



The Power of Local Authorities in Handling Divorce

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Abstract

This study seeks to describe and analyze the role of local authorities (i.e., village chiefs) in handling divorce, as well as the implications for their involvement for women and households. In so doing, this article investigates how local wisdom-based legal systems are realized. Data were collected through observation, interviews, and a review of the literature. This research shows that divorce occurs when families, as communal and religious units, deal with economic difficulties and social media. The recognition of village chiefs as the sole authorities with the authority to decide legal matters is foundational for the traditional legal system practiced within the community, wherein it is the village chiefs—rather than the religious courts—who may handle divorces. In this capacity, village chiefs act as key mediators for the Madurese people,

demonstrating that customary authority operates not merely as a residual practice but as a parallel and socially dominant legal order. This article recommends that future studies employ a formalistic approach to understand the validity of customary law, with a broad range of cases and diverse sources used to create a progressive legal system that is recognized and accepted by society.

KEYWORDS *Divorce; Local Authority; Local Culture; Legal Systems.*

Introduction

The phenomenon of divorce is a major indicator of family cohesion and the social structure of any society. Divorce patterns are associated with a variety of factors, such as cultural changes, female education, female labor force participation, age at first marriage, social support of divorced women, men's economic status, and religious principles¹. For example, village chiefs are commonly positioned as wielding the singular authority to handle domestic conflicts, including divorces². In such cases, divorces are handled by village chiefs, even though positive law—specifically, Law No. 16 of 2019 regarding Marriage—stipulates that such matters should be decided by religious courts³.

Local authorities assume an extremely important role in the administration of local authority areas. A local authority is a unit within the system of local government and is established to manage its affairs⁴. Villages' authority to set their own rules and regulations has been deleterious to the

¹ Shawky Mansour, Emad Saleh, and Talal Al-Awadhi, "The Effects of Sociodemographic Characteristics on Divorce Rates in Oman: Spatial Modeling of Marital Separations," *Professional Geographer*, 2020, <https://doi.org/10.1080/00330124.2020.1730196>.

² Desmawaty Romli, Junaidi Junaidi, and Martindo Merta, "Kewenangan Kepala Desa Dalam Menyelesaikan Sengketa Masyarakat Berdasarkan Undang-Undang Desa," *Solusi*, 2022, <https://doi.org/10.36546/solusi.v20i1.526>.

³ Jhony Fredy Hahury, "Implementasi Tugas Kepala Desa Dalam Pembangunan Berdasarkan Undang-Undang Nomor 6 Tahun 2014 Tentang Desa," *FOKUS: Publikasi Ilmiah Untuk Mahasiswa, Staf Pengajar Dan Alumni Universitas Kapuas Sintang*, 2017, <https://doi.org/10.51826/fokus.v15i1.86>; Joejoen Tjahyani, "Akibat Hukum Dengan Adanya Kewenangan Desa Berdasarkan Undang-Undang Nomor 6 Tahun 2014 Tentang Desa Dalam Pembuatan Publik," *Jurnal Independent*, 2018, <https://doi.org/10.30736/ji.v6i1.76>.

⁴ Ainul Jaria Maidin and Bashiran Begum Mobarak Ali, "Powers Of The Local Authority In Regulating Land Planning And Development Control: Whither Control," *Planning Malaysia Journal*, 2009, <https://doi.org/10.21837/pmjournal.v7.i1.75>.

state's efforts to implement a standardized positive law throughout the nation. Law No. 6 of 2014 regarding Villages granted village-level governments the authority to handle their affairs, per the needs and wants of the local community⁵. This has a significant effect on conflict resolution activities; In this manner, the authority wielded by village governments is crucial for resolving the internal and external issues within the community.

