

LEGAL ISSUES REGARDING THE ELECTION OF VILLAGE HEADS

Sukman^{1*}, Rosmini², Insan Tajali Nur³

^{1,2,3}Faculty Hukum Universitas Mulawarman Program Magister Ilmu Hukum, Universitas Mulawarman Samarinda, Indonesia
sukmanrijal@gmail.com^{1*}, rosmini@gmail.com², insan.tajali@gmail.com³

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Abstract

This thesis examines legal issues related to village head elections, with a case study in Kota Bangun 2 Village, Kutai Kartanegara Regency. The background highlights the importance of village head elections in village democracy, but the lack of attention to the village head election regime is a weakness in itself. The results of the study show that violations in Pilkades can be caused by poor supervision, such as administrative disputes and election result disputes. The factors causing Pilkades disputes include internal factors (non-neutral committees, problematic voter lists, unhealthy campaign processes, fanaticism among supporters, and lack of social control) and external factors (local government intervention, regulatory weaknesses, political and power interests, and proximity to local authorities). The mechanism for resolving Pilkades disputes is regulated in Law No. 6 of 2014 concerning Villages, Government Regulation No. 47 of 2015, Minister of Home Affairs Regulation No. 112 of 2014 in conjunction with Minister of Home Affairs Regulation No. 72 of 2020, and Kutai Kartanegara Regency Regulation No. 3 of 2015 in conjunction with Kutai Kartanegara Regency Regulation No. 3 of 2018. However, in practice, the resolution of Pilkades disputes is often not in accordance with the proper mechanisms, as was the case in the Pilkades in Kota Bangun 2 Village.

Keywords: Dispute Resolution Mechanisms, Village Head Elections, Supervision of Village Head Elections

INTRODUCTION

Democracy as a political system has provided space for all segments of society to participate in leadership processes, including at the village level. Democracy is understood as a model of governance that ensures public involvement in political decision-making through mechanisms that are free, participatory, and equitable. In contemporary political science literature, democracy is considered a multidimensional concept that encompasses not only electoral procedures but also the values of participation, civil liberties, political equality, and accountability (Held, 2006; Dryzek, 2000; Przeworski, 2010). Dahl (1989) conceptualizes democracy as *polyarchy*, a system characterized by political competition, broad participation, and access to information that enables citizens to make informed choices. Thus, democracy is not merely about elections but also a constellation of institutions and values that foster responsive and representative governance.

The historical roots of democracy can be traced back to the practice of direct democracy in ancient Greece, which allowed citizens to participate directly in public decision-making. Over time, as societies became more complex, democratic governance evolved from direct participation to representative democracy. This evolution reflected institutional adaptation to demographic expansion, growing territorial boundaries, and the need for more efficient administrative structures (Manin, 1997). In the 20th and 21st centuries, the concept of democracy expanded further to include the protection of human rights, the rule of law, and principles of good governance (Diamond & Morlino, 2005). As a result, democracy today is understood not only as an electoral mechanism but also as a normative system that protects political freedoms and ensures public oversight over government authority.

Democracy is also closely linked to the evolution of leadership. In traditional systems, leadership was often inherited through kinship or customary authority. Weber (1947) identifies three types of authority—traditional, charismatic, and legal-rational. In modern democratic systems, legal-rational authority predominates, emphasizing that leadership legitimacy derives from formal legal procedures and public consent, especially through elections. This shift also occurs at the village level, where the direct election of village heads has replaced hereditary or appointed leadership structures. This shift represents a major transformation in village governance towards a system that is more democratic, transparent, and accountable.

Within this framework, the principle of popular sovereignty serves as the foundation of democratic governance. Popular sovereignty asserts that the highest authority rests with the people and that government derives its legitimacy from their consent (Budiardjo, 2018; Rosanvallon, 2011). At the local level, this principle is embodied in the Village Head Election (Pilkades). Pilkades represents a concrete manifestation of popular sovereignty in rural areas, conducted directly, fairly, and transparently. Research by Yuningsih and Subekti (2016) shows that Pilkades functions as a crucial arena for villagers to express their political preferences and to ensure that village leaders possess strong social legitimacy. Historically, the shift from hereditary succession to direct election in rural leadership has created greater political participation and strengthened the democratic character of village governance.

