

## Informal Dispute Resolution in East Java

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Province – East Java  
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## **1 Introduction**

### 1.1 Objectives:

The purpose of Justice for the Poor's Village Judicial Autonomy (VJA) study is:

1. To examine informal dispute resolution patterns, preferences, expectations, norms and structures at the local level in the five research provinces.
2. To focus specifically on the experiences of poor and marginalized members of the community – women, ethnic minorities and youth – in dealing with disputes.
3. To document policy changes and local initiatives related to local level dispute resolution.
4. To canvas views of policy makers at district level and community leaders and members about attitudes and proposals for reform to local level dispute resolution institutions and mechanisms.

### 1.2 Summary:

East Java is very different to the other four VJA research provinces. Unlike West Sumatra, Central Kalimantan, NTB and Maluku, dispute processing in East Java tends to rely, but not exclusively, on state sanctioned actors and rarely refers to specifically *adat* (traditional/customary) norms or institutions. Thus, unlike in West Sumatra for example, there are not such strong tensions between state and local community institutions. In the two research *kabupatens* (districts), Ponorogo and Pamekasan, regional autonomy has not resulted in a strong “return to *adat*” movement but has, if anything, strengthened the position of Islamic norms and contributed to the general politicisation of actors commonly involved in informal dispute resolution.

The key actors in dispute processing are mostly state sanctioned and include the village head, police and BPD members. Non-state sanctioned actors include local religious leaders (*kyai* or *imam*), other community leaders and also, at least in Madura (Pamekasan), *bajingan* (mafia-like groups). The common disputes include: petty crime/social disorder, land and natural resource disputes, “social crimes”, such as *santet* (black magic) and gambling, domestic violence, divorce and inheritance, and administrative disputes. No actor has complete authority to resolve all, nor indeed specific, disputes. Rather, disputants generally choose their preferred actor and conversely different actors will make various unrelated attempts at resolving a particular dispute. In this way, jurisdiction and capacity to resolve disputes depends considerably on social networks and relationships. This includes family and village links but also *silat*, religious and political affiliations.

Dispute processing commonly employs a process of adjudication or conciliation and actors must rely on their social and political status as well as their personal networks to arrive at

and enforce decisions. This also means that actors make an assessment of likely resolution and are reluctant to become involved in disputes that are intractable and that may negatively impact on their position in the community. *Musyawah* is sometimes, but not institutionally, used and the word tends to designate any decision-making gathering rather than a specific process of decision-making or dispute resolution.

Generally, disputes cannot be resolved successfully when either: actors do not have the social and political legitimacy and capital; and/or when the dispute involves significant external interests. Petty crime as well as “Social crimes”, that is activities that are not deemed criminal by the state such as *santet*, can, if left unaddressed, result in a vigilante response. Often this involves local criminal elements (i.e. *bajingan*) but with acquiescence from the whole community.

Like in the other four provinces, women tend not to fair well in local dispute processes. Particularly in relation to domestic and sexual violence, women do not have access to appropriate and favourable actors. There is very little female representation in local institutions, such as the BPD (village parliament) as well as the police. It seems women’s interests are expendable and that there is no social or political return in protecting women’s interests. Resolving and achieving justice for domestic and sexual violence relies on either strong local female personalities or external NGO support.

The most significant innovation affecting informal dispute resolution since “regional autonomy” is the shift to a model of “community policing” which has facilitated greater discretion by police in how disputes are resolved as well as their engagement with community leaders.

### 1.3 Methodology:

This report on informal dispute resolution in East Java is based on one Justice for the Poor field trip to East Java (11-20 February 2005) and extensive fieldwork and analysis carried out for the KDP and Community Conflict Study. This mixed-methods study was undertaken over the years 2002 – 2004 in two Districts of East Java, Pamekasan and Ponorogo, and involved seven researchers who spent nine months living in villages following 42 conflict case studies and conducting approximately 502 in-depth interviews. Although carried out with slightly different aims in mind, the research, including its subject, methodology and findings are relevant and directly applicable to Justice for the Poor’s research on VJA. This report incorporates eight of these conflict case studies and complements them by considering smaller disputes, particularly involving gender issues.

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## **2 Local context**

East Java is the eastern most province in the island of Java and includes the island of Madura. It is the most densely populated province in Indonesia, with a population of about 35 million people. Two thirds of the region is covered in mountainous terrain, resulting in an uneven population distribution. The 2002 SUSENAS, the government's annual socio-economic survey, reveals that the major ethnic groups in the province are the Javanese and the Madurese (78% and 20%).

East Java has 29 Districts and eight Municipalities, totalling 37 overall. Of all provinces in Indonesia, it is one of the most developed in terms of infrastructure, employment, and accessibility to public services. The capital of the province, Surabaya, has a population of 2.3 million and is the second largest city in Indonesia behind the national capital Jakarta.

Often considered one of the heartlands of Islam in Indonesia, the majority of the population in East Java identify themselves as Muslims, with the parts of the province being the stronghold of many of the Muslim parties in Indonesia, including the National Awakening Party (PKB) and the United Development Party (PPP). However, while almost homogenous in terms of its Muslim religious identity and two dominant ethnic groups (Javanese and Madurese), it is incredibly diverse in terms of its *prescriptive* identity groups. These include martial arts groups, Islamic boarding school affiliations, affiliations to different Muslim clerics, distinct geographical differentiation between groups living in different locations within and across village boundaries, family and kinship groups, crime groups, political affiliations with both different political parties and different village and regional elites, as well as rich and poor, prayer groups, work groups, occupational affiliations and the like. Many of the identity groups overlap and diverge creating complex human networks and cleavages which emerge and dissipate in conflict situations.

Employment in the province is divided between the agricultural sector (46%), industry (22%), trade (18%) and services (13%). In terms of Regional Domestic Product, prior to 1990 agriculture was the main source of income for the province, however, since that time the income generated from industry has also become a mainstay in East Java.

Common to East Java and approximately one third of the provinces in Indonesia is the reliance on migrant work (TKI – *Tenaga Kerja Indonesia*) as a source of household income. Poorer, mainly women workers, seek employment abroad as servants and factory workers in order to acquire the capital necessary to build houses and start small businesses back home.

## **3 Typologies**

It is difficult to determine which disputes are most common from limited field research. For this reason, as apart of the Conflict Research team's research in East Java a dataset on

conflict as reported by local newspaper was constructed for the years 2001 – 2003.<sup>1</sup> Although using a different dispute typology than that used by the VJA research, the results give a rough indication of the perversity of different *conflicts* as opposed to *disputes*.<sup>2</sup> The most common conflict types, were: administration (57%), vigilantism (29%), land and natural resources (7%), and position and influence (6%).

The fieldtrip in February 2005 to both Ponorogo and Pamekasan provided an opportunity to examine smaller disputes relevant to the VJA research. This trip indicated that the most common disputes, as opposed to conflicts, were: petty crime and violence; land, and to a lesser extent natural resources; administration type disputes. The fall of Suharto and the subsequent lapse in security triggered a spate of “social crimes” but which now seem to have died away. A number of informants indicated domestic violence is pervasive, particularly in Pamekasan, but that these disputes are rarely made public and it is difficult to determine just how widespread is it and whether it is in fact treated as a dispute.

**Table 1: Common dispute typology by type**

<b>Conflict/Dispute type (in approximate order of frequency)</b>	<b>Resolution Actors (in approximate order of use for each dispute type)</b>	<b>Issues</b>
Petty Crime and Violence <ul style="list-style-type: none"> <li>▪ theft</li> <li>▪ fighting</li> <li>▪ <i>silat</i></li> <li>▪ etc.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Village Head</li> <li>▪ Police</li> <li>▪ <i>Kyai</i> / Religious figures</li> <li>▪ Community leaders (often with organization affiliations)</li> <li>▪ Camat and Bupati (<i>silat</i>)</li> <li>▪ <i>Bajingan</i></li> </ul>	Can often result in vigilantism if not dealt with; <i>Bajingan</i> are sometimes used by the Village Head
Land and Natural Resources <ul style="list-style-type: none"> <li>▪ Ownership and inheritance</li> <li>▪ Borders</li> <li>▪ Administration</li> </ul>	<ul style="list-style-type: none"> <li>▪ Village Head</li> <li>▪ Hamlet Head</li> <li>▪ <i>Kyai</i> / Religious figures</li> <li>▪ Relevant government departments</li> </ul>	Generally individual (or familial) but <u>not</u> communal. More prevalent in Pamekasan.
“Social crimes” <ul style="list-style-type: none"> <li>▪ <i>Selingkuh</i></li> <li>▪ Gambling</li> <li>▪ <i>santet</i> (black magic)</li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>Kyai</i> / Religious figures</li> <li>▪ Village Head</li> <li>▪ Police</li> <li>▪ <i>Bajingan</i></li> </ul>	In Pamekasan, where pride is involved, men sometimes utilise <i>carok</i> as a resolution process
Domestic violence	<ul style="list-style-type: none"> <li>▪ Within families</li> </ul>	

<sup>1</sup> Barron and Sharpe (2005).

<sup>2</sup> The Conflict and Community Development Team’s research focused on *disputes* that could be said to have become *conflicts*. Thus, for example, petty crime is only considered if it resulted in a vigilante response. The dispute or, rather, the conflict typology included the following categories: Land and Natural Resources; Administration, that is disputes over government services; Position and Influence, that is competition over political power and influence; Vigilantism and Retribution; and, Other.