Relevant studies tend to perceive local authorities through two principal perspectives. The first perspective conceptualizes local authorities as key actors in mediating disputes and conflicts within village communities. Romli et al. argue that local authorities play a crucial role in facilitating community-based dispute resolution by utilizing locally accepted norms and values⁶. Similarly, Hahury emphasizes the function of local authorities as mediators who maintain social cohesion and communal stability⁷. Rayes et al. further demonstrate that local authorities contribute significantly to conflict management by providing culturally embedded mechanisms for resolving disputes at the grassroots level⁸. From this perspective, mediation is not merely a mechanism for settling disputes but also a means of preserving social harmony and strengthening community relationships. Hamidi and Latif contend that the effectiveness of local mediation lies in its capacity to prevent social fragmentation, maintain peaceful coexistence, and reinforce collective solidarity within local communities⁹. Second, local authorities are understood as those individuals responsible for managing the local budget in accordance with the principles of good governance¹⁰. Village chiefs obtain this authority through attribution, and in so doing they are assisted by the Village Financial Management Implementation Team. However, such studies have yet to consider the customary role of local

⁵ Sukimin, "Kewenangan Kepala Desa Sebagai Pemegang Kekuasaan Pengelolaan Keuangan Desa Sesuai Prinsip Good Governance," *Kewenangan Kepala Desa Sebagai Pemegang Kekuasaan Pengelolaan Keuangan Desa Sesuai Prinsip Good Governance*, 2020; Romli, Junaidi, and Merta, "Kewenangan Kepala Desa Dalam Menyelesaikan Sengketa Masyarakat Berdasarkan Undang-Undang Desa."

⁶ Desmawaty Romli, Junaidi Junaidi, and Martindo Merta, "Kewenangan Kepala Desa Dalam Menyelesaikan Sengketa Masyarakat Berdasarkan Undang-Undang Desa," *Solusi* 20, no. 1 (2022): 17–30, <https://doi.org/10.36546/solusi.v20i1.526>.

⁷ Hahury, "Implementasi Tugas Kepala Desa Dalam Pembangunan Berdasarkan Undang-Undang Nomor 6 Tahun 2014 Tentang Desa."

⁸ HS Rayes et al., "Peran Kepemimpinan Kepala Desa Dalam Menjaga Partisipasi Masyarakat Dalam Pembangunan Desa Di Era Covid-19 Tahun 2020," *Riset.Unisma.Ac.Id*, 2021.

⁹ Romli, Junaidi, and Merta, "Kewenangan Kepala Desa Dalam Menyelesaikan Sengketa Masyarakat Berdasarkan Undang-Undang Desa."

¹⁰ Anjani, "Pertanggungjawaban Pengelolaan Dana Desa." *Jurist-Diction*, 2019. <https://doi.org/10.20473/jd.v2i3.14288>.

authorities in divorce. This article seeks to fill this gap by highlighting the role of village chiefs, as the lowest-level executives in the state government, in not only discharging their formal duties as government officials but also in mediating disputes and conflicts (such as divorce). Three research questions may thus be formulated. First, how is local authority understood and practiced within the context of divorce? Second, when a divorce is handled by local authorities rather than religious courts, what are the implications for households and women? Third, how could a local wisdom-based legal system be developed? These three questions underpin the current study.

This article departs from the argument that village officials are not only responsible for administrative matters, but also involved in the resolution of conflicts and disputes—up to and including divorce. In cases where marriages are not recognized by the state, village officials are the only ones with the authority to resolve the issue. The position of village officials cannot be separated from local wisdom, which understands government officials as mediators in domestic disputes. Communities' continued deference to their village chiefs, likewise, highlights their habituation with customary systems that prioritize not only the happiness of both parties but also the continued well-being of wives and children. Customary law, in other words, is a living law that continues to exist within communities and demands respect and compliance.

Method

This study was conducted in Sumenep, Madura, a location chosen due to its residents' continued adherence to customary law. The people of Sumenep continue to employ traditional paradigms in their everyday activities, and they thus steadfastly obey and comply with customary law. Such obeisance and compliance are evident, for example, in cases of divorce, during which village chiefs are consulted as mediators. As such, this study focuses on legal compliance within Madurese society as well as village governments' use of a local wisdom-based approach—involving discussions between both parties—to handle divorce cases. The paucity of divorces in Madurese religious courts can be attributed to the prevalence of such local wisdom-based approaches.

This study employs a qualitative approach, with data collected through observations, interviews, and a review of the literature. Observations were conducted throughout the divorce process, from the beginning of discussions through the signing of the agreement. Interviews were conducted with several local leaders, including both village chiefs and religious figures, to uncover their paradigms regarding local wisdom and its role in legal interpretation and implementation. Interview data were transcribed, coded thematically, and categorized based on recurring patterns related to authority, mediation practices, and perceptions of legal legitimacy. These empirical findings were then interpreted in light of relevant statutory provisions and legal doctrines to assess their consistency with national law. Finally, data were collected from relevant journal articles and categorized. These data were subsequently reduced and analyzed using descriptive analysis.

