

**DUAL DUTIES OF THE VILLAGE HEAD ELECTION COMMITTEE**

**BASED ON PERMENDAGRI NUMBER 112 OF 2014**

***SIYASAH DUSTURIYAH* PERSPECTIVE**

**THESIS**

**by:**

**AYU FEBRIA RANTIKA SARI**

**SIN 210203110061**



**CONSTITUTIONAL LAW (SIYASAH) DEPARTMENT**

**SHARIA FACULTY**

**STATE ISLAMIC UNIVERSITY OF MAULANA MALIK IBRAHIM**

**MALANG**

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**MALANG**

**2025**

## **STATEMENT OF AUTHENTICITY**

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis is entitled:

### **DUAL DUTIES OF THE VILLAGE HEAD ELECTION COMMITTEE**

#### **BASED ON PERMENDAGRI NUMBER 112 OF 2014**

#### **SIYASAH DUSTURIYAH PERSPECTIVE**

Is truly the writer's original work which can be legally justified. If the thesis is proven to be the result of duplication or plagiarism from another scientific work, it as a precondition of degree will be declared legally invalid.

Malang, May 26, 2025

Writer,



Ayu Febria Rantika Sari

NIM 210203110061

## APPROVAL SHEET

After reading and correcting thesis of Ayu Febria Rantika Sari Student ID: 210203110061 Department of Constitutional Law ( *Siyasah* ) Syari'ah Faculty of the State Islamic University Maulana Malik Ibrahim Malang with the title:

### DUAL DUTIES OF THE VILLAGE HEAD ELECTION COMMITTEE

### BASED ON PERMENDAGRI NUMBER 112 OF 2014

### SIYASAH DUSTURIYAH PERSPECTIVE

The supervisor stated that this thesis has met the scientific requirements to be proposed and to be examined on the Assembly Board of Examiners.

Acknowledged by,

Malang, May 28, 2025

The Head of Department of,

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







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Thesis title : Dual Duties of the Village Head Election Committee Based on Permendagri Number 112 of 2014 *Siyasah* Dusturiyah Perspective

No	Day/Date	Material Consultation	Initials
1	Thursday, February 27, 2025	Revision After Proposal Seminar	
2	Thursday, March 6, 2025	Consultation Chapter I	
3	Friday, March 7, 2025	Chapter I Revision	
4	Wednesday, March 12, 2025	Consultation Chapter II	
5	Friday, March 14, 2025	Chapter II Revision	
6	Wednesday, May 7, 2025	Consultation Chapter III	
7	Wednesday, May 14, 2025	Chapter III Revision	
8	Tuesday, May 20, 2025	Revision of Chapter III RM 2nd	
9	Monday, May 26, 2025	Consultation Chapter IV	
10	Tuesday, May 27, 2025	Finishing Chapters I-IV and ACC	

Malang, May 28, 2025

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Head Department of Constitutional  
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## LEGITIMATION SHEET

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Dual Duties Of The Village Head Election Committee Based On Permendagri Number 112 Of 2014 *Siyasah* Dusturiyah Perspective

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May 13, 2025

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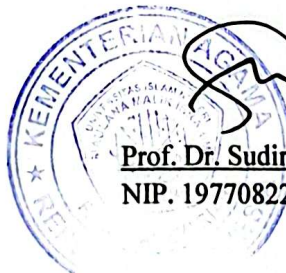
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## MOTTO

فَإِذَا ضُيِّعَتِ الْأَمَانَةُ فَانْتَظِرِ السَّاعَةَ قَالَ كَيْفَ إِضَاعَتُهَا قَالَ إِذَا وُسِّدَ الْأَمْرُ إِلَى غَيْرِ أَهْلِهِ  
فَانْتَظِرِ السَّاعَةَ

*“When the trust is lost, then wait for the Hour”. The man (Bedouin) asked, “How is the trust lost?” The Prophet (SAW) replied, “If a matter is handed over not to the experts, then wait for the end of the world.”*

*(Narrated by Al-Bukhari)*

*"There is no liberty if the judicial power is not separated from the legislative and executive."*

*~Baron de Montesquieu~*

## FOREWORD

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Alhamdulillahirabbil'alamin, who has given grace and assistance in researching the thesis entitled: "**Dual Duties of the Village Head Election Committee Based on Permendagri Number 112 of 2014 *Siyasah Dusturiyah* Perspective**" we were able to complete well. We offer our prayers and greetings to the Prophet Muhammad SAW who has given us uswatun hasanah to us in living this life in a syar'i manner. By following him, hopefully we will be among those who believe and receive his intercession on the Day of Judgment. Amen.

With all the teaching, guidance/direction, and service assistance that has been provided, the author with all humility expresses his incomparable thanks to:

1. Prof. Dr. HM Zainuddin, MA., as the Chancellor of the State Islamic University of Maulana Malik Ibrahim Malang.
2. Prof. Dr. Sudirman, MA, CAHRM as Dean of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University of Malang
3. Dr. H. Musleh Harry, SH, M. Hum. as Chair of the Constitutional Law Study Program ( *Siyasah* ) Faculty of Sharia, Maulana Malik Ibrahim State Islamic University, Malang.
4. Teguh Setyo Budi, S.HI., MH as the author's advisor during his studies at the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University of Malang.

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8. My beloved mother, Yusniati, S.Pd. my door to heaven on earth. The warmth of your hug, the sincerity of your prayers, and your limitless patience are the most beautiful place to return to in every tiredness. You are a source of strength that never dries up, teaching the author the meaning of true affection with all your gentleness and sacrifice.
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always give and moral support that never stops have become strength for the author in facing various challenges. Not to forget, the youngest Reonal Febrian who always provides support and prayers that are very meaningful for the author, hopefully in the future the author can be a motivation for you to continue to achieve and reach higher ideals.

10. Lastly to myself, Ayu Febria Rantika Sari, who has fought with full dedication.

Thank you very much for all your efforts, hard work and perseverance during this academic journey. You are a true warrior who deserves to be appreciated and respected.

With the completion of this thesis report, it is hoped that the knowledge we have gained during college can provide benefits for the charity of life in this world and the hereafter. As a human being who is never free from mistakes, the author greatly expects forgiveness as well as criticism and suggestions from all parties for the sake of improvement efforts in the future.

Malang, May 26, 2025  
Writer,



Ayu Febria Rantika Sari  
NIM 210203110061

## TRANSLITERATION GUIDELINES

In writing scientific papers, the use of foreign terms is often unavoidable. In general, according to the general guidelines for Indonesian spelling, foreign words are written (printed) in italics. In the context of Arabic, there are special transliteration guidelines that apply internationally. The following is a table of transliteration guidelines as a reference for writing scientific papers.

### A. CONSONANT

A list of Arabic letters and their transliteration into Latin letters can be seen on the following page:

Arab	Indonesia	Arab	Indonesia
A	'	ط	t
ب	B	ظ	z
t	T	ع	'
ث	Th	غ	gh
ج	J	ف	f
ح	h	ق	q
خ	kh	ك	k

D	D	ل	l
ذ	dh	م	m
ر	R	ن	n
ز	Z	و	w
س	S	ه	h
ش	sh	ء	'
ص	s	ي	y
ض	ḍ	-	-

Hamzah ( ء ) which is located at the beginning of a word follows its vowel without any mark. If hamzah ( ء ) is located in the middle or at the end, then it is written with a mark (').

## B. VOCAL

Arabic vowels, like Indonesian vowels, consist of single vowels or monophthongs and double vowels or diphthongs.

Arabic single vowels whose symbols are signs or harakat, the transliteration is as follows:

Arabic Letters	Name	Latin letters	Name
اَ	Fathah	A	A
اِ	Kasrah	I	I
اُ	Damma	U	U

Arabic double vowels whose symbols are a combination of harakat and letters, the transliteration is a combination of letters, namely:

Sign	Name	Latin letters	Name
أَيَّ	Fathah and ya	Ai	A and I
أَوْ	Fathah and waw	Iu	A and U

Example:

كَيْفَ : *kaifa*

هَوْلَ : *hauila*

### C. MADDAH

Maddah or long vowels whose symbols are in the form of harakat and letters, the transliteration is in the form of letters and signs, namely:

Harakat and Letters	Name	Letters and Signs	Name
ي	Kasrah and ya	ī	I and the line above
و	Dammah and waw	ū	U and the line above

Example:

مَاتَ : māta

رَمَى : ramā

قِيلَ : qīla

يَمُوتُ : yamūtu

#### D. TA MARBUTAH

There are two transliterations for ta marbutah, namely: ta marbutah that is alive or has the harakat fathah, kasrah and dhammah, the transliteration is [t]. While *ta marbutah* that is dead or has the harakat sukun, the transliteration is [h].

If a word ending with ta marbutah is followed by a word that uses the definite article al- and the two words are read separately, then *ta marbutah* is transliterated as ha (h).

Example:

رَوْضَةُ الْأَطْفَالِ : the holy place of al-atfall

الْمَدِينَةُ الْفَاضِلَةُ : al-madīnah al-fadilah

الْحِكْمَةُ : al-hikmah

#### E. SYADDAH

*Syaddah* or *tasydīd* which in the Arabic writing system is symbolized by a *tasydid sign* (ـّ), in transliteration it is symbolized by repetition of letters (double consonants) which are marked *syaddah* .

Example:

رَبَّنَا : *rabbaṇā*

نَجَّيْنَا : *najjainā*

الْحَقُّ : *al-ḥaqq*

الْحَجُّ : *al-ḥajj*

نُعِمْ : *nu''ima*

عَدُوُّ : *'aduwwu*

If the letter ع has a *tasydid* at the end of a word and preceded by a letter with a kasrah vowel ( -ِ ), then it is transliterated like the letter *maddah* ( ī ).

Example:

عَلِيٍّ : 'Alī (not 'Aliyy or 'Aly)

عَرَبِيٍّ : 'Arabī (not 'Arabiyy or 'Araby)

#### F. ARTICLE

The article in the Arabic writing system is symbolized by the letter ال (alif lam ma'arif). In this transliteration guideline, the article is transliterated as usual, al-, whether it is followed by a syamsiyah letter or a qamariah letter. The article does not follow the sound of the direct letter that binds it. The article is written separately from the word that follows it and is connected with a horizontal line (-).

For example:

الشَّمْسُ : *al-syamsu* (not asy-syamsu)

الزَّلْزَلَةُ : *al-zalزالah* (not az-zalزالah)

الْفَلْسَفَةُ : *al-falsafah*

الْبِلَادُ : *al-bil ādu*

#### G. HAMZAH

The transliteration rule of the hamzah letter into an apostrophe (') only applies to hamzahs located in the middle and end of words. However, if the

hamzah is located at the beginning of a word, it is not symbolized, because in Arabic writing it is an alif.

For example:

تَأْمُرُونَ : ta'marūna

النَّوْء : al-nau'

شَيْء : syai'un

أُمِرْتُ : my lord

#### H. WRITING OF ARABIC WORDS COMMONLY USED IN INDONESIAN

Transliterated Arabic words, terms or sentences are words, terms or sentences that have not been recorded in Indonesian. Words, terms or sentences that are common and have become part of the Indonesian vocabulary, or have often been written in Indonesian writing, are no longer written using the transliteration method above. For example, the words Al-Qur'an (from *the Qur'an*), sunnah, hadith, special and general. However, if these words are part of a series of Arabic texts, then they must be transliterated in their entirety.

Example:

Fīzilāl al-Qur'ān

The Sunnah of the Almighty

Al-'Ibārāt Fī 'Umūm al-Lafẓ lā bi khuṣūṣ al-sabab

## I. LAFZ AL-JALALAH

The word "Allah" which is preceded by particles such as the letter *jarr* and other letters or is positioned as *mudaf ilaih* (nominal phrase), is transliterated without the letter hamzah.

Example:

دِينَ اللَّهِ : dīnullāh

As for *ta marbutah* at the end of the word which refers to *lafz al-jalalah*, it is transliterated with the letter [t].

example:

هُمْ فِي رَحْمَةِ اللَّهِ : hum fī raḥmatillāh

## J. CAPITAL LETTERS

Even though the Arabic writing system does not recognize capital letters (*All Caps*), in its transliteration these letters are subject to provisions regarding the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the first letter of a proper name (person, place, month) and the first letter at the beginning of a sentence. If a proper name is preceded by an article (al-), then the initial letter of the proper name is written in capital letters, not the initial letter of the article. If it is located at the beginning of a sentence, then the letter A of the article is capitalized (Al-). The same provisions also apply to the initial letters of

reference titles preceded by the article al-. both when it is written in the text and in reference notes (CK, DP, CDK, and DR).

Example:

Wa mā Muḥammadun illā rasūl

Inna awwala baitin wuḍi'a linnāsi lallaẓī bi Bakkata mubārakan

Syahru Ramaḍan al-laẓī unzila fih al-Qur'an

Nasir al-Dīn al-Ṭūs

Abū Naṣr al-Farābī

Al-Ghazālī

Al-Munqiz min al-Ḍalāl

## ABSTRACT

Ayu Febria Rantika Sari, NIM 210203110061, 2025. **Dual Duties of the Village Head Election Committee Based on Permendagri Number 112 of 2014, Siyasah Dusturiyah Perspective**, Thesis, Constitutional Law (*Siyasah*) Study Program, Faculty of Sharia, State Islamic University of Maulana Maliak Ibrahim Malang.

**Supervisor:** Abdul Kadir, SHI., MH

---

**Keywords:** Double Duty; Village Head Election; Siyasah Dusturiyah.

The dual duties of the Village Head Election Committee as both implementer and supervisor in the Village Head Election (Pilkades) process are the result of the Disharmony of Article 9 of the Permendagri Number 112 of 2014 concerning Village Head Elections against the higher norm hierarchy, namely Law Number 6 of 2014 concerning Villages. The placement of these two duties in one entity violates the *check and balances mechanism* and has the potential to cause a *conflict of interest* and ineffectiveness of the performance of the Village Head Election Committee during the Pilkades process. This study aims to analyze and describe the regulation of the dual duties of the Village Head Election Committee as implementer and supervisor according to the theory of legal certainty and the perspective of *siyasah dusturiyah*. The type of research used is normative legal research with a *statute approach* and *conceptual approach*. The legal materials in this study consist of primary legal materials in the form of relevant regulations and secondary legal materials in the form of books, journals and other scientific papers with a bibliography study collection method. The analysis in this study uses qualitative legal analysis techniques.

The results of the study show that: Article 9 of the Permendagri Number 112 of 2014 which is the basis for the dual duties of the Village Head Election Committee does not fulfill the elements of legal certainty as stated by Nurhasan Ismail due to the unclear concept of the scope of duties which is full of multiple interpretations, the unclear hierarchy where the Permendagri should be in the form of technical regulations not creating new norms that are not regulated by law and vertical inconsistency where the Permendagri is not in line with the Village Law which only provides the mandate of the implementer not the supervisor. Based on the perspective of *siyasah dusturiyah*, the dual duties of the Election Committee are contrary to the principle of separation and balance of powers developed by Muhammad Iqbal. The Minister ( *al-sulthah al-tanfidiyyah* ) through the Ministerial Regulation exceeds his authority in the legislative process which is the domain of *al-sulthah al-tasri'iyah*. In addition, the integration of the duties of the implementer and supervisor in one entity is contrary to the principle of independence of *al-sulthah al-qadha'iyah*.

## ABSTRACT

Ayu Febria Rantika Sari, NIM 210203110061, 2025. **Dual Duties of the Village Head Election Committee Based on the Regulation of the Minister of Home Affairs Number 112 of 2014 Perspective of Siyasah Dusturiyah**, Thesis, Constitutional Law Study Program ( *Siyasah* ), Faculty of Sharia, Maulana Maliak Ibrahim State Islamic University Malang.

**Advisor:** Abdul Kadir, SHI., MH

---

**Keywords:** Double Duty; Village Head Election; Siyasa Dusturiyah.

The double duty of the Village Head Election Committee as the executor and supervisor of the Village Head Election ( *Pilkades* ) process is the result of the disharmonization of Article 9 of Permendagri No. 112/2014 on Village Head Elections against the higher hierarchy of norms, namely Law No. 6/2014 on Villages. The placement of two tasks in one entity violates the checks and balances mechanism and has the potential to cause conflicts of interest and ineffectiveness in the performance of the Village Head Election Committee during the *Pilkades* process. This research aims to analyze and describe the regulation of the dual duties of the Village Head Election Committee as executor and supervisor according to the theory of legal certainty and the perspective of *siyasah dusturiyah* . The type of research used is normative legal research with a statute approach and conceptual approach. Legal materials in this research consist of primary legal materials in the form of relevant regulations and secondary legal materials in the form of books, journals and other scientific papers with a bibliography study collection method. The analysis in this research uses qualitative juridical analysis techniques.

The results showed that: Article 9 of Permendagri Number 112 of 2014, which is the basis for the double duty of the Village Head Election Committee, does not fulfill the element of legal certainty as stated by Nurhasan Ismail due to the unclear concept of the scope of duties which is full of multiple interpretations, unclear hierarchy where the Permendagri should be a technical regulation rather than creating new norms that are not regulated by law and vertical inconsistency where the Permendagri is not in line with the Village Law which only mandates implementers not supervisors. Based on the perspective of *siyasah dusturiyah* , the double duty of the Election Committee is contrary to the principle of separation and balance of power developed by Muhammad Iqbal. The Minister (*al- sulthah al- tanfidziyah* ) through the Ministerial Regulation exceeds his authority in the legislative process which is the domain of *al- sulthah al- tasri'iyyah* . In addition, the integration of implementing and supervisory duties in one entity is contrary to the principle of independence of *al- sulthah al- qadha'iyyah* .

## الملخص

الواجبات المزدوجة للجنة انتخاب رئيس القرية. 2025، NIM 210203110061، أبو فيبريا رانتিকা ساري  
استناداً إلى البرمنداغري رقم 112 لعام 2014 من منظور السياسة الدستورية، أطروحة، برنامج دراسة  
.. القانون الدستوري (السياسة)، كلية الشريعة، جامعة مولانا ملاك إبراهيم الإسلامية الحكومية مالانج

المشرف: عبد القادر، س. ه. م. ه.

الكلمات المفتاحية: واجب مزدوج؛ انتخابات رئيس القرية؛ سياسة دستورية

إن ازدواجية مهام لجنة انتخاب رئيس القرية كمنفذ ومشرف في عملية انتخاب رئيس القرية (بيلكاديس) هي نتيجة عدم الانسجام بين المادة 9 من البرمنداغري رقم 112/2014 بشأن انتخابات رؤساء القرى وبين التسلسل الهرمي الأعلى للمعايير، أي القانون رقم 6/2014 بشأن القرى. إن وضع مهمتين في كيان واحد ينتهك آلية الضوابط والتوازنات ومن المحتمل أن يتسبب في تضارب المصالح وعدم الفعالية في أداء لجنة انتخاب رؤساء القرى خلال عملية بيلكاديس. يهدف هذا البحث إلى تحليل ووصف تنظيم الواجبات المزدوجة للجنة انتخاب رئيس القرية كمنفذ ومشرف على العملية الانتخابية وفقاً لنظرية اليقين القانوني ومنظور السياسة الدبرية. إن نوع البحث المستخدم هو بحث قانوني معياري ذو نهج قانوني معياري مع نهج النظام الأساسي والمنهج المفاهيمي تتألف المواد القانونية في هذا البحث من مواد قانونية أولية في شكل لوائح ذات صلة ومواد قانونية ثانوية في شكل كتب ومجلات وأبحاث علمية أخرى مع طريقة جمع الدراسة الببليوغرافية. ويستخدم التحليل في هذا البحث تقنيات التحليل القانوني النوعي

تُظهر نتائج البحث أن: إن المادة 9 من البرمنداغري رقم 112/2014، التي هي أساس ازدواجية واجب لجنة انتخابات رؤساء القرى، لا تفي بعنصر اليقين القانوني كما ذكر نور حسن إسماعيل بسبب عدم وضوح مفهوم نطاق الواجبات الملية بالتفسيرات المتعددة، وعدم وضوح التسلسل الهرمي حيث يجب أن يكون البرمنداغري قاعدة فنية بدلاً من إنشاء قواعد جديدة لا ينظمها القانون وعدم الاتساق الرأسي حيث لا يتماشى البرمنداغري مع قانون القرية الذي يكلف المنفذين فقط وليس المشرفين. واستناداً إلى منظور السياسة الشرعية فإن ازدواجية مهمة لجنة الانتخابات تتعارض مع مبدأ الفصل والتوازن بين السلطات الذي وضعه محمد إقبال. فالوزير من خلال اللائحة الوزارية يتجاوز صلاحياته في العملية التشريعية التي هي من اختصاصات السلطة التشريعية التي هي من اختصاصات السلطة التنفيذية. بالإضافة إلى أن دمج المهام التنفيذية والرقابية في جهة واحدة يتعارض مع مبدأ استقلالية السلطة القضائية

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## CHAPTER I INTRODUCTION

### A. Background

Indonesia is recognized as a unitary state in the form of a Republic <sup>1</sup>as stated in Article 1 paragraph (1) of the 1945 Constitution. The diversity of culture, ethnicity, religion and customs of the Indonesian people is reflected in the motto Bhinneka Tunggal Ika. The structure of the Indonesian government adheres to a vertical division of power, where Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI) stipulates that provinces are autonomous regions which are then divided into districts and cities. Each level of government has regional autonomy authority regulated by law.<sup>2</sup>

The village as the lowest government entity, is a legal community unit that has the right to regulate and manage the interests of the local community based on local origins and customs, and is officially recognized in the government system of the Unitary State of the Republic of Indonesia. <sup>3</sup>However, Geertz stated that the term "village" comes from Sanskrit, which refers to a peripheral area or an area that is under the subordination or authority of

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<sup>1</sup> Article 1 paragraph ( 1 ) of the 1945 Constitution of the Republic of Indonesia

<sup>2</sup> Rika Marlina, "Division of Power in the Implementation of Government in Indonesia," *Jurnal Daulat Hukum* 1, No. 1 (March 10, 2018), <https://doi.org/10.30659/jdh.v1i1.2631>.