	<ul style="list-style-type: none"> <li>▪ Police</li> <li>▪ Village Head</li> <li>▪ Kyai / Religious figures</li> </ul>	
Divorce and Inheritance	<ul style="list-style-type: none"> <li>▪ Kyai / Religious figures</li> <li>▪ Village Head</li> </ul>	
Administration/Development <ul style="list-style-type: none"> <li>▪ Village Head elections</li> <li>▪ Corruption</li> <li>▪ Development</li> </ul>	<ul style="list-style-type: none"> <li>▪ Village Head</li> <li>▪ Community Leaders (see Para 4.1.6)</li> <li>▪ <i>Camat</i> and <i>Bupati</i></li> <li>▪ <i>Bajingan</i></li> </ul>	Use of informal negotiation to resolve corruption etc. Many villagers do not know where to go.

The village (*desa*) is the most common unit of community in East Java and this report adopts the village as a reference point when referring to *intra-*, *inter-* and *outside-community* disputes. There often exists, however, considerable differences and competition within the village amongst the hamlets (*dusun*) and also allegiances established by village elections and organization affiliations. In Sampung village, Ponorogo, for example, there is a strong divide between east- and west-side hamlets. A division that is largely hinged on differing *silat* affiliations. Perceptions of inside/outside relations will affect dispute processing, particularly the selection of an appropriate third-party actor.

<b>Table 2: Common dispute typology by nature of parties</b>		
<b>Intra-community</b>	<b>Inter-community</b>	<b>Outside-community</b>
Petty crime and violence	Petty crime and violence	Administration
Land and Natural Resources	Land and Natural Resources	Public Policy
“Social Crimes”		Development
Domestic violence		Land and Natural Resources
Administration and Corruption		

#### **4 Informal dispute resolution mechanisms**

Informal dispute resolution in East Java is highly flexible and negotiable. Unlike in provinces such as West Sumatra where strong local institutions still exist, disputes tend to be resolved by particular individuals (referred to in this report as “actors”) rather than institutions. That said, these actors do, at times, rely on and utilise their institutional and organizational affiliations when resolving disputes.

There are a number of general steps informal dispute processing follows in East Java. The *first* step is to identify an appropriate third party actor; the *second* step involves “fact-finding”; the *third* step the actor makes a, or some, recommendation(s); *forth*, the

disputants will decide, or be persuaded, to accept the recommendation/decision; *fifth*, once agreement is reached it is sometimes written and socialised. Unlike in some other provinces the process does not finish with ceremonial or symbolic cleansing. If the process fails, which usually occurs at either the *first* or *forth* step, the disputes either languish or disputants try another actor.

#### 4.1 Dispute Resolution Actors

Generally, disputants choose a trusted and accessible actor. These, in approximate order of popularity, include: the village head, *kyai* and religious figures, the police, hamlet head, and other community leaders (*tomas*). These actors operate separately but may, individually, attempt resolution of similar disputes. There is some degree of community agreement as to which community leaders are appropriate for particular disputes. For example, land disputes are best resolved by the village head, as are petty criminal cases. More commonly, however, disputants select actors for their capacity to resolve their individual dispute on a case-by-case and negotiated basis. Capacity seems to be determined by a combination of personal relations and institutional affiliation as well as individual skill and status.

Disagreement can arise as to who should resolve the dispute. This often becomes a dispute in itself. For example, in Case Study 4, the victim insisted that the dispute be resolved with the involvement of the police, whereas the two accused were determined to resolve the dispute without police involvement. More often, however, the disputants compromise and seem genuinely interested in finding an actor in order to restore community harmony. That agreement took longer in this particularly case, was probably because it involved disputants from different villages.

Conversely, the community leaders called upon to resolve a dispute sometimes make an assessment as to whether they are strategically placed to facilitate resolution. They guard their reputation to resolve disputes and are reluctant to become involved in a hopeless case. In vigilante-type disputes village leaders are also concerned for their safety. In regard to Case Study 7, a village elder in Pamekasan noted:

A few nights before the incident a number of *bajingan* arrived here. They asked for my blessings. I said to them that I didn't want to say that I was giving them my blessings, or that I was rejecting their proposal. I didn't want to get involved.

##### 4.1.1 Village Head

Across both research locations, the village head is commonly considered the most appropriate dispute resolution actor. He is considered the "father" of the village, particularly in Pamekasan, and his ability to resolve disputes is considered by the



community as a clear indication of their success and capabilities.<sup>3</sup> In the areas researched the village head is always male.

Depending on the nature of the dispute the village head can find themselves in a position of playing arbitrator or conciliator. In land cases, particularly in Pamekasan, the village head will arbitrate, using his knowledge (and understanding) of local history as well as the records of land transfers in the *Buku Petok C* (land transaction books introduced by the Dutch colonial administration) which, although often seriously outdated, are kept by the village heads. Village heads are also often consulted on reporting to the police and the formal system (see Case Study 4: *A Street Fight* and Case Example 1: *Lari Adiknya*).

Informal actors, although important, only have influence in their respective spheres, such as the village for the village head. In Case Study 1: *An Inheritance brings Misfortune*, the village head was unable to facilitate the resolution of a land dispute that involved a disputant from a different village. In this case the village head had clear family connections to one disputant. Indeed, village heads often act as “petty nationalists” when one of their villagers is involved in an inter-village dispute. The village head feels he must personally ensure that his villagers are not mistreated. This often inflames inter-village disputes as seen in the behaviour of one *Lurah* in Case Study 4: *A Street Fight*.

#### **Case Study 1: An Inheritance brings Misfortune**

Disputants: This inter-village inheritance land dispute involved two distantly related cousins. Sammat is from Palengaan Daja village whereas Sardiman is from Poreh village, both are in Pamekasan. The dispute was over land used by Sardiman but located in Sammat’s village. Sardiman came to inherit the land through his father, who had previously been married to a woman from Palengaan Daja. His previous wife had passed away before bearing children, leaving her land with Sardiman’s father who subsequently remarried and fathered Sardiman. The woman from Palengaan Daja had been Sammat’s aunt and because of this, when Sardiman’s father passed away, Sammat claimed that part of the land was rightfully his.

Initially, Sammat tried to unilaterally reclaim the land by marking the plot with stakes. Sardiman refused to acknowledge the stakes and the claim, insisting that the land was bought with a cow. In response Sammat reported the matter to the village head. That is, the village head of Palegaan Daja where the land was located and where Sammat lived. The village head’s response was to summon the two disputing parties to his house, however, Sardiman refused to turn up.

“Five meetings were held in total to resolve the case. The first one was held at the *Klebun*’s house, but nobody was able to reach an agreement. The second meeting was held at the disputed site with the *Klebun*, but still no resolution was found.”

*Rahmat, Witness, 3 May 2003*

“The third meeting was held in Dusun Tenggina Dua so that both parties could attend.

<sup>3</sup> Ashari (2004a), pp. 2-4.

Dusun Tenggina Dua is located right in the middle, between Palengaan Daja and Poreh. The meeting took place at the house of a respected community figure, Pak Hamid, who also used to be the head of the *dusun* (hamlet).<sup>4</sup>

When Sardiman and his supporters from Desa Poreh finally arrived they suddenly start shouting “carok...carok...carok!” Both disputants had brought considerable supporters and almost everyone bore sickles. Both the hamlet head and village head managed to calm the groups and convince them to give up their sickles. However, they were unable to facilitate an agreement.

The land was left unused for some time. The village head twice attempted to arrange a meeting but on both occasions the disputants did not turn up. Later Sardiman from Desa Poreh returned and began working the land. Currently the status of the land is uncontested but unresolved.

Somewhat surprisingly, given that this is an inheritance case involving Muslims, no *kyai* was ever involved. It indicates that inheritance cases, and disputes generally, are not the purview of any particular actor and that disputants can choose which actor they feel is most appropriate.

#### 4.1.2 Kyai

In Madura *kyai* are central community figures and play an important role in religious as well as political and social life. Thus in Madura, *kyai* share the key dispute resolution role with the village head, however, they operate individually. *Kyai* are generally more involved in cases that implicate values or morals. Thus, *kyai* are involved in inheritance disputes, “social crimes” such as *santet* (best translated as “black magic”), and preventing violent *carok* (best translated as a “duel”, see Box 1); whereas village heads are generally involved in land, administration disputes as well as petty crime. Compare these two statements of a *kyai* and a village head, respectively, and the capacity to to prevent *santet* killings:

“Hamzah was accused of practicing *santet*, and a plan had been made to murder him. However, the *kyai* heard about the plan, and then stood up in front of the Friday congregation in the Mosque and swore that Hamzah would not practice *santet* ever again.”<sup>5</sup>

“Before going ahead with the murder, Harus [a *bajingan*] stopped me [the village head] on my way to Jakarta. He said that they wanted to kill Brudin. I didn’t condone it, but I did suggest that if they were to kill him, that they should not plunder his goods. I am in a difficult position, if I was to prohibit it, the community would insist, but if I were to condone it, I would be scared that I had sinned. If I was to prohibit it, I would be up against the masses. It could me who gets killed.”<sup>6</sup>

In contrast to the village head, *kyai* often have influence beyond the village and are less “patriotic” to the village unit. However a *kyai*’s status is not conferred automatically and although he is not formally appointed by the community, his status amongst the community and hence ability to resolve disputes is highly contingent on the communal relations of the

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<sup>4</sup> For the complete case, see Said (2004).

<sup>5</sup> Respected Community Figure, Paengaan Daja village, Pamekasan.