Result & Discussion

A. The Application and Practice of Local Authority in Divorce Cases

Under the Village Law (Law Number 06 of 2014), village chiefs have the authority to resolve the conflicts and issues experienced by local residents—including matters of divorce. During cases of divorce, local authorities serve as mediators in all discussions and negotiations. This indicates that villagers honor their communities' laws and values more than they respect the formal legal system that requires divorces to be handled by religious courts. This is also reflected in the adage *bhuppa' bhabhu' ghuru rato*, which holds that the Madurese of Sumenep must first honor their *bhuppa' bhabhu'* (parents), then their *ghuru* (religious teachers, i.e., *kiai/ulama*), and finally their *rato* (village officials/leaders).

According to interviews with AR, village chiefs play an integral role in the divorce process, as they provide guidance and mediation to both parties. As this village chief explained:

"The [role of] mediator [play by village chiefs] is a tradition here in Sumenep in which we may take pride. It is inseparable from our strong values and our local wisdom. Village chiefs have the authority

to make decisions in matters of divorce, and this role is reflective of the religious character and history of our society. Village chiefs play a vital role, one distinct from that played by the courts. Village chiefs are people who are perceived as having the ability to guide villages through all challenges and problems, as well as to advance the economic aspirations of the community. Village chiefs are points of reference for their communities, as well as judges in the customary legal system." (interview)

The Madurese of Sumenep are unique in that, when deciding matters of divorce, they prefer non-litigatory channels (i.e., working outside the court system) that emphasize discussion, mediation, and negotiation. Such mediation is usually handled by the village, as seen in the following excerpt from an interview with the Village Chief of Matanair Village:

"The people of Sumenep, their communal mindset and religious character influence how they approach family-related issues such as divorce. People prefer consulting their religious and customary leaders, whom they trust to provide guidance. As such, the people trust the village chief to provide advice and make wise decisions."

As an implication of communities' trust in village leaders' mediatory abilities, particularly during conflict resolution, they are more willing to employ discussion and negotiation to resolve familial disputes. After identifying potential solutions, village chiefs urge both parties to sign an agreement; they also act as witnesses during the signing. In this manner, the divorce is finalized and made binding for both parties.

Local culture, known in Indonesia as *adat*, refers to the characteristics that are created and shared by communities within their territory and practiced in their everyday lives¹¹. Local culture thus encompasses the everyday experiences, expressions, and cultural identities within specific communities¹². In this context, local culture refers to people who understand themselves as united in a singular community or collective, and thus as sharing certain experiences, habits, attitudes, and characteristics that distinguish them from

¹¹ Günter Warsewa, "The Transformation of Port Cities: Local Culture and the Post-Industrial Maritime City," in *WIT Transactions on the Built Environment*, 2017, <https://doi.org/10.2495/CC170151>.

¹² Adom, "The Place and Voice of Local People, Culture, and Traditions: A Catalyst for Ecotourism Development in Rural Communities in Ghana." *Scientific African* 6 (2019). <https://doi.org/10.1016/j.sciaf.2019.e00184..>

others¹³. At the same time, however, local culture may refer to a broader history, heritage, or character¹⁴. As such, it provides neighboring communities with solidarity and a shared identity¹⁵. As such,¹⁶ write that local culture is normally realized through the habits, linguistic practices, and social systems that exist within a community. Consequently, local culture reflects a complex system of values that functions to orient communities, shape their society, and inform their economic practices¹⁷.