The shift from lineage-based succession to direct elections was institutionalized through Law Number 6 of 2014 concerning Villages. This law not only limits the term of office of village heads to six years but also regulates leadership transitions through direct elections as part of the country's broader effort to strengthen grassroots democratization. Normatively, the legal framework for Pilkades is regulated by the Village Law, supported by Minister of Home Affairs Regulation No. 112 of 2014 (as amended by Regulation No. 72 of 2020), and further strengthened by district and municipal regulations.

Nevertheless, in practice, Pilkades has not been treated as a formal electoral regime equivalent to national or regional elections (*pilkada*). In reality, the stages and procedures of Pilkades share many similarities with general elections and often reflect a more substantive form of democracy due to the direct involvement of the community and the closer relationship between candidates and voters (Antlöv, 2003; Satria, 2018). The lack of institutional recognition for Pilkades contributes to several governance issues, particularly when disputes over election results arise.

Although the Village Law prescribes that Pilkades disputes should be resolved by the Regent or Mayor as stated in Article 37(6), inconsistencies between the legal framework and its implementation remain prevalent. A notable example is the Pilkades dispute in Kota Bangun 2 Village, Kutai Kartanegara Regency, which escalated to the State Administrative Court (PTUN) and even reached the Supreme Court. This case illustrates the regulatory gaps and legal uncertainties in the dispute settlement process, ultimately undermining the democratic legitimacy of Pilkades.

These issues indicate that Pilkades is not a simple administrative procedure but a complex electoral regime requiring a strong, consistent, and integrated legal framework. Without clear regulations, democratization at the village level is vulnerable to conflict, political tension, and procedural

inconsistency. Strengthening the legal and institutional framework of Pilkades is therefore essential to promoting democratic governance and improving the quality of village administration.

Based on these issues, this study focuses on two main research problems: (1) the factors that lead to disputes in village head elections, and (2) the mechanisms used to resolve such disputes. The purpose of this study is to identify the causes of Pilkades disputes and analyze the alignment between normative regulations and their implementation, including aspects of law enforcement at the village and district levels.

This study offers two significant contributions. Theoretically, it aims to enrich the development of legal scholarship, particularly in constitutional and administrative law, as well as to support academic discussions on democratization at the local level. Practically, this research is expected to serve as a valuable reference for students, researchers, and local governments in formulating more effective and equitable policies for resolving Pilkades disputes.

RESEARCH METHOD

The research method used in this study is the socio-legal research approach, which emphasizes not only the analysis of written legal norms but also considers their implementation in practice. This approach was chosen because it is relevant to the research objective of understanding the issues surrounding village head elections (Pilkades) from both normative and empirical perspectives. At the applied level, socio-legal research is directed at reformulating the law to make it more functional and responsive to the needs of the community, although this study still accommodates a doctrinal approach that emphasizes the study of the relationship between applicable legal norms.

This research was conducted in East Kalimantan Province, with a focus on Kutai Kartanegara Regency. The location was chosen based on the availability of data, the relevance of the research object, and the representation of actual Pilkades dispute cases, particularly in Kota Bangun 2 Village, Kota Bangun Subdistrict, which had been the subject of a lawsuit over the results of the village head election. The main data was obtained from the Village Community Empowerment Agency (DPMD) of Kutai Kartanegara Regency, the Legal Division of the Kutai Kartanegara Regency Secretariat, and interviews with selected respondents who were directly involved in the Pilkades process and the resolution of disputes.

The research data sources consisted of secondary data and empirical data. Secondary data includes relevant laws and regulations, including Law No. 6 of 2014 on Villages, Minister of Home Affairs Regulation No. 112 of 2014 and its amendments, as well as Kutai Kartanegara Regency regulations on village head elections, as well as literature, legal principles, and legal theories related to the resolution of Pilkades disputes in the constitutional legal system. Empirical data was obtained through interviews with informants selected using consecutive sampling, namely parties who met the qualifications based on the information needed regarding policy regulations and the implementation of Pilkades. Through a combination of normative and empirical data, this study is expected to provide a comprehensive analysis of the factors causing Pilkades disputes and the mechanisms for resolving them within the framework of law and village governance practices.