<sup>3</sup> Kadek Apriliani and I. Made Sudirga, "Implementation of the Village Law in Village Head Election Disputes," *Synotic Law: Journal of Legal Studies* 1, No. 3 (September 30, 2022): 141–47, <https://doi.org/10.56110/sl.v1i3.12>.

external forces. The Indonesian Constitution through Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, explicitly recognizes and respects the existence of customary law communities and their traditional rights. This recognition applies as long as these rights are still alive and in accordance with the dynamics of society and the principles of the Unitary State of the Republic of Indonesia, with the mandate to be further regulated through statutory regulations.<sup>4</sup>

The implementation of the principle of decentralization in Indonesia underlies the emergence of a vertical division of power. Based on this principle, the central government delegates authority to autonomous regional governments to independently manage government affairs in their regions. However, there are exceptions for matters that are the exclusive authority of the central government, such as foreign policy, defense, security, justice, religion, and monetary and fiscal policies.<sup>5</sup> The decentralization system in the implementation of government in Indonesia is a form of division of power from the central government to regional governments through the mechanism of regional autonomy. This implementation is a manifestation of democracy that is oriented towards improving people's welfare through equitable distribution of development and its results<sup>6</sup>.

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<sup>4</sup> Apriliani and Sudirga.

<sup>5</sup> Marlina, "Division of Power in the Implementation of Government in Indonesia."

<sup>6</sup> Khusnul Khotimah et al., "Inter-Time Village Head Election Inter-Time Village Head Election (PAW) After the Regent's Decree was Cancelled by the State Administrative Court Decision," *Journal of Law, Humanities and Politics* 4, No. 4 (May 7, 2024): 512–22, <https://doi.org/10.38035/jihhp.v4i4.1938>.

In this context, the government also grants autonomy to the lowest government unit, namely the village, known as "Village Autonomy". Through this autonomy, village communities are given the authority to regulate and manage the dynamics of their lives independently, based on applicable regulations and with minimal intervention from outside parties <sup>7</sup>. The scope of this autonomy includes the technical aspects of organizing the Village Head Election which are further regulated in the Regional Regulation. The Village Head Election (Pilkades) is an important stage in the local democracy system in Indonesia <sup>8</sup>. The constitution mandates that sovereignty lies in the hands of the people and is implemented according to the Constitution <sup>9</sup>.

One of the characteristics of a democratic country, as a form of government from, by, and for the people, is the change of power that involves public participation through General Elections (Pemilu). <sup>10</sup>Generally, Elections are held to elect people's representatives in legislative institutions at every level of government, from the center to the provinces, districts, and cities, as well as to elect the president and vice president <sup>11</sup>. Meanwhile, the Regional Head Election (Pilkada) is the process of electing regional

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<sup>7</sup> Richard Timotius, "Village Revitalization in the Constellation of Decentralization According to Law Number 6 of 2014 Concerning Villages," *Journal of Law & Development* 48, no. 2 (September 7, 2018): 326, <https://doi.org/10.21143/jhp.vol48.no2.1666>.

<sup>8</sup> Madaskolay Viktoris Dahoklory, "Effective Village Head Election Results Dispute Settlement Design," *Jurnal Rechts Vinding: Media for National Legal Development* 12, No. 1 (June 26, 2023), <https://doi.org/10.33331/rechtsvinding.v12i1.1088>.

<sup>9</sup> Cecep Prayatno and Tri Susilowati, "Simultaneous General Elections in 2024 Based on the Decision of the Constitutional Court of the Republic of Indonesia," *Perkara: Journal of Law and Politics* 1, no. 4 (November 20, 2023): 168, <https://doi.org/10.51903/perkara.v1i4.1495>.

<sup>10</sup> Ahmad Jukari, "Development of the Election Monitoring System in Indonesia," *JPW (Walisongo Political Journal)* 3, No. 1 (April 30, 2021): 1–19, <https://doi.org/10.21580/jpw.v3i1.8791>.

<sup>11</sup> Prayatno and Susilowati, "Simultaneous General Elections in 2024 Based on the Decision of the Constitutional Court of the Republic of Indonesia," 172.

heads and deputy regional heads directly, both at the provincial and district/city levels<sup>12</sup>. At the lowest level of government, there is the Village Head Election (Pilkades) which is a means of channeling political rights and implementing people's sovereignty directly to elect village heads<sup>13</sup>.

The involvement of all elements of society in the village head election process is a fundamental indicator of a democratic government system. Specifically, regulations regarding village head elections (Pilkades) are regulated in Law No. 6 of 2014 concerning Villages (Village Law) which explicitly mandates that village heads must be elected directly by local villagers.<sup>14</sup> Direct village head elections (Pilkades) are the democratic aspirations of village communities, where residents have the right to determine their choice without intervention from outside parties. In the context of democracy, Pilkades can be seen as a prototype of direct elections, both in terms of implementation and implications, because they are implemented based on the principles of direct, general, free, secret, honest, and fair (Luber and Jurdil).<sup>15</sup>

Pilkades can be interpreted as a form of validation of community diversity, political expression, and community participation within the framework of

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<sup>12</sup> Parbuntian Sinaga, "Regional Head Elections in the Construction of the 1945 Constitution of the Republic of Indonesia," *Binamulia Law* 7, no. 1 (2018): 17, <https://doi.org/10.37893/jbh.v7i1.311>.

<sup>13</sup> Dedi Mulyadi, M. Rendi Aridhayandi, and Aris Budiono, "Democracy and Legitimacy of Village Leadership: A Normative Legal Review of the Dynamics and Regulations Related to Village Head Elections," *Lex Publica* 5, no. 1 (January 30, 2018): 25, <https://journal.appthi.org/index.php/lexpublica/article/view/87>.

<sup>14</sup> Kalvin Hasiholan Gultom, Margo Hadi Pura, and Muhammad Rifaldi, "Legal Review of Legal Efforts to Settlement Village Head Election Disputes Based on Law No. 6 of 2014 Concerning Villages," *Jurnal Ilmiah Wahana Pendidikan* 8, no. 5 (April 29, 2022): 386, <https://doi.org/10.5281/zenodo.6504851>.

<sup>15</sup> Dahoklory, "Effective Village Head Election Result Dispute Resolution Design."

democratization at the village level. Given the closeness of the village government to various levels of society, including their various interests and problems, optimal village government performance can be a crucial indicator for significant community progress.

<sup>16</sup>Pilkades is implemented simultaneously in all districts/cities, as regulated in Article 31 of Law No. 6 of 2014 concerning Villages (Village Law). Furthermore, the article also mandates that technical policies related to the implementation of simultaneous Pilkades must be stipulated through District/City Regional Regulations (Perda). <sup>17</sup>To implement the Pilkades process, a Village Head Election Committee (Pilkades) is formed, in accordance with the provisions of Article 34 paragraph (4) of the Village Law.

The reality of the implementation of Village Head Elections (Pilkades) in various regencies/cities in Indonesia often deviates from democratic values. <sup>18</sup>Violations often involve village head candidates, campaign teams, the community, or even organizers. This condition is of course caused by the less than optimal supervision in each stage of the Pilkades. Regarding the supervisory function in Pilkades, Article 9 letter (a) of the Regulation of the Minister of Home Affairs No. 112 of 2014 concerning the Election of Village Heads explicitly states that the Village Head Election Committee is

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<sup>16</sup> Apriliani and Sudirga, "Implementation of the Village Law in Village Head Election Disputes," September 30, 2022.

<sup>17</sup> Apriliani and Sudirga.

<sup>18</sup> Rizki Maharani, Habiburrahman Habiburrahman, and David Aprizon Putra, "Money Politics Practices in Village Head Elections from the Perspective of Siyasa Sar'iyah (In Kampung Melayu Village in 2023)" (undergraduate, STATE ISLAMIC INSTITUTE (IAIN) CURUP, 2024), 23, <https://e-theses.iaincurup.ac.id/7187/>.

responsible for planning, coordinating, organizing, supervising, and controlling all stages of the election implementation. This indicates that the election committee does not only act as an implementer, but also as a supervisor and monitor of the election process.<sup>19</sup>

This situation is clearly less effective and has the potential to trigger a conflict of *interest* if it only relies on one institution. The absence of *checks and balances* becomes a serious obstacle if violations are committed by the Village Head Election Committee itself. Although the Village Head Election does not involve political parties, in order to realize direct democracy that upholds the sovereignty of the people, ideally a special independent institution is needed to act as the organizer and supervisor of the Village Head Election in Indonesia.<sup>20</sup>

Referring to Law No. 7 of 2017 concerning Elections, which is a pillar of the legitimacy of direct democracy in Indonesia, the implementation of elections is carried out by functional units. This unit consists of the General Election Commission (KPU) as the main implementer of the Election, the General Election Supervisory Body (Bawaslu) which is tasked with supervising the implementation of the Election, and the Election Organizer Honorary Council (DKPP) which has the authority to handle violations of the code of ethics committed by the KPU and Bawaslu and their staff.<sup>21</sup>

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<sup>19</sup> Article 9 letter a of the Regulation of the Minister of Home Affairs Number 112 of 2014 concerning Election Village head

<sup>20</sup> Jukari, "The Development of Election Supervision Systems in Indonesia."

<sup>21</sup> Dewi Haryanti, "Legal Construction of General Election Organizing Institutions in Indonesia Reviewed from the Stufenbau Theory," *Journal of Legal Reform* 2, No. 2 (2015): 270–78.

The Election Supervisory Body (Bawaslu), as previously mentioned, is an independent institution tasked with supervising all stages of the election and regional elections at every level. In line with this, an independent institution is also needed to optimize the supervisory function in the implementation of the Village Head Election (Pilkades). Referring to Article 3 paragraph (1) letter b of the Election Supervisory Body Regulation Number 4 of 2018 concerning General Election Supervision, "Election observers must be independent". Independent is defined as a condition that is free, autonomous, and free from the influence of external parties.<sup>22</sup>

If related to the requirements for candidate supervisors of the Village Head Election, then the supervisors of the Village Head Election must have an independent, autonomous position, and not be subordinated by other institutions (external factors). Thus, the supervisors of the Village Head Election should stand alone and not be integrated into the Village Head Election Committee. This is because the supervisory function in the Village Head Election (Pilkades) plays a crucial role considering the vulnerability of the Village Head Election to violations. This situation is exacerbated by the division of community groups during the Village Head Election process. Cases related to the Village Head Election are not a new phenomenon, but have become recurring issues from time to time. Some cases related to the Village Head Election include:

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<sup>22</sup> Amelia Haryanti and Yulita Pujilestari, "The Function and Role of Bawaslu in the Election as an Implementation of the Enforcement of Law of the Republic of Indonesia Number 7 of 2017 Concerning General Elections," *Surya Kencana Dua Journal: Dynamics of Legal and Justice Issues* 6, No. 1 (July 2019), <https://core.ac.uk/download/pdf/337609076.pdf>.

First, the case of the Taman Suruh Village Head Election Committee which was attacked by dozens of people. This was because one of the village head candidates (cakades) named Rowiyah was suspected of falsifying supporting data (screening) for the requirements to become a village head candidate. Rowiyah, who was born in 1986, admitted that she had served as a health post administrator from 1998 to 2016. One of the residents named Slamet revealed the impossibility of Rowiyah becoming a health post administrator at the age of 12. Slamet said that Rowiyah's passing was due to negligence on the part of the committee and supervisors. He even suspected that the village head election committee was not neutral and forced Rowiyah to enter the Cakades exchange <sup>23</sup>.

Second, the Karangjati Village Head Election Committee was accused of cheating on the ballots. Ibnu Bahroini (one of the village head candidates) considered that the committee had inflated three ballots in the ballot box. Where the number of ballots given to voters was 2419 votes, but the final count of the ballots in the box was 2422 votes. This caused the implementation of the Karangjati Village Head Election to be questioned for its validity. Meanwhile, Sumyardi as the head of the Karangjati Village Head Election Committee explained that there was no inflation of the ballots, but he did not deny that there was an error related to the excess of the three ballots <sup>24</sup>.

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<sup>23</sup> Rahadi Adnil, "Forcing Village Head Candidate Data to Pass Selection, Tamansuruh Village Head Election Committee Stormed by Masses," Seru.co.id, September 3, 2019, <https://seru.co.id/2976-paksakan-data-cakades-agar-lolos-seleksi-panitia-pilkades-tamansuruh-digeruduk-massa>.

<sup>24</sup> "Accused of Village Head Election Committee Cheating on Ballots, Masses Storm Panwascam | Ngawi News Portal," accessed March 4, 2025, <https://www.sinarngawi.com/2013/07/dituding-panitia-pilkades-curangi-surat.html?m=1>.

Third, Mochtar Arif as one of the village head candidates in Pasir Putih village, Obi Utara sub-district, assessed that the implementation of the village head election was procedurally flawed. According to him, there were systematic, structured and massive violations starting from registration to the recapitulation of vote counting, both carried out by the Pasir Putih village head election committee and by the village government, in this case the village head and BPD who participated in the campaign and benefited candidate number three. Mochtar also mentioned that there was negligence on the part of the committee during the election, which never socialized the election rules, including how to use the correct vote <sup>25</sup>.

Fourth, the implementation of the Rambah Hilir Tengah Village Head Election on December 2, 2021 showed indications of systemic procedural violations and had a material impact on the integrity of the election results, including: (1) the absence of an official attendance list at TPS 02 which was replaced with a non-standard document, (2) inconsistency in additional voter verification with the granting of voting rights only with one document (KTP/KK), (3) participation of non-domiciled residents in the DPT, and (4) the lack of transparency in the recapitulation process through the withholding of plenary copies. These violations were exacerbated by non-compliance with Article 74 Paragraph 2 of Perbup No. 53/2018 in the counting of ballots, although

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<sup>25</sup> “Pasir Putih Village Head Election in North Obi District Deemed to Have Flaws in Procedure,” Indotimur, accessed March 4, 2025, <https://indotimur.com/nusantara/Pilkades-pasir-putih-kecamatan-obi-utara-dinilai-cacat-prosedur>.

acknowledged by the KPPS, and arithmetic irregularities between actual voter data and the DPT <sup>26</sup>.

The validation of the results by the committee through Clarification Letter No. 001/Pan-PILKADES/RHTg/XII/2021 actually ignored the findings of structural violations, thus having implications for the denial of the principle of procedural justice and potentially triggering social conflict. Therefore, the results of this election are legally inconsistent and do not meet democratic election standards, so immediate intervention is needed in the form of an independent audit and a re-vote at problematic polling stations to restore the legitimacy of the electoral process <sup>27</sup>.

Fifth, the case that shows indications of violations of the principles of justice, transparency, and neutrality in the selection process for the Wonokerto Village Head Candidate, where the Village Head Election Committee unilaterally changed the decision on the administrative verification of Siti Hany Aisyah even though all of her documents had been declared complete, including a mental health certificate. The committee's attitude in insisting on rejecting Siti Hany's passing even though the Demak Regency Community and Village Empowerment Service stated that her requirements had been met indicates a violation of procedures and discrimination, especially with the alleged attempt to smooth the nomination of other candidates related

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<sup>26</sup> "Accompanied by Legal Counsel, RHT Village Head Candidate Submits Letter of Objection to Village Head Election Results," [lineperistiwa.com](https://lineperistiwa.com), accessed March 4, 2025, <https://lineperistiwa.com/news/detail/1477/didampingi-kuasa-hukum-calon-kades-rht-sampaikan-surat-sanggahan-hasil-suara-pilkades>.

<sup>27</sup> "Accompanied by Legal Counsel, RHT Village Head Candidate Submits Letter of Objection to Village Head Election Results."

to the incumbent. This has the potential to violate the principles honest and fair competition in the election of village heads, as regulated in laws and regulations relating to local elections.<sup>28</sup>

Based on the various cases of violations above, the role of the supervisory committee in the Pilkades is very crucial. A separate supervisory body is needed that specifically oversees the implementation of the Pilkades without any intervention from any party.

When examining the legal material related to the dual duties of the Village Head Election Committee, it is necessary to strive for harmonization of the hierarchy of laws and regulations, where lower regulations must not conflict with higher regulations.<sup>29</sup> The regulation regarding the supervisory function of the Village Head Election Committee is currently only found in the Regulation of the Minister of Home Affairs No. 112 of 2014 concerning the Village Head Election. Meanwhile, Article 34 paragraph (5) of Law No. 6 of 2014 concerning Villages, which is the basic regulation for organizing the Village Head Election, only outlines the duties of the Village Head Election Committee and does not mention the supervisory duties. This indicates a conflict of norms *and* legal uncertainty regarding the supervisory duties of the village head election committee. This ambiguity or uncertainty is exacerbated by its derivative

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<sup>28</sup> "Siti Hany Aisyah Cheated by Wonokerto Demak Village Head Election Committee, There Are Indications of Engineering of Prospective Village Head Candidates - Tribunjateng.Com," accessed May 20, 2025, <https://jateng.tribunnews.com/2022/08/29/siti-hany-aisyah-dicurangi-panitia-pilkades-wonokerto-demak-ada-indikasi-teknik-bakal-calon-kades>.

<sup>29</sup> Ida Surya and Abdul Wahab, "Harmonization of Legislation in Realizing Good Governance," *Jurnal Kompilasi Hukum* 8, no. 2 (October 13, 2023): 111, <https://doi.org/10.29303/jkh.v8i2.142>.

regulations, such as the Regent's Regulation, which also does not regulate in detail the scope of the supervisory function.

Therefore, the author uses the theory of legal certainty as an analytical framework to create clarity regarding the limitations of the implementation and supervision of the Village Head Election Committee (Pilkades). This is important to ensure the firmness of the application of the law itself.<sup>30</sup> In essence, the principle of legal certainty refers to a condition in which the law has definite concrete power. The existence of this principle also functions as protection for justice seekers from arbitrary actions. Without legal certainty, uncertainty will arise *which* can cause chaos *due* to the uncertainty of the legal system. Thus, the application of the theory of legal certainty is expected to produce clear, consistent law enforcement that is not influenced by subjective conditions.<sup>31</sup>

In addition, this study also applies *siyasah dusturiyah* as an analytical framework. *Siyasah dusturiyah* is a branch of *fiqh siyasah* that studies issues of state legislation. The discussion includes the concepts of the constitution (the basic law of the state and the history of legislation), the legislative process (methods of formulating laws), and democratic institutions and *shura* as important pillars in legislation. This study also explores the concept of the rule of law in *siyasah*, as well as the reciprocal relationship

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<sup>30</sup> Sulasiyah Amini and Suratman, "The Importance of Land Registration: The Perspective of Legal Certainty Theory," *Journal of Law and Notary* 6, No. 3 (August 15, 2022): 1347–61, <https://doi.org/10.33474/hukeNo.v6i3.17712>.

<sup>31</sup> Mario Julyano and Aditya Yuli Sulistyawan, "Understanding the Principle of Legal Certainty Through the Construction of Legal Positivism Reasoning," *CREPIDO* 1, No. 1 (July 31, 2019): 13–22, <https://doi.org/10.14710/crepido.1.1.13-22>.

between the government and citizens, including the rights of citizens that must be protected.<sup>32</sup> Thus, *siyasah dusturiyah* will act as an analytical tool in formulating regulations related to the dual duties of the Village Head Election Committee based on the principles of Islamic law.

Scope *siyasah dusturiyah* , divided on :

1. *Siyasah tasri'iyah* . This section includes a discussion of *ahlu halli wal aqdi* and the representation of the people. The main focus is on the legislative power that acts as the people's representative in the process of forming laws
2. *Siyasah Tanfidiyah* . This discusses problem Imamate or government , in particular specific referring to power executive .
3. *Siyasah Qadla'iyah* . Components This covers related issues with justice or the general one known as power judiciary <sup>33</sup>.

The realm of *fiqh siyasah dusturiyah* in the *siyasah tashri'iyah* (legislation regulation legislation) or power legislature which is authority Islamic government in make set law based on provision Islamic law , there is a number of element keys that include <sup>34</sup>:

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<sup>32</sup> M. Edward Rinaldo and Hervin Yoki Pradikta, "Analysis of Fiqh Siyasah Dusturiyah in the Formation of Regulations on Trading in Influence in Positive Law in Indonesia," *AS-SIYASI: Journal of Constitutional Law* 1, no. 1 (2021): 1, <http://ejournal.radenintan.ac.id/index.php/assiyasi/index/AS-SIYASI>.

<sup>33</sup> Prof. HA Djazuli, *Fiqh Siyasah Implementation of the Public Welfare in Sharia Signs* (Jakarta: Prenadamedia Group, 2018), 48.

<sup>34</sup> Rinaldo and Pradikta, "Analysis of Siyasah Dusturiyah Fiqh in the Formation of Regulations Concerning Trading in Influence in Positive Law in Indonesia," 67.

1. Government hold authority For set the law that will implemented in Islamic society ;
2. Society Islam as executor law the ;
3. Contents of the regulations or law That must always in accordance with values base Islamic law .

Constitution Number 6 of 2014 Concerning Villages and the Permendagri Number 112 of 2014 Concerning Election Next Village Head will analyzed based on structural its institutions in framework *fiqh siyasah*. This *study* will explore authority institution the in formation regulation legislation . In addition , the substance of the Article or provisions that discuss discuss task double Committee Election The Village Head will traced For ensure its suitability principles Sharia Islam .

Referring to the explanation above, the author would like to raise this issue with the title **"Dual Duties of the Village Head Election Committee Based on Permendagri Number 112 of 2014 *Siyasah Dusturiyah* Perspective "**

## **B. Problem Limitation**

In order for this research to be more focused and not too broad, the author limits the scope of the research to the analysis of the dual duties of the Village Head Election Committee as both implementer and supervisor based on Article 9 of Permendagri No. 112 of 2014 concerning Village Head Elections. This study will be analyzed through two theoretical perspectives, namely:

1. The Theory of Legal Certainty by Nurhasan Ismail to test the consistency and clarity of regulations related to the dual duties of the Village Head Election Committee within the framework of legal certainty.
2. The perspective of Siyasah Dusturiyah by Muhammad Iqbal as a review of Islamic law regarding the suitability of the legislation to the division of state duties into three main powers and the principles of siyasah dusturiyah.

### **C. Research Problems**

1. How is the arrangement of the dual duties of the Village Head Election Committee as the implementing and supervisory committee in Article 9 of the Permendagri Number 112 of 2014 from the perspective of the theory of legal certainty?
2. What is the view *of the industrial administration* regarding the dual duties of the Village Head Election Committee according to Article 9 of the Permendagri Number 112 of 2014?

### **D. Research Purposes**

1. To analyze and describe the dual task arrangements of the Village Head Election Committee as the implementing and supervisory committee in Article 9 of the Permendagri No. 112 of 2014 from the perspective of the theory of legal certainty.

2. To analyze and describe the views of *siyasah dusturiyah* on the dual duties of the Village Head Election Committee according to Article 9 of the Permendagri No. 112 of 2014.