Local culture takes diverse forms, taking not only the form of human activities (festivals, history, art, music, dance, and cuisine) but also deep-rooted values and principles that are passed between generations¹⁸. In southern Australia, for example,¹⁹ notes that local culture significantly influences women's experiences with divorce and domestic violence.²⁰ shows that the emphasis on values such as independence, familiarity, and privacy in south Australian cultural discourses on family contribute to the perpetuation of domestic violence. Due to these discourses and local authorities, women have difficulty escaping domestic violence or discussing their experiences with it²¹;

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- ¹³ Lobna Abdel Aziz Ahmed and Samah M. El-Khatee, "Change of Local Culture after the 25th Revolution and Its Impact on Environmental Awareness," *Procedia - Social and Behavioral Sciences* 50, no. July (2012): 997–1017, <https://doi.org/10.1016/j.sbspro.2012.08.101>.
- ¹⁴ Suin Lee, Christos Pantzalis, and Jung Chul Park, "Does Local Culture Trigger Speculative Investment Behavior?," *Journal of Business Research* 103, no. July 2018 (2019): 71–88, <https://doi.org/10.1016/j.jbusres.2019.06.011>.
- ¹⁵ Mark A. Brennan, "The Importance of Incorporating Local Culture into Community Development," *Edis* 2005, no. 15 (2019), <https://doi.org/10.32473/edis-fy773-2005>.
- ¹⁶ Yuliasuti and Sukmawati; Creative Urban Kampung Based on Local Culture, a Case of Kampung Bustaman Semarang." *Journal of Architecture and Urbanism* 44, no. 2 (2020): 128–37. <https://doi.org/10.3846/jau.2020.11450>
- ¹⁷ Juliana Jaya, Utama, Murjana Yasa, & Yuliarmi, "Improving Competitiveness and Well-Being through Human Resources Quality, Local Culture, and Product Performance." *Cogent Business and Management* 7, no. 1 (2020): 1–12. <https://doi.org/10.1080/23311975.2020.1831247>.
- ¹⁸ Aquarini Priyatna, "Negotiating and Rethinking Local Culture: The Narratives of Indonesian Women Juggling Higher Education, Work, and Domestic Roles," *Asian Journal of Women's Studies* 19, no. 4 (2013): 95–123, <https://doi.org/10.1080/12259276.2013.11666167>.
- ¹⁹ Wendt, "Constructions of Local Culture and Impacts on Domestic Violence in an Australian Rural Community." *Journal of Rural Studies* 25, no. 2 (2011): 175–84. <https://doi.org/10.1016/j.jrurstud.2008.11.001>.
- ²⁰ Wendt, "Constructions of Local Culture", 2011.
- ²¹ Yueping Song, Jingwen Zhang, and Xian Zhang, "Cultural or Institutional? Contextual Effects on Domestic Violence against Women in Rural China," *Journal of Family Violence* 36, no. 6 (August 2021): 643–55, <https://doi.org/10.1007/s10896-020-00198-6>.

many cannot readily press charges or access relevant services^{22,23}. From this discussion, it is evident that local culture not only influences individuals' understandings and interactions with their social environment but also influences the socio-cultural values practiced in society.

Handling divorce requires significant competencies as well as clear action plans, which must consist of two components. First, local authorities must be open to national laws as well as the diverse perspectives that underpin them. Second, the national government—as the premiere policy-making body in Indonesia—must elaborate its policies in a manner that accommodates the specific cultures and habits of customary communities.

The handling of divorce cases by local authorities also reflects three important points. First, local communities continue to trust local authorities and their decisions over those offered by formal law—especially in matters of divorce²⁴. Second, local communities have a limited understanding of the nationally proscribed mechanisms for handling divorce cases, and thus injustices are commonly perpetrated in the name of customary law. Third, the Indonesian legal system has yet to provide sufficient space for customary legal systems and their aspirations. These three factors have contributed to the continued reliance on customary approaches and local authorities in cases of divorce²⁵.

The handling of divorces by local authorities shows that the lack of other stakeholders in local communities has allowed the rise of individual authorities with significant power. Likewise, due to limited knowledge of Indonesia's formal law, two distinct legal systems have been implemented within local communities. As stated by Subroto²⁶, the state—which should play an important role in protecting citizens during cases of divorce—must recognize

²² Dudley, "Domestic Abuse and Women with No Recourse to Public Funds: Where Human Rights Do Not Reach." *SSRN Electronic Journal*, 2016. <https://doi.org/10.2139/ssrn.2724370>

²³ Wendt, "Constructions of Local Culture", 2011.