<sup>6</sup> Village Head, Palengaan Daja village, Pamekasan.

disputing parties and his personal networks and status in each party's respective communities. For example, if the community is not oriented towards a given *kyai* i.e. they are not his *santri* (alumni) or followers of his ideology, then it is unlikely he will wield authority and be able to resolve disputes in that community (see Case Study 6).

The communities distinguish between *kyai kecil* and *kyai besar*, which simply means “small *kyai*” and “big *kyai*” respectively. That is, *kyai* with differing degrees of influence. *Kyai kecil* will only have influence in their respective communities whereas *kyai besar* will have often have influence across *kecamatan*s and even *kabupaten*s. This is often a result of their organisational affiliations. *Kyai*, particularly *kyai besar*, often have links to political parties and are hence often politically motivated as to when they intervene.<sup>7</sup>

#### 4.1.3 Community/Organization Leaders

In East Java, affiliation to organizations is particularly strong. Almost all community leaders are members of a variety of organizations. These include *silat* (martial art) groups, *reyog* (traditional performance) groups, Islamic organizations, particularly those with links to NU and Muhammadiyah, prayer groups, political parties, as well as affiliations to politically active NGOs.

Similar to *kyai besar*, organizational leaders have influence across village boundaries.<sup>8</sup> However, their influence is mostly limited to their respective organization's members. That said, organization leaders are often community leaders in their own right. Therefore they only likely to become involved in disputes as an organization leader in larger cases of disorder involving their organizations members. Generally, they feel it is the role of the police to resolve sporadic disputes, including violent disputes, that (happen to) involve their members (See Case Studies 8 and 9: Controlling *Silat*).<sup>9</sup>

#### 4.1.4 The *Camat* and *Bupati*

Generally the *Camat* and *Bupati* only become involved as mediators in development, corruption and administration-type disputes. This includes small disputes that remain internal to a village or particular government department but also wider disputes that involve large sections of the community. Given the *Bupati*, and to a lesser extent the *Camat*, are political positions, these actors will only intervene when it suits their political interests and, as one would expect, only cases of serious magnitude. The *Bupati* is reluctant to manage “small matters in a small village”.<sup>10</sup>

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<sup>7</sup> Ashari (2004a), p. 6.

<sup>8</sup> *Kyai kecil* are sometimes referred to as *kyai desa*, that is “village *kyai*”, see Ashari (2004a), p. 6.

<sup>9</sup> See also, Probo (2004).

<sup>10</sup> Attributed to former *Bupati* of Ponorogo.

## **Case Study 2: *Grosok*: Conflict between Sampung village and the mining company Sari Gunung<sup>11</sup>**

This long running disputes involves a government owned mining company, Sari Gunung, and the villagers from Sampung village which is where the mine located. The Director of Sari Gunung, the village head, Sampung BPD (Village Parliament) members as well as the *Camat* (sub-district head) were involved at various points of the dispute as dispute resolution actors. Primarily, the dispute is over damage caused by the mine's activities.

Limestone has been mined near Sampung village since the Dutch colonial period. Since independence the operations have been owned by the local government but managed by a private company. For over 20 years the community has complained to the company and the district government about the negative environmental impacts and damage to village infrastructure. The mine produces significant amounts of *grosok*, an unusable by-product mixture of chips and silt. As the mine is on a hill above the village, during the raining season the *grosok* flows down from the mine into the village. During heavy rain it causes significant damage to the roads and some private residences.

In the 1980s, the then village secretary sent a letter of complaint to the *Bupati*, signed by the village head, hamlet head and *Camat*. Thinking that because the company was owned and controlled by the district government, the village government thought they were responsible. At the time the *Bupati* simply claimed the *grosok* problem was not a priority.

Suddenly in 1997 the district government, without consultation with the village government, built drains in the village so that the rain water and *grosok* would be channeled away from the village. However, this simply shifted the problem from the western hamlet to the eastern hamlet. Heavy rains later that year caused houses in the east as well as paddy fields further downstream to be flooded with water mixed with *grosok*. Another letter was fired off, this time to the DPRD (District Parliament) and Bappeda (District Planning Agency), but again there was no response. Shifting the problem from the western to the eastern hamlets began to fuel intra-community tensions. In 2003 a group of youth and farmers, who were tired of cleaning the *grosok* after heavy rain and having their fields polluted by dirty water, blocked the drains that diverted the water from the western to the eastern hamlets. According to informants this protest was as much directed towards the village government as the company and district government for lack of substantive action. Learning of this act of protest the village head called the youths to his home for a meeting. The community in eastern hamlet interpreted this as a hostile move by the village head, and approximately 20 villagers from the eastern hamlet arrived at the village head's house. Not wanting to inflame tensions, the village head accepted their protest action and the drains were left blocked.

The rain continued and the *grosok* water flooded the main road and a number of shops and houses. No one would dare unblock the drains or even cleanup the mess created. "No-one in the other community dares clean it up, it could lead to brawls if someone cleaned it up."<sup>12</sup> There were a number of motorbike accidents on the main road, made slippery by the *grosok* water.

In April, Dwi, a female BPD member, met with the Director of Sari Gunung. The Director explained that it was not his company's responsibility but that of the district government. Every year he gave the profits to district government and in his opinion it was up to them as to whether they would use some of this to

<sup>11</sup> Summary of two cases studies by Cici Novia Anggraini and Endro Probo for the KDP and Community Conflict Study.

<sup>12</sup> Dwi Pertiwi (BPD member), cited in Cici Novia Anggraini (2004), p. 9.

resolve the *grosok* issue in Sampung village. The *Camat* also raised the issue with the Director but only managed to secure a Rp. 1.500 levy on each truck (per day) that passed through the village. The Director consistently maintained that the village should bring it up with district government.

Legal action was never considered let alone taken by the village government. Given that the mine employs many villagers, the village head and the *Camat* were reluctant to provoke the company. Further, village government informants indicated they were reluctant to challenge the Director who, being directly appointed by the *Bupati*, held a higher ranking position than both the village head and *Camat*.

At the time of writing this dispute remains unresolved. Social tensions remain high, particularly between the east and west hamlets over the blocked trains as well as between those who have forbidden that the *grosok* mess be cleaned and those who want to get on with their lives.

#### 4.1.5 Bajingan

*Bajingan* is difficult word and concept to translate. In Java *bajingan* carries negative connotations and in this context it can be translated as a group of crime groups or mafia. In Madura, however, it takes on other meanings and these, depending on who you talk to, can be both positive and negative. It can denote someone who possesses leadership and other “awe-inspiring” qualities, but also someone who works in variety of trades and almost always gambling.<sup>13</sup> In each *kecamatan* there are usually one or two groups whose members consist of youth, community leaders as well as some village heads. Unlike in West Sumatra where youth groups often play a role in the “informal security sector”, *bajingan* are not formally institutionalised and act more as a gang.

It is unclear why this group of men, who are essentially rural mafia, are conferred such status. Generally it seems they gained sympathy during the post-Suharto reform period of weak policing for their role in guarding against *santet* (black magic) and petty crime. More recently some village heads have been selected from “the ranks” of *bajingan*.

With regard to dispute processing, they can be understood has part of the informal “security sector”, where they are called upon directly by the community to deal with instances of *santet* or by the village head as his “foot-soldiers” in dealing with petty crime. As noted in Case Studies 6 and 7 they require “petrol money” and for this reason are largely available to those who can afford their services. They complicate informal dispute resolution by taking sides and often inflaming tensions presumably in order to ensure the continuing need of their services.

#### 4.1.6 Police: Bridging informal and formal mechanisms

Given the closer proximity to government services in East Java in contrast to other areas of Indonesia, the community has a more realistic option of choosing between formal and

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<sup>13</sup> Ashari (2004a).

informal dispute resolution mechanisms. Informants, as well as a Police Study, indicated villagers almost always access the formal system through the local *kecamatan* police station (*polsek*).<sup>14</sup>

The involvement of the police does not necessarily mean, however, that the dispute has entered the formal system, certainly not if we define formal dispute resolution as a legal process. As well as collecting data on conflict/dispute types the conflict newspaper collected disputes on where conflicts/disputes were resolved. It indicates that the police are involved in 37 percent of disputes whereas the courts are involved in only 7 percent. The results for violent disputes are even more indicative, 86 percent of violent disputes reach the police whereas only 5 percent then go on to the courts.<sup>15</sup> This suggests police, in East Java, play a significant role in determining whether or not disputes go onto the formal legal system. Consider the Deputy Head of the district police station's response to how a petty fight case was handled (see Case Study 4: *A Street Fight*):

- Researcher: How did the police handle [that fight case]? I hear that one side did not want the dispute to go to the court.
- Deputy Head: We handled the case procedurally. We [briefly] detained the accused but while realising there was already a peaceful agreement with the victim's side. *We [the police] are prepared to mediate disputes, which is what we did with this case, so that it is no always necessary for cases to go to the courts. We already have a mediation service at the kecamatan police stations. In this case the two sides agreed to peace with the understanding that if it occurred again the matter would go to the court.*<sup>16</sup>

Police informants indicated that over 80 percent of cases are resolved informally by the police, often working in cooperation with local community leaders.<sup>17</sup> Indeed, local police officers are often requested by the village head and other community leaders to witness informally resolved disputes in order to give them give them legitimacy and so as to strengthen enforcement.

This discretion to mediate or persecute disputes is open to abuse and is a potential source of rent-seeking. In the case above, for example, the victim was unhappy with the result for felt he was coerced into accepting a "peaceful" decision. Similarly, in a rape case (Case Example 2) there was strong evidence that the police, as well as the prosecutor and the court, had been bribed into "mediating" the dispute.