## **E. Research Benefits**

### **1. Theoretical Benefits**

- a. This research is expected to be able to contribute theoretically to enrich the literature on Constitutional Law related to the Implementation of the Dual Duties of the Village Head Election Committee as the Implementing and Supervisory Committee in Permendagri No. 112 of 2014.
- b. This research is expected to be useful for the development of science as well as input for those in power regarding the urgency and separation of duties between implementers and supervisors in the Village Head Election.

### **2. Practical Benefits**

- a. For the community

This research is expected to provide insight and knowledge related to the implementation of the Dual Duties of the Village Head Election Committee in Indonesia based on the theory of legal certainty and the perspective of *siyasah dusturiyah*.

- b. For the government

This research is expected to provide a real contribution regarding the urgency of separating the duties of implementing and supervising the Village

Head Election Committee to optimize performance and increase the effectiveness and efficiency of the Village Head Election Committee.

c. For writers

This research is expected to increase insight and knowledge regarding the importance of separating the implementing and supervisory functions in the Village Head Election Committee as a solution step in handling disputes over the Village Head Election process in Indonesia.

## **F. Research methods**

Method is defined as a systematic procedure or approach designed to acquire knowledge.<sup>35</sup> In scientific practice, research methods play a crucial role as an essential technical instrument to guide the entire research process. Vital functions of methods lies in its ability For ensure that study implemented in a way maximum , structured , and systematic .<sup>36</sup> With Thus , the election the right method become factor determinant success a study . The following will outlined method research that will be used :

### **1. Types of research**

Types of research used in studies This is study law normative . According to Soerjono Soekanto and Sri Mamudji, normative legal research is "legal research

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<sup>35</sup> Saifullah, *Typology of Legal Research (History, Paradigms and Thoughts of Figures in Indonesia)* , I (Bandung: PT Refika Aditama, 2018), 131.

<sup>36</sup> Nurul Qamar and Farah Syah Rezah, *Legal Research Methods: Doctrinal and Non-Doctrinal* (CV. Social Politic Genius (SIGn), 2020), 7.

conducted by examining library materials (secondary data)<sup>37</sup>. So it can be concluded that normative legal research is a process of investigation and analysis of law as norms, rules, principles, principles, doctrines, theories, and other legal literature, with the aim of answering the legal problems being studied.<sup>38</sup>

The author uses a normative legal research type of study focusing on laws and regulations, especially Law No. 6 of 2014 and Permendagri No. 112 of 2014 concerning Village Head Elections. This study will correlate these regulations with legal issues regarding the dual duties of the Village Head Election Committee as stipulated in Article 9 letter a of Permendagri No. 112 of 2014. Furthermore, the author uses normative legal research to develop discussions based on relevant legal theories.

## 2. Approach Study

This study adopts two main approaches. First, the statute approach. This approach involves a comprehensive review and analysis of all laws and regulations relevant to the legal issue being studied<sup>39</sup>. Thus, this approach allows the author to examine the consistency and conformity between legal reforms, including: the 1945

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<sup>37</sup> Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review*, I (Jakarta: Rajagrafindo Persada, 2007), 13.

<sup>38</sup> Muhaimin Muhaimin, *Legal Research Methods*, I (Mataram: Mataram University Press, 2020), 48, <https://eprints.unram.ac.id/20305/1/Metode%20Penelitian%20Hukum.pdf>.

<sup>39</sup> Nur Solikin, *Introduction to Legal Research Methodology*, I (Pasuruan: CV Publisher Qiara Media, nd), 58, <http://digilib.uinkhas.ac.id/12273/1/Buku%20Pengantar%20Metodologi%20Penelitian%20Hukum-Nur%20Solikin%20%281%29%20%281%29.pdf>.

Constitution of the Republic of Indonesia (UUD NRI 1945), Law Number 6 of 2014 concerning Villages, Law Number 3 of 2024 concerning the Second Amendment to Law Number 6 of 2014, Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages, Government Regulation Number 47 of 2015 concerning Amendments to Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014, Regulation of the Minister of Home Affairs Number 122 of 2014 concerning Village Head Elections, Regulation of the Minister of Home Affairs Number 65 of 2017 concerning Amendments to Regulation of the Minister of Home Affairs Number 112 of 2014, Regulation of the Minister of Home Affairs Number 72 of 2020 concerning the Second Amendment to Regulation of the Minister of Home Affairs No. 112 of 2014. 2014, as well as several other regulations relating to the dual duties of the Village Head Election Committee.

Second, the conceptual approach *that* starts from the views and doctrines that develop in legal science <sup>40</sup>. This approach is the basis for the author to build arguments in overcoming *the conflict of norms* and legal ambiguity related to the dual duties of the Village Head Election Committee, especially through the lens of the theory of legal certainty. The author assumes that legal ambiguity has the potential to cause conflicts *of interest* and inefficiency in the performance of the

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<sup>40</sup> Marzuki, *Legal Research* , 95.

Village Head Election Committee itself, considering the existence of two tasks as implementers and supervisors that should have separate functions.

### **3. Legal Materials**

#### **a. Primary Legal Materials**

Primary legal materials are a category of legal materials that include laws and regulations, official minutes, court decisions and official state documents

<sup>41</sup>. The primary legal materials used in this study consist of laws and regulations related to the Village Head Election.

#### **b. Secondary Legal Materials**

Secondary legal materials include legal literature such as books, journals containing basic principles (legal principles), views of legal experts (doctrines), results of legal research, legal dictionaries, legal encyclopedias that are connected to the dual duties of the Village Head Election Committee.

### **4. Legal Material Collection Methods**

The author applies a secondary data collection strategy designed to produce significant findings by combining primary and secondary legal materials through literature studies to find research results. Bibliography study *involves* reviewing written legal information from various sources that have been widely published,

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<sup>41</sup> Muhaimin, *Legal Research Methods* , 59–60.

such as laws and regulations, legal studies, theses, dissertations, journals and articles

<sup>42</sup>Among the primary legal materials used in this study are:

- 1) The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945);
- 2) Law Number 6 of 2014 concerning Villages;
- 3) Law Number 3 of 2024 concerning the Second Amendment to Law Number 6 of 2014;
- 4) Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages;
- 5) Government Regulation Number 47 of 2015 concerning Amendments to Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014;
- 6) Regulation of the Minister of Home Affairs Number 122 of 2014 concerning the Election of Village Heads;
- 7) Regulation of the Minister of Home Affairs Number 65 of 2017 concerning Amendments to Regulation of the Minister of Home Affairs Number 122 of 2014 concerning Village Head Elections;
- 8) Regulation of the Minister of Home Affairs Number 72 of 2020 concerning the Second Amendment to Regulation of the Minister of Home Affairs Number 122 of 2014 concerning the Election of Village Heads;

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<sup>42</sup> Muhaimin, 65.

9) Malang Regent Regulation Number 30 of 2021 Concerning Village Head Elections

The primary legal materials for this research consist of:

- 1) Books related to Village Head Elections;
- 2) Fiqh Siyasah Book: Contextualization of Islamic Political Doctrine;
- 3) Various books, journals, research and scientific papers that have connections with the dual duties of the Village Head Election Committee.

## 5. Legal Material Processing Methods

After the process of collecting legal materials, the next step is to synchronize the legal materials which are analyzed using the interpretation method or known as the Hermeneutic method. This method aims to change the situation of ignorance into a comprehensive understanding. In solving research problems, data processing also involves several stages, namely:

- a. Data checking ( *editing* ). This stage is carried out to review the completeness of the data, especially related to legal sources, as well as the selection of data that is in accordance with the object of research, namely the dual duties of the Village Head Election Committee.
- b. Classification ( *classifying* ). Data will be grouped based on the theory of legal certainty and the theory of *siyasa dusturiyah* , and classify research materials from primary to secondary legal materials.

- c. Verification ( *verifying* ). This stage aims to prove the feasibility of the two theoretical variables, namely the theory of legal certainty and the theory of *siyasaḥ dusturiyah* and to adjust the legal materials to ensure that there are no errors in the analysis.
- d. Analysis ( *analyzing* ). This stage aims to analyze the research object by comparing it to primary legal materials, in accordance with the concept carried in secondary legal materials, in order to produce relevant conclusions.
- e. Conclusion ( *concluding* ). This stage is the final result of the entire analysis process that has been carried out.

The analysis in this study uses a qualitative legal analysis technique, which focuses on a process of interpretation of legal materials that have been processed <sup>43</sup>. The main purpose of the interpretation method is to interpret whether the primary legal materials, especially Permendagri No. 112 of 2014 which regulates the dual duties of the Village Head Election Committee, have legal uncertainty or not. The nature of this study will be prescriptive which will provide an assessment of truth or error, or what should be according to law <sup>44</sup>.

## G. Previous Research

Previous research refers to the results of studies that have been conducted by other researchers on certain themes and topics. The goal is to identify aspects of novelty

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<sup>43</sup> Muhaimin, 68.

<sup>44</sup> Muhaimin, 71.

from the research being conducted, through comparison with previous findings. The following are previous studies that are relevant to this paper:

1. Research conducted by Supriyadi A Arief, Rahmat Teguh Santoso Gobel entitled " *Issues of Constitutional Rights of Village Communities Regarding Authority Election Village Head* ". This article discuss issue right constitutional public village related supervision Election Village Head Election ( Pilkades ) in Indonesia. Author highlight importance supervision in ensure implementation Democratic village head elections , but to criticize mechanism existing supervision , which provides authority big to committee election level district / city . This is potential cause intervention political and disturbing integrity organizer Village Head Election .

The author also notes that existing regulations Not yet fully fulfil element the necessary legal , sociological and philosophical For regulation good legislation . For overcome problem this , writer propose three more models of supervision independent and effective <sup>45</sup>. In his proposal , the author recommend involvement of the Supervisory Body Election ( Bawaslu ) in recruitment committee Village Head Election , formation supervisor Separate village head elections from committee , and supervision directly by Bawaslu . With Thus , it is hoped that the village head election process can in progress

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<sup>45</sup> Supriyadi Arief and Rahmat Teguh Santoso Gobel, "Issues of Constitutional Rights of Village Communities Regarding the Authority to Supervise Village Head Elections," *Jurnal Konstitusi* 19, No. 4 (December 1, 2022): 886–908, <https://doi.org/10.31078/jk1946>.

more transparent and fair , reflecting principles democracy and autonomy village .<sup>46</sup>.

2. Research conducted by Ahmad Yani entitled " *Regulation Arrangement " Election Village Head In The System State Administration in Indonesia "* . Journal This discuss in a way comprehensive about arrangement organization Election Village Head Election ( Pilkades ) in Indonesia, with focus on aspects supervision , enforcement law , and recognition constitutional . Author identify various the problem that hinders integrity Village head elections , such as supervision carried out by the committee the election also acts as organizers , which have the potential cause conflict interests . In addition , enforcement law to violations , including practice *money politics* , still weak and in need more settings clear<sup>47</sup>.

Writer propose formation institution settlement dispute Independent village head elections as well as involvement of the Supervisory Board Elections ( Bawaslu ) and Commission General Election Commission (KPU) in the election process For increase professionalism and independence . Journal this also emphasizes importance confession constitutional to Village Head Election , which is currently This set up in Law No. 6 of 2014 concerning

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<sup>46</sup> Arief and Gobel.

<sup>47</sup> Ahmad Yani, "Arrangement of Village Head Elections in the Constitutional System in Indonesia," *Constitutional Journal* 19, No. 2 (June 2, 2022): 456, <https://doi.org/10.31078/jk1929>.

Villages, however No own Constitution special like elections and elections head area <sup>48</sup>.

3. Research conducted by Riswan Lagalante , Hedwig Adianto Mau, Ismail entitled " *Solving The Conspiracy Election Village Head by Regional Head According to Law No. 6 of 2014 Concerning Villages* ". Journal This discuss settlement dispute Election Village Head Election ( Pilkades ) in Indonesia with referring to Law No. 6 of 2014 concerning Villages. Research This highlight that although Regent / Mayor own authority For finish dispute results Village Head Election , regulated mechanisms in Constitution the No Enough details , which can disrupting the democratic process at the level village . Through approach normative and study library , author identify risk possible fraud and conflict appear during implementation Village Head Elections , as well as emphasize importance not quite enough moral responsibility of all party For guard integrity election <sup>49</sup>.

A study conducted in South Halmahera Regency showed that ambiguity procedure settlement disputes and influences factor political can create uncertainty law . Author take notes that although Regent has Issue a Decree on

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<sup>48</sup> Yes.

<sup>49</sup> Riswan Lagalante, Hedwig Adianto Mau, and Ismail Ismail, "Resolution of Village Head Election Disputes by Regional Heads According to Law No. 6 of 2014 Concerning Villages," *SINERGI: Scientific Research Journal* 1, No. 3 (March 26, 2024): 116–23, <https://doi.org/10.62335/z95vyt44>.

the Establishment of a Supervisory Team Election Village Head , in in practice, team the No made into runway strong law For finish disputes that arise . <sup>50</sup>.

4. Research conducted by Nurul Faizin , Lutfian Ubaidillah entitled " *Completion The Conspiracy Election Village Heads Simultaneously in the Regency Situbondo* ". This article discuss dispute Election Village Head in Regency Situbondo , Indonesia, with highlight challenges faced in settlement dispute the law that emerged during the selection process . Research show that mechanism settlement dispute set up in a way No Details in existing regulations , including in Law Number 6 of 2014 concerning Villages and Village Regulations Government , so that required more settings clear For ensure fair and transparent elections .

Writer use approach legal normative For analyze problem this, emphasizes that Election The Village Head is form democracy is important, but often colored by conflict and fraud that can lead to dispute law . Although there is regulation the area that regulates mechanism settlement dispute, still there is lack in provision Details regarding the settlement process dispute in more laws tall <sup>51</sup>.

5. Research conducted by Kadek Apriliani, I Made Sudirga entitled " *Implementation Law in Dispute Election Village Head* ". This article discuss

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<sup>50</sup> Lagalante, Mau, and Ismail.

<sup>51</sup> Nurul Faizin and Lutfian Ubaidillah, "Resolution of Simultaneous Village Head Election Disputes in Situbondo Regency," *Indonesian Journal of Law and Justice* 1, No. 1 (November 23, 2023): 13, <https://doi.org/10.47134/ijlj.v1i1.1981>.

implementation Constitution Number 6 of 2014 concerning Villages in Indonesia, in particular regarding the settlement process dispute results Election Village Head ( Village Head Election ). In the law said, the authority For finish dispute given to Regent / Mayor, however No There is clear guidelines about mechanism settlement dispute .

This matter cause problem Because can leading to abuse power and lack of it objectivity, remembering Regent / Mayor is part from executives who have Affiliation politics . Position village as a unit of government lowest also makes it prone to to neglect his rights <sup>52</sup>. In conclusion , the authority Regent / Mayor in finish dispute Village Head Election potential create intervention politics and conflict interests , which can detrimental to the democratic process at the level village <sup>53</sup>.

**Table 1.1**  
**Study Previous**

N o	Name/ Title Research	Research result	Equality	Difference	Element Newness
1	Journal article from Journal Constitution by Supriyadi A Arief, Rahmat Teguh Santoso Gobel (Vol. 19 No. 1 December	Village Head Election as an important process democracy . but addition authority supervision at a time organizer Village Head Election to	You're welcome discuss authority committee election of a nature double so that potential to	This article discusses the constitutional rights of the community and the independent supervision of the	Study This integrate view <i>siyasah dusturiyah</i> and theory certainty law in analyze material law related task double

<sup>52</sup> Kadek Apriliani and I. Made Sudirga, "Implementation of the Village Law in Village Head Election Disputes," *Synotic Law: Journal of Legal Studies* 1, No. 3 (September 30, 2022): 141–47, <https://doi.org/10.56110/sl.v1i3.12>.

<sup>53</sup> Apriliani and Sudirga.

	2022) entitled "Issues of Constitutional Rights of Village Communities Regarding Authority Supervision Election Village head "	committee election level district / city contradictory with principle <i>free and fair elections</i> . Repair supervision Village Head Election to front can done with three models: engagement Election Supervisory Agency district / city , formation supervisor Village Head Election district / city , supervision directly by Bawaslu district / city . The implementation of one of the models requires change Regulation related Election Village head .	injure independence organizing Election Village head	Pilkades by Bawaslu. While research that will be investigated will analyze the legal ambiguity in Home Affairs Ministerial Regulation No. 112/2014 regarding the dual duties of the election committee, using the theory of legal certainty and perspective <i>industrial policy</i> .	Committee Election Village head
2	Journal article from Journal The constitution written by Ahmad Yani (Vol. 19 No. 2 June 2022) is entitled "Arrangement Election Village Head	The need for strengthening position implementation Village Head Election in system state administration with equalize it with elections and regional elections . The	The similarities , yes that is discuss function double from the organizing institution Village Head Election .	This article emphasize strengthening position Village Head Election in state administration as well as weakness organizer nature <i>ad hoc</i>	Study This integrate view <i>siyasaah dusturiyah</i> and theory certainty law in analyze material law related task double Committee Election Village head

	in System State Administration in Indonesia”	implementation can involving the KPU and Bawaslu district . And need enforcement consistent law to violation in Village Head Election		. While study furthermore will analyze task double committee election in framework theory certainty law and <i>siyasah dusturiyah</i>	
3	Journal article from Scientific Research Journal written by Riswan Legalante , et al . (Vol. 1 No. 3 Year 2024) entitled “ Settlement The Conspiracy Election Village Head by Regional Head According to Law No. 6 of 2014 Concerning Villages)	The dispute resolution mechanism for the simultaneous village head elections in South Halmahera is not representative and contradicts Law No. 6/2014 and Regional Regulation No. 7/2015. The Regent's intervention in the regulation shows bias and violation of the law, potentially creating legal risks. The regime's political power is also dominant in the dynamics of the village head elections in the district.	You're welcome discuss Election Village Head in Indonesia  Based on Law No. 6 of 2014 and Permendagri No. 112 of 2014	This article focus on aspects laws and mechanisms settlement dispute results Village Head Election . Meanwhile research that will be writer thorough focus on analysis blurriness law about task double committee election head village as implementer and supervisor	Study This integrate view <i>siyasah dusturiyah</i> and theory certainty law in analyze material law related task double Committee Election Village head
4	Journal article from	Affairs Regulation No.	The similarities	This article to study	Study This integrate view

	<p><i>Indonesian Journal of Law and Justice</i> written by Nurul Faizin , Lutfian O Allah (Vol. 1 No. 1 2023) Titled “ Settlement The Conspiracy Election Village Heads Simultaneousl y in Situbondo ”</p>	<p>112 of 2014 provides authority to Regent / Mayor For finish dispute village head election without arrange mechanism details . As a limitation, Article 67 paragraph (7 ) of Regional Regulation No. 9 of 2015 limits authority regent only on completion dispute administrative .</p>	<p>that is discuss aspect law Election Village head . Highlighting importance role committee election</p>	<p>settlement conflict Village Head Election . Meanwhile research that will be investigated focus on analysis blurriness law related task double committee election .</p>	<p><i>siyasah dusturiyah</i> and theory certainty law in analyze material law related task double Committee Election Village head</p>
5	<p>Journal article from <i>Synotic Law</i> : Journal Legal Science written by Kadek Apriliani , I Made Sudirga , (Vol. 1 No. 3 2022) entitled " Implementatio n Invite Invite Village in The Conspiracy Election Village head ".</p>	<p>Authority Regent / Mayor in to finish dispute dispute results Village Head Election as the mandate of the Village Law seems to be strengthen function executive in the field judiciary . Even though This potential trigger intervention political Because regent / mayor not let go from party political the bearer</p>	<p>Research and articles This You're welcome discuss Election Village head Use the same regulation namely Law No. 6 of 2014 concerning Villages as well as regulations that have correlation</p>	<p>This article highlight authority regent / mayor in finish dispute results Village Head Election . Meanwhile research that will be investigated highlighting the blur law task double Committee Election Village head</p>	<p>Study This integrate view <i>siyasah dusturiyah</i> and theory certainty law in analyze blurriness law related task double Committee Election Village head</p>

## H. Discussion Systematics

system is designed to facilitate the smooth running of the research process. This research follows the guidelines for writing scientific papers issued by the Faculty of Sharia, UIN Maulana Malik Ibrahim Malang. The author divides this research into four chapters, as following :

CHAPTER I: INTRODUCTION. This chapter serve description general study started background the back that outlines anxiety writer related issue task double Committee Election Village Head based on study of Article 9 letter a of the Permendagri No. 112 of 2014. Issue law This Then associated with theory certainty laws and concepts *siyasah dusturiyah* . Next , chap This will formulate problem research , and objectives research , as well as to expose benefit study Good in a way theoretical and practical . The discussion also includes study previously , method research that contains points points important like type research , approach research , materials law , engineering collection material laws and methods processing material law .

CHAPTER II: LITERATURE REVIEW. this chapter to describe framework the theory that became runway analysis author . The theory presented in the form of theory relevant with issue the law under study , in particular about task double Committee Election The Village Head studied Article 9 letter a of the Permendagri No. 112 of

2014. Therefore that , the theory used is theory certainty law and perspective *industrial policy* .

CHAPTER III: RESULTS AND DISCUSSION. This chapter serve analysis and discussion findings research, with focus main on completion formulation the problem that has been explained in CHAPTER I. Discussion will to study task double committee election Village Head Election based on study of Article 9 letter a of the Permendagri No. 112 of 2014 which was analyzed use theory certainty law and perspective *industrial policy* .

CHAPTER IV: CLOSING. The final chapter This load conclusions and suggestions. Conclusions are results end from research that is drawn from discussion to formulation problem . While that , the suggestion works as recommendation to study furthermore .

## CHAPTER II

### LITERATURE REVIEW

#### A. The Concept of Village Autonomy

##### 1. Understanding Village Autonomy

Etymologically, the term village comes from Sanskrit, *deca* which means homeland, land of origin, or birthplace. From a geographical perspective, a *village* is defined as "*a group of houses or shops in a country area, smaller than a town*". In the context of government, a village is a legal community unit that has the autonomy to manage its internal affairs based on the rights of origin and customs recognized in the National Government and is located in the Regency area <sup>54</sup>.

According to HAW Widjaja in his work "Village Autonomy", a village is defined as a legal community unit that has an original structure based on special ancestral rights. The thinking underlying the concept of Village Government is based on the principles of diversity, participation, original autonomy, democratization and community empowerment" <sup>55</sup>.