²⁴ Kadek Ayu Monica Pastika Putri et al., "Pengaruh Hukum Adat Atau Awig-Awig Terhadap Pengelolaan Dana Desa Di Desa Banjar Kecamatan Banjar Kabupaten Buleleng Provinsi Bali," *Jurnal Ilmiah Akuntansi Dan Humanika*, 2019, <https://doi.org/10.23887/jinah.v8i1.19856>; Wayan Joniarta, "Muhtadli Muhtadli, Responsivitas Kebijakan Lokal Dalam Menghadapi Dinamika Sosial," *Jurnal Ilmiah Dinamika Sosial*, 2019, <https://doi.org/10.38043/jids.v3i1.1736>; "Pengakuan Desa Adat Sebagai Penyelenggara Pemerintahan Daerah Di Indonesia Berdasarkan Asas Otonomi," *Constitutionale*, 2020, <https://doi.org/10.25041/constitutionale.v1i1.2008>.

²⁵ Dahlan, "Rekognisi Hak Masyarakat Hukum Adat Dalam Konstitusi." *Undang: Jurnal Hukum*, 2019. <https://doi.org/10.22437/ujh.1.2.187-217>

²⁶ Subroto, "Peran Negara Dalam Menjaga Eksistensi Masyarakat Hukum Adat." *Yuriska : Jurnal Ilmiah Hukum*, 2019. <https://doi.org/10.24903/yrs.v11i1.457>

the need for local and national systems to exist side-by-side in a complementary relationship.

At the same time, the legal standing of handling divorce must be analyzed within Indonesia's broader regulatory framework. Law No. 6 of 2014 on Villages grants village heads the authority to manage local affairs in accordance with the needs and characteristics of their communities, which may include facilitating dispute resolution through customary mediation. However, under the national marriage law regime, the formal dissolution of marriage remains within the jurisdiction of the courts, where mediation—when required—is conducted by certified mediators in accordance with procedural law. This indicates that although village heads may exercise delegated authority to facilitate and socially legitimize divorce settlements at the local level, such mediation does not replace the formally regulated mediation process or the judicial determination necessary for legal validity.

B. Implications of Divorce Through Local Authorities for Household Life and Women

The reliance on local authorities, rather than religious courts, to handle cases of divorce by registered married has significant implications for households and women. As stated by HM, in Sumenep:

"Before and after conflict occurs, the structure of the family—the household—differs. For example, the husband and wife may both act as breadwinners and be responsible for domestic duties, or the wife may earn an income while her husband handles domestic duties and communicates with society. Many things keep them busy, both husband and wife, and thus they often leave their children with the neighbors until late at night." (interview)

As stated by HM, in Sumenep, Madura, breadwinning is not the sole responsibility of the husband as the head of the household; it is also earned by the wife, who dedicates herself to supplementing the household income and ensuring the family's continued well-being. Both parties are responsible for the financial viability of the family, and both must contribute to ensure a harmonious and successful family life.

As stated by HM, after the peace agreement is signed, family life is affected significantly. Communication with others, for example, is impeded by the significant emotional and legal obstacles posed to women.

"The signing of the agreement, as witnessed by the village chief, causes a significant shift in the social structure. In other words, it affects the household's behaviors and social interactions at various levels, including the individual, family, community, social, cultural, and global levels. It results in communications between the family and the community becoming more guarded." (interview)"

As stated by HM, when a village chief negotiates an agreement between husband and wife, this serves to maintain harmony within the family and create stability within society. The village chief acts as a neutral third party, one who maintains communication between the parties involved in the conflict. Fruitful negotiations, as well as the agreements resulting from them, are important because they ensure that husbands and wives fulfill their obligations and comply with societal expectations.

In Islamic law, divorce is permitted in extreme cases where it is the best and only solution²⁷. Several forms of divorce are recognized by Islamic law, writ: 1) *fasakh*, a divorce sought by the wife due to obstacles in the marriage (excluding violence), 2) *taqlik talak*, a suspended *talak*, 3) *syiqaq*, a divorce sought by both parties in response to irreconcilable differences, 4) *li'an*, a divorce sought by the husband in cases of adultery without material evidence/witnesses, and 5) *khuluk*, a divorce sought by the wife wherein the wife must pay *iwaddl*²⁸. In practice, due to the gender constructs and patriarchal structures that exist within society—especially in Indonesia—it is not uncommon for women (wives) to be victims in divorce cases²⁹³⁰. At the same time, it must be recognized that divorce practices are influenced not only by

²⁷ H.I. Rehim, K.S. Alshamsi, and Kaba, "Perceptions of Divorcees towards Factors Leading to Divorce in UAE." *Journal of Divorce and Remarriage*, 2020. <https://doi.org/10.1080/10502556.2020.1824205>

²⁸ "Perceraian Menurut Kompilasi Hukum Islam (KHI) Dan Fiqh." *Jurnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial*, 2018. <https://doi.org/10.24952/el-qanuniy.v4i2.2385>.