RESULTS AND DISCUSSION

Characteristics of the Village Head Election Dispute in Kota Bangun 2 Village

This study highlights the case of a village head election (Pilkades) dispute in Kota Bangun 2 Village, Kota Bangun Subdistrict, Kutai Kartanegara Regency, as a concrete illustration of legal issues in the implementation of Pilkades. Basically, the Pilkades in this village was carried out according to the schedule and administrative procedures as stipulated by Kutai Kartanegara Regency Regulation Number 3 of 2015 in conjunction with Local Regulation Number 3 of 2018 concerning the Election and Dismissal of Village Heads, as well as Regent Regulation Number 10 of 2019. However, from the candidate nomination stage to the vote counting stage, one of the candidates raised objections, alleging the election committee's lack of neutrality and suspected fraud in the voting process.

The objection was initially submitted to the Regent of Kutai Kartanegara in accordance with the mandate of Article 37 paragraph (6) of Law Number 6 of 2014 concerning Villages (Village Law). However, instead of being resolved at the local executive level, the case proceeded to the legal process with a lawsuit filed with the Samarinda Administrative Court (PTUN). In the end, the case even reached the cassation level at the Supreme Court. This fact shows the lack of clarity in the mechanism for resolving Pilkades disputes, as well as the weak effectiveness of legal norms that should provide certainty.

The Gap between Norms and Practice

Normatively, regulations regarding the resolution of Pilkades disputes have been stipulated in several legal instruments, namely the Village Law, Government Regulation Number 47 of 2015, Permendagri Number 112 of 2014 in conjunction with Permendagri Number 72 of 2020, as well as regional regulations in each regency/city. All of these regulations give the Regent or Mayor the authority to resolve disputes over Pilkades results. However, in practice, these regulations are not implemented consistently. In the case of Kota Bangun 2, the aggrieved party was dissatisfied with the Regent's decision and chose to take the matter to court. The decision of the Samarinda Administrative Court Number 3/G/2020/PTUN.SMD then became a precedent that Pilkades disputes can be brought to court, even though this is not regulated normatively. This gap shows a weakness in terms of legal certainty because legal norms are unable to close the loopholes that allow parties to use other legal instruments to seek justice.

Factors Causing Pilkades Disputes

The findings of the study identified two categories of factors causing Pilkades disputes, namely internal and external factors.

Internal Factors

1. The committee's lack of neutrality in organizing the election stages, which aroused suspicion among candidates and their supporters.
2. Problems with the final voter list (DPT), such as double voters or eligible residents who were not registered.
3. Unhealthy campaigning, including money politics, intimidation, and the spread of negative issues among candidate supporters.
4. Fanaticism among candidate supporters, which exacerbates rivalries and creates social polarization in the village community.
5. Lack of social control mechanisms at the village level that are capable of mediating conflicts early on.

External Factors

1. Intervention by the local government in the form of specific political support that affects the independence of the committee.
2. Weak regulations that do not provide clarity on appeal mechanisms or other legal remedies outside the authority of the regent.
3. Local political interests that make Pilkades an arena for the struggle for power at the regency level.
4. The closeness of candidates to local authorities, which creates a perception of injustice among the village community.
5. Analysis of these factors shows that Pilkades is not only a formal democratic arena, but also a complex local political arena. The disputes that arise are not merely administrative issues, but reflect the interaction between law, politics, and the social structure of the village.

Theoretical Analysis: Legal Certainty, Effectiveness, and Justice

From a legal theory perspective, this case reveals a tension between legal certainty, justice, and utility. On the one hand, the Village Law provides certainty by appointing the Regent/Mayor as the authority to resolve disputes. However, on the other hand, this regulation does not provide a sense of justice for the aggrieved party because the Regent's decision is considered not to be independent. This condition ultimately encourages the disputing parties to seek justice through the State Administrative Court.