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<sup>14</sup> Baare (2004).

<sup>15</sup> Barron and Sharpe (2005), p. 30.

<sup>16</sup> Interview with Deputy Head of District Police Station, Pamekasan, 18<sup>th</sup> February 2005.

<sup>17</sup> Baare (2004).

## 4.2 Dispute Resolution Process

Once an actor is selected the method of dispute processing is similar. The actor usually calls the disputant to his or her house where the disputants take turns to explain their versions of the dispute. These “fact-finding” meetings can occur a number of times depending on the complexity of the dispute and the level of tension between the disputants.

“Five meetings were held in total to resolve the case. The first one was held at the *Klebun*’s (village head) house, but nobody was able to reach an agreement. The second meeting was held at the disputed site with the *Klebun*, but still no resolution was found.”

“The third meeting was held in Dusun Tenggina Dua so that both parties could attend. Dusun Tenggina Dua is located right in the middle, between Palengaan Daja and Poreh. The meeting took place at the house of a respected community figure, Pak Hamid, who also used to be the head of the *dusun* (hamlet).”

As suggested in the above quote from Case Study 1, where these initial meetings take place is often an indication of the power relations between the disputant as well as between the disputants and the actor. If these meetings occur in the house of one of the disputants, or one disputant’s close relatives, this is generally a sign of bias amongst the actor or manipulation by a disputant. Unlike in West Sumatra, these meetings generally only involve the direct disputants and perhaps just one or two moral supporters from each side. Again unlike in West Sumatra, generally only one actor facilitates the meeting, although other actors may attempt resolution at different points of the dispute. In those meetings involving group disputes, such as *silat* disputes, it is usually only respective group leaders that are involved.

Generally, the actor acts as an adjudicator, passing judgement rather than facilitating agreement, or a conciliator, facilitating and persuading agreement between the disputants. Unlike in Sumatra, actors do not try to balance family or *suku* relations via a single dispute. That said, it is clear that actors are influenced, unsurprisingly, by their relationship to the disputants and are careful to ensure their relationships are maintained. Even after selecting an actor, disputants can still reject the decision. Generally, disputants will accept what they feel to be an unfair settlement if they trust and respect the actor. In this way, then, successful dispute resolution is more to do with local legitimacy and authority than skilful facilitation skills.

## 4.3 Norms and Rules

Rules, whether manifested as formal laws or informal norms, are the inherently guiding principles of action [which] shape human interactions through structuring incentives in

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human exchange. Understanding the rules that exist within a give society is vital if we want to understand the ways in which [...] people and communities interact.<sup>18</sup>

Narayan suggests that it is primarily informal norms, rather than formal laws, that shape the actions of the poor:

Poor people's interactions with landlords, traders, moneylenders [...] are not governed primarily by the laws of the land but by the social norms which dictate who has what value in each interaction.<sup>19</sup>

Unlike in the other four provinces, in East Java *adat* was rarely discussed as a normative basis for dispute resolution. Rather, when processing disputes actors referred more to local characteristics and values. In this way, informants debated how social and religious differences between eastern and western Ponorogo, rather than a specific Javanese *adat*, might affect the decisions of informal dispute resolution.

*Kyai* will draw upon their specific understanding and interpretation of Islamic law. The community refers to these interpretations as either *fara'id* or *prailan*.<sup>20</sup> That each *kyai* has their own interpretation and ideology is partly why *kyai* tend only to have influence amongst their respective *santri* (alumni). *Kyai*, then, do not seem to be viewed by the community as generally representative or exponents of Syariah law but of specific interpretations.

There are occasionally clashes between formal law and local norms as well as between villages over norms, or rules, regarding appropriate dispute processing. In the *santet* cases from Pamekasan, for example, the village head often finds himself stuck between communities desires and sense of justice, and the state's norms of justice.

I am in a difficult position, if I was to prohibit it, the community would insist, but if I were to condone it, I would be scared that I had sinned. If I was to prohibit it, I would be up against the masses. It could me who gets killed.

In these cases it is often only the *kyai* who was able to rise above both state and local norms, presumably by reference to even higher norms.

Because of this problem many *kyai* came here asking me not to take revenge ... up to the fortieth day (i.e. the ceremonial remembrance period) following the death of my brother and my nephew there was always a *kyai* coming here requesting my family and I be willing not to take revenge *but accept the deaths were fated by God*.

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<sup>18</sup> Barron, Smith and Woolcock (2004), p. 13.

<sup>19</sup> Narayan et al (2000), p. 278.

<sup>20</sup> Ashari (2004a), p. 6.



In the petty fight case, disagreement arose of how dispute processing should proceed and who should be present at a *musyawarah*. According to the accused and his supporters the involvement of a *barbinsa* officer, a village level military officer, as a witness was normal for their village, whereas the victims group saw this as an act of intimidation.

**Box 1: “Alternative Dispute Resolution”: *Carok* in Madura**

In Madura, *carok* is widely accepted—both socially and culturally—as a means of resolving disputes, particularly disputes that negatively impact on a male’s pride and social standing. In some places it is seen as method of last resort when other dispute resolution mechanisms have failed. Although not always so methodically planned, the following quote indicates just how accepted this practice is:

“If Madurese people here have the desire to commit *carok*, they prepare everything, not just the weapons for the *carok* and who will be involved, but they also prepare payment for the police and the courts, who will manage the trial process, who will manage the wounded and dead victims and so on. In short, they prepare everything. They are also prepared to go to jail .... Usually, following a *carok*, the winner [or other actors] run straight to the Village Head or to a respected community figure to report themselves and ask to be taken to the police. [Why?] So that the police don’t prolong the matter and so that they aren’t beaten up, as the Village Head or the community figure will protect them.... They aren’t afraid of going to jail, rather they are proud because they have successfully defended their pride.”

*Jambringin Village Head, Proppo, 26 June 2003*

This social practice has implications for informal dispute resolution processes. *Firstly*, in an attempt to intervene prior to and thus prevent *carok* for “social crimes”, a process, or its facilitator, needs to seriously consider and successfully manage the disputants’ pride. Generally *kyai* are most successful actors in preventing *carok* by appealing to “higher” religious values than pride and local practices. *Secondly*, if an informal actor (or mechanism) is to intervene in the dispute after *carok*, due to the serious criminal violations, they must be able to link and work with the formal legal system.

#### 4.4 Sanctions

Generally, sanctions are proposed by the actor and agreed upon, or not, by the disputants. The extent of the sanction is based on the actor’s own sense of justice and what he feels the disputants are likely to acknowledge as fair. Generally, sanctions consist of monetary compensation and are written into the dispute agreement. There does not seem to any instances where the actor would insist on sanctions been payed to the community or himself.

#### 4.5 Enforcement

Enforcement is almost always ensured by personal influence, social stigma, the threat of violence, or the threat of legal action. In this way, then, dispute agreements often remain contingent on the power relations existing at the time of agreement. If these shift

considerably then it may be that one disputant will renege on the agreement and reopen the dispute.

*Kyai* often use public oaths as a method of ensuring enforcement, particularly with regard to preventing violent *carok* (see Box 1). Ashari writes, “The swearing of oaths by the *kyai besar* has proven to be an effective means of reducing revenge [...]. The disputing parties will usually swear they will keep the peace and then sign a document [to this effect]. Similarly, one village head noted social stigma was the most important method of ensuring enforcement. Importantly however, he went on to note this was generally not available for preventing domestic violence cases because it was more likely the community would stigmatise the women for “making the male resort to violence.”<sup>21</sup>

Both the village head and *kyai* may at time use *bajingan* in order to enforce decisions and maintain public order. Similarly, in Ponorogo, the influence of *silat* leaders may be utilised by community leaders and even the police. As seen in Case Study 4: *A Street Fight*, the village head may use the police and military as witnesses in order to strengthen enforcement decisions.

### Case Study 3: Dang Lebar Land Dispute<sup>22</sup>

This land dispute between H. Halim (hamlet head) and Amir (Halim’s cousin) occurred in 2001 in Panangguan village, Pamekasan. This dispute began when Amir returned to Panangguan after spending sometime in Java. Upon returning he heard that someone had offered Halim Rp. 8 million for the land and subsequently claimed that the land used by Halim still belonged to his father (Bakir).

Three meetings were conferred at Ali’s house, where Ali, Halim’s older brother, attempted to clarify the position of the land. At these meetings the matter could not be resolved and so Halim reported the dispute to the village head. A week later the village head held a meeting very early in the morning, present were the two disputants as two relative each to act as witnesses. No one else in the community was involved.

“Because [the problem] could not be resolved at the lower [hamlet] level, it was brought to the village level... In order to resolve the problem, I referred to the document I had in H. Julis’ [Halim’s father] name. Amir continued to just make an issue of the hereditary land that was only in H. Julis’ name. The witnesses’ explanations were somewhat confusing. They could not agree on a decision. It seems that [the land] was not purchased transparently back then. It seems that the land was sold when he needed money, and he wanted to redeem it if he had the money. It was certainly bought cheaply. Amir’s side acknowledged this. According H. Halim’s side, the transaction was a sale... There were many witnesses. The witnesses were *ngambang* (controversial). Because the two divided sides were both nephews... The atmosphere of the meeting was tense. Amir threatened *carok* in my forum. Then I divided the land. I returned part of it to Amir, part of it I did

<sup>21</sup> Interview with Pak Luthfi, village head, Pamekasan, 19th February 2005.

<sup>22</sup> For the complete case, see Ashari (2004b).

not [return]. Consider it divided in two. Amir got 25 percent. I put pressure on him. If he did not accept the solution, then the village would take the land. They were frightened. The community very much supported this method. The problem was resolved.”

The documents the village head refers to above were old land record (*Petok C*) books that were used during the Dutch colonial period. As is often the situation, these books were out-of-date and unable to clearly determine an owner. Completely the matter further was the context, or intention, surrounding the transaction, something which is difficult to record in technical land books. Finally, the village head used his judgment and authority to divide the land.

#### **Case Study 4: “A Street Fight”**

This relatively simple instance of petty fighting became more complex when the disputants and their supporters disagreed over how the case should be resolved. The dispute occurred in Blumbungan village, Pamekasan, however one disputant was from a different village in a neighbouring *kelurahan*.

The fight broke out in response to motorbike accident that occurred in the middle of a procession of pilgrims who had just returned from Mecca. The motorbike rider overtook a car waiting at the traffic lights, the car then turned right without looking and knocked over the motorbike rider. Pak Wardi, who had been watching the returning pilgrims, went to help the motorbike rider and shouted at the Pak Paidi, who was driving the car, “If you’re going to drive a car be careful, don’t be so reckless. This is the result of speeding”. Pak Paidi felt insulted and humiliated in front of the gathered crowd to the point that he jumped from the car and began to punch Pak Wardi. The fight was relatively short lived as a number of observers stepped in to separate the two. Pak Paidi returned home and Pak Wardi remained at the procession.

However, because he still felt enraged by Pak Wardi’s comments he returned to the scene with a kitchen knife. He again attacked Pak Wardi but again those in the street stepped in and prevented serious violence. A few minutes later Paidi’s father, Pak Djoko, arrived and began beating Pak Wardi with a chair. Those standing by stepped in but Pak Djoko continued to threaten Pak Wardi, shouting that he would murder him next time he saw him in the street.

Pak Wardi, feeling he was in danger, reported the incident to the local police station (*Polsek*). After reporting the incident and presenting evidence and witnesses, the police first restrained Pak Agus and then locked him up in the local police cell. Paidi’s father, Pak Djoko, refused to meet with the police in order to resolve the situation. In response the police called a local *kyai* in order to help the police make the two groups make peace and resolve the dispute without a formal police report. However, Pak Wardi, who was physically assaulted, refused the *kyai*’s attempts at resolution, insisting that he would not withdraw the report until Pak Djoko apologized.

A few days later, Pak Djoko and Pak Paidi reported the matter to the head of their *kelurahan*, Pak Lurah, and requested that he help them resolve this dispute. Subsequently Pak Lurah requested *musyawarah* with Pak Wardi. Wardi agreed to meet with the *Lurah* at his house and five days Pak Lurah, a neighbourhood leader, a *Barbinsa* (village level military) officer, a local *bajingan* member and a number of other community leaders, all from Pak Djoko and Paidi’s *kelurahan*, arrived to resolve the dispute. They had brought with them a pre-prepared letter of agreement that stated Pak Wardi would not continue to pursue the dispute with the police. Pak Wardi felt he was intimidated by the fact that Djoko had brought a *bajingan* and a *barbinsa* officer to the meeting and initially he refused to cooperate.

It seems the *bajingan* member acted as a mediator, guaranteeing if Pak Djoko heeded M Wardi's demands that he himself would ensure that Pak Djoko's son, Paidi, was quickly released from jail. Similarly, the *bajingan* tried convincing Pak Wardi that it was inappropriate to report the matter to the police because he was local community leader and should not need to rely on the police. In this way the *bajingan* acted as a mediator while simultaneously selling his services to Pak Djoko. Finally, Pak Wardi agreed to resolve the issue informally providing that a letter of agreement was witnessed and signed at the kecamatan police station. This was agreed to the matter was resolved.

## 5 Analysis

### 5.1 "Meta-rules"

In East Java there is no dominating normative basis for dispute resolution such as *adat*. Nor are their dominant traditional community leaders who enjoy a monopoly on the interpretation and application of local (*adat*) norms. This is significantly different to the other VJA research areas, such as West Sumatra and Maluku where institutions or certain individuals play a key and dominate role in dispute resolution. Rather, normative interpretation and application in East Java is fluid and changing. Indeed, a normative basis is at times is not even required and a community leader is simply able to use his authority (Case Study 3: *Dang Lebar Land Dispute*).

In East Java both actors, by facilitating a range of dispute types, and disputants, by selecting various actors, continually shift through and are influenced by various sets of norms. These include local notions of justice, to various interpretations of Islamic legal and social principles, to state law. For example, a village head might resolve both a standard and an inheritance land dispute whereas a disputant might choose either the village head or the local Imam to resolve a land inheritance dispute.

There needs, then, to be overarching rules or processes for choosing between these various actors and norms in order to prevent disputes arising over how a dispute should be resolved and what is an appropriate outcome. These overarching rules to manage rules can be referred to as "meta-rules".

Meta-rules are agreements to principles about what to do where there is ambiguity or incompatibility amongst rules; they may be rules systems in themselves, or they may be authorities (individual or institutional) to which legitimacy is commonly ascribed from different groups and actors, either in general, or in specific incidences of conflict.<sup>23</sup>

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<sup>23</sup> Barron, Smith and Woolcock (2004), p. 18.

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The most common approach to managing different dispute resolution rules and norms is to have clear jurisdictions over where specific types of disputes are resolved. As noted above, this does not seem to exist in East Java.

In East Java disputants have considerable flexibility, particularly compared to other provinces such as Sumbar, to choose where a dispute is resolved and hence what norms are applied. This effectively prevents disputes arising between various community actors over who should resolve which disputes and avoids actors, who are often the elites, from becoming involved in confrontations over norms. As seen above, this process of selection is not always perfect and disputants themselves will sometimes disagree over the appropriate forum.

That actors tend not to mediate together also prevents disputes over rules/norms. When actors do work together, generally, it is in either situation of mediation rather than adjudication, or, alternatively, one actor will take the lead and the other will participate more as an observer. If one actor is unable to broker a situation then another actor seems free to have a go.

Finally, actors follow a general process of adjudication that allows things to return to normal i.e. maintain harmony. Unlike in Central Kalimantan, for example, sanctions and punishments are not codified. Thus a sanction for a given dispute could be what has been taken place in the past, but it could be excessively harsh if, say, there has been a spate of thefts and a lesson needs to be taught. However, as seen in the case study *An Inheritance brings Misfortune* (Case Study 1), “normal” can in fact be a return to the status quo, particularly if it is likely one party, in this cases the weaker party from a different village, will simply give up on its claim.

“After both parties had been summonsed twice by the *Klebun* and neither of them attended, nothing else was done. News has it that Sardiman divided the land between himself and Jaelani [Saliman’s cousin who helped him defend his land]. Sammat didn’t get anything, and even now the case has yet to be resolved ...”

*Rahmat, Witness, 3 May 2003*

It is also worth noting that these meta-rules, particularly the adherence to some common notion of harmony tends to break down in disputes involving more distant parties. As discussed with regard to Table 2 above and section 5.4 below, the village tends to distinguish the boundaries of “close-nite” relations.

## 5.2 Options counter power imbalances

There are no *institutionalised* informal dispute resolution mechanisms in East Java and therefore one of the important steps in informal dispute resolution is selecting the

mediator/adjudicator actor. There are informal dispute resolution *processes or pathways* that are commonly followed by communities and thus, through practice, could be considered mechanisms. These practices remain, however, flexible and negotiable and disputants are relatively free to select an actor from accessible options.

At the local level, and for smaller disputes, communities rely on a handful of respected community figures. It is assumed that if one is unsatisfied with a particular outcome there exists the option of taking the dispute elsewhere, generally to a more influential actor. For example, the *Dang Lebar* land dispute (Case Study 3) could not be resolved at the hamlet level and went on to the village head. In this case the hamlet head was a disputant and these initial failed meetings occurred in the home of the hamlet head's older brother. Similarly, the village head was unable to facilitate a meeting in the case study *Inheritance brings Misfortune* (Case Study 1), one party ignored the village head's requests but did later turn up to a meeting facilitated by a respected hamlet head. Finally, in *A Street Fight* (Case Study 4), one disputing party, unhappy with a *musyawarah* marked with intimidation, took the matter to the police.

Flexibility is seen by some informants as a key advantage of informal processes, which helps to disperse power imbalances amongst disputants. Thus, some informants were reluctant, when asked hypothetically, to support a centralised village dispute resolution body because of a concern that it would weaken this flexibility. Unsurprisingly, those currently involved in village governance were much more supportive of the suggestion.

That flexibility can reduce power imbalances rests on the assumption that realistic options exist for all disputants. Many of the case studies indicate that this is not always the situation. In *Inheritance brings Misfortune* (Case Study 1) the failed attempts by the respected hamlet head and village head exhausted potential options. One disputant, by default, ended up with all the land. Case Study 5, a "social crimes" case, also indicates the few options Rima had in which to challenge her husband's (and later her boyfriend's) actions. In the end she ran away to Kalimantan; an option that would not have existed had she not been economically independent. And again, the *Grosok* case demonstrates just how disempowered the community is to resolve disputes with outside actors; that communities are rarely able to overcome large commercial interests, often backed by the local government, without support from outside the community.

In sum then, one can conclude that options outside of ongoing resolution negotiations greatly increase one's bargaining position. Short of a reliable, fair and transparent dispute resolution mechanisms with a clear process of appeal, flexibility can facilitate and is crucial to achieving satisfactory outcomes.

### 5.3 Women's Access to Informal Mechanisms

In many ways women remain in the interstices between informal and formal mechanisms, particularly with regard to domestic violence, sexual assault and “moral crimes”. Informal dispute resolution mechanisms do not protect or serve their needs and interests, and many informants felt formal mechanisms were often too extreme and divisive, and thus did not actually serve their needs. Across both research areas we came across only one female BPD member active in dispute resolution (see Case Study 2: *Grosok*).

In cases of domestic violence women often “choose” to remain quiet rather than seek assistance through informal or formal mechanisms. This silence is a result of social stigma, economic dependency as well as a cultural tendency or norm to forgive rather than prosecute such incidents. One informant noted, “I was too ashamed to report [the incident of domestic violence], because people would ask what did I do to get beaten”.<sup>24</sup> Informal mechanisms are unable to counteract social stigma attached to women who are beaten by their husband; the social norms are such that women are often looked down upon for being beaten. Further, as indicated by Case Example 1 women are unlikely to disrupt their relationships with their partners because of their economic dependence. Those that do speak up generally did so only with family or outside (NGO) encouragement and moral support (see Case Example 2 below).

#### **Case Examples: Women's Access to Informal Justice**

##### **Case Example 1: “*Lari Adiknya*”**

In this case both the police and the village head played a role in facilitating the resolution of a short-lived affair between the male and his sister-in-law. The young man ran off with the underage sister (17 years old) of his wife. The parents of the wife and sister were angry and requested assistance from the village head. The village head subsequently called the police and meet with the family of the husband who were in contact with him. The threat of police action encouraged the return of the two. Also, apparently, the younger girl, who initially agreed to run away with her sister's husband, changed her mind. Upon return the husband spent three days in prison. The wife, however, does not want to press charges nor divorce her husband; she is concerned for the welfare of their five-year old child. The police feel the case is already resolved and have released the young man.

##### **Case Example 2: *Perkosaan* (rape) and Community Mobilization**

This case, which occurred in 2001, demonstrates how NGOs and informal actors can mobilize to achieve justice, albeit in the formal system. The story goes that a young wealthy man from neighboring *Kabupaten Sampung* (Madura) kidnapped a 16-year-old girl from Pamekasan. It is unclear whether she initially agreed to run away with him but in 16 days she was gone she was obliged to repeatedly have sex (was raped) by the young man. Initially the family of the girl were reluctant to press charges nor did they bring the matter up with informal actors. Given the geographical distance it unlikely the family would no have an actor, besides

<sup>24</sup> Interview, 26 February 2005, Pamekasan, East Java.

the police capable of exerting influence on the wealthy young man. Finally, the girl and her family were encouraged by her a close school teacher to take action in the formal system. However, the police did not move on the case and rumors circulated that the wealthy accused had paid off the courts and the police. In response, a local *kyai* and seven CSOs grouped together to stage massive protests at the court and police station. The seriously political pressure meant the case finally had its day in court and the rapist received a five-year jail term. One informant suggested that this politically active *kyai* become involved in this particularly case was because, given the accused was from a different *kabupaten*, it was bound to have a high political return in Pamekasan.

Similar constraints to women's behaviour exist with regard to divorce. A negative social stigma is often attached to women who initiate by the women, often carries a negative social stigma. One researcher from the local STAIN (State Islamic High School) in Pamekasan, who attended one of our FGDs, noted her quantitative research on the local Religious Court indicated that lower-class village women are far more likely to request divorce than urban and upper-class village women. Her explanation was that these women, who often work the land and provide a significant proportion of the household income, are less economically dependent on their husbands. This observation resulted in quick dismissal by the majority of (male urban) FGD participants. This phenomenon, they argued, was because these women were uneducated and did not understand their (proper) position within the family according to Islam.

The few women's NGOs active in Ponorogo city were only involved with urban women and seemed more interested in prayer groups etc. than getting involved in domestic violence and other contentious issues.

In sum then, women are prevented from achieving justice in cases of domestic violence, sexual assault and "social crimes" for three inter-related reasons: lack of options, economic dependence and negative social norms/stigma. Arguably, a dispute resolution intervention would need to tackle all three of these causes.

#### **Case Study 5: *Selingkuh* and Divorce in Sampung, Ponorogo**

Disputants: Rima and Alec had been married for a number of years and had two children when this dispute occurred. During their marriage Alec had regularly cheated on his wife, which Rima was aware of but had chosen to remain silent rather than disrupt her marriage, family and community. Rima is relatively economic independent and has two small businesses and owns a truck.

A few years ago Alec's mistress at the time became pregnant to Alec. Alec, as according to national governments interpretation and codification of Islamic law, requested permission from Rima to take a second wife. Rima refused and requested divorce, which in turn Alec refused. In response Rima started having an affair in front of her husband. According to Rima this new boyfriend of hers is only interested in her because of her financial resources, nevertheless she accepted him in what appears to have been act of defiance and retribution.



Rima and Wahyu ran away to Kalimantan where they lived with Wahyu's parents. After a short period of time a letter arrived from the hamlet head in Sampung informing her that Alec wanted a divorce. Rima returned to Sampung and meet with the hamlet head who counselled her not to divorce but to allow Alec to take a second wife. Rima, having previously requested a divorce herself, ignored this advice. Subsequently Rima submitted the divorce papers to the Religious Court in Ponorogo with some assistance from the hamlet head. The process was straight forward and the only delay was caused by Alec not showing up for the first two court hearings. The Court did not counsel the couple and the divorce was granted.

Rima returned to Kalimantan, this time staying for two years, although the relationship was turning sour. Rima was regularly the victim of domestic violence, particularly after Wahyu had been drinking and the time they were living in Kalimantan Rima largely provided their subsistence living expenses with her savings from Ponorogo. She never told Wahyu that she owned her own truck. Finally, in 2003 Rima requested they return to Sampung as she was pregnant. Her parents would still not accept her and she stayed at Wahyu's parents' house. The baby was born but she gave the child at birth to her sister to care for. Some weeks later Rima broke off relationship with Wahyu. She just recently married Mas Salim.

#### 5.4 Inter-village Disputes

Informal dispute resolution mechanisms often break down in cases involving disputants from different villages. In these disputes the number of actors, interests and norms is increased making for misunderstandings and complex negotiations over appropriate processes and outcomes. This is not to suggest that in East Java whole villages rise up against a neighbouring village, although to some extent this can, on a limited scale, occur. More often, however, it is simply more difficult for disputants from different villages, who have differing interests and affiliations, to agree to an appropriate actor.

Case Study 4: *A Street Fight* is an example of how a relatively straight forward case was complicated by different informal norms and practices. The inclusion of a *Barbinsa* officer (village level military officer) in one disputant's negotiation party was interpreted as an act of intimidation. Interviews with those from that group indicated that the use of a *Barbinsa* officer as a witness, although questionable since the end of the New Order, was still practiced and considered normal in their *kecamatan*.<sup>25</sup> This case also indicates the way village heads, particularly in Pamekasan, almost become "petty nationalists" in their approach to inter-village dispute resolution; arriving at the *musyawarah* as supporters or advocates of their villager rather than as neutral facilitators.

The Police are the only actors that often and relatively successfully function across villages, *kecamatan* and, as seen in Case Study 9: *Joget*, even *kabupaten*. The influence of the village head is tied to village boundaries and *kyai* influence is largely limited to their followers. There are numerous organisational affiliations that cross village boundaries,

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<sup>25</sup> They presented copies of other dispute agreements that had been witnessed by the same *Barbinsa* officer, Interview Pak Lurah, Mohammad and Raufik, Pamekasan, 19<sup>th</sup> February 2005.

such as *silati* membership, political party alliances, and *pesantren* affiliations. Thus if two members of, say, the same *silat* group but from different villagers or *kecamatan* become involved in a dispute they may be able to agree to an actor from their organization. However, organizational leaders are reluctant to become involved in just any dispute involving their members and generally do so only when it is clear that their organization as a whole is implicated.

### 5.5 Outside-community Disputes

One would assume larger disputes pitting the community against larger powers such as a local mine or corrupt government officials would end up in the courts. In contrast a number of cases demonstrate the communities use a number of ad hoc, informal and politicised methods to have these disputes addressed.<sup>26</sup>

The *Grosok* case (Case Study 2) indicates the village government is able to get the attention of the *kecamatan* government but that the step-up to the *kabupaten*, where real decision-making power resides, is more difficult. Generally, local governments have no established procedures for consulting with communities, prioritising concerns, and hearing demands. Conversely, the village government is reluctant to seriously challenge its superiors and that, ultimately, the community is left to rely on demonstrations and acts of civil disobedience, which in turn often result in further community frustration and division.

### 5.6 Police

In East Java the police play an important role in both informal and formal dispute resolution mechanisms. As mentioned earlier the police are the most accessible agents of the formal system and largely determine which disputes go on to the Courts. That said the majority of disputes that arrive at the police are resolved informally through mediation (see Section 4.1.6 above). When police work informally they generally cooperate with local community and organizations leaders (see Case Study 4: *A Street Fight* and Case Study 9: *Joget*).

An in-depth study of the police operations and practices in Ponorogo provides a number of findings relevant to this study.<sup>27</sup> The Ponorogo police have adopted a model of “discretionary policing” that gives them the flexibility to resolve disputes extra-judicially. They justify this, relatively successful practice, under the state-sanctioned model of community policing. Community policing is the model adopted and encouraged by the *Polri* (National Police Headquarters), however, in Ponorogo only 17 percent of staff have

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<sup>26</sup> See, also, the conflict case study between a village and the Forestry Department, Anggraini (2004).

<sup>27</sup> Baare (2004).

undergone what they claimed was low quality community policing training. In this context, then, police officers respond to disputes through a method of trial and error.

In the whole of Ponorogo there are only 14 police women out of a total of 700 police officers (2%). These 14 are stationed at the *Polres* (District Police Station) in Ponorogo city and thus there are no female police at the *kecamatan* level, that is at *Polsek* (Subdistrict Police Stations). More positively there is a RPK (Special Service Desk for women) in Ponorogo, however this is located in district capital city, reducing accessibility, and the field investigation indicated that the RPK was not functioning as designed and, if anything, did not actually exist.

In both Ponorogo and Pamekasan elements of the community felt that the police were inefficient in resolving incidents of petty crime and disorder, and thus these parts of the community were more likely to resort to *bajingan* or vigilantism (See Case Studies 6 and 7). That approximately 30 percent of the police's budget comes from "alternative sources" certainly provides an incentive for corrupt practices which can reduce their neutrality and legitimacy to intervene in the eyes of the community—in this sense "discretionary policing" takes on a whole new meaning. Further, that the police are embedded in state laws and norms makes it difficult to respond to "social crimes", such as *santet*. Despite their deficiencies the police, particularly when they worked together with community leaders, were able to help resolve a range of disputes.

Geographical issues of access still do exist. Imron Rasyid reports villagers living near the *kecamatan* capital city are more likely to report disputes to police than those living in outer villages.<sup>28</sup> Informants also indicated that class and levels of education of disputants will determine whether police are involved. Upper-class villagers are more likely to utilise the police whereas lower-class, read poorer, villagers are more likely to rely on community leaders. It seems the poorer lower classes were reluctant to utilise the police due to information gaps and economic reasons i.e. police services generally require some "petrol money". However, some informants also suggested that poorer-classes are relatively more concerned with consensus and the maintenance of social harmony. The corollaries being that the police are considered more disruptive, or disrupt certain class' interests, than community leaders.

#### 5.7 Social harmony/consensus: bias against the poor?

It is clear from the case studies that the maintenance of social harmony through decision-making by consensus is, although important, not an uncontested norm of dispute resolution in East Java. The obvious example is *carok* in Pamekasan where disputants

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<sup>28</sup> Imron Rasyid (2004), p. 3.

resolve their disputes through a fight to death, hardly a process of consensus (see Box 1). But even when disputants sit together and hold *musyawarah*, deliberations are often shot through with power imbalances and acts of intimidation. In Case Study 4: *A Street Fight*, one party brought a prepared letter of agreement to a *musyawarah* held to resolve a particularly dispute. This party also brought along *bajingan* and military officers in an attempt to intimidate the opposing party into signing the document (i.e. “consensus” is often forced upon weak parties). In the *Dang Lebar Land Dispute* (Case Study 3) the village head threatened to take the land away from both parties if they did not agree to his decision.

As mentioned above, village elites are more likely than poorer villagers to take disputes to the police, an action commonly seen as a disruption of social harmony or the breaking of a *de facto* norm of informal dispute resolution. The maintenance of social harmony is often based on self-interest, which for poorer villagers often translates into maintaining relations of dependence. This would seem to suggest, then, that village elites, who are generally less socially and economically dependent on others, are therefore less dependent on social harmony. More powerful disputants can manipulate the ideology of harmony, challenging it and deploying it as it suits their interests. Certainly, in cases where *musyawarah* were utilised, such as the *Grosok* (Case Study 2) and the *A Street Fight* (Case Study 4) cases, the result was often a continuation of the status quo in favour of the more powerful disputant.<sup>29</sup> A paper on conflict and empowerment, which draws on the conflict research team’s research in East Java as well as Flores, draws similar conclusions. Gibson and Woolcock write:

Lacking influence involves a vicious cycle: those unable to purposefully navigate in shared worlds of meaning-making are precisely *those who lack the opportunities for the kinds of conjecture, refutation, inquiry, and criticism, which might result in greater influence*. Said differently, marginalization is about lacking both the capability and the occasions on which *to engage in productive conflict*. With this debt, marginalized actors struggle to “get recognized” in these contexts and tend to oscillate between intense “loyalty” to core cultural values and “exit” from them, often manifest in violent protest or total apathy.<sup>30</sup>

## 5.8 Local Politics and Dispute Resolution

The extent to which an informal dispute resolution actor can oppose or justify local norms and practices is linked to local as well as national political discourses. This resonates with Moore’s classic essay on the “semi-autonomous social field”,

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<sup>29</sup> This also mimics the national governments (ideological) use of *musyawarah* to resolve compulsory state land acquisitions.

<sup>30</sup> Gibson and Woolcock (2005), p. 26.

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The approach proposed here is that the small field observable to an anthropologist be chosen and studied in terms of its semi-autonomy – the fact that it can generate rules and customs and symbols internally, but that it is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded.<sup>31</sup>

The absence of a “return to *adat*” movement in East Java makes it more difficult to justify local practice, whereas the strength of Islam, and the Islamic parties, in Pamekasan provides space not just for *kyai* as an actor but also for the application of Islamic norms in dispute resolution.

Similarly, Imron Rasyid argues that the proliferation of organisational affiliations, and their increasing politicisation at the local (*kabupaten*) level, has compromised community leaders ability to mediate disputes neutrally.<sup>32</sup> In short, community leaders are not third party, disinterested mediators. They see, and are increasingly seen, as local political actors and consequently are more strategic in when they intervene and evaluate disputants’ as well as the community’s general interests in specific disputes.

It’s difficult to determine the extent and the exact processes through which these political dynamics and discourses influence informal dispute resolution actors.<sup>33</sup> What is clear is that dispute resolution actors must carefully negotiate local norms and those with claims to universality, such as state and Islamic law. Further they, unlike the judges and even police chiefs who are regularly rotated, must live with their decisions. This suggests two consequences for (informal) dispute resolution: *one*, it is unlikely informal dispute resolution actors would be able to consistently implement a strong normative model of dispute resolution that does not have strong local legitimacy. Their decisions will, necessarily, be marked by negotiations of local norms and politics. This, arguably, has consequences for a “rule of law” ideology at the local level. *Two*, in East Java it is clear that local organizations and political dynamics can significantly, and potentially positively, influence the application of certain norms that inform local dispute resolution actors and processes.

## **6 Lessons for Future ADR Initiatives**

### 6.1 How *not* to outlaw a “social crime”?

The Brudin case study provides an example of how *not* to manage disputes over values. In East Java, particularly in Madura, the practice of *santet* (black magic) is widely considered a “social crime”. That said, the community’s feelings towards *santet* seem somewhat

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<sup>31</sup> Moore (1973), p. 720.

<sup>32</sup> Imron Rasyid (2004), ‘Security Sector’, p. 3.

<sup>33</sup> Bowen (2003) provides an excellent example of how national political dynamics and discourses affect the resolution of local inheritance disputes in the Gayo Highlands, Aceh.

contradictory and the majority of the community seems to simultaneously utilise and denounce *santet*. Because of this inconsistent relationship, and because the “crime” is notoriously difficult to prove, the state, including the police, are reluctant/unable to criminalize *santet*.

The police and military’s response to the community’s demand for justice was to forcefully impose the state’s non-criminal interpretation of *santet*. A village head recalls his frustration at being prevented from carrying out the desire of the community:

“The community reported [Brudin] to the Koramil [Military at the *Kecamatan* level]. That was still during the Suharto era in 1994. At that time, he was placed in protective custody overnight at Koramil, and then one week at the house of the Commander of the *Kecamatan* Military. I visited him twice when he was there. The first time I went to visit, I pretended to ask about Brudin’s condition, but I had actually gone there to let the Commander know what the community wanted, namely, for Brudin to be released and tried at the hands of the masses. I then told the community that the Commander prohibited it. Finally, I invited the community to come with me on the second visit so that they could hear what the Commander had to say for themselves. The community came because they wanted to kill Brudin at that time but the Commander was once again able to protect Brudin.”

That the police may have been less than partial in their application of *santet*’s non-criminal status only frustrated the community further. A villager explains his understanding or interpretation of the police’s actions to protect those accused of practicing *santet*:

“Usually if a *santet* case is reported to the police, the accused will only be detained for five to eight days. After that, if they have cash, they will be able to walk free. The community is fed up with this. They don’t believe in the police.”

What arose in this situation, then, is not a dialogue between the community and the state (as represented by the police) on the legal or values informing the clashing norms, rather, the police upheld one understanding with force. The final result was that the moment the security sector weakened following the fall of Suharto the community took its revenge.

“The community was not happy with Brudin for a long time, but they were also scared. The community wanted to kill him but they weren’t brave enough. It wasn’t until there was all the fuss and bustle about the reform era that they got their opportunity, and then they immediately murdered him.”

Almost all the VJA provincial reports identify “bad” practices or norms in informal dispute resolution. The most common criticism is the weak position of women and their interests in informal dispute resolution mechanisms. The Brudin case study, then, would seem to suggest that any attempt to change, or reconcile, informal norms through top-down enforcement of “good” norms and practices is only likely to cause frustrations, polarisation

and ultimately fail. Rather, a less positivist approach that focuses on dialogue and that allows communities to engage with the rationale behind rules or norms is more likely to have a long-term and sustainable impact.

**Case Comparison: Breakdowns in the formal and informal systems: two cases of vigilante justice**

These two case studies indicate how both the formal and informal dispute resolution mechanisms can fail. Both cases occurred at the height of the turbulent *reformasi* period. During this period the formal security sector was weakened and carried less legitimacy in the eyes of the community, thus, creating space for vigilante justice.

The mass vigilante response is common to both cases. However, the dispute types are very different. The first case is one of petty crime whereas the second case involves the widely practiced “social crime” *santet* (black magic). The first demonstrates a failure of the informal and formal system in a period of transition. The second is more complex. *Santet* is difficult to prove and therefore the police and military are reluctant to heed community demands for criminalization.

**Case Study 6: Even Agile Squirrels Fall, Let Alone Humans<sup>34</sup>**

One evening at about nine o'clock, four people on two motorbikes began passing backwards and forwards along the main road of the village, making people suspicious of their behavior. One of the four got off his bike (the accused thief) and started moving towards Pak Matnawi's house. Pak Matnawi's neighbour, however, was watching the thief's movements. Due to the general state of disorder there had been many burglaries in the village and many villagers would stay awake at night guarding their belongings. When the thief was about to enter Pak Matnawi's yard and steal the water pump from his well, the neighbour shouted out to Pak Matnawi that there was a thief in his yard. Realizing he was caught red-handed, the thief ran off without the water pump. The neighbour kept shouting and quickly residents gathered and chased after the thief.

The thief climbed a tree but eventually he was caught and butchered by the crowd chasing him. The following day the *kecamatan* police (*Polsek*) came but made no attempt to remove the body or investigate the murder. His body remained where he was killed, with members of the community standing watch to learn who would come to collect the body. After two days no family member or friend showed up, so the body was taken to the local hospital and later buried without ceremony. It was widely known, however, that the thief was from a village outside Pamekasan.

Subsequently, the village became frightened there would be a revenge attack. Two months later some men came to Pak Matnawi's house to order tiles from his building materials business. It turned out to be a trap. When Pak Matnawi's brother and two nephews delivered the tiles to a nearby town they were mobbed by *bajingan* hired by the thief's relatives. Two were killed and one escaped with serious injuries. One of the attackers was caught in the village where the attack occurred and immediately handed over to the *Polres*. This one attacker was later sentenced and jailed.

Pak Matnawi's family wanted revenge on those not caught by the police; a cycle of vengeance had begun. Fortunately, Kyai Mudazzir, who previously had been Pak Matnawi's *pesantren* (Islamic boarding school) teacher, convinced Pak Matnawi not to continue with vigilante killings.

<sup>34</sup> Summary based on a case study by Mohammad Said for the KDP and Community Conflict Study.

### Case Study 7: Brudin ‘the Razor Blade’ is Burnt Alive<sup>35</sup>

Brudin was well known amongst the community as a particularly powerful practitioner of *santet* (black magic). He lived in Palengaan Daja but people would come from other villages to pay for his services. It was said he could, for example, cure the blind, make someone fall in love, provide courage and good luck for those traveling abroad as TKI/TKW or fight off spells cast by other *dukun* (someone who practices *santet*). It was his source of livelihood and he would insist on payment for his services.

Although many in the community would use his services, there were many in the community who held a grudge against Brudin. Some had been the victims of his sorcery, albeit at the request of others, and some had lost land etc. as payment for his services. Twice in 1994, prior to the turbulent *reformasi* era, the community attempted to murder Brudin. However, the Commander of the local *Koramil* (Kecamatan level military unit) placed Brudin in protective custody and convinced the community to forget their demands for his murder.

In 2001 the fall of the Suharto regime resulted in the weakening of the security sector. The community felt empowered to take justice into their own hands. The community, determined to get rid of Brudin, invited *bajingan* from outside the village. The community collected “petrol money” for the *bajingan* and secured a contract of sorts. The village head, who holds a key position in resolving disputes, as well as other community leaders were consulted for their tacit approval. The village head of Palengaan Daja recalled,

“Before going ahead with the murder, Harus [a *bajingan*] stopped me on my way to Jakarta. He said that they wanted to kill Brudin. I didn’t condone it, but I did suggest that if they were to kill him, that they should not plunder his goods. I am in a difficult position, if I was to prohibit it, the community would insist, but if I were to condone it, I would be scared that I had sinned. If I was to prohibit it, I would be up against the masses. It could me who gets killed.”

Village Head

Some local *kyai* were also aware that the murder of Brudin was being planned. However, it seems they were not in the position to prevent the incident. Further, with regard to *santet* *kyai* are in a difficult normative position. That cannot be seen to condone *santet* by intervening to prevent his murder.

One night at 10pm Brudin was attacked by a group while he was sleeping in his room. He died from a sickle to his head. The mob feared he would use his powers to come back alive and so his body was doused in petrol and set alight. The next morning the village head returned to the scene with the *kabupaten* and *kecamatan* police, journalists, as well as two members from the *Koramil* that had previously protected Brudin. No one was ever charged with the murder.

One year later, in another but related incident, Brudin’s wife was accused of practicing *santet* and murdered by community sponsored *bajingan*.

## 6.2 Police and *Silat* cooperation

The *silat* case studies provide a snap shot of how the police, through cooperation with community leaders, began to exert influence over *silat* groups in Ponorogo. It provides an

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<sup>35</sup> Summary based on a Case study by Luthfi Ashari for the KDP and Community Conflict Study.



interesting contrast to how the police handled the Brudin case above. Imron Rasyid, who has conducted wider research, suggests that regular meetings between the police commanders and the *silat* leaders was crucial in order to legitimise the police in the eyes of the young *silat* members.<sup>36</sup> The Deputy Head of the district police stations also encouraged his officers to become members in order to anticipate rumours and tensions as well as understand their rationale.

This process of cooperation was, arguably, facilitated by political patronage of *silat* groups by local politicians. SH Terate, the largest group in Ponorogo has over 35,000 paying members. The former *Bupati* of Ponorogo, Mahkum, is said to have joined SH Terate in order to garner votes and grassroots support. Generally, however, this example of cooperation indicates the importance of engaging and cooperating with informal community leaders in order to strengthen and positively affect local dispute resolution.

**Comparative Cases : Controlling the Uncontrollable: Two cases of *silat***

**Case Study 8: Vigilantism: A House is vandalized at *Campusari* performance West of Sampung Market<sup>37</sup>**

An argument broke out at a *campusari* next to Sampung market in Ponorogo that involved young members from the two rival *silat* groups: SH Terate and SH Winongo. The various hamlets of Sampung village are divided in their support for Terate or Winongo. Some drunken youths from SH Terate raided drinks from a stall and they were subsequently admonished by the owner. Offended the youths gathered and started hurling things at the house belonging to the villager who admonished them. According to some reports, some 200 youths were involved in the vandalism.

Various informants indicated that there was no point calling in the police, arguing that it was simply beyond their capacity to control; others, more negatively, felt the police themselves were drunkards and were thus, implicitly, contributing to such situations.

Quickly one community member, whose house was next to the one being vandalized, called upon the Ponorogo leader of SH Terate, Pak Sutrisno. Sutrisno lives nearby but in another part of Sampung village. Recalling a personal favour, the local whose house was at risk convinced Pak Sutrisno to come to the market and break up the unruly youth. Given Sutrisno's position as leader of SH Terate in Ponorogo he was able to convince the youth to disband. Interestingly, it seems Sutrisno only intervened to return a favour. He stated his belief that it is the police's role to control unruly youth and that their membership of SH Terate, although certainly emboldening its members, is not responsible for such events.

**Case Study 9: *Joget*: It's Blissful but can Provoke Fury<sup>38</sup>**

At a *campursari* (music and dance) performance in *kabupaten* Wonogiri (Central Java) SH Terate youth from Purwantaro (Wonogiri) beat-up a group of jujitsu youth from Biting village (Ponorogo, East Java). Threats emerged from Biting village that they would take their revenge on the SH Terate members from the neighbouring *kabupaten*. In response the SH Terate members planned an attack on Biting village.

<sup>36</sup> Imron Rasyid (2004).

<sup>37</sup> Summary of a case study by Imron Rasyid for the KDP and Community Conflict Study.

<sup>38</sup> Summary of a case study by Imron Rasyid for the KDP and Community Conflict Study.

SH Terate members starting gathering at the border between the two *kabupaten*. Police sensing something was about to blow-up called in reinforcements from both *kabupaten* police stations. Rather than just physically separate the two groups and enforce security the police also invited leaders from both quarrelling communities, that is, *kecamatan* Purwantro and Badegan, into a dialogue at the border. The police requested that the community and *silat* leaders calm and control their respective members. They also informed the community leaders that the police would need to take firm action and several days later the police arrested those SH Terate members that had earlier beaten the jujitsu youth from Badegan.

### 6.3 Women Policing

As mentioned above, the police play an important role in informal dispute resolution. They are also the primary agents of the formal (court) system outside the *kabupaten* city. The police provide an alternative method of redress if informal village-level mechanisms fail. Further, as argued above, if a realistic police option exists one's bargaining position in informal negotiations is likely to be improved. In East Java informal dispute processing is flexible and it seems likely that local leaders would adapt to changing (women's) demands for justice rather than see their position be continuously undermined by police services. Therefore, that all women do not have easy access to this alternative option significantly decreases their chance of having their case taken seriously by male dominated informal mechanisms.

Theoretically the *kabupaten* based *Polres* has a RPK women's desk, however, our research indicated that it was not functioning effectively, if at all. Further, although the *Polres* are relatively accessible in East Java, geographical distances, and the informational gaps this creates, still exist. Hidden away at the back of *Polres* station, it is unlikely to facilitate women