment of village government is integral to the establishment of regional autonomy, and even the village government serves as the premier community service organization and a crucial turning point for the achievement of all projects.<sup>26</sup> This means that the village government decides how to move toward regional autonomy more quickly in terms of achieving communal welfare.<sup>27</sup> Village government is made up of the village government and any other titles for the village representative bodies.<sup>28</sup>

### 3.1.1. Village Head

Article 26 of Law Number 6 of 2014 concerning Villages states that the village chief oversees managing administration, community empowerment, and village development. In carrying out these responsibilities, the village head has the authority to: (1) lead the administration of the village; (2) appoint and remove officials from the village; (3) manage the village's finances and assets; (4) establish village regulations; (5) determine the village's income and expenditure budget; (6) promote village community life; (7) promote peace and order in the village community; (8) foster and improve the village economy and integrate it; (9) develop the sociocultural life of the village community; (10) use appropriate technology; (11) organizing cooperative village development; (12) defending the village in court or designating a legal representative to do so in accordance with the law; and (13) executing other bold projects.

### 3.1.2. Village Consultative Council

According to Article 1 Point 4 of Law Number 6 of 2014 Concerning Villages, the Village Consultative Council is an entity that performs governmental duties, and its members are elected democratically as representatives of the village community based on regional representation. The duties of the Village Consultative Council include working with the Village Head to evaluate and adopt the Draft Village Regulation, accommodating and guiding community goals, and keeping an eye on the Village Head's effectiveness.

## 3.2. Village Head Election Mechanism

Village government can be framed within the principles of democracy.<sup>29</sup> Conceptually, democracy is based on several fundamental tenets, such as representation, accountability, responsiveness, transparency, and participation. These tenets serve as the fundamental cornerstones for managing public policy, village planning, village finances, and village services. The community will develop an autocratic "one ruler" and its

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<sup>25</sup> Netty, Arfa, and Irwandi, "Politik Hukum Administrasi Desa Di Desa Dataran Kempas Kecamatan Tebing Tinggi Kabupaten Tanjung Jabung Barat."

<sup>26</sup> Sugiman Sugiman, "Pemerintahan Desa," *Binamulia Hukum* 7, no. 1 (2018): 82–95.

<sup>27</sup> H A W Widjaja, *Otonomi Desa: Merupakan Otonomi Yang Asli, Bulat Dan Utuh* (Jakarta: PT. RajaGrafindo Persada, 2003).

<sup>28</sup> Manan Bagir, *Menyongsong Fajar Otonomi Daerah* (Yogyakarta: Pusat Studi Hukum Fakultas Hukum UII Yogyakarta, 2001).

<sup>29</sup> Irlina Dewi, Titin Sumarni, and Indra Indra, "Peran Badan Permusyawaratan Desa (BPD) Terhadap Pemerintahan Desa Studi Kasus Desa Pambang Pesisir Kecamatan Bantan," *Jurnal Yustisiabel* 4, no. 2 (2020): 118–27.

finances and policies will function smoothly, or unpleasant situations may arise that damage the inhabitants, if these fundamental rules are not followed. Village democracy will provide a forum for citizens to communicate their desires to the village authority.<sup>30</sup>

Law Number 6 of 2014 Concerning Villages *jo* Government Regulation Number 43 of 2014 states that the village head election system is direct. The Village Head is directly chosen by Village residents who are Republic of Indonesia citizens and meet the criteria for an office term of 6 (six) years starting on the day of inauguration.<sup>31</sup> The Village Head may hold office for a maximum of three terms, whether they are consecutive or not.<sup>32</sup> Village head elections are conducted in accordance with the following principles: direct, general, free, confidential, honest, and fair.<sup>33</sup> All districts have village head elections concurrently, or they can be held in waves no more than three times over the course of six years.<sup>34</sup> The purpose of the village head election being held simultaneously is the election of the village head which is held on the same day, considering the number of villages and the ability of the election costs. The explanation of Law Number 6 of 2014 concerning Villages explains that the election of village heads is carried out simultaneously throughout the Regency to avoid negative things in its implementation.<sup>35</sup> In order for their implementation to be carried out in waves as long as it is governed by district regulations, simultaneous village head elections take into account the quantity of villages and the ability for the election costs to be charged to the district's Regional Revenue and Expenditure Budget.<sup>36</sup>