When analyzed using Soerjono Soekanto's theory of legal effectiveness, the law in the context of Pilkades has not been effective because the factors of regulation, law enforcement, facilities, society, and legal culture have not been mutually supportive. This can be seen from the continuing multiple interpretations of the authority to resolve disputes and the dissatisfaction of village communities with the existing mechanisms.

The Socio-Political Dimension of Pilkades Disputes

In addition to normative aspects, socio-political dynamics also play a major role in complicating the resolution of Pilkades disputes. Rivalry between candidates, fueled by fanatical supporters, has triggered social fragmentation in Kota Bangun 2 Village. The existence of local elites and community leaders affiliated with certain candidates further strengthens political polarization in the village.

Within the framework of political sociology theory, this phenomenon shows that Pilkades is an arena for power struggles that cannot be separated from the interests of local actors. Pilkades disputes are therefore not only procedural issues, but manifestations of broader conflicts of interest involving economic, social, and political aspects.

Implications for the Constitutional System

One important discussion arising from these findings is the position of Pilkades in Indonesia's electoral system. Formally, Pilkades is not recognized as a separate electoral regime like legislative elections or regional head elections. However, in substance, Pilkades has very similar stages and mechanisms, and even more concretely reflects the sovereignty of the people at the village level.

The unclear position of Pilkades in the constitutional system means that the resolution of disputes does not have a strong legal framework. If Pilkades is positioned as a local election regime, then the dispute resolution mechanism can be directed to a special judicial institution or at least to the Election Supervisory Agency (Bawaslu) with certain adaptations. This reformulation would strengthen the legitimacy of Pilkades while closing the legal uncertainty gap that currently exists.

CONCLUSION

Based on this problem statement, it can be concluded that violations can occur in village head elections due to poor supervision, including administrative disputes over the election and disputes over the results of the village head election. Disputes in Village Head Elections (Pilkades) can be triggered by various complex factors, both internal and external. Internal factors occur because the committee does not understand the mechanism of implementing village head elections. This can be seen in the implementation of village head elections where there are committees that are not neutral, problematic voter lists, unhealthy campaign processes, fanaticism among supporters, and a lack of social control.

Meanwhile, external factors are influenced by local government intervention, weak regulations, political and power interests, and proximity to local authorities. Looking at these factors certainly opens up the possibility of violations occurring. Meanwhile, external factors are influenced by local government intervention, regulatory weaknesses, political and power interests, and proximity to local authorities. Considering these factors, it is clear that there is room for Pilkades disputes to occur, which will have a negative impact on the lives of the village community, such as the breakdown of harmony, the obstruction of village development, and the emergence of prolonged social conflicts.

Disputes over village head elections (PILKADES) can be resolved through deliberation/consensus. A village head election dispute is a disagreement or conflict that arises due to differences of opinion or dissatisfaction with the results or process of the village head election. Pilkades disputes can arise from various parties, such as village head candidates, election committees, or the community. The mechanism for resolving Pilkades disputes is regulated in Law Number 6 of 2014 concerning Villages, Government Regulation No. 47 of 2015, Minister of Home Affairs Regulation No. 112 of 2014 in conjunction with Minister of Home Affairs Regulation No. 72 of 2020, and Kutai Kartanegara Regent Regulation No. 10 of 2019. Dispute resolution mechanisms can be resolved in two ways, namely through litigation and non-litigation. Litigation is resolved through the courts, in this case the State Administrative Court (PTUN) based on Law No. 5 of 1986 concerning State Administrative Courts, where the final decision is made by a judge based on the law and evidence presented in court. Non-litigation dispute resolution is carried out through the mechanism stipulated in Regional Regulation No. 10 of 2019, the Implementing Regulation of Regional Regulation No. 3 of 2015 concerning the Election and Dismissal of Village Heads, as amended by Regional Regulation No. 3 of 2018 concerning Amendments to Regional Regulation No. 3 of 2015 concerning the Election and Dismissal of Village Heads, the mechanism of which is resolved through deliberation and consensus

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