²⁹ Imron; Creative Urban Kampung Based on Local Culture, a Case of Kampung Bustaman Semarang." *Journal of Architecture and Urbanism* 44, no. 2 (2020): 128–37. <https://doi.org/10.3846/jau.2020.11450>

³⁰ Nasir, Islamic Law and Paradox of Domination and Resistance." *Asian Journal of Social Science*, 2016. <https://doi.org/10.1163/15685314-04401006>

national and religious law but also by social customs³¹³². Often, customary approaches to divorce are preferred due to cultural considerations or because of their ease and speed (Wati, 2018). Ultimately, divorce is still considered the final and most extreme means of overcoming conflict within the household.

According to Sa'id (in Abror, 2020), divorce refers to the dissolution of marriage due to disharmony within the household. In most cases, divorce significantly transforms individuals' social relations and economic status³³. Those who experience divorce generally feel a range of emotions, which may include sadness, grief, guilt, and anger³⁴. Although divorce is not normally desired, many informants interviewed by³⁵ noted that it is often needed. It becomes a "necessary evil", one that occurs in response to disharmony within the family that has a detrimental effect on the psychological wellbeing of any children involved³⁶. It must be noted, however, that divorce does not only have a psychological effect on children; it also affects women. Divorce, which may occur as a result of misunderstandings, parental intervention, financial exploitation, or environmental factors, can result in psychological distress, stigmatization, and poverty; in some cases, it can limit divorced individuals' ability to remarry³⁷.

In the context of divorce, local authorities also play an important role. Take, for example, Afghanistan. As described by³⁸, Afghani family law follows the Hanafi school of Islam, including in matters of divorce—which is understood as under the authority of the husband—and applies it through

³¹ Kastama & Dewi, 2021; Wati "Keputusan Damang Pada Masyarakat Adat Dayak Dalam Menyelesaikan Kasus Perceraian Di Kalimantan Tengah." *Kertha Patrika*, 2021. <https://doi.org/10.24843/kp.2021.v43.i02.p05>.

³² Afifah et al., Peoblematika Proses Perceraian Adat Suku Tolaki Perspektif Al-Urf." *Kalosara* 1, no. 1 (2021): 132–49.

³³ Symoens et al., "Breaking Up, Breaking Hearts? Characteristics of the Divorce Process and Well-Being After Divorce." *Journal of Divorce and Remarriage*, 2013. <https://doi.org/10.1080/10502556.2013.773792>.

³⁴ Symoens et al. Breaking Up, Breaking Hearts? Characteristics of the Divorce Process and Well-Being After Divorce,

³⁵ South, Perceptions of Romantic Relationships in Adult Children of Divorce." *Journal of Divorce and Remarriage* 54, no. 2 (2013): 126–41. <https://doi.org/10.1080/10502556.2012.755032>

³⁶ South, "Perceptions of Romantic Relationships in Adult Children of Divorce", 2013.

³⁷ Qamar and Faizan, "Reasons, Impact, and Post-Divorce Adjustment: Lived Experience of Divorced Women in Pakistan." *Journal of Divorce and Remarriage*, 2021. <https://doi.org/10.1080/10502556.2021.1871840>

³⁸ Toisuta, Hukum Keluarga Di Afghanistan." *Tabkim*, 2013

local authorities (including courts and councils)³⁹. The link between divorce and local authority is further evident in the concept of "purchased local authority", wherein the gender construction of the divorce process shifts, leaving wives with more bargaining power than their husbands, as well as control of familial economic assets⁴⁰. In practice, divorces that involve local authorities are often associated with customary law, thereby justifying the involvement of local authorities in the process^{41, 42}. This indicates how local culture influences the channel chosen by individuals when initiating the divorce process.