**Table 1.** Comparison matrix of settings on village head elections

| Arranged things   | Law Number 32 of 2004                                     | Government Regulation Number 72 of 2005                     | Law Number 6 of 2014   | Government Regulation Number 43 of 2014                   |
|---|---|---|--|---|
| The legal basis for delegating village head election arrangements | Article 216 paragraph (1): "Further regulations regarding | Article 53 paragraph (1): "Further provisions regarding the | Article 31 paragraph (2): "Regental/municipal regional governments shall determine the | Article 46: "Further provisions regarding the election of |

<sup>30</sup> Abdul Kadir Bubu, "Urgensi Pemberian Kewenangan Lembaga Peradilan Dalam Penyelesaian Sengketa Pilkades (Rekonstruksi Kewenangan Mengadili Pasal 37 Undang-Undang Nomor 6 Tahun 2014 Tentang Desa)," *Khairun Law Journal* 3, no. 1 (2020): 1-12.

<sup>31</sup> Ramadani, Irwan Nasution, and Usman Tarigan, "Analisis Pemilihan Kepala Desa Serentak Terhadap Demokrasi Lokal Di Desa Tanjung Kabupaten Aceh Tamiang," *Prespektif* 7, no. 2 (2018): 40-45.

<sup>32</sup> Cholillah Suci Pratiwi, Faizah Bafadhal, and Ade Siska Giovani, "Strategi Marketing Politik Kepala Desa Pertahana Pada Pilkades Di Desa Sidomukti Kecamatan Dendang Kabupaten Tanjung Jabung Timur," *Jurnal Ilmu Sosial Dan Pendidikan* 4, no. 4 (2020): 311-19.

<sup>33</sup> Taopik Iskandar and Dewi Mulyanti, "Penyuluhan Hukum Dalam Upaya Meningkatkan Partisipasi Masyarakat Dalam Pemilihan Kepala Desa Serentak Di Kabupaten Ciamis," *ABDIMAS GALUH* 3, no. 2 (2021): 447-56.

<sup>34</sup> Ismanudin and Ilham Setiawan, "Model Implementasi Kebijakan Penyelenggaraan Pemilihan Kuwu Serentak Di Masa Pandemi COVID-19 Tahun 2021: Studi Kasus Di Kabupaten Indramayu," *Jurnal Aspirasi* 12, no. 1 (2022): 13-32.

<sup>35</sup> Pemerintah Republik Indonesia, Undang-Undang Nomor 6 Tahun 2014 tentang Desa.

<sup>36</sup> Andreanus Ding, "Pemilihan Serentak Petinggi Kampung Tahun 2018 Di Kecamatan Long Hubung Kabupaten Mahakam Ulu," *Journal of Government Science (GovSci)* 1, no. 1 (2020): 23-30.

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| with regional regulations and the nomenclature of regional regulations | villages are stipulated in regional regulations by referring to government regulations"                       | procedure for the election, nomination, appointment, inauguration, and dismissal of village heads shall be regulated by district/city regulations" | policy of implementing simultaneous village head elections as referred to in paragraph (1) with district/city regional regulations"            | village heads shall be regulated by a ministerial regulation"   |
| Who formed the selection committee                                     | Article 203 paragraph (1) states that it is regulated in regional regulations based on government regulations | Article 47 paragraph (1) states that by the Village Consultative Council for nominations and elections   | Article 3 paragraph (2) states that the Village Consultative Council   | Article 41 paragraph (2) letter b states that the Regional Consultative Council   |
| The nature of the selection committee                                  | Unregulated   | Unregulated  | Article 32 paragraph (3) states that it is independent and impartial   | Not explicitly regulated but implicitly independent   |
| Sources of funding and submission of the Village head election budget  | Unregulated   | Article 53 paragraph (2) states that it is regulated in regional regulations   | Article 34 paragraph (6) states that the cost of selecting a village head is borne by the Regency/City Regional Revenue and Expenditure Budget | Article 41 paragraph (2) letter d states that it is submitted by the election committee to the regent a maximum of 30 days after the executive committee is formed. Using the Regional Revenue and Expenditure Budget |
| Determination of village head candidates                               | Unregulated   | Article 48 paragraph (2) states that it is determined by the election committee  | Article 34 paragraph (5) and Article 36 paragraph (1) state that it is determined by the election committee                                    | Article 41 paragraph (3) does not regulate explicitly but is implicitly stipulated by the election committee  |
| Determination of the elected   | Unregulated   | Article 50 paragraph (3) states that by  | Article 37 paragraph (2) and Article 34 paragraph (5) state that   | Article 41 paragraph (4) does not   |