Meanwhile, Article 1 of Law No. 6 of 2014 concerning Villages defines a village as, "a legal community unit that has

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<sup>54</sup> Rudolf Sam Mamengko, Max Karel Sondakh, and Butje Tampi, "Implementation of Village Autonomy Based on Law Number 6 of 2014 Concerning Villages in Minahasa Regency," *Jurnal Nuansa Akademik: Jurnal Pembangunan Masyarakat* 9, no. 1 (June 2024): 95–106, <https://jurnal.ucy.ac.id/index.php/nuansaakademik/article/view/2202>.

<sup>55</sup> HAW Widjaja, *Village Autonomy (Constituting Genuine, Complete and Whole Autonomy)* (Jakarta: PT Raja Grafindo Persada, 2003), 3.

territorial boundaries that are authorized to regulate and manage the interests of the local community, based on local origins and customs that are recognized and respected in the government system of the Republic of Indonesia." <sup>56</sup>Based on this definition, it can be understood that the essential characteristics of a village that are recognized are the existence of its origins and customs.<sup>57</sup>

The definition of the village according to Widjaja and Law number 6 of 2014 clearly indicates that the Village is *a Self Community* , namely a community that is able to regulate itself. This understanding emphasizes that the Village has the autonomy to manage and regulate the interests of its people in the social, political and economic fields according to local conditions and socio-culture. Village autonomy has two crucial aspects <sup>58</sup>:

- a. Village autonomy must be recognized, fulfilled, trusted, and protected by the government. This aims to reduce the dependence of village communities on government intervention.
- b. Village government needs to be restored and developed so that it can return to its original function or even be more advanced in anticipating future challenges.

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<sup>56</sup> Article 1 of the Law Number 6 of 2014 Concerning Villages

<sup>57</sup> Mamengko, Sondakh, and Tampi, "Implementation of Village Autonomy Based on Law Number 6 of 2014 Concerning Villages in Minahasa Regency."

<sup>58</sup> Zulman Barniat, "Village Autonomy: Theoretical and Legal Concepts," *Journal of Social and Political Analysis* 2, no. 2 (2018): 111, <https://doi.org/10.23960/jasp.v2i2.28>.

The position of the Village that has original autonomy is very strategic, so it requires balanced attention in the implementation of regional autonomy. This is because strong village autonomy will significantly affect the realization of regional autonomy as a whole.

## **2. Village Government**

The village head as the executive leader at the village level is directly elected through a democratic process by the village residents who are Indonesian citizens who meet the requirements.<sup>59</sup> The term of office of the village head is set for eight years from the date of inauguration, with a maximum limitation of two terms of office, either consecutively or separately. As for the customary village head, the provisions regarding the filling and term of office are regulated by customary law in force in the local village. However, the application of customary law must remain relevant to the development of society and in line with the principles of the Unitary State of the Republic of Indonesia.

Further provisions regarding this matter are regulated in regional regulations at the district/city level, while still referring to government regulations. In addition, the district/city government has the authority to form villages in accordance with applicable laws and regulations. Furthermore, the

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<sup>59</sup> Sugiman, "Village Government," *Binamulia Law* 7, no. 1 (July 30, 2018): 82–95, <https://doi.org/10.37893/jbh.v7i1.16>.

central government, provincial government, and district/city government can also delegate some government affairs that are within their scope of authority to the village head.<sup>60</sup> Based on the Regulation of the Minister of Home Affairs Number 84 of 2015 concerning the Organizational Structure and Work Procedures (SOT) of Village Government has been issued as a follow-up to the village law. The village government consists of a village head supported by village officials. This village official includes the village secretariat, regional implementers, and technical implementers.<sup>61</sup>

The Village Head occupies a central position as the leader of the Village Government, who is fully responsible for the implementation of various aspects of village government. His main duties include the implementation of Village Government, implementation of development, community development, and community empowerment. In addition, the Village Head also carries out the authority, rights, and obligations regulated in the applicable laws and regulations<sup>62</sup>.

To carry out these tasks, the Village Head has various functions, including:

- a. Organizing village government, including the establishment of regulations, community development, fostering peace and order, carrying out

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<sup>60</sup> Sugiman, 86.

<sup>61</sup> Sugiman, 86.

<sup>62</sup> Muhamad Mu'iz Raharjo, *Village Governance* (East Jakarta: Bumi Aksara, 2021), 8.

community protection efforts, managing population administration, as well as regional planning and management.

- b. Organizing development, the Village Head's function includes the development of rural facilities and infrastructure, as well as development in the fields of education and health.
- c. In the field of community development, the Village Head is responsible for implementing community rights and obligations, encouraging participation, developing socio-cultural, religious and employment aspects.
- d. In the field of community empowerment, the Village Head carries out socialization and motivation in various fields such as culture, economy, politics, environment, as well as family empowerment, youth, sports, and youth organizations.
- e. The Village Head also has a crucial function in maintaining strategic partnership relations with community institutions and other related entities<sup>63</sup>.

### **3. Selection Mechanism Village head**

Village Head Election (Pilkades) is a fundamental element in the democratic system in Indonesia. Pilkades as a local political event, shows that village communities have been actively involved in the political process

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<sup>63</sup> Raharjo, 8–9.

directly since the beginning.<sup>64</sup> This activity reflects the form of democratic practice at the most basic level of society. Pilkades usually involves candidates who have gone through a strict selection process and are considered competent to lead.<sup>65</sup>

The implementation of the Village Head Election is marked by the principle of transparency, which means that the community has the right to obtain comprehensive information, starting from the preparation stage to the voting and counting of votes. In addition, the Village Head Election must also be carried out directly, publicly, freely, secretly, honestly, and fairly. Thus, the village community has the opportunity to actively participate in the entire series of Village Head Election activities, as well as to determine the direction of village government policy.<sup>66</sup>

Based on Article 33 of Law No. 3 of 2024, there are twelve requirements that must be met by individuals who wish to run for village head. Some important criteria include a minimum education equivalent to junior high school or equivalent, being at least twenty-five years old at the time of

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<sup>64</sup> Siti Muslikhatul Ummah et al., “Democracy and Village Autonomy in the Post-Reformation Village Head Election Process,” *USM LAW REVIEW JOURNAL* 6, no. 3 (December 9, 2023): 1223–33, <https://doi.org/10.26623/julr.v6i3.6818>.

<sup>65</sup> Ahmad Averus and Dinda Alfina, “Political Participation in Village Head Elections,” *Moderat: Scientific Journal of Government Science* 6, no. 3 (August 31, 2020): 587, <https://doi.org/10.25157/moderat.v6i3.3996>.

<sup>66</sup> Averus and Alfina, 587.

registration, and not being in a status of revocation of voting rights based on a court decision that has permanent legal force , etc.<sup>67</sup>

The current Village Head Election Mechanism is regulated in Article 31 of Law Number 6 of 2014 concerning Villages. This provision stipulates that the Village Head Election must be held simultaneously in all districts/cities. Therefore, the district/city regional government has the authority to formulate and determine policies related to the implementation of simultaneous Village Head Elections through relevant regional regulations.<sup>68</sup>

Furthermore, Article 40 of Government Regulation No. 43 of 2014, which is the implementing regulation of Law No. 6 of 2014 concerning Villages, stipulates that the simultaneous Village Head Election can be held in waves, with a maximum frequency of three times within a period of six years. If there is a vacancy in the position of village head during the period of the simultaneous Village Head Election, the regent/mayor has the authority to appoint an acting village head. The acting village head must come from civil servants within the district/city government <sup>69</sup>.

The process of implementing the Village Head Election involves a series of structured stages. Based on Article 41 of Government Regulation No.

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<sup>67</sup> Constitution Number 3 of 2024 Concerning Change Secondly , under the Law Number 6 of 2014 State Gazette Number 77 of 2024

<sup>68</sup> Lagalante, Mau, and Ismail, "Resolution of Village Head Election Disputes by Regional Heads According to Law No. 6 of 2014 Concerning Villages."

<sup>69</sup> Lagalante, Mau, and Ismail, 117.

47 of 2015 concerning Amendments to Government Regulation No. 43 of 2014 concerning Implementing Regulations of Law No. 6 of 2014 concerning Villages, the Village Head Election is held through four main phases: preparation, nomination, voting and determination.

The preparation stage for the Village Head Election involves a series of coordinated activities. It begins with notification from the Village Consultative Body (BPD) to the village head about the end of the term of office, which is delivered six months before the date. Within ten days of the notification, the BPD is tasked with forming a Village Head Election Committee. Next, the village head must submit an end-of-term report to the regent or mayor no later than thirty days after the notification of the end of the term. Once the committee is formed, they must submit a budget plan for the election costs to the regent or mayor within thirty days. This preparation process ends with the approval of the election costs by the regent or mayor, which must also be given within thirty days after the submission by the committee.<sup>70</sup>

The nomination stages in the Pilkades include several sub-stages. It begins with the announcement and registration of prospective candidates, which lasts for nine days. After that, research is carried out on the completeness of administrative requirements, clarification, and determination and

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<sup>70</sup> Regulation Government Number 47 of 2015 Concerning Amendment to Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages State Gazette Number 157 of 2015

announcement of the names of candidates within a period of twenty days. The number of village head candidates determined must range from a minimum of two to a maximum of five people. Furthermore, the Pilkades committee is tasked with determining the permanent voter list. This stage ends with a three-day campaign period, followed by a three-day quiet period.<sup>71</sup>

The voting stages in the Village Head Election (Pilkades) include several core activities. This process begins with the implementation of voting and vote counting. After that, the candidate with the most votes is determined. If there is more than one candidate who gets the same number of votes, then the elected candidate will be determined based on the wider coverage of the vote acquisition area.<sup>72</sup>

The stages of determination in the Pilkades involve a series of formal procedures. This process begins with the reporting of the elected candidates by the committee to the Village Consultative Body (BPD), which must be submitted no later than seven days after the vote. Then, the BPD has a time limit of seven days after receiving the report to report the elected candidates to the regent or mayor. Furthermore, the regent or mayor will issue a decision regarding the ratification and appointment of the elected village head

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<sup>71</sup> Regulation Government Number 47 of 2015 Concerning Amendment to Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages State Gazette Number 157 of 2015

<sup>72</sup> Regulation Government Number 47 of 2015 Concerning Amendment to Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages State Gazette Number 157 of 2015

candidates no later than thirty days after the report is received from the BPD. Finally, the regent/mayor or appointed official will inaugurate the elected village head candidates within a maximum period of thirty days since the appointment decision is issued.<sup>73</sup>

## **B. Theory of Legal Certainty**

### **1. Definition Legal certainty**

In discourse law there is a number of theory about objective law , namely : (1) Flow ethical thinking fundamental purpose of law is For reach justice . (2) Flow utility that prioritizes creator benefit as objective law . (3) Flow formal legal belief that function essential law is For ensure certainty law<sup>74</sup>.

The fundamental purpose of law is For create order an orderly society , at the same time realize order and balance . Through achievement order this , it is expected interest individual in public will protected . In an effort reach objective said , the law play a role in distribute rights and obligations between individual in society , regulate authority as well as provide mechanism settlement problem law at a time look after certainty law <sup>75</sup>.

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<sup>73</sup> Regulation Government Number 47 of 2015 Concerning Amendment to Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages State Gazette Number 157 of 2015

<sup>74</sup> Amini and Suratman, "The Importance of Land Registration," 1334.

<sup>75</sup> Amini and Suratman, 1335.

Legal certainty as one of the fundamental objectives of law, is an essential instrument in efforts to realize justice. The concrete manifestation of legal certainty is the implementation or enforcement of impartial law against an action, regardless of the subject of the perpetrator. With legal certainty, each individual is able to predict the consequences that will arise from certain legal actions. Therefore, legal certainty is very necessary to uphold the principle of equality before the law without discrimination.<sup>76</sup>

Certainty is fundamental elements in system law , especially in legal norms written . Without existence mark legal certainty No Again functioning in a way effective as guidelines behavior in society , so that meaning the essence become lost . More Far again , certainty law play role crucial in operate function law at a time guard order social . However however , even though certainty law is prerequisite absolute in every regulations , aspects justice and utility law must also be noted to achieve balance in enforcement law .<sup>77</sup>

In general etymologically , the term “ certainty ” is related close with principle truth , where a matter must proven legally -formally through rigorous reasoning . In the context of law , rules law positive functioning as major premise , whereas incident concrete play a role as minor premise in framework logic deductive . With apply system logic closed , conclusion law can lowered

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<sup>76</sup> Satjipto Rahardjo, *Legal Science* (Bandung: PT. Citra Aditya, 2006), 277.

<sup>77</sup> Budi Astuti and M. Rusdi Daud, “Legal Certainty in Online Transportation Regulations,” *Al-Qisth Law Review* 6, no. 2 (2023).

in a way directly . The conclusion is must nature predictive so that it can become binding guidelines for all over society . There is compliance to certainty law this is what it is in the end create order in society . With Thus , it can concluded that certainty law play a role as guide to direction creation order orderly society.<sup>78</sup>

Draft certainty law appear as derivative from development positivism law in the 19th century . In the construction of a state of law , the certainty law is fundamental prerequisite for the realization of a state of law . The essence of a state of law That Alone requires three element main : adoption principle supremacy law , equality before law , and the establishment of the state above constitution . In substantive , rule of law means every problem must completed based on provision applicable law .<sup>79</sup> It means certainty law own close correlation with law positive , namely a form applicable law in a way specifically in a country or region condition certain , which is manifested in form regulation legislation written .

Basically , the rules legislation the load terms and conditions general functioning as guidelines behavior in demand for every member society .

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<sup>78</sup> Moh. Mahfud MD, “Law Enforcement and Good Governance” (National Seminar: Time for Conscience to Speak, Constitutional Court, Jakarta, January 8, 2009).

<sup>79</sup> Fachmi, *Legal Certainty Regarding Void and Void Decisions in the Criminal Justice System in Indonesia* (Jakarta: Ghalia Indonesia Publishing, 2011), 296.

Existence and implementation rule law kind of This will create certainty law ,  
 a a concept that according to Peter Mahmud has significance as following :

Certainty law has two dimensions essential . First , the existence of rule law of a nature general allow individual For in a way clear understand limitations permitted and prohibited behavior ; and second , certainty law give guarantee security law for individual from potential arbitrariness government . This is because of with existence general rule , every individual can know in a way Certain What only charged or carried out by the state against himself .<sup>80</sup>.

Based on explanation definition said , can concluded that certainty law functioning as guarantee for individual For behave in accordance with provision applicable law . Otherwise , no existence certainty law will resulting in no existence clear guidelines for somebody in determine his behavior . Therefore that , the opinion of Gustav Radbruch who placed certainty as one of the objective law is views that are relevant and can be accountable in a way scientific .

## **2. Urgency Legal certainty**

In context life social , certainty law hold role important . In normative , certainty law can understood as a the principles reflected Good in provision legislation and decision court . More far , concept This refers to the implementation rule in life implemented in society in a way clear , structured , consistent and continuous . One of the characteristics fundamental from

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<sup>80</sup> Peter Mahmud Marzuki, *Introduction to Legal Science Revised Edition* (Jakarta: Kencana Prenada Media Group, 2008), 136.

certainty law is its objective nature , so that No can influenced by factors subjective as possible appear in dynamics social .<sup>81</sup>

In perspective law , certainty law functioning as guarantee normative that allows everyone behaves in accordance with regulation applicable legislation . On the other hand , the absence of certainty law will cause ambiguity guidelines for subject law in determine the right action . In line with view said , Gustav Radbruch confirm that certainty law is one of the fundamental purpose of law .<sup>82</sup> More continued , Radbruch to argue that the ideal law should be fulfil three mark essential , namely :

- a. The principle of certainty law ( *reichtmatigheid* ) which is based on aspects juridical .
- b. The principle of justice law ( *gerechtigheid* ) which is based on aspects philosophical , guarantee principle similarity right every individual in to obtain justice before law specifically in the judicial process .
- c. The principle of utility law ( *zwechmatigheid / doelmatigheid* ) or value - oriented *utility* usefulness<sup>83</sup>.

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<sup>81</sup> Nur Agus Susanto, "Axiological Dimension of the Decision of the 'ST' Case: Review Decision Study Number 97 PK/Pid.Sus/2012," *Judicial Journal* 7, no. 3 (December 2014).

<sup>82</sup> Satjipto Rahardjo, *Legal Science* (Bandung: Citra Aditya Bakti, 2012), 19.

<sup>83</sup> Astuti and Daud, "Legal Certainty in Online Transportation Regulations."

### 3. Indicator Legal certainty

According to Gustav Radbruch in the theory about certainty law , there is four principle intrinsically related basis with certainty law That itself , namely<sup>84</sup>:

- a. The law must nature positive , in the legal sense positive identical with applicable laws and regulations .
- b. Making law must based on facts empirical , which means every provision law reflect the reality that exists in society .
- c. The facts that become base law must formulated in a way clear and firm in regulation legislation so as not to give rise to misinterpretation and facilitate in practice .
- d. Positive law that has set must own characteristic stable and not may easy changed or often changed change .

Construction Gustav Radbruch's thoughts state that draft certainty law built on understanding that essence certainty law That Alone nature intrinsic in product law . In theoretical The meeting state that certainty law is derivation direct from product law , or more specific Again is product from the legislative process . <sup>85</sup>. Based on argument said , Radbruch to argue that law positive that

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<sup>84</sup> Rahardjo, *Legal Science* , 2012, 19.

<sup>85</sup> Rahardjo, 20.

regulates connection social and interests public must obeyed in a way consistent, even though in the practice there is perception injustice inherent in the law the.

Basically, certainty law occupy position central as fundamental goal in law. Phenomenon order social in essence own close correlation with principle certainty law, considering order That Alone is substance from certainty. In the context of this, certainty law requires existence formulation systematic law in instrument legislation, which must be formed by competent and *legitimate* authorities, so that legal norms the own strength capable juridical ensure function law as guidelines behave in a binding manner. In a comparative, tradition law Europe Continental in framework *legal state* more emphasize on aspects certainty law, whereas system law *Anglo-Saxon* in *the concept of the rule of law* tend more put forward achieving a sense of justice.<sup>86</sup>

In perspective theory law, doctrine certainty law rooted in the school of thought Juridical -Dogmatic based on paradigm positivism law. School of thought This look at law as a an autonomous and independent system, where the essence law solely understood as a set of positive norms. For the positivism law, function main law only limited to create and strengthen certainty Law. Reality certainty law actualized through characteristics the law that only regulate norms that are of a nature general. Generality of legal norms in a way

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<sup>86</sup> Astuti and Daud, "Legal Certainty in Online Transportation Regulations."

clear show that objective law is not For reach justice substantive or benefit social , but rather solely For to uphold certainty law .<sup>87</sup>

Nusrhasan Ismail also stated that the creation of legal certainty in a regulation requires the fulfillment of a number of structural aspects inherent in the legal norm itself. The internal requirements referred to by Nurhasan Ismail are as follows<sup>88</sup>:

- a. Clarity of concepts used in formulating norms. Each norm must clearly define the behavior regulated through a clear and measurable legal concept, thus avoiding multiple interpretations in its application.
- b. Clarity of normative hierarchy is an absolute prerequisite. In the *civil law system* , the principle of the hierarchy of legal regulations applies, which establishes exclusive authority for each state institution. Laws can only be formed by the legislative institution, government regulations by the executive institution, presidential regulations by the chief executive, and ministerial regulations by the relevant ministry. This hierarchy has strict legal consequences: (1) lower regulations must not contradict higher regulations, and (2) the formation of lower regulations must be based on the delegation of authority from higher regulations. The validity and binding

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<sup>87</sup> Achmad Ali, *Unveiling the Veil of Law (A Philosophical and Sociological Study)* (Jakarta: Gunung Agung Store Publisher, nd), 82–83.

<sup>88</sup> Nurhasan Ismail, *Development of Land Law: A Political Economic Approach* (Yogyakarta: Gadjah Mada University, 2008), 24.

force of a regulation is highly dependent on the fulfillment of this hierarchical principle, and serves as a guideline for lawmakers in exercising their legislative authority.<sup>89</sup>

- c. Normative consistency is an important element both horizontally and vertically. Horizontally, various regulations governing the same subject must synergize with each other and not contain contradictions. Vertically, there must be harmony between lower and higher regulations. Inconsistency of norms will create legal uncertainty, where society is faced with different choices of norms according to their respective interests. Such conditions result in the absence of clear and uniform standards of legal behavior for all citizens, which ultimately damages the essence of legal certainty itself.<sup>90</sup>

Nurhasan Ismail further explained that legal certainty requires efforts to formulate legal regulations in laws issued by authorities or authorities. This aims to ensure that the resulting regulations have a legal dimension and can guarantee that the law functions as a regulation that must be respected and obeyed by society or citizens.

Based on the theory of legal certainty explained above, the theory of legal certainty proposed by Nurhasan Ismail is the most relevant theory to be used as an analytical tool in the research that the author will conduct. Where

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<sup>89</sup> Ismail, 25.

<sup>90</sup> Ismail, 25.

legal certainty according to Nurhasan Ismail requires 3 indicators regarding the legal norms themselves which consist of: clarity of the concept used, clarity of the hierarchy of the institution that forms the legislation, and clarity of the hierarchy of the legislation. So that there is a connectivity between Nurhasan Ismail's theory of legal certainty and the dual duties of the Village Head Election Committee in Article 9 letter (a) of Permendagri No. 9 of 2014 concerning the Election of Village Heads which was born from disharmony and inconsistency with Law Number 6 of 2014 concerning Villages which has a higher position hierarchically in the legislation.

### **C. Siyasah Dusturiyah**

#### **1. Understanding Siyasah Dusturiyah**

In the discipline of Islamic political science, the term *siyasah dusturiyyah* is an established terminology. However, understanding this concept will be less comprehensive if it is not preceded by an in-depth discussion of *fiqh siyasah*, considering that historically-theoretically, the emergence of *siyasah dusturiyyah* is rooted in the development of *fiqh siyasah* as its foundation. Etymologically, the term *fiqh* comes from the verb *faqaha-yafquhu-fiqhan* which linguistically means deep understanding. Terminologically, *fiqh* is interpreted as the science of sharia

laws that regulate various human actions, which are obtained from <sup>91</sup>*tafshili* (detailed) evidence from both the Qur'an and the Sunnah of the Prophet.

Etymologically, the term *siyasah* is rooted in the word *sasa-yasusu-siyasatan*, which in terms of language has the basic meaning of organizing, managing, and governing. From a linguistic perspective, the essence of *siyasah* refers to the process of managing and formulating policies in the political realm. <sup>92</sup>Further conceptual development gave birth to the term *siyasah dusturiyyah* which, according to Muhammad Iqbal's analysis, the word *dusturi* (derived from Persian) historically refers to a figure who has dual authority in both politics and religion. In the process of Arabization of this terminology, there was an expansion of meaning where *dustur* developed into a concept that includes basic understanding, principles, or guidelines. Terminologically, *dustur* is interpreted as a set of principles that regulate the basis and mechanism of relations between the state and society, both in the form of conventions (unwritten) and constitutions (written).

As a special branch of *fiqh siyasah*, *siyasah dusturiyyah* specifically studies the legislative aspects of the state and all components related to it. The scope of its studies includes an in-depth analysis of various fundamental concepts, including: the state system, the legislative process, and the institutional mechanisms of

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<sup>91</sup> Muhammad Iqbal, *Fiqh Siyasah: Contextualization of Islamic Political Doctrine* (Jakarta: Pranada Media Group, 2014), 2.

<sup>92</sup> Iqbal, 3.

democracy and shura. Furthermore, siyasah dusturiyyah conducts theoretical exploration of the concept of a legal state from an Islamic political perspective, which includes a study of the reciprocal relationship between the government and citizens. Another important aspect that is the focus of the study is the protection of the basic rights of citizens that must be guaranteed by the government system.<sup>93</sup>

Fiqh siyasah dusturiyah focuses its study on two main aspects, namely the relationship between leaders and the people and institutions that play a role in the social order. The main problem lies in the dynamics of interaction between the two parties, including the institutional regulatory mechanisms within it. Therefore, the scope of discussion of fiqh siyasah dusturiyah is generally limited to the regulation of laws and regulations that originate from the needs of the state. This is done to ensure its compliance with sharia principles while realizing human welfare and meeting its needs as a whole.

There are related verses from the Koran with leader related with discussion *siyasah dusturiyah* there is in letter an-Nisa verse 59 :

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِيَ الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

Meaning : " O you who believe , obey Allah and obey the Messenger (Prophet Muhammad) and ululamri ( holder) power ) between you . If you different opinion

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<sup>93</sup> Iqbal, 177.

*about something , return it to Allah (the Qur'an) and the Messenger ( sunnah ) if You believe to Allah and the Last Day . That 's it That more good ( for you ) and more Good consequences (in this world and in the hereafter ) ."*

Based on definition said , can concluded that term *dustur* have the same meaning with *constitution* in Language English or The Basic Law in Indonesian . Possibility big , the word " basic " in context This is derivation from term *dustur* .<sup>94</sup> With thus , *fiqh dusturi* can understood as A discipline the science that studies government in wide coverage , considering *dust* load a set principles the basis that regulates mechanism power in a country. More Far again , all over regulation legislation below it must in harmony with *dust* as the highest norm , so that No may There is the conflict between both of them <sup>95</sup>.

## **2. Principles of *Siyasah Dusturiyah***

Fiqh siyasah dusturiyah own relatedness with regulation base about form of state and system government , restrictions power , succession leadership , rights base citizens , etc. <sup>96</sup>Principles *siyasah dusturiyah* consists of from <sup>97</sup>:

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<sup>94</sup> Putri Eka Agustina, "Government Responsibility in Providing Personal Data Protection from a Legal Perspective" (Undergraduate, UIN Fatmawati Sukarno Bengkulu, 2023), 31, <http://repository.uinfabengkulu.ac.id/1011/>.

<sup>95</sup> Agustina, 31.

<sup>96</sup> Mutiara Fahmi, "Basic Principles of Islamic Political Law in the Perspective of the Qur'an," *Journal of Law and Sharia Studies* 2, no. 1 (2017): 37–41.

<sup>97</sup> Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine* , 237–40.

a. Principles of Human Position on Earth

Based on QS Al-Baqarah: 30 Allah has appointed humans as caliphs tasked with prospering the earth. The consequence of this appointment is the responsibility of humans to manage Natural Resources wisely and at the same time maintain them from destruction.

b. The principle of power as a trust

Allah commands humans to carry out the mandate placed on their shoulders QS An-Nisa (4) : 58

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

*It means: "Indeed, Allah commands you to convey trust to its owner. When you determine a law between people, you must determine it fairly. Indeed, Allah gives you the best teaching. Indeed, Allah is All-Hearing, All-Seeing."*

The concept of amanah in Islam occupies a central position as a moral-religious responsibility that must be maintained by every individual, considering that one day he will be held accountable before Allah SWT. In the context of state administration, power is a special form of amanah, the implementation of which must always be guided by sharia provisions. Therefore, Islam firmly rejects all

forms of abuse of power, whether in the form of corruption, nepotism, or other arbitrary actions.<sup>98</sup>

### c. Principle of Upholding Justice

Justice is a basic principle that ensures the creation of balance in human life. Empirically, the enforcement of justice is positively correlated with maintaining the stability of the social system. Conversely, the absence of justice in society will cause social dysfunction which will disrupt the order of life. The normative basis for this is explicitly stated in QS An-Nahl (16): 90.<sup>99</sup>

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ  
وَالْبَغْيِ يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ

*It means: "Indeed, Allah commands to act fairly, do good deeds, and provide assistance to relatives. He (also) forbids evil deeds, evil and enmity. He teaches you lessons so that you always remember."*

This principle is closely related to the principle of equality between fellow human beings. Theologically, Islam affirms the equality of human beings regardless of physical attributes such as skin color, race, ethnicity, or language, but rather based on the parameters of individual piety. The logical consequence of this principle is the absolute prohibition of all forms of legal discrimination, as warned

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<sup>98</sup> Iqbal, 238.

<sup>99</sup> Iqbal, 238.

by the Prophet Muhammad SAW that the practice of discrimination in the judicial system is an early indicator of the destruction of a civilization.<sup>100</sup>

d. Principle of deliberation

Consultation is explicitly mentioned in QS Asy-Shura (42): 38

وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَى بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنْفِقُونَ<sup>ج</sup>

Meaning: *"(it is also better and more lasting for) those who accept (obey) God's call and perform prayers, while their affairs are (decided) by deliberation between them. They spend part of the sustenance that We have bestowed upon them"*

The verse explicitly places deliberation as an important mechanism in the collective decision-making process for believers. The significance of the principle of deliberation is seen from its strategic position in the narrative structure of the Qur'an, which is flanked by the command to establish prayer and give alms, two fundamental acts of worship in Islam. This contextualization indicates that deliberation occupies a significant hierarchy of values in the Islamic ethical system, although it is subordinate to the ritual obligation of prayer.<sup>101</sup>

e. Principle of Obedience to Leaders

The hierarchical structure of obedience in Islam places obedience to the leader in a tertiary position after the absolute obligation to Allah SWT and His

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<sup>100</sup> Iqbal, 238–39.

<sup>101</sup> Iqbal, 239.

Messenger. However, the nature of obedience to the leader is conditional and bound by the principle of conformity with the Sharia, as manifested in QS An-Nisa' (4): 59. The verse linguistically only uses the command verb " *athi'u*" (obey) specifically for Allah and the Messenger, while for *ulil amri* (holders of power) it uses a different grammatical construction. This difference in wording shows the concept of limited obedience in the Islamic political system, where the legitimacy of obedience to the ruler is relative and must always go through the filter of conformity with divine provisions.<sup>102</sup>

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِيَ الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

Meaning: "O you who believe, obey Allah and obey the Messenger (Prophet Muhammad) and the *ululamri* (holders of authority) among you. If you differ in opinion about something, return it to Allah (the Qur'an) and the Messenger (the Sunnah) if you believe in Allah and the Last Day. That is better (for you) and the consequences are better (in this world and in the hereafter)."

#### f. Principle of Brotherhood and Unity

The Qur'an explicitly establishes the principle of brotherhood ( *ukhuwah* ) among believers as stated in QS Al-Hujurat (49): 50. This principle creates a collective obligation to carry out *ishlah* (reconciliation) when there is a dispute

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<sup>102</sup> Iqbal, 239.

among Muslims. Furthermore, QS Ali Imran (3): 103 underlines the necessity to maintain the unity of the community by adhering to religion, while emphasizing the strict prohibition against division.<sup>103</sup>

g. Principles of Peace

Islam as a value system prioritizes the principles of compassion and peace in all aspects of life. This is explicitly stated in QS Al-Anfal (8): 61 which orders Muslims to always prioritize peace in interacting with others. This principle places war as the last option that can only be done in a defensive situation when there is a real threat to the security and safety of Muslims.

h. *Amar Ma'ruf Nahy Munkar* Principles

Islam teaches its followers to advise each other and exercise control over power so that goodness is always maintained in the life of society. QS Ali Imran (3) : 114 states that:

يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُسَارِعُونَ فِي  
الْخَيْرَاتِ وَأُولَئِكَ مِنَ الصَّالِحِينَ

Meaning: “They believe in Allah and the Last Day, enjoin what is right, forbid what is wrong, and hasten to do good deeds. Those are the righteous.”

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<sup>103</sup> Iqbal, 239.

This suggests that the opposition mechanism is not seen as something forbidden, but rather as an important instrument in controlling power. Structurally, the existence of the opposition functions as a counterweight that prevents abuse of power by the government, while creating a *check and balance* mechanism in the state system. Furthermore, the form of opposition in Islamic society is not limited to formal institutions, but also includes the role of individuals as part of social responsibility ( *amar ma'ruf nahi munkar* ).<sup>104</sup>

i. Principles of Professionalism and Public Accountability in Filling Government Positions

In the Islamic government system, filling public office must be based on recruitment principles that prioritize competence and integrity, not on considerations of family ties or nepotism. Two basic criteria in the selection of state officials are strength (professional capacity) and al-terpercaya (moral integrity). These criteria require an objective recruitment process, where technical expertise and trustworthiness are the main parameters. Appointing officials based on kinship or tribal ties is contrary to the principles of justice ( *al-'adl* ) and responsibility ( *mas'uliyah* ) in Islam, because this can lead to bureaucratic

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<sup>104</sup> Iqbal, 240.

inefficiency and abuse of power.<sup>105</sup> This is in accordance with QS Al-Qashas (28):

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قَالَتْ إِحْدَهُمَا يَأْتِيَّ اسْتَأْجَرُهُ إِنَّ خَيْرَ مَنْ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ

Meaning: “One of the two (women) said, “O my father, employ him. Indeed the best of those you employ is the strong and trustworthy.”

#### j. Principles of Human Rights Enforcement

Islam is a religion that pays great attention to the enforcement of human rights, human rights violations in any form are not permitted either to Muslims or non-Muslims. One of the most fundamental rights is the freedom to embrace and practice a religion. As Allah says in QS Al-Kafirun (109): 6 which reads:

لَكُمْ دِينُكُمْ وَلِيَ دِينِ

Meaning: “For you your religion and for me my religion.”

*siyasah dusturiyah* principles that have been explained, the author will focus the analysis only on several principles that are considered most appropriate and relevant to the scope of this research.

### 3. Scope and Study of Siyasah Dusturiyah

*Fiqh siyasah dusturiyah* covers field life is very broad and complex . In general general , study This covering a number of field main , namely : issues and space

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<sup>105</sup> Iqbal, 240.

scope ( discussion ), concept Imamate along with rights and obligations , issues of the people's status and rights , issues of *bai'at* , problem *waliyul Ahdi* , problem representative , the role of *ahlul halli wal aqdi* ( institution deliberation ), problem *Wizaroh* ( ministry ) and its comparison .<sup>106</sup>

Fundamentally, all discourses in *fiqh siyasah dusturiyah* rests on two main pillars. First , the arguments *kulliy* , in the form of verses of the Qur'an and hadith , maqosid sharia, and values the basis of Islam in Community settings . Its nature constant and not affected changes of the times, at the same time functioning as dynamist transformation social . Second , the technical-operational aspects are flexible and can adapt to changing situations , including the results of the *ijtihad* of the scholars, although No all of it <sup>107</sup>.

On the other hand, *fiqh siyasah dusturiyah* can divided to :

- a. Field *siyasah tasyri'iyah* , which discusses the formulation of laws and regulations, includes the role of *ahlul halli wal aqdi* as a legislative body, the mechanism of people's representation, and the regulation of relations between Muslims and non-Muslims within a constitutional framework. Its scope includes the hierarchy of legal products starting from the Constitution to Regional Regulations .

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<sup>106</sup> Djazuli, *Fiqh Siyasah: Implementation of the Public Welfare in the Signs of Sharia* , 47.

<sup>107</sup> Jazuli, 47–48.

- b. Field *siyasah tanfidiyah* , which focuses on the study of state leadership (*imamah*), the system of appointing leaders through *bai'ah* , cabinet structure (*wizarah*), and the mechanism of leadership succession (*waliy al-ahd*). This field emphasizes the aspect of policy implementation in Islamic governance.
- c. Field *siyasah qadlailiyah* , which examines the Islamic judicial system, including the principles of an independent judiciary, dispute resolution mechanisms, and the position of the judiciary in the state structure.
- d. Field *siyasah idariyah* , which discusses governance, bureaucracy, and state personnel management according to Islamic principles.<sup>108</sup>

In accordance with the purpose of the state to create welfare for all over humans, then the state has a strategic role in realizing objective There are three task The main thing played by internal countries matter This .

*First* , the task to draft laws and regulations that are in line with sharia principles. To carry out this mandate, the state is given legislative authority ( *al-sulthah al-tasyri'iyah* ) which includes three main mechanisms, namely interpretation , analogy and inference. on *texts* The Qur'an and Hadith. Interpretation is systematic efforts to interpret *texts* (the Qur'an and Hadith) in order to understand the substantive meaning of the law contained therein . Analogy is carrying out the *Qiyas method* or deductive method in applying legal provisions from cases that have

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<sup>108</sup> Jazuli, 48.

been explicitly regulated in the text to new cases based on similarities in '*illah* (legal reasons). Meanwhile, inference is the process of formulating law through a deep understanding of the universal goals of sharia ( *maqasid al-syari'ah* ) and Divine will.

In situations where there is no text that directly regulates a problem ( *faragh al-nass* ), the scope of the state's legislative authority becomes wider. However, this authority remains limited by the basic parameters of sharia, so that any legal product produced must not contradict the fundamental principles of Islam.<sup>109</sup> Historically, legislative authority in the Islamic government system was carried out by the institution of *ahl al-hall wa al-'aqd* (a council of experts authorized to bind and release) as an institutional representation of the principle of shura. In contemporary developments, this institutional format has undergone a structural transformation that adapts to the modern system, manifested in *the form of a shura assembly* (parliament) as a representative legislative body.

*Second*, the task of implementing the law. To implement it, the state has executive power ( *al-sulthah al-tanfidiyah*). Here the state has a crucial role in implementing the legislative products that have been established. In this case, the state carries out policies related to both the domestic sphere and international relations. The government structure in carrying out this function consists of the head of state as the highest authority assisted by a council of ministers (*wizarah*) whose

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<sup>109</sup> Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine* , 157.

composition is dynamic according to the specific needs of each Muslim country. It is important to note that as with legislative power, all executive policies must remain guided by two main parameters: conformity with the spirit of *the sharia texts* and consideration of the welfare of the people.<sup>110</sup>

*Third*, the judiciary ( *al-sulthah al-qadha'iyah* ) bears the primary responsibility for upholding and maintaining the supremacy of law. Historically, the judicial institution in Islam has developed in three complementary institutional forms: First, the *al-hisbah region* which has the authority to resolve trade disputes and minor violations in the field of muamalah. Second, *the al-qadha' region* as a general court that handles civil and criminal cases between citizens. Third, *the al-mazhalim region* which specifically handles abuse of authority by state officials, including violations of human rights and public policies that are detrimental to society.<sup>111</sup>

Referring to the explanation above, the author uses *the siyasah dusturiyah thought* put forward by Muhammad Iqbal. The goal of the state as explained by Muhammad Iqbal is create welfare for all over humans , then the state has a duty For to realize objective Those three tasks The main tasks of the state mentioned by Muhammad Iqbal are; First , the task the legislature that forms shrimp law in accordance teachings Islam ( *al- sulthah al- tasyri'iyah* ), Second, duties carry out law laws carried out by institutions executive ( *al- sulthah al- tanfidziyah* ) Third ,

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<sup>110</sup> Iqbal, 157–58.

<sup>111</sup> Iqbal, 158.

maintaining laws and regulations that have been formed as realization the duties of the judiciary ( *al- sulthah al- qadha'iyah* ).

Related with regulation legislation that the author thorough about dual duties of Village Head Election Committee, then researcher will to examine more carry on about task main from institution legislative as former Law No. 6 of 2014 concerning Villages and also the Minister ( institution executive ) which forms Permendagri No. 112 of 2014 Concerning Election Head Village of corner view three task the main state according to Muhammad Iqbal.

#### **4. Sources of Fiqh Dusturiyah**

Primary source *of Islamic jurisprudence* is the Al-Quran al-Karim which functions as a primary source containing basic principles in the governance of state life, including: universal principles, fundamental societal values, and the essence of the teachings of the Al-Quran comprehensively. The second source of law is the Sunnah of the Prophet which is manifested in authentic hadiths on the system of *imamate* (state leadership) and *siyasaḥ syar'iyah* (state policy), which represents the ideal practice of the Prophet Muhammad SAW in building governance in Arab countries.<sup>112</sup>

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<sup>112</sup> Rizki Wahyuni Ayu, “The Role of the Lampung Province Bawaslu in the Dispute Resolution Process in the 2020 Bandar Lampung Mayor and Deputy Mayor Election from the Perspective of Fiqh Siyasaḥ (Study of the Lampung Province Bawaslu)” (diploma, RADEN INTAN STATE ISLAMIC UNIVERSITY OF LAMPUNG, 2022), 26, <https://repository.radenintan.ac.id/19121/>.

Third, the source jurisprudence *dusturiyah* is policies implemented by Khulafah al - Rasyidin in manage governance . Although there were methodological variations in the leadership styles of each caliph that reflected differences in individual character, all of their policies showed consistency in maintaining a public welfare orientation as the main paradigm .

Fourth, the product of the *ijtihad* of the ulama is formed framework think that dynamic in *fiqh dusturiyah* . Ulema *ijtihad* products have contribution significant in understand essence and principles *fiqh dusturi* . The implementation of *ijtihad* always protection oriented interest general in a way comprehensive , with still guard consistency to *maqasid al- shari'ah* .<sup>113</sup>

Fifth , sources jurisprudence *dusturiyah* is custom habit a a nation that does not contradictory with the fundamental principles of the Quran and Hadith . Customs that are not written This often termed as conventions . In addition , some custom habit can lifted become provision law written , with condition certain things that must be fulfilled so that customs the can accepted as source legitimate law .<sup>114</sup>

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<sup>113</sup> Ayu, 26–27.

<sup>114</sup> Ayu, 27.

### **CHAPTER III DISCUSSION**

#### **A. Regulation of the Dual Duties of the Village Head Election Committee as the Implementation and Supervisory Committee in Article 9 of the Permendagri Number 112 of 2014 concerning the Election of Village Heads According to the Theory of Legal Certainty**

The implementation of the Village Head Election (Pilkades) can currently be classified as an important effort in maintaining democratic values and the principle of autonomy. According to Janedjri M Gaffar, democracy is based on the principle of equality, namely that every citizen has equal rights and position in government, in this case the people are given the power to participate in determining the government, namely the authority held by the ruler comes from the legitimacy of the people <sup>115</sup>.

##### **1. Portrait Disharmony Regulation Dual Duties of the Village Head Election Committee**

Village head elections are a democratic process that requires people to truly elect leaders who have the ability to manage the village both administratively and politically. In general, the stages of implementing the Pilkades are regulated in Article 34 of Law Number 6 of 2014 concerning Villages and Article 6 of the Regulation of the Minister

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<sup>115</sup> Janedjri M Gaffar, *Democracy and Elections in Indonesia* (Jakarta: Konstitusi Press, 2013), 1.

of Home Affairs (Permendagri) Number 112 concerning the Election of Village Heads. These two regulations explain that the Village Head Election is carried out through the stages of preparation, nomination, voting; and determination.<sup>116</sup>

The political dynamics that occur during the preparation process until the determination of the implementation of the Pilkades are undeniable, therefore the regional government, especially the Regent/Mayor as the highest leader in the region, has the authority to form an election committee at the district level to organize the stages of the Pilkades as narratively written in the Regulation of the Minister of Home Affairs (Permendagri) Number 72 of 2020 concerning the Second Amendment to the Regulation of the Minister of Home Affairs (Permendagri) Number 112 of 2014 concerning the Election of Village Heads<sup>117</sup> as a form of solution to the political problems that occur. This will of course be structural to the election committee at the lowest level, namely the village level known as the Village Head Election Committee.

The mandate of Article 34 paragraph (5) of Law Number 6 of 2014 concerning Villages (Village Law) states that the Village Head Election Committee is tasked with conducting the selection and screening of prospective candidates based on the specified requirements, implementing voting, determining the elected Village Head candidate,

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<sup>116</sup> Shazlin Fazhira and Irwansyah Irwansyah, "Implementation of Home Affairs Ministerial Regulation No. 112/2014 on the Implementation of Village Head Elections in the Perspective of Siyasa Tanfidziyah," *EDUCATIO Journal: Indonesian Education Journal* 9, no. 1 (June 30, 2023): 561, <https://jurnal.iicet.org/index.php/j-edu/article/view/3080>.

<sup>117</sup> Arief and Gobel, "Issues of Village Community Constitutional Rights Regarding the Authority to Supervise Village Head Elections," 888.

and reporting on the implementation of the Village Head Election <sup>118</sup>. However , there is an expansion of the duties of the Village Head Election Committee, as stated in the formulation of Article 9 of the Regulation of the Minister of Home Affairs Number 112 of 2014 concerning the Village Head Election <sup>119</sup>(Permendagri concerning the Village Head Election). The Village Head Election Committee has the following duties <sup>120</sup>.

- a. Planning, coordinating, organizing, supervising and controlling all stages of the election implementation.
- b. Planning and submitting election costs to the Regent/Mayor through the sub-district head;
- c. Carrying out voter registration and determination;
- d. Conducting recruitment and screening of potential candidates;
- e. Determine candidates who have met the requirements;
- f. Determining the procedures for implementing elections
- g. Determine the procedures for implementing the campaign;
- h. Facilitate the provision of equipment, supplies and polling stations;
- i. Conducting voting;

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<sup>118</sup> Constitution Number 6 of 2014 Concerning Villages State Gazette Number 7 of 2014

<sup>119</sup> Arief and Gobel, "Issues of Village Community Constitutional Rights Regarding the Authority to Supervise Village Head Elections," 896.

<sup>120</sup> Regulation of the Minister of Home Affairs Number 112 of 2014 Concerning Election Village Head State News Number 2092 of 2014

- j. Determine the results of the vote counting recapitulation and announce the election results;
- k. Determining the elected village head candidate; and
- l. Conducting evaluation and reporting on the implementation of elections

Based on the normative study of the above laws and regulations, there was a disharmony in the regulations regarding the scope of duties of the Village Head Election Committee. The Village Law explicitly only mandates the Village Head Election Committee as the election implementer, while Permendagri No. 112 of 2014 concerning the Village Head Election expands the scope of its duties to include a supervisory function. This expansion of duties raises legal problems, especially related to the dual duties carried out by the Village Head Election Committee. Furthermore, the Permendagri is considered controversial because it grants superpower authority to the Village Head Election Committee,<sup>121</sup> where one institution simultaneously carries out both the implementing and supervisory functions.

This is explicitly seen in Article 9 of the Permendagri on Village Head Elections which states that the election committee's task is not only to organize the stages of the Pilkades implementation, but also to supervise the implementation. This legal construction raises fundamental problems because it conflicts with the principle of independence in the implementation of democratic elections. Furthermore, a

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<sup>121</sup> Arief and Gobel, "Issues of Village Community Constitutional Rights Regarding the Authority to Supervise Village Head Elections," 889.

comprehensive study of the Village Law, there is not a single provision that mandates such dual duties <sup>122</sup>. This condition indicates a disharmony of law that has the potential to cause legal uncertainty *in* the regulation of the implementation of Pilkades.

The unlimited authority held by the Village Head Election Committee will open up opportunities for *conflicts of interest* and non-neutrality of the committee. The coordination forum for the district/city election committee also only consists of the district/city regional leaders (regents/mayors), DPRD leaders, police leaders, prosecutors, and heads of territorial units of the Indonesian National Army in the region, which elements indicate that there is no party that has competence in the Village Head Election process like an election that has a General Election Commission that serves as the organizer and the Election Supervisory Body as the supervisor of the implementation of the Election. These elements also do not refer to parties that specifically carry out the implementation and supervision of the Village Head Election<sup>123</sup>.

Essentially, the monitoring mechanism plays a fundamental role in ensuring the realization of democratic principles in the Village Head Election. Pilkades as a means of aggregating the aspirations of village communities <sup>124</sup>requires an effective monitoring system, which functions as a parameter of whether the election process

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<sup>122</sup> Arief and Gobel, 889.

<sup>123</sup> Arief and Gobel, 889.

<sup>124</sup> Muhammad Yunus, "Simultaneous Village Head Elections in 2015 (Case Study in Keera District, Wajo Regency)" (Makassar, Alauddin State Islamic University, 2016), 69.

truly reflects democratic values or deviates from them . This problem is increasingly complex with the implementation of a simultaneous election system, where the wide coverage area and large number of villages pose significant challenges in terms of comprehensive monitoring and supervision. This condition has the potential to create gaps for deviations from the democratic process in the implementation of Pilkades <sup>125</sup>.

Substantively, the implementation of an effective monitoring mechanism in the Village Head Election functions as a catalyst for increasing the integrity and professionalism of the organizing committee, while ensuring the realization of a quality election process. The antithesis of the constituendum that was built, namely the absence of fundamental elements of monitoring the Village Head Election, has an impact on the committee's non-neutrality and *conflict of interest*, reflected in several cases.

First, based on information from senior lawyer H. Ridwan Rangkuti, SH, MH, there are indications of violations in the selection process for Prospective Village Head Candidates (Bacakades) in Hutagodang Muda Village, Mandailing Natal (Madina) Regency. The Pilkades Committee is suspected of making mistakes in weighting the support files for two Bacakades, namely Ris and MS. Ris was stated to have experience working in a government institution as a madrasah teacher, even though based on the Madina Regent Regulation and the Minister of Home Affairs Regulation, this profession is not included in the category of government work. Meanwhile, MS was

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<sup>125</sup> Arief and Gobel, "Issues of Village Community Constitutional Rights Regarding the Authority to Supervise Village Head Elections," 896.

stated to have served as the Head of Naposo Nauli Bulung (NNB) of Hutagodang Muda Village, even though in fact he never held that position. As a result of this inappropriate weighting, Ridwan Rangkuti's clients, Mansur Suleman Rangkuti and Roil Dalimunthe, received the lowest scores and thus failed to qualify as village head candidates.<sup>126</sup>

Furthermore, Ridwan Rangkuti stated that the Pilkades committee did not invite his client when announcing the village head candidates, thus raising suspicions that the selection process was not transparent. His client has filed a lawsuit against the Pilkades committee of Madina Regency cq. Madina PMD Service, but until now there has been no response. Therefore, Ridwan Rangkuti requested that the Madina Regent, Madina Police Chief, and Panyabungan District Attorney postpone the Pilkades process while reviewing the files of Ris and MS. In addition, he stated that he would report this case to the police.<sup>127</sup>

Second, the implementation of the Village Head Election in Rambah Hilir Tengah Village was marked by a number of procedural violations that disrupted the integrity of democracy. The violations and fraud were in the form of manipulation of voter administration at Polling Station (TPS) 02 where an unofficial attendance list was used and replaced with incomplete manual records without the KK number and NIP KTP of

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<sup>126</sup> "Files Allegedly Fake, Hutagodang Muda Village Head Election Asks for Postponement," accessed March 4, 2025, <https://www.waspada.id/sumut/berkas-diduga-palsu-Pilkades-hutagodang-muda-minta-ditunda/>.

<sup>127</sup> "Files Allegedly Fake, Hutagodang Muda Village Head Election Asks for Postponement."

voters from the Permanent Voter List (DPT ). Furthermore, the granting of unconstitutional voting rights to: (a) additional voters who only brought their KTP/KK (the initial agreement was to bring both), and (b) residents who had moved domicile before the determination of the Permanent Voter List (DPT) <sup>128</sup>.

Systematic violations also occurred at the recapitulation stage. The committee failed to fulfill the obligation of pre-voting counting (unused ballots, damaged ballots and DPT verification). Arithmetic anomalies were seen from the difference between the actual number of voters and the number of DPT. Furthermore, copies of the KPPS plenary at TPS 01 and TPS 02 after the vote counting were not given to witnesses/Village Head Candidates on the grounds that the committee did not know about the task. Based on the indications of potential structural fraud above, the committee still insisted that the election had been in accordance with procedures and met the requirements even though it was contrary to the reality on the ground.<sup>129</sup>

The village head election that took place in Karangjati village also ended in a demonstration in front of the sub-district office to confront the Karangjati Panwascam. This was caused by Ibnu Bahroin, a village head candidate with ballot number 2, suing the committee because the committee was considered to have inflated three ballots.

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<sup>128</sup> "Accompanied by Legal Counsel, RHT Village Head Candidate Submits Letter of Objection to Village Head Election Results," [lineperistiwa.com](https://lineperistiwa.com/news/detail/1477/didampingi-kuasa-hukum-calon-kades-rht-sampaikan-surat-sanggahan-hasil-suara-Pilkades), accessed March 4, 2025, <https://lineperistiwa.com/news/detail/1477/didampingi-kuasa-hukum-calon-kades-rht-sampaikan-surat-sanggahan-hasil-suara-Pilkades>.

<sup>129</sup> "Accompanied by Legal Counsel, RHT Village Head Candidate Submits Letter of Objection to Village Head Election Results."

The number of ballots given to voters was 2,419 votes while the total number of ballots in the box was 2,422 votes. So the validity of the implementation of the village head election should be questioned. Sumiyardi as the head of the village head election explained that there was actually no vote inflation, he explained that there was a possibility of a technical error where voters were not recorded by the committee. However, Ibnu Bahroini admitted that he would continue to sue the village head election committee to the Surabaya State Administrative Court (PTUN) <sup>130</sup>.

The last case of clashes between residents during the Village Head Election occurred in Burtungen Julu Village, Tiga Lingga, Dairi Regency, North Sumatra. A village head candidate with the initials HS is suspected of inciting residents to riot during the Village Head Election. This was because HS objected to the final results of the vote count. Previously, HS supporters forced the vote count, but it ended in chaos and there was an incident of violent destruction of ballot boxes at two TPS by dozens of HS supporters so that the ballots were scattered and an officer was injured as a result of this incident <sup>131</sup>.

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<sup>130</sup> "Accused of Village Head Election Committee Cheating on Ballots, Masses Storm Panwascam | Ngawi News Portal."

<sup>131</sup> "Village Head Election in Dairi Turns Chaotic, 1 Village Head Candidate Arrested for Inciting Residents to Create Riots," accessed April 29, 2025, <https://news.detik.com/berita/d-5830716/Pilkades-di-dairi-ricuh-1-calon-kades-ditangkap-hasut-warga-bikin-rusuh>.

## **2. Review of the Theory of Legal Certainty Regarding the Dual Duties of the Village Head Election Committee According to Nurhasan Ismail**

The case explained earlier shows that the dual duties of the Village Head Election Committee will have an impact on the quality of the implementation of the Village Head Election. This is due to the weak supervision of the committee and the absence of a *check and balances mechanism* that can control the performance of the committee itself. This impact should be the foundation for re-examining the regulations governing the dual duties of the Village Head Election Committee. Therefore, in the author's opinion, this legislation needs to be reviewed for its legal certainty, so in this study the researcher uses the theory of legal certainty put forward by Nurhasan Ismail. The formation of legal certainty in legislation requires a number of conditions that are closely related to the internal structure of the legal norms themselves.

According to Nurhasan Ismail, these internal requirements include the following:

### **a. Clarity of concept.**

Conceptual clarity is a fundamental characteristic of a legal norm that must be met so that the law can function effectively and legally. In a deeper theoretical perspective, conceptual clarity means that every legal norm explicitly, systematically and comprehensively describes certain behaviors that are the focus of its regulation. Furthermore, this behavioral description is then translated and crystallized into well-defined, measurable and rationalized legal concepts in

everyday life. The purpose of this conceptual clarity is to eliminate ambiguity, multi-interpretation and ensure that everyone can understand exactly which behavior is regulated by the norm.<sup>132</sup>

This context crystallization process involves the transformation of abstract ideas about desirable or undesirable behavior into concrete and applicable normative formulations. This transformation requires a deep understanding not only of the linguistic and semantic aspects of the legal language, but also of the social, political, economic, and cultural context in which the legal norms will be implemented. This is in line with Fuller's view that the law must be clear and consistent, there must be no room for doubt or ambiguity in legal regulations so that they can be understood by the public and applied consistently by law enforcement officers <sup>133</sup>.

The main purpose of this conceptual clarity is multidimensional and complex. First, conceptual understanding aims to eliminate interpretive ambiguity that can cause legal coverage and ensure that every legal subject, both individuals and institutions, can understand precisely, comprehensively, and accurately what is regulated, prohibited, or required by the norm <sup>134</sup>. Second, conceptual clarity functions as an instrument to ensure consistency in interpretation and application

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<sup>132</sup> Ismail, *Development of Land Law: Political Economic Approach* , 39.

<sup>133</sup> Dwi Tatak Subagiyo, *Guarantee Law in the Perspective of the Fiduciary Guarantee Law (An Introduction)* (Surabaya: UWKS Press, 2018), 308.

<sup>134</sup> Ismail, *Development of Land Law: Political Economic Approach* , 39.

of the law at various levels of government and geographical areas, so that uniformity of understanding and implementation is achieved that can support the creation of national legal certainty. Third, conceptual clarity acts as a preventive mechanism against potential conflict interpretations that can lead to prolonged law enforcement and harm various parties involved in the legal process.

In a broader philosophical perspective of law, conceptual clarity is also closely related to the fundamental *rule of law* which requires legal principles to be comprehensible , predictable , and accessible *to* all members of society without discrimination <sup>135</sup>. The principle of *the rule of law* requires that laws must be written with sufficient clarity to avoid unfair enforcement, laws must avoid contradictions, and laws must not order the impossible. Conceptual ambiguity in legal norms not only contradicts the basic principles of the rule of law, but can also lead to discriminatory practices in the application of law in society which can ultimately erode trust in the legal system as a whole and include the legitimacy of government.

In addition, conceptual clarity also has an important democratic dimension. In a democratic system, public participation in the legal process can only occur effectively if the public clearly understands what is regulated by law. Conceptual ambiguity can create barriers to democratic participation and can lead to the marginalization of certain groups in society who do not have access to authoritative

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<sup>135</sup> Teguh Prasetyo, "Rule of Law in the Dimension of the Indonesian Legal State," *Journal of Legal Studies, Legal Reflections* , October 2010, 135.

legal interpretation. This is in line with the principle of *due process of law* which requires everyone to be able to understand the legal consequences of their actions before taking those actions <sup>136</sup>.

The problem of unclear concepts becomes very real, significant, and fundamental when we conduct a comprehensive and in-depth analysis of the regulations related to the Village Head Election Committee as stipulated in Law Number 6 of 2014 concerning Villages and Regulation of the Minister of Home Affairs Number 112 of 2014 concerning Village Head Elections. Both legal instruments, which are the main foundation and primary reference in organizing village head elections throughout Indonesia, actually contain fundamental weaknesses in terms of understanding the concept which has serious implications for implementation in the field.

A thorough textual analysis of the substance of both regulations shows that they do not provide a clear, firm, comprehensive, and operational definition of the nature of the Village Head Election Committee as an election organizing institution at the village level. The absence of a comprehensive definition is not only a technical deficiency in the preparation of laws and regulations, but also reflects the inability of the regulators to concretize the abstract concept of organizing democratic

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<sup>136</sup> Mahrus Ali, "Supervision of the Circulation of Printed Materials, Due Process of Law and the Right to Freedom of Expression," *Constitutional Journal* 8, no. 4 (2011): 521–50, <https://doi.org/10.31078/jk845>.

elections at the village level into a normative formulation that can be implemented effectively.

Both regulations only mention superficially that the village head election committee is a committee formed by the Village Consultative Body (BPD) to organize the Village Head Election process <sup>137</sup>, without providing capable and substantive elaboration regarding various fundamental aspects such as: the ontological nature of the election committee as a legal entity, institutional characteristics that distinguish it from other institutions in the village government structure, hierarchical position in the village governance system, accountability and responsibility, and structural and functional relationships with other institutions in the democratic and participatory village government ecosystem.

The absence of a comprehensive operational definition has direct, significant, and multidimensional implications for the unclear scope of duties, authorities, rights, and responsibilities of the Village Head Election Committee in carrying out the function of organizing democratic, transparent, accountable, and participatory elections. This unclearness not only impacts the technical operational level, but also the strategic and philosophical level regarding the role of the election committee in the democratization process at the grassroots level.

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<sup>137</sup> Permendagri Number 112 of 2014 Concerning Election Village Head State News Number 2092 of 2014

This ambiguity of definition and context also has an impact on the exposure of the legal status of the election committee in the hierarchy of village government institutions. Whether the election committee is an auxiliary organ of the BPD, an independent entity formed by the BPD, or a *sui generis institution* with special characteristics that differ from both categories <sup>138</sup>, is not adequately explained in both regulations.

This unclear legal status further has implications for the protection of various important aspects such as: accountability mechanisms (to whom the election committee is responsible), monitoring systems (who has the authority to monitor the performance of the election committee), resolution mechanisms that may arise in the process of organizing village head elections, and procedures for terminating election committee members in cases of violations or irregularities. Furthermore, the unclear concept can lead to diverse and potentially conflicting interpretations in various regions and local contexts, thus potentially creating significant disparities in the implementation of village head elections between regions.

Inconsistency arrangement between second regulation the the more to aggravate condition intimidation the law that has been complex and creative layer ambiguity addition in implementation in the field . Village Law , as regulations that are hierarchical is at a higher level tall in system regulation legislation in Indonesia,

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<sup>138</sup> Dhea Putri Wulandari, "Legal Position of Investment Management Institutions with Special Authority (Sui Generis) in Indonesia," *Journal of Law, Public Administration and State* 2, no. 1 (January 20, 2025): 115–24, <https://doi.org/10.62383/hukum.v2i1.129>.

adopting a tendentious approach nature restrictive with reduce duties and functions Committee Election Village Head only on aspects implementation operational technical election <sup>139</sup>.

Characterization task committee election of a nature pure technical This give impression that committee election only functioning as executor or executor from decisions that have been made made by institutions other , without own authority substantive in ensure quality , integrity , and fairness of the election process .

On the other hand , the Permendagri Number 112 of 2014, as executor regulations that are hierarchical be under Village Law , in fact take a more approach expansive and comprehensive with expand spectrum duties and functions committee election until covers function supervision . Expansion function This is change significant from the characterization given by the Village Law and gives rise to question important about consistency and coherence in framework regulation organization election head village <sup>140</sup>.

However expansion function supervision This done without give clear , comprehensive and operational guidelines about various aspect fundamental such as : space scope supervision (what surrounds) , object supervision (who surrounds), mechanism supervision (how supervision carried out), standards and criteria

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<sup>139</sup> Arief and Gobel, "Issues of Village Community Constitutional Rights Regarding the Authority to Supervise Village Head Elections."

<sup>140</sup> Yani, "Arrangement of Village Head Elections in the State System in Indonesia."

supervision ( based on What supervision done ), instrument supervision ( tools ) what is used For supervision ), as well as consequence from results supervision (what happens If found violation). The absence of guidelines operational This create emptiness in implementation that can filled with interpretation subjective and potential arbitrary from the implementers in the field .

Expansion function supervision without clear boundaries also causes question fundamental about connection between committee election with institution supervisor other in ecosystem organization election head village , such as Election Supervisory Agency or institution other internal supervisors . Are function supervision committee election nature each other complement , overlap overlap , or hierarchical to function supervision other institutions do not get adequate clarification .

Divergence arrangement This create tension regulations that are of a nature multifaceted and potential cause various problematic in implementation , including : conflict authority between committee election with institution supervisor others , publish in distribution duties and responsibilities answer between different actors in organization election , inconsistency in implementation in various areas that can adopt different interpretations , as well as potential dispute jurisdiction that can hinder effectiveness organization election .

Condition inconsistency this can also cause ambiguity about mechanism coordination committee election with various stakeholders interest other in

organization election head village , such as the Village Consultative Body as former committee election , apparatus government the village that has interest in results election , candidates head the village that has right For get fair treatment , society village in a way general as owner protection , as well as institution supervisor and enforcer responsible law answer For ensure right voice in election .

similar emphasized by Nurhasan Ismail in perspective theoretical about creation certainty law , formation effective legislation need a number of related requirements with internal structure of legal norms That myself , including existence clarity the concept used , where legal norms the containing about description from behavior certain which then made into One to in concepts certain as well. These fundamental requirements No only is need technical legal in compilation regulation legislation , but also constitutes imperative constitutional For ensure achievement objective regulation and protection fundamental rights of the subject the law regulated by the <sup>141</sup>norms .

In a more detailed context specific related arrangement task Committee Election Village Head , ambiguity definition and space scope task creating a grey zone law ( *legal grey area* ) which is broad and has potential cause various problematic serious . Grey zone This No only potential cause ambiguity and multiple interpretations in implementation operational at the level village , but also

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<sup>141</sup> Ismail, *Development of Land Law: Political Economic Approach* , 39.

can leading to a systemic and structural world of law in organization election head villages throughout Indonesia .

Condition violation systemic law This can impact in a way direct and significant on various aspect fundamental from the democratization process at the level village . First , warming up This can impact on the decline quality and integrity of the selection process head village , because ambiguity role and function committee election can create opportunity the occurrence manipulation and deviation . Second , it can impact on reducing legitimacy of the election process in the eyes of public village , which can lower level participation politics and involvement civil at the level root grass . Third , chaos This can impact on the decline accountability and transparency in organization election , because ambiguity mechanism accountability can create impunity to various form violation <sup>142</sup>.

More Far again , ambiguity context This can cause deviant practices from fundamental principles of democracy , transparency and accountability in organization election head village . Ambiguity authority and authority committee election can utilized by the parties certain with interest certain For do manipulation or influence that is not should in the election process , which ultimately can harm principle popular sovereignty and government democratic at the level village .

Condition This can realized in various form , start from purchase voice ,

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<sup>142</sup> Fazhira and Irwansyah, "Implementation of Home Affairs Ministerial Regulation No. 112/2014 on the Implementation of Village Head Elections from the Perspective of Siyasah Tanfidziyah."

intimidation to voters , manipulation registration voters , destruction calculation sound , until various form fraud elections that can damage integrity the entire election <sup>143</sup>process .

b. Clarity of hierarchy in the legal norm system.

This hierarchy refers to the order of levels of legislation, where each level has a different position and binding power. The existence of this clear hierarchy serves to determine the validity of a legal norm, a lower norm must not conflict with a higher norm. In addition, the certainty of this hierarchy provides a clear framework for lawmakers regarding the limits of their legal authority in formulating regulations at a more specific level <sup>144</sup>.

In the context of the dual task arrangement of the Village Head Election Committee, the analysis of the clarity of the hierarchy is focused on the position of Law Number 6 of 2014 concerning Villages and Regulation of the Minister of Home Affairs Number 112 of 2014 concerning the Election of Village Heads. Based on Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, the hierarchy of legislation in Indonesia consists of:

- 1) The 1945 Constitution of the Republic of Indonesia;
- 2) Decree of the People's Consultative Assembly;

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<sup>143</sup> Faizin and Ubaidillah, "Resolution of Simultaneous Village Head Election Disputes in Situbondo Regency."

<sup>144</sup> Ismail, *Development of Land Law: Political Economic Approach* , 39.

- 3) Law/Government Regulation in Lieu of Law;
- 4) Government regulations;
- 5) Presidential decree;
- 6) Provincial Regional Regulations; and
- 7) Regency/City Regional Regulations.<sup>145</sup>

Even though there is no explicit recognition in the hierarchy, the Ministerial Regulation is recognized as existing in Article 8 paragraph (1) of Law Number 11 of 2011 which states that:

Types of Legislation other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, People's Representative Council, Regional Representative Council, Supreme Court, Constitutional Court, Audit Board, Judicial Commission, Bank Indonesia, Ministers, agencies, institutions or commissions of the same level which are established by Law or by the Government on the orders of Law, Provincial People's Representative Council, Governor, Regency/City People's Representative Council, Regent/Mayor, Village Head or equivalent.<sup>146</sup>

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<sup>145</sup> Constitution Number 12 of 2011 Concerning Formation Regulation Legislation State Gazette Number 82 of 2011

<sup>146</sup> Constitution Number 12 of 2011 Concerning Formation Regulation Legislation State Gazette Number 82 of 2011

Furthermore, Article 8 paragraph (2) states that these regulations are recognized as existing and have binding legal force as long as they are ordered by higher statutory regulations or are formed based on authority <sup>147</sup>.

Based on these provisions, the Village Law is at the third level in the hierarchy of laws and regulations, while Permendagri No. 112 of 2014, although not explicitly mentioned in the hierarchy, is recognized as existing and has binding legal force as long as it is ordered by higher laws and regulations or is formed based on authority.

The clarity of the hierarchy between the Village Law and Permendagri No. 112 of 2014 has implications for resolving norm conflicts related to the duties of the Village Head Election Committee. Based on the principle of *lex superior derogat legi inferiori* (a higher law defeats a lower law) <sup>148</sup>, the provisions of the Village Law should be prioritized over the provisions of Permendagri No. 112 of 2014 if a norm conflict occurs.

In the context of regulating the duties of the Village Head Election Committee, the Village Law only provides the Village Head Election Committee with an implementation function, while Permendagri No. 112 of 2014 adds a supervisory

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<sup>147</sup> Constitution Number 12 of 2011 Concerning Formation Regulation Legislation State Gazette Number 82 of 2011

<sup>148</sup> Tongon Fernando Hutasoit and Pan Lindawaty Suherman Sewu, "The Principle of Lex Specialis Derogat Legi Generalis Associated with the Principle of Lex Superiori Derogat Legi Inferiori in Electronic Medical Records in Indonesia," *Syntax Literate; Indonesian Scientific Journal* 7, no. 12 (December 20, 2022): 18352–67, <https://doi.org/10.36418/syntax-literate.v7i12.10907>.

function. Based on the principle of *lex superior derogat legi inferiori* , the provisions in the Village Law should be prioritized <sup>149</sup>, which means that the Village Head Election Committee should only carry out an implementation function, not a supervisory function.

However, in practice, the clarity of this hierarchy is often ignored, so that Permendagri No. 112 of 2014 concerning Village Head Elections is still implemented even though it has the potential to conflict with the Village Law. This creates legal uncertainty in the implementation of Village Head Elections, where the Village Head Election Committee is faced with a dilemma regarding the scope of its duties.

Indicator clarity hierarchy also includes aspect delegation arrangement from more regulations tall to more regulations low <sup>150</sup>. Related with context arrangement task Committee Election Village Head , analysis to delegation arrangement focused on the provisions in The Village Law which delegates arrangement more carry on to regulation executor . Article 31 paragraph (3) of the Village Law states that " Provisions more carry on about Election Village Head is regulated with Regulation

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<sup>149</sup> Suko - Prayitno, "Mechanism of Cancellation of Regional Regulations and Its Legal Consequences Based on the Principle of Lex Superiori Derogat Legi Inferiori," *Surya Kencana Satu Journal: Dynamics of Legal and Justice Problems* 8, no. 2 (November 8, 2017): 109–20, <https://doi.org/10.32493/jdmhkdmhk.v8i2.698>.

<sup>150</sup> Agung Wibowo and Arif Sugitanata, "Theory of Norm Enhancement and Discovery of Islamic Law (Deepening and Reconstruction of Concepts)," *DARUSSALAM JOURNAL: Constitutional Law Thought and Comparative Schools* 3, no. 1 (June 26, 2023): 79–96, <https://doi.org/10.59259/jd.v3i1.50>.

Government ." Based on provision This , Invite Village Law delegates arrangement more carry on about Election Village Head to Regulation Government , not to Ministerial regulation .

The reality arrangement more carry on about Election The village head actually done through Permendagri No. 112 of 2014 concerning Election Village Head . This is cause question about legitimacy Permendagri No. 112 of 2014 concerning Election Village Head in arrange provision more carry on about Election Village Head , especially when arrangement the potential contradictory with Village Law .

Nurhasan Ismail emphasized that the clarity of the delegation of regulations is very important to ensure coherence and consistency in the legal system. In relation to the regulation of the duties of the Village Head Election Committee, the unclear delegation of regulations creates ambiguity and uncertainty in its implementation<sup>151</sup>.

c. Consistency of legal norms.

Consistency means that various legal provisions that regulate the same subject or problem must be logically interrelated and not contain internal contradictions <sup>152</sup>. If inconsistency occurs, this can cause confusion in law enforcement and uncertainty for the community. Therefore, harmonization between various laws and

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<sup>151</sup> Ismail, *Development of Land Law: Political Economic Approach* , 40.

<sup>152</sup> Ismail, 39.

regulations that regulate the same field is essential to creating an effective and fair legal system.

In the context of the regulation of the duties of the Village Head Election Committee, the analysis of norm consistency is focused on the coherence of the regulations between the Village Law and Permendagri No. 112 of 2014 concerning Village Head Elections, as well as its implications for legal certainty in the implementation of Village Head Elections. Vertical inconsistency occurs when there is a conflict between laws and regulations that have different hierarchies. In the context of the regulation of the duties of the Village Head Election Committee, vertical inconsistency is identified between the Village Law and Permendagri No. 112 of 2014.

The Village Law in Article 34 paragraph (5) only provides the implementation function to the Village Head Election Committee, which includes the selection and screening of prospective candidates, the implementation of voting, the determination of elected candidates, and reporting on the implementation of the election. Meanwhile, Permendagri No. 112 of 2014 in Article 9 letter (a) adds a supervisory function to the Village Head Election Committee, namely "planning,

coordinating, organizing, supervising and controlling all stages of the implementation of the election" <sup>153</sup>.

Inconsistency vertical This create potential norm conflict cause uncertainty law in organization Election Village Head . Committee Election The village head is faced with a dilemma about room scope his task , is it only as executor as set up in Village Law or also as supervisor as set up in Permendagri No. 112 of 2014.

Nurhasan Ismail emphasized that consistency vertical is prerequisite For realize certainty law in system regulation legislation . If correlated<sup>154</sup> with arrangement task Committee Election Village Head , inconsistency vertical between The Village Law and Home Affairs Ministerial Regulation No. 112 of 2014 created uncertainty potential law to grind legitimacy organization Election Village head .

Based on analysis that has been done , found that three the conditions conveyed by Nurhasan Ismail in create certainty law Not yet fulfilled in the Article the author careful . This is reflected from : first, ambiguity concept , the absence of a clear operational definition regarding the election committee in both regulations has led to multiple interpretations of the scope of their duties.

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<sup>153</sup> Permendagri Number 112 of 2014 concerning Election Village Head State News Number 2092 of 2014

<sup>154</sup> Ismail, *Development of Land Law: Political Economic Approach* , 39.

Second, the ambiguity of the hierarchy, where both the Village Law and the Permendagri No. 112 of 2014 concerning the Election of Village Heads are equally recognized in the hierarchy of laws and regulations in Indonesia and have binding legal force as stated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations. However, the existence of the Permendagri that is not in accordance with the provisions of delegation in the Village Law raises hierarchical problems, where the lower norm, namely the Permendagri No. 112 of 2014, actually regulates matters that are not ordered by the higher norm, namely the Village Law.

Third, the vertical inconsistency between the two regulations, especially regarding the addition of the supervisory function by the Minister of Home Affairs Regulation, worsens the law and threatens the certainty and legitimacy of the implementation of the Village Head Election. Therefore, harmonization and affirmation of norms are needed to ensure clarity, harmony, and fair and effective legal enforcement.

#### **B. Arrangement of the dual duties of the Village Head Election Committee as the Implementing Committee and Supervisor of the *Siyasah Dusturiyah* Perspective**

The dual duties of the Village Head Election Committee as the implementing and supervisory committee are based on the inconsistency and disharmony of the laws and regulations governing the implementation of the Village Head Election process itself. Article 34 paragraph (5) of Law Number 6 of 2014 concerning Villages, which is the foundation for organizing the Village Head Election, explicitly shows that the duties given to the Village Head Election Committee are only the duties of implementing the

election. However, Article 9 of the Permendagri No. 112 of 2014 concerning the Village Head Election expands the duties of the Village Head Election Committee to include a supervisory function.

One of the duties of the Village Head Election Committee as stated in Article 9 letter (a) of Permendagri No. 112 of 2014 concerning Village Head Elections is: planning, coordinating, organizing, supervising and controlling all stages of the election. The addition of the supervisory task in letter (a) which includes "supervising and controlling all stages of the election implementation" shows the existence of dual duties that were not previously regulated in the Village Law. This disharmony has caused the legitimacy of Permendagri No. 112 of 2014 to be questioned, because it shows inconsistency with higher-level legislation.

This normative inconsistency not only has implications at the normative and administrative levels, but also touches on the theoretical aspects of state administration, especially when examined from the perspective of *siyasah dusturiyah* developed by Muhammad Iqbal.

# **1. Review The Duties of the State in the Primary Power System of Siyasah Dusturiyah regarding the Dual Duties of the Village Head Election Committee According to Muhammad Iqbal**

In the concept of *industrial policy*, Muhammad Iqbal stated that the state has three tasks in the form of main powers:

a. *Al-sulthah al-tasri'iyyah*

The institution tasked with creating laws (legislative institution). This means that the state has the authority to interpret, analogize and infer the *texts* of the Qur'an and Hadith. If it is not regulated in *the text* at all, then the legislative authority is broader and larger, as long as it does not deviate from the principles of Islamic teachings. History records that legislative authority used to be held by *ahl al-hall wa al 'aqd* . Then over time it changed form to become *a shura assembly* (parliament).<sup>155</sup>

Actualization *al-sulthah al-tasri'iyyah* (legislative power) in system the Indonesian government was realized through the People's Representative Council (DPR), which has function main in formation and establishment law in form Law (UU).<sup>156</sup> Hierarchy regulation legislation in Indonesia, as mandated in Article 7 of the Law Number 12 of 2011 concerning Formation Regulation Legislation , placing Law on position third after Constitution and Decrees Assembly People's Consultative Assembly (MPR). Consequences from hierarchy This is that every the rules below must in line with and guided by more stringent regulations high <sup>157</sup>. In

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<sup>155</sup> Dr Muhammad Iqbal M.Ag, *Fiqh Siyasa: Contextualization of Islamic Political Doctrine* (Kencana, 2016), 187.

<sup>156</sup> Dermina Dalimunthe, "The Process of Forming Laws According to Law No. 12 of 2011 Concerning the Formation of Legislation," *Jurisprudencia: Journal of Economic Law* 3, no. 1 (2017): 69, <https://doi.org/10.24952/yurisprudencia.v3i1.680>.

<sup>157</sup> Riski Riski, "The Position of Ministerial Regulations Regarding the Formation of Regional Regulations," *JOURNAL OF ACT YUDISIA* 5, no. 2 (April 17, 2021): 118, <https://doi.org/10.35334/ay.v5i2.1912>.

the context of This , Law No. 6 of 2014 concerning Villages becomes runway normative main in organization Election Village Head ( Village Head Election ) in Indonesia.

More continue, existence Ministerial Regulation ( Permen ) is also recognized in Article 8 of Law No. 12 of 2011 concerning Formation Regulation Legislation . Although in a way conceptual minister be in the realm executive with task carry out law ( *al- sulthah al- tanfidziyah* ), but in context Indonesian state administration, ministers are also given authority For to form regulations that are of a nature technical or implementative from regulation the legislation above it .<sup>158</sup>Therefore that , the Regulation of the Minister of Home Affairs ( Permendagri ) No. 112 of 2014 concerning Election The village head has legitimacy law and function as regulation implementing the Village Law.

Article 34 paragraph (5) of the Village Law firm and limited mention that task Committee Election Village head :

1. Stage screening and selection of candidates based on specified requirements ;
2. Carry out collection voice ;
3. Set candidate Elected Village Head ;

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<sup>158</sup> Mila Dahlia et al., "Material Content of Government Regulations or Presidential Regulations as Material Content of Delegated Laws Reviewed from the Perspective of the Legislative Regulation System," *Almufi Journal of Social and Humanities* 1, no. 2 (July 16, 2024): 115–24, <https://almufi.com/index.php/ASH/article/view/317>.

#### 4. Report implementation of Village Head Election<sup>159</sup>.

Formulation chapter in The Village Law shows existence restrictions function Committee Election as executor technical . Usage the phrase “ carry out ” in effect semantics indicates role single and specific at the level implementation procedural. The absence of mention authority supervision in chapter the clear indicates existence desire former law ( legislative ) for avoid multi-interpretable<sup>160</sup> related room scope task Committee Election Village head .

On the other hand , Article 9 of the Permendagri No. 112 of 2014 introduces construction different authorities . This article define task Committee Election Head Village as as follows : " planning , coordinating , organizing , supervising and controlling" all stages implementation election ”. Addition function supervision in Permendagri This in a way significant expand mandate Committee Election Village Head , beyond set limits in the Village Law, which is runaway more laws tall .

Inconsistency substantive between second regulation This potential violate principle hierarchy of mandated legal norms in Article 7 of Law No. 12 of 2011 concerning Formation Regulation Legislation . The article in a way explicit state

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<sup>159</sup> Constitution Number 6 of 2014 concerning Villages State Gazette Number 7 of 2014

<sup>160</sup> Dr Selfianus Laritmas MH SH and Dr Ahmad Rosidi MH SH, *Theories of the Legal State* (Prenada Media, 2024), 8.

that position Constitution more tall from Ministerial <sup>161</sup>Regulation . With Thus , the addition authority supervision in The Permendagri which does not There is base the law in the Village Law is deviation to principle superiority of legal norms tall .

The normative conflict between the Village Law and the Permendagri on the regulation of the Village Head Election Committee has touched on fundamental aspects in Islamic constitutional theory, especially regarding the relationship between *al-sulthah al-tasri'iyah* (legislative power) and *al-sulthah al-tanfidziyah* (executive power). In the perspective of *siyasah dusturiyah* (Islamic constitutional law) developed by Muhammad Iqbal, the principle of separation of powers ( *taqsim al-sulthah* ) is the main pillar in building a healthy government system.

Iqbal in his works emphasized that *al-sulthah al-tasri'iyah* (legislative power) has exclusive authority to establish basic norms, while *al-sulthah al-tanfidziyah* (executive power) is only authorized to implement the norms technically without being allowed to make normative innovations <sup>162</sup>. Analysis of this case shows that the executive through Permendagri No. 112 of 2014 has exceeded its authority by creating a new norm on the supervisory function of the election committee <sup>163</sup>,

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<sup>161</sup> Wibowo and Sugitanata, "Theory of Normative Development and the Discovery of Islamic Law (Deepening and Reconstruction of Concepts)," 83–84.

<sup>162</sup> Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine* , 187.

<sup>163</sup> Ida Surya and Abdul Wahab, "Harmonization of Legislation in Realizing Good Governance," *Jurnal Kompilasi Hukum* 8, no. 2 (December 2023): 108–17, <https://doi.org/10.29303/jkh.v8i2.142>.

whereas the Village Law as a legislative product only mandates the formation of a committee as an implementer.

b. *Al-sulthah al-tanfidziyah*

The institution tasked with implementing laws (executive power). This means that the state has the authority to outline and implement laws, to carry out policies related to domestic and foreign affairs. The holder of this power is the government (head of state) assisted by a council of ministers in his cabinet. The implementation of political policies must also be in line with *the text* and the public interest.<sup>164</sup>

In the context of the Village Head Election (Pilkades), the function of *al-sulthah al-tanfidziyah* (executive authority) is represented by the Village Head Election Committee. This *ad hoc institution* is specifically formed with a mandate to carry out all stages of the Pilkades implementation. The position of the Village Head Election Committee is normatively regulated in Law No. 6 of 2014 concerning Villages and Permendagri No. 112 of 2014 concerning Village Head Elections. Based on these regulations, the Village Head Election Committee is formed by the Village Consultative Body (BPD) and has the primary responsibility for organizing the entire Village Head Election process<sup>165</sup>.

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<sup>164</sup> M.Ag, *Fiqh Siyasah Contextualization of Islamic Political Doctrine* , 190.

<sup>165</sup> Joko Mardiyanto, "The Role of the Village Consultative Body in the Election of Village Head in Keji Village, West Ungaran District, Semarang Regency in 2016 According to Law Number 6 of 2014 Concerning Villages," *Jurnal Bedah Huku* 2, no. 1 (2018): 28.

If seen from side structural , Committee Election The village head has typical position as a legal entity temporary and formed special For to organize Village Head Election . Although Thus , its position has crucial strategic significance in determine the continuity of the democratization process at the level government village . In hierarchical , Committee Election The Village Head is under BPD coordination functions as institution representative public village . Within the framework of this , BPD can conceptualized as representation *al-sulthah al-tasyri'iyah* (legislative power) at the level village , while Committee Election Village Head more tend occupy position *al- sulthah al- tanfidziyyah* ( power of executive ) who runs function technical operational organization Village Head Election <sup>166</sup>.

Function Committee Election Village Head in general covers two dimensions main , namely function organization and function supervision . In his capacity as organizer , committee Election The village head is responsible answer For carry out all over stages Election Village Head, starting from preparation, implementation, until stage evaluation. In more specific, task organization This covering registration voter, verification file candidate, socialization election, voting voice, counting sound, until determination results election .

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<sup>166</sup> Mardiyanto, 28.

On the other hand , the Committee Election The village head also carries out function supervision to the election process. Its function covers supervision to behavior candidate head village during the campaign period, supervision to implementation collection sound, and supervision to the counting process sound. In running this supervision function, The Village Head Election Committee has authority For monitor violations that occurred during the selection process, starting from give sanctions administrative until cancel nomination .

Task double Committee Election Village Head as organizer at a time supervisor this is what then cause conceptualization problematic when explained from perspective distribution power. In an ideal context, it should be there is clear difference between institution that runs function organization with institution that runs function supervision. Separation This important For ensure objectivity supervision and prevention conflict interest in organization Village Head Election.

Dual function of the Committee Election The Village Head as the organizer and supervisor of the Village Head Election raises conceptualization issues when explained from the perspective of the division of powers in *Siyasah Dusturiyah* Muhammad Iqbal. Examined from the aspect of the doctrine of the separation of powers, the dual duties of The Village Head Election Committee clearly contradicts the principle of distribution of power that is the foundation of *Siyasah Dusturiyah*. In the framework of Muhammad Iqbal's thinking, each institution should have a clear scope of authority and not overlap with other institutions. This is intended to

prevent the concentration of power that has the potential to cause *conflicts of interest* and absolutism of power because it is vulnerable to deviation.

Viewed from the aspect of the principle of *amar ma'ruf nahi munkar* or the Islamic version of *checks and balances*, the dual duties of The Village Head Election Committee creates a situation where the monitoring mechanism becomes ineffective because it is carried out by an institution that also acts as an implementer. In Muhammad Iqbal's framework of thought, the separation of powers and mutual control mechanisms are important foundations to ensure that each institution exercises its power in accordance with the established limits <sup>167</sup>. When the Village Head Election Committee carries out a supervisory function over himself, the objectivity of the supervision is questionable due to the potential for a conflict of interest.

Therefore, it is necessary to make a clear separation between the function of organizing and the function of monitoring in the Village Head Election. The Village Head Election Committee should only carry out the technical function of organizing the election, while the supervisory function is carried out by a separate independent institution. In this context, a Village Head Election Supervisory Committee (Panwas Pilkades) can be formed which is specifically tasked with supervising the election process. This separation is in line with the principle of distribution of

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<sup>167</sup> Iqbal, *Fiqh Siyasaah Contextualization of Islamic Political Doctrine*, 187.

power in Siyasa Dusturiyah which assumes a clear division of functions between institutions <sup>168</sup>.

c. *Al-sulthah al-qadha'iyyah*

The institution tasked with upholding law and legislation (judicial institution). Islamic history records that the authority of this institution covers *wilayah al-hisbah* (a judicial institution that resolves minor cases of fraud in business), *wilayah al-qadha* (a judicial institution for civil and criminal cases), *wilayah al-mazhalim* (a judicial institution for cases of abuse of duty by state officials).<sup>169</sup>

The construction of a modern state that adopts the separation of powers, places *al-sulthah al-qadhaiyyah* (judicial power) in a central position as the guardian of the constitution and an independent interpreter of the law <sup>170</sup>. In relation to the implementation of the Village Head Election (Pilkades) in Indonesia, the ideal position of *al-sulthah al-qadhaiyyah* faces complex challenges when correlated with the dual duties of the Village Head Election Committee as regulated in the Village Law and Permendagri No. 112 of 2014 concerning the Village Head Election. These two regulations create the phenomenon of the dual duties of the

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<sup>168</sup> Iqbal, 240.

<sup>169</sup> M.Ag, *Fiqh Siyasa Contextualization of Islamic Political Doctrine*, 104.

<sup>170</sup> Urwatul Wutsqah, "The Indonesian Judicial Commission after the Decision of the Indonesian Constitutional Court Number 005/PUU-IV/2006 (Review of Islamic State Administration)" (Jakarta, UIN Syarif Hidayatullah, 2008), 21.

Village Head Election Committee as the implementing committee and supervisor which raises legal problems that have implications for the basic principle of the separation of powers, especially *al-sulthah al-qadha'iyah* .

Conceptually, *al-sulthah al-qadha'iyah* in Islamic legal tradition and modern law refers to judicial power or power that resolves disputes objectively, separate from legislative power (*al-sulthah al-tasryi'iyah*) and executive power (*al-sulthah al-tanfidiyyah*). The purpose of this separation is to strengthen the independence of *al-sulthah al-qadha'iyah* both structurally and functionally from other branches of power. Independence is needed so that *al-sulthah al-qadha'iyah* can carry out its functions without intervention that can disrupt objectivity and fairness in decision making.

When correlated with the institutional structure of the Village Head Election Committee, it does not show any difference between the implementing and supervisory units. All committees carry out dual functions without adequate *check and balance mechanisms*. A deeper analysis of this legal construction shows inconsistencies in the election supervision system at the national level. In both legislative and presidential elections, the organizing function is carried out by the General Election Commission (KPU) and the supervisory function is the responsibility of the Election Supervisory Body (Bawaslu) <sup>171</sup>. However, in the

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<sup>171</sup> Juwita Rahayu Manurung and Irwansyah Irwansyah, "The Position of the General Election Commission (KPU) and Bawaslu as State Auxiliary Agents in the Perspective of *Siyasah Dusturiyah*,"

Village Head Election, the implementing and supervisory functions are actually combined in one entity, namely the Village Head Election Committee.

The combination of the implementing and supervisory functions opens up the possibility of *a conflict of interest* in the implementation of the Village Head Election, as in the field case based on information from senior lawyer H. Ridwan Rangkuti, SH, MH, there were indications of violations in the process of selecting Prospective Village Head Candidates (Bacakades) in Hutagodang Muda Village, Mandailing Natal (Madina) Regency. The Village Head Election Committee is suspected of making mistakes in weighting the support files for two Bacakades, namely Ris and MS.

Ris was stated to have experience working in a government institution as a madrasah teacher, even though based on the Madina Regent Regulation and the Minister of Home Affairs Regulation, this profession is not included in the category of government jobs. Meanwhile, MS was stated to have served as the Head of Naposo Nauli Bulung (NNB) of Hutagodang Muda Village, even though in fact he had never held that position. As a result of this inappropriate weighting, Ridwan

Rangkuti's clients, Mansur Suleman Rangkuti and Roil Dalimunthe, received the lowest scores and thus failed to qualify as village head candidates.<sup>172</sup>

Furthermore, Ridwan Rangkuti stated that the Pilkades committee did not invite his client when announcing the village head candidates, thus raising suspicions that the selection process was not transparent. His client has filed a lawsuit against the Pilkades committee of Madina Regency cq. Madina PMD Service, but until now there has been no response. Therefore, Ridwan Rangkuti requested that the Madina Regent, Madina Police Chief, and Panyabungan District Attorney postpone the Pilkades process while reviewing the files of Ris and MS. In addition, he stated that he would report this case to the police<sup>173</sup>.

The above case shows that the combination of the duties of the implementer and supervisor is not in line with Muhammad Iqbal's concept of the separation of powers regarding the ideal position of *al-sulthah al-qadha'iyyah*. According to Muhammad Iqbal's perspective, there should be a clear institutional separation between the implementing committee (*al-sulthah al-tanfīdziyah*) and the supervisory committee (*al-sulthah al-qadha'iyyah*) in the implementation of the Pilkades to ensure objectivity, neutrality and justice during the Pilkades process.

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<sup>172</sup> "Files Allegedly Fake, Hutagodang Muda Village Head Election Asks for Postponement," accessed March 4, 2025, <https://www.waspada.id/sumut/berkas-diduga-palsu-Pilkades-hutagodang-muda-minta-ditunda/>.

<sup>173</sup> "Files Allegedly Fake, Hutagodang Muda Village Head Election Asks for Postponement," accessed March 4, 2025, <https://www.waspada.id/sumut/berkas-diduga-palsu-Pilkades-hutagodang-muda-minta-ditunda/>.

This can be achieved through regulatory reform by forming an independent and independent supervisory committee as an effort to maximize the ideal function of *al-sulthah al-qadha'iyyah* in the implementation of the Pilkades .

Based on the analysis above, the concept of separation of powers into three *sulthah* to prevent absolutism of power has not been fulfilled optimally, because of the tendency of superpower in *al-sulthah al-tanfīdīyah* (executive power). Starting from the indication of the minister as *al-sulthah al-tanfīdīyah* exceeding the authority in forming regulations owned by *al-sulthah al-tasrī'iyyah* , or the position of the Pilkades Committee as the organizer ( *al-sulthah al-tanfīdīyah* ) as well as the supervisor ( *al-sulthah al-qadha'iyyah* ) of their own performance.

## **2. Review of the Principles of Siyasah Dusturiyah Regarding the Dual Duties of the Village Head Election Committee According to Muhammad Iqbal**

The disharmony of Permendagri No. 112 of 2014 against the Village Law became the basis for the birth of centralization of power in *al-sulthah al-tanfīdīyah* (executive). Both in terms of the implementation of legislative functions by the minister or in terms of the position of the village head election committee as the implementer and supervisor itself. Therefore, based on the siyasah dusturiyah basis, the Village Head Election Committee must fulfill the following principles:

a. The Principle of Power as a Trust

Allah commands humans to carry out the mandate placed on their shoulders

QS An-Nisa (4) : 58

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا  
بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

Meaning: "Indeed, Allah commands you to convey trust to its owner. When you determine a law between people, you must determine it fairly. Indeed, Allah gives you the best teaching. Indeed, Allah is All-Hearing, All-Seeing."

In Islam, trust is something that must be maintained because it will be accounted for to Allah. Power is one of the trusts that must be carried out properly, in accordance with His command. Therefore, Islam cannot tolerate any form of abuse of power <sup>174</sup>.

In the framework of *siyasah dusturiyah*, the concept of power as a mandate implies the necessity of separation of powers, mutual control mechanisms and accountability in its implementation <sup>175</sup>. This perspective is in line with Iqbal's opposition to all forms of absolutism of power and his support for a political order based on public participation and social justice.

<sup>174</sup> Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine* , 238.

<sup>175</sup> Dr Abdul Kholik M.Si SH, *Revitalization of the Pancasila Legal State* (CV. Pilar Nusantara, 2020), 7.

If associated with the provisions of Article 9 of the Permendagri No. 112 of 2014 concerning the Election of Village Heads which mandates the function of implementation and supervision to the Village Head Election Committee (Pilkades), then this practice is very contrary to the principle of trust put forward by Muhammad Iqbal. Power that is exercised without an external and independent oversight mechanism has great potential for violations <sup>176</sup>, as indicated in the case of alleged fraud in the Segar Wangi Village Pilkades <sup>177</sup>.

Based on field monitoring, there are strong indications of fraudulent practices involving the Village Head Election Committee and candidate number 1, Basuni SE, in the Segar Wangi Village Head Election (Pilkades). The main allegation is money politics *through* the distribution of 700 lunch boxes by the campaign team of candidate number 1 to voters around Polling Stations (TPS) 1 and 2 on voting day, under the pretext of charity. The Head of the Village Head Election Committee, Suharni, admitted that the lunch boxes came from candidate number 1, but there was no firm action from the committee against this violation, giving the impression of neglect or even collusion <sup>178</sup>.

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<sup>176</sup> Muhamad Habibullah Ar et al., "Authority and Responsibility of Government in Constitutional Law," *Hutanasyah: Journal of Constitutional Law* 3, no. 2 (February 28, 2025): 83–103, <https://doi.org/10.37092/hutanasyah.v3i2.1004>.

<sup>177</sup> Supli, "Alleged Fraud, Three Segar Wangi Village Head Candidates File Lawsuit » delikcom.com," *delikcom.com* (blog), July 3, 2023, <https://delikcom.com/diduga-adanya-kecurangan-tiga-cakades-segar-wangi-ajukan-gugatan/>.

<sup>178</sup> Supply.

In addition, other procedural violations were found, such as the invalidity of Basuni and his wife as voters at TPS 1 because they were domiciled in another sub-district, the failure to hold a plenary recapitulation by ignoring the participation of candidates number 2, 3, and 4, and the refusal of the committee to provide voter attendance data which was allegedly used to direct votes to candidate number 1. On this basis, three other candidates filed a 10-point dispute lawsuit to the Ketapang Regent through the Dispute Resolution Team of the Community and Village Empowerment Service <sup>179</sup>.

This case indicates the weak supervision of the neutrality of the Village Head Election Committee and the violation of the principle of *free and fair election* in the Village Head Election. This problem is also caused by the normative disharmony between the Regulation of the Minister of Home Affairs (Permendagri) No. 112 of 2014 concerning the Election of Village Heads and Law No. 6 of 2014 concerning Villages which explicitly only regulates the committee as the organizer. The unclear regulation creates legal confusion and significantly weakens the implementation of the principles of trust and justice in the implementation of the Village Head Election.

Ideally, the Village Head Election Committee only carries out the implementing duties as mandated by the Village Law which is the basic benchmark

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<sup>179</sup> Supply.

in the implementation of the village head election, in addition, an independent external monitoring mechanism is needed to oversee each stage in the village head election process. This is also in line with maximizing the principle of power as a mandate with the separation of powers and mutual control between the village head election organizing institutions.

#### b. Principle of Upholding Justice

Justice is a principle of balance in human life. As long as justice is upheld, the balance of the order of life will automatically be maintained and preserved. On the other hand, if justice is not upheld, the order of life will experience shocks <sup>180</sup>. Among the verses that order humans to uphold justice is QS An-Nahl (16): 90

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ  
وَالْبَغْيِ يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ

Meaning: "Indeed, Allah commands to act fairly, do good deeds, and provide assistance to relatives. He (also) forbids evil deeds, evil and enmity. He teaches you lessons so that you always remember."

This principle is closely related to the principle of equality between fellow human beings. Islam does not differentiate humans based on skin color, race, nation and language, but based on the level of piety to Allah SWT. Therefore, no one has the right to receive special treatment before the law. The Prophet

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<sup>180</sup> Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine* , 238.

Muhammad said that the destruction of a nation begins with a discriminatory attitude in law enforcement <sup>181</sup>.

In context Village Head Elections in Indonesia, Objectivity committee organizer who also doubles as function supervision become problematic, considering existence potential conflict interests and violations principle *nemo judges in cause* ( not no one can to be the judge of the matter Alone ). Tihis situation has implications for power responsiveness and credibility Handling complaint public related organization Village Head Election . Allegations partisanship committee to candidate certain aggravated with limitations mechanism independent and reliable correction at the level local <sup>182</sup>.

The reality, still there is element injustice and non-neutrality committee in the process of implementation Village Head Election as example case obstruction nomination The Head of Wonokerto Village, Siti Hany Aisyah, claimed experience effort obstruction systematic by individuals Village Head Election Committee Wonokerto in the registration process candidate head village . Initially, she has stated fulfil condition administration by the committee, but approach stage nomination, committee suddenly state the file No complete even though Siti Hany

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<sup>181</sup> Iqbal, 238.

<sup>182</sup> Ali Lating, Rahmat Suaib, and Bakri La Suhu, "Social Conflict Between Communities After the Village Head Election (Study in Mano Village, South Obi District, South Halmahera Regency)," *KAWASA* VII, no. 1 (2017): 31–40.

has ensure completeness all over documents, including letter health the soul that has taken care of since July 6, 2022. On August 16, 2022, the committee disqualify him with reason lack letter health soul, even though previously has give confirmation completeness file along with checklist evidence.<sup>183</sup>

After report to the Community and Village Empowerment Service (DPMD) of Demak Regency, the party service confirm that Siti Hany actually passed verification, but committee village still insist No pass it. When the stage Village Head Election enter taking number sequence and delivery vision-mission , Siti Hany does not included although has request delay process for consider his objection . She suspect existence engineering systemic for smooth out nomination of two candidates another candidate, who is suspected is the incumbent and his family, so that cause indication practice nepotism and violations principle openness in the selection process candidate head village <sup>184</sup>.

The ideal committee as executor at a time supervisor must behave neutral and fair, because legitimacy Village Head Election No only determined by the results end, but also by perception public to justice procedural and integrity all over

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<sup>183</sup> “Siti Hany Aisyah Cheated by Wonokerto Demak Village Head Election Committee, There are Indications of Engineering of Village Head Candidates - Tribunjateng.Com.”

<sup>184</sup> “Siti Hany Aisyah Cheated by Wonokerto Demak Village Head Election Committee, There are Indications of Engineering of Village Head Candidates - Tribunjateng.Com.”

stages. Perspective siyasah dusturiyah emphasize that justice is must for the holders power as foundation legitimacy legitimate power.

c. *Amar Ma'ruf Nahy Munkar* Principles

Islam teaches its followers to advise each other and exercise control over power so that goodness is always maintained in the life of society. QS Ali Imran (3) : 114 states that:

يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُسَارِعُونَ فِي  
الْخَيْرَاتِ وَأُولَئِكَ مِنَ الصَّالِحِينَ

Meaning: “They believe in Allah and the Last Day, enjoin what is right, forbid what is wrong, and hasten to do good deeds. Those are the righteous.”

This suggests that opposition is actually not a taboo in Islamic governance. Opposition can be a counterweight to government power, so that they always feel supervised and controlled. Opposition is not only in the form of institutions, but also carried out by individuals in Islamic society <sup>185</sup>.

In context Village Head Election , Principles *checks and balances* have an important meaning as runway normative mechanism supervision power . This mechanism important For prevent potential abuse power by the organizer village head elections . Ideally , the institution organizer activity Village Head Election operating under supervision institution supervisor independent who has authority

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<sup>185</sup> Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine* , 240.

for give reprimand, do review repeat, and cancel indicated decision deviate from provision or procedures that have been set. Function supervision This is form concrete from principle *oh munkar*, which is in context this covering effort prevention to violation administration, order licensing, manipulation results calculation voice, and action intimidation to voters.

However, the reality empirical show existence anomaly structural in organization Village Head Election, where the committee executor double function supervision, as listed in Article 9 of the Permendagri No. 112 of 2014.<sup>186</sup> Configuration institutional like this cause paradox, because power concentrated on one entity without existence mechanism control effective external situation. This in a way inherent limit implementation *amar ma'ruf nahi munkar* principle, because no existence receptacle institutions that enable participation public or institution independent for convey correct or legitimate objection.

Within the framework theory *siyasah dusturiyah*, *amar ma'ruf nahi munkar* principle, task supervision no only viewed as not quite enough answer individual society, but also must institutionalized in form supervision structural to power. Therefore that , implementation supervision based on *amar ma'ruf nahi munkar*

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<sup>186</sup> Muh Awal Waliyullah. t, "Legal Analysis of the Implementation of Village Head Elections in Permendagri No. 72 of 2020" (other, Hasanuddin University, 2023), <https://repository.unhas.ac.id/id/eprint/30526/>.

principle in context Village Head Election need formation separate and independent institution from committee executor <sup>187</sup>.

d. Principles of Professionalism and Public Accountability in Filling Government Positions

The holder of power may not appoint state officials based on primordial relationships or kinship. The holder of power must consider the professionalism, ability and honesty of the officials appointed. Allah indicates that people who are appointed as officials must fulfill two conditions, namely strong (have ability and expertise in their field) and trustworthy (can maintain the trust entrusted to them)<sup>188</sup>. This is in accordance with QS Al-Qashas (28): 26

قَالَتْ إِحْدُهُمَا يَٰأَبَتِ اسْتَأْجِرْهُ إِنَّ خَيْرَ مَنِ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ

Meaning: *“One of the two (women) said, “O my father, employ him. Indeed the best of those you employ is the strong and trustworthy.”*

In implementation Election Village Head, practice appointment committee that doubles as executor at a time supervisor based on Article 9 of the Permendagri No. 112 of 2014 concerning Election Village Head in general inherent potential hinder proof professionalism . This is caused by load role potential double cause

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<sup>187</sup> Dhea Patricia, “Legal Analysis of Village Head Election Dispute Resolution in Indonesia Based on the *Siyasah Tasyri'iyah* Concept” (undergraduate, IAIN Parepare, 2024), 28, <https://repository.iainpare.ac.id/id/eprint/8456/>.

<sup>188</sup> Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine* , 240.

imbalance allocation source power and risk conflict interest in implementation not quite enough answer <sup>189</sup>. Absence audit and evaluation mechanisms independent external can reduce accountability committee become just fulfillment formality administrative.

Like the case that occurred in the implementation of the Village Head Election in Rambah Hilir Tengah Village which was marked by a number of procedural violations that disrupted the integrity of democracy. The violations and fraud were in the form of manipulation of voter administration at Polling Station (TPS) 02 where an unofficial attendance list was used and replaced with incomplete manual records without the KK number and NIP KTP of voters from the Permanent Voter List (DPT). Furthermore, the granting of unconstitutional voting rights to: (a) additional voters who only brought their KTP/KK (the initial agreement was to bring both), and (b) residents who had moved domicile before the determination of the Permanent Voter List (DPT) <sup>190</sup>.

Systematic violations also occurred at the recapitulation stage. The committee failed to fulfill the obligation of pre-voting counting (unused ballots, damaged

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<sup>189</sup> Romadzon Syaiful Haq, Kaelan Kaelan, and Armaidy Armawi, "Implementation of E-Voting Policy in Village Head Election (Pilkades) in Boyolali Regency in 2019 and Its Implications for Regional Political Resilience," *National Resilience Journal* 26, no. 3 (December 31, 2020): 399, <https://doi.org/10.22146/jkn.62262>.

<sup>190</sup> "Accompanied by Legal Counsel, RHT Village Head Candidate Submits Letter of Objection to Village Head Election Results," [lineperistiwa.com](https://lineperistiwa.com), accessed March 4, 2025, <https://lineperistiwa.com/news/detail/1477/didampingi-kuasa-hukum-calon-kades-rht-sampaikan-surat-sanggahan-hasil-suara-Pilkades>.

ballots and DPT verification). Arithmetic anomalies were seen from the difference between the actual number of voters and the number of DPT. Furthermore, copies of the KPPS plenary at TPS 01 and TPS 02 after the vote counting were not given to witnesses/Village Head Candidates on the grounds that the committee did not know about the task. Based on the indications of potential structural fraud above, the committee still insisted that the election had been in accordance with procedures and met the requirements even though it was contrary to the reality on the ground.<sup>191</sup>

The case above emphasize that professionalism and accountability from Committee Election The village head has not yet implemented in a way maximum. This is also caused by the task double or burden role double that causes there is no control mechanism against performance Committee Election Village Head . While perspective *siyasah dusturiyah* emphasize importance draft hisbah , namely system moral and administrative supervision in organization government as instrument effective accountability.<sup>192</sup> Therefore that , separation function between implementer and supervisor Pilkades accompanied by with formation system

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<sup>191</sup> "Accompanied by Legal Counsel, RHT Village Head Candidate Submits Letter of Objection to Village Head Election Results."

<sup>192</sup> Rizkaul Hasanah, "Internal Supervision in the Perspective of Maqāṣid Al-Syarī'ah (Study of Government Regulation No. 60 of 2008 Concerning the Government Internal Control System)" (Banda Aceh, Ar-Raniry Darussalam State Islamic University, 2018).

evaluation participatory involving various element public become step crucial in realize principles professionalism and accountability public .

Based on the analysis above, it was found that the concept of *al-sulthah al-tasri'iyah* (legislative), *al-sulthah al-tanfidziyah* (executive), and *al-sulthah al-qadha'iyah* (judicial) according to Muhammad Iqbal emphasizes the principle of separation and balance of powers ( *checks and balances* ) in order to prevent abuse of authority and centralization of power <sup>193</sup>.

However, in practice, the dual duties of the Village Head Election Committee based on Home Affairs Ministerial Regulation (Permendagri) Number 112 of 2014 show inconsistencies, where the Minister as part of *al-sulthah al-tanfidziyah* (executive) exceeds his authority in the formation of regulations, while the combination of implementing and supervisory functions in one entity is contrary to the principle of independence of *al-sulthah al-qadha'iyah* (judicial). This indicates a violation of the principle of *siyasah dusturiyah*, so ideally a strict separation is needed between implementing and supervisory functions in order to fulfill the principle of power as a mandate, the principle of justice, the principle of *amar ma'ruf nahi munkar* ( *checks and balances* ), and the principle of professionalism and accountability as mandated by the Village Law .

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<sup>193</sup> M. Eza Helyatha Begouvic MH SH, Rizki Ramadhani MH SH, and Rizayusmanda MH SH , MH , Abuyazid Bustomi, SH , MH , Supriyedi, SH , MH , Budi Aspani, SH , MH , and Sutra Handiko, SH, *Government Opposition According to Islamic Law* (Adab Publishers, nd), 65.

## **CHAPTER IV CLOSING**

### **A. Conclusion**

Based on the analysis that has been described previously, the following conclusions can be drawn:

1. The dual duties of the Village Head Election Committee as the implementing and supervisory committee as regulated in Article 9 of the Permendagri No. 112 of 2014 concerning the Village Head Election are considered not to fulfill the elements of legal certainty as explained by Nurhasan Ismail. This is caused by: First, the unclear concept regarding the division of clear scope of work has the potential to cause multiple interpretations in its implementation. Second, the unclear hierarchy, where the dual duties based on the Permendagri No. 112 of 2014 function as technical regulations, not creating new norms that are not regulated by higher norms, namely the Village Law. Third, vertical inconsistency where the addition of the supervisory function for the Village Head Election Committee by the Permendagri is not in line with the Village Law which only provides the mandate of the implementer, not the supervisor.
2. Based on the analysis of state duties in the main power system, the siyasah dusturiyah perspective put forward by Muhammad Iqbal shows

that the dual duties of the Village Head Election Committee in Permendagri No. 112 of 2014 are contrary to the principle of separation of powers. This is because the Minister as part of *al-sulthah al-tanfidziyah* (executive) exceeds his authority in the formation of regulations, a domain that should be the authority of *al-sulthah al-tasri'iyah* (legislative). In addition, the integration of the executive and supervisory functions in one entity of the Village Head Election Committee is contrary to the principle of independence of *al-sulthah al-qadha'iyah* (judicial). Furthermore, the reality in the field shows that the dual duties of the Village Head Election Committee have not fulfilled the principles of power as a mandate, justice, *amar ma'ruf nahy munkar* and professionalism and public accountability in filling government positions that are ideal in the perspective of *siyasah dusturiyah*.

## **B. Suggestion**

1. Separation of institutional functions of implementation and supervision. It is recommended that the government make a strict institutional separation between the implementation committee and the supervisory institution in the implementation of the Village Head Election. Ideally, the supervisory function is transferred to an independent body such as the Village Head Election Supervisory Body or involves the active role of the community through a participatory supervision mechanism. Negative implications if it is maintained in one entity: the occurrence of a conflict of *interest* because the committee

plays a dual role as both the implementer and supervisor of the election process, reduced objectivity of supervision due to the absence of a clear institution, and the potential for abuse of authority due to the absence of an effective external control mechanism.

2. Revise regulations hierarchically. It is appropriate to make changes to Permendagri No. 112 of 2014 by removing provisions regarding the supervisory function in the duties of the Village Head Election Committee and strengthening the legal umbrella for supervision through: inserting a special article on supervision of the Village Head Election in the Village Law and establishing a clear legal framework regarding independent supervisory institutions. This is because the principle of legality requires the regulation of supervisory functions at the level of law, legal certainty demands harmony between technical regulations and a higher legal umbrella and *the doctrine of checks and balances* requires a clear institutional separation between implementers and supervisors.

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