However, the reliance on customary mediation mechanisms also raises critical questions regarding the extent to which such processes adequately safeguard women's rights. While the notion of "purchased local authority" suggests a shift in bargaining power that may benefit wives in certain contexts, the informal and culturally embedded nature of customary dispute resolution may simultaneously expose women to normative pressures that reinforce patriarchal expectations. From a feminist legal theory perspective, informal mediation must therefore be assessed not only in terms of procedural accessibility, but also in relation to substantive gender justice. The absence of formal procedural safeguards, legal representation, or rights-based oversight may risk reproducing unequal power relations, even where women appear to exercise economic leverage. Accordingly, this phenomenon calls for a gender-sensitive evaluation of local authority involvement in divorce, examining whether such mediation genuinely advances women's autonomy or merely reconfigures existing hierarchies within a customary framework.

C. The Development of A Local Wisdom-Based Legal System

³⁹ Robi'atul Adawiyah, *Reformasi Hukum Keluarga Islam Dan Implikasinya Terhadap Hak-Hak Perempuan Dalam Hukum Perkawinan Indonesia Dan Malaysia* (Cirebon: Nusa Litera Inspirasi, 2019).

⁴⁰ Wirawan and Mas'udah, "International Migration and Risk of Divorce in Families of Female Migrant Workers." *International Journal of Innovation, Creativity and Change*, 2020

⁴¹ Marwa, Model Penyelesaian Perselisihan Perkawinan Perspektif Hukum Adat Dan Hukum Islam." *JURNAL USM LAW REVIEW*, 2021. <https://doi.org/10.26623/julr.v4i2.4059>

⁴² Kastama et al, Keputusan Damang Pada Masyarakat Adat Dayak Dalam Menyelesaikan Kasus Perceraian Di Kalimantan Tengah."

The development of a local wisdom-based legal system must involve local actors, experiences, and knowledge, as only then can local customs, traditions, and wisdom be accommodated. As seen in the case of Sumenep, Madura, the practice of local authority by village chiefs provides an important mechanism for maintaining social harmony and resolving common disputes. As stated by HMD:

"The development of a local wisdom-based legal system, wherein decisions are made by the village chief, must begin by referring to the advice given by religious and customary leaders—putting aside the paradigms maintained by others in society—and then involve capacity building and personal development. This provides them with the capacity to act as mediators, as well as the knowledge to draft binding agreements between the parties. The national legal system must also provide space for such situations, to give them legal standing, and allow for understandings and practices that reflect customary law so long as it is applied consistently and massively—as it is in Sumenep, Madura." (interview)

The involvement of village chiefs in negotiations offers an informal and unwritten legal approach that emphasizes the well-being of all involved, whereas the national legal system relies on positivist and formalistic mechanisms that prioritize individual power and political expediency. Due to such differences, there exists a *legal gap* between the national and customary legal systems. Jurisprudence should seek to minimize this gap and provide an approach that maintains balance and harmony between formal national law and informal customary law.

The making of decisions by village chiefs in Sumenep, Madura, is illustrative of a local wisdom-based legal system that has been well-received by the local community, as evidenced by the high levels of compliance. Community members obey the terms of their agreements, indicating that the legal authority wielded by local leaders remains highly respected. Village chiefs' decisions are honored by community members, as these decisions are rooted in communities' historical experiences and values, and thus serve as binding law.

In such a system, the diverse customary legal systems that exist within the Indonesian Archipelago must be recognized as *mulur mungkret*—as layered and limited—and accepted so long as they (1) continue to be observed, (2) do not

run contrary to national interests, (3) do not contradict existing formal laws and regulations, and (4) are suited to contemporary demands (I Gusti Agung Sum, 2021).

At the same time, it must be recognized that the dialectic interrelations between local wisdom-based legal systems may result in contradictions, such as when: (i) the facts and values contained within legal policies differ from those of local wisdom, for instance, because social values do not reflect those embedded in national law; (ii) there is no causal relationship between the values contained within customary and national legal systems; and (iii) the specific characteristics of the customary and national legal systems (past, future, or present) differ. This is important because the local values that underpin customary law must exist in dialogue with those that provide the foundation for positive law ⁴³. Unfortunately, many studies that use a legal perspective to investigate divorce fail to emphasize the importance of legal certainty and justice.

Local authority, according to ⁴⁴, refers to the capacity granted to individuals and organizations to regulate the people within a specific territory. Persons with such authority (in short, local authorities) are commonly recognized as expert problem-solvers who help their communities resolve conflicts and meet their needs. Local authorities are critical actors in the identification, discussion, and mediation of their communities' desires and concerns, and thus their views, skills, and experiences are necessary to ensure that power is practiced following specific local contexts and under certain considerations ⁴⁵. Local authority tends to be exerted through a linear mechanism, rooted in local tradition, which is ascribed a certain identity and image that serves to legitimize power and its practice. In Africa, for example, local authorities play key roles in matters of governance, power, and regulation,

⁴³ Budiyo Budiyo, "Model Fungsionalisasi Nilai-Nilai Kearifan Lokal (Local Genius) Dalam Kebijakan Hukum (Legal Policy) Daerah Di Provinsi Jawa Tengah (Kajian Konstitusional Penguatan Komunitas Adat Sedulur Sikep Pati Dalam Pengelolaan SDA & Pelestarian LH)," *Jurnal Pembaharuan Hukum* 3, no. 1 (2016): 69, <https://doi.org/10.26532/jph.v3i1.1348>.

⁴⁴ Seftyono et al. "Accelerating Rural Development in Central Java Indonesia: Connecting Leadership, Social Capital and Policy in Local Context." *IOP Conference Series: Earth and Environmental Science* 175, no. 1 (2018). <https://doi.org/10.1088/1755-1315/175/1/012185>.

⁴⁵ Richard Pratt and Sekson Yongvanit, "Perspectives on Local Leadership among Current and Future INGO Leaders in Cambodia," *Cambodian J.Int'l. Studies* 2 (2016): 3–28.

and their communities are likely to comply with their recommendations and instructions due to their recognized legitimacy⁴⁶.

This article has shown that local authority can be used to resolve domestic disputes, including divorces. Three findings must be emphasized. First, divorces are not handled exclusively by religious courts following national law; they are also decided by customary leaders using local legal systems⁴⁷. Second, the handling of divorces by local authorities has significant consequences for the legal certainty expected by the involved parties, as customary law has no standing in the national legal system. Third, contestation between customary and national legal systems has continued, in part due to the significant role of local authorities in handling divorce-related matters.

The tension identified above reflects a structural gap between formalistic norms embedded in national law, and customary law. While formalistic norms emphasize legal certainty and standardized procedures through judicial institutions, customary law derives its authority from social legitimacy and collective recognition within the community. The coexistence of these normative orders does not necessarily imply direct opposition, but rather illustrates an ongoing negotiation between state-centered legality and locally embedded normative practices.

Conclusion

This study has shown that village chiefs have effectively handled divorces using an approach that is rooted in local wisdom and eschews litigation in favor of negotiation and reconciliation. For the people of Sumenep, Madura, customary law is a living legal system that enjoys legal standing within the community and influences customary communities' understanding of national law. Although this study does not claim to exhaustively capture the complexity of local governance practices, it contributes theoretically by reconceptualizing local authorities not merely as providers of public services, but as dynamic

⁴⁶ Carolyn Logan, "The Roots of Resilience: Exploring Popular Support for African Traditional Authorities," *African Affairs*, 2013, <https://doi.org/10.1093/afraf/adt025>.

⁴⁷ Elviandri and Indra Perdana, "Pembentukan Peraturan Desa (Perdes): Tinjauan Hubungan Kewenangan Kepala Desa Dan Badan Permusyawaratan Desa (BPD)," *JOURNAL EQUITABLE*, 2021, <https://doi.org/10.37859/jeq.v6i1.2679>.

socio-legal actors who actively mediate conflicts and negotiate social order within their communities.

This article has limited itself to the legal norms and jurisprudence that provide village chiefs with authority at the local level. Courts will play an important role in reducing the gap between customary and national legal systems, thereby creating balance. As such, further research is necessary to ensure that other elements of customary law—as well as its application by village chiefs—can be understood vis-à-vis positive national law and its limited recognition of other legal systems.

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