|  |  |  |  |   |
|--|--|--|--|---|
| village head candidate                         |  | decision of the Village Consultative Council based on the minutes of the election from the election committee                    | it is conducted by the election committee  | regulate explicitly but is implicitly stipulated by the election committee  |
| The basis for determining the chosen candidate | Article 203 paragraph (2) states that the most votes and 1 round | Article 50 states that the most votes and 1 round  | Article 37 paragraph (1) states that the majority vote   | Article 41 paragraph (4) states that the most votes by taking into account the area of the vote acquisition if the most votes are more than one   |
| The Role of the Village Consultative Council   | Not clearly regulated  | Forming an election committee and determining the elected village head candidates based on the minutes of the election committee | Article 37 paragraph (3) states that forming the Election Committee, receives the election committee report a maximum of 7 days after the appointment of the elected candidate by the Committee, and Article 37 paragraph (4) states that submit the name of the elected village head candidate to the regent for approval | Article 41 paragraph (5) letter a states that forming an election committee receives the election committee's report on the elected candidate a maximum of 7 days after voting, and Article 41 paragraph (5) letter b states that report the name of the elected candidate to the regent 7 days after the committee report for validation |

Source: analysed from the primary source.

Table 1 shows changes in the village head election mechanism. There are several changes in village head election arrangements, including: 1) provisions governing village head election procedures which are initially delegated to the regions and then taken over by



the center, 2) institutions authorized to form village head selection teams, 3) independence of village head selection teams, 4) funding village head elections, 5) mechanisms for determining village head candidates, 6) mechanisms for determining elected village head candidates, and 7) the basis for determining the selected candidates. This shows that the mechanism for selecting village heads regulated in Law Number 6 of 2014 is different.

### 3.3. Village Head Election Dispute Resolution Mechanism

Disputes over village head election results are still a topic of discussion. The provisions regarding this matter have also developed, as the authors describe in Table 2.

**Table 2.** Comparison matrix of regulations on village head election dispute resolution

| Arranged things    | Law Number 32 of 2004 | Government Regulation Number 72 of 2005 | Law Number 6 of 2014  | Government Regulation Number 43 of 2014  |
|--------------------|-----------------------|---|---|--|
| Dispute Settlement | Not clearly regulated | Unregulated                             | Article 37 paragraph (6) states that the regent is obliged to settle the dispute over the results within a period of 30 days. The resolution by the bupati is relevant to Article 48 of Law Number 5 of 1986 concerning the institution of the administrative appeal. For this reason, the object of the state administrative dispute should be clear, in the form of a decision letter from the village head election committee, not a decision letter from the Village Consultative Body. If the dispute is a decision letter from the Village Consultative Council, it reduces the independence of the election committee as mandated by Law Number 6 of 2014 (Article 37 (2) and Article 34 (5)). | Article 41 paragraph (7) states that the Regent is obliged to settle the dispute within 30 days. |

Source: analysed from the primary source.

Table 2 shows that the authority to resolve disputes over the results of village head elections is a new authority owned by the district head. Article 37 paragraph (5) and (6) of Law Number 6 of 2014 concerning Villages stipulates that disputes over the results of village head elections are resolved by the regent:

(5) The elected village head candidate, as mentioned in paragraph (3), is approved by the regent/mayor to take office as village head no later than 30 (thirty) days after the date on which the regent/mayor receives the submission of the election results from the village head election committee.

(6) The regent/mayor is required to resolve any disagreements over the outcome of the village head election within the time frame outlined in paragraph (5).

The provisions of the article mean that the resolution of disputes over election results or vote counting is carried out by the regent. In order to prevent disagreements over the outcome of the village head election, the regent's tasks of direction and oversight, which include the ability to dismiss the village head, are carried out in the administration of the village.

If it is in line with Indonesian local knowledge of debate (*musyawarah*), which favors alternative ways for resolving village head election issues, the regent's resolution of village head election disputes is a good legal policy. However, because the position of the regent is a political position, it is possible that it is not independent, and it is also possible that it cannot resolve disputes. In addition, this is contrary to the principle of separation and division of power applied in Indonesia. The division of power pioneered by the United States delegation meeting in Philadelphia stated that power is divided into three branches of power: executive, legislative, and judicial, each of which has specific powers and the principle of checks and balances.<sup>37</sup> Although, the doctrine of the division of power into three branches of power: deliberative, executive, and judicial, was pioneered by Aristotle.<sup>38</sup> The executive is the implementing government agency and is identical to the president or, at the local level, identical to the governor/regent/mayor. However, executives are much more complex than just individuals.<sup>39</sup> The legislative branch of power is the branch of power that has the function of forming laws, while the authority to adjudicate and resolve disputes is part of the judicial branch of power. The judicial branch must show itself as an independent institution and free from political influence.<sup>40</sup> Legislative, executive, and judicial powers must forever be separated and distinct.<sup>41</sup>

The executive is not a branch of power that has the authority to judge. To overcome the overpowering and independence of the regent in resolving disputes over the results of the village head election, the regent may form a dispute resolution team consisting of

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<sup>37</sup> Brian Duignan, *The Executive Branch of the Federal Government: Purpose, Process, and People* (Britannica Educational Publishing, 2009).

<sup>38</sup> David Bilchitz, *The Evolution of the Separation of Powers: Between the Global North and the Global South* (Edward Elgar Publishing, 2018).

<sup>39</sup> Gisela Sin, *Separation of Powers and Legislative Organization: The President, the Senate, and Political Parties in the Making of House Rules* (New York: Cambridge University Press, 2015).

<sup>40</sup> Charles M Lamb and Jacob R Neihsel, *Constitutional Landmarks: Supreme Court Decisions on Separation of Powers, Federalism, and Economic Rights* (Springer Nature, 2020).

<sup>41</sup> Eoin Carolan, *The New Separation of Powers: A Theory for the Modern State* (OUP Oxford, 2009).

community leaders or people who are competent in resolving village head election disputes. The village head election results dispute settlement process is carried out by the dispute resolution team through mediation efforts by bringing the opposing parties together to reach an agreement through discussion and consensus. If the mediation effort is unsuccessful, the dispute resolution team will take adjudication steps (identification and assessment) to assess the correctness of the objection material from the village head candidate who filed an objection. The dispute resolution team has the authority to order the revocation of the Election Committee Decree concerning the Determination of the Elected Village Head Candidate and instruct the Election Committee to issue a New Determination Decree or continue the process of ratifying the Elected Village Head candidate based on the results of the adjudication process carried out by the dispute resolution team formed by the Regent. The dispute resolution team formed must comply with the principle of impartiality, have no interest in both parties to the dispute, and be non-political. It is hoped that through the team, the intervention of the Regent as an executive with political nuances can be minimized. The eligible candidate who objected to the village head election result has three days from the conclusion of the Regent's settlement process to file a legal complaint with the State Administrative Court if the settlement of the dispute over the results of the village head election above is rejected by the village head candidate who objected.

#### 4. Conclusion

The regent (acting as a mediator) resolves complaints regarding the outcomes of the village head election within 30 days. In order to help him in settling village head election issues, the regent can assemble a committee of independent experts. The outcomes of the village head election conducted by the regent and/or the dispute resolution committee are final and conclusive. However, if there are parties who do not accept the results of the decision, they can be allowed to file an objection through the administrative court.

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### **Law and Regulation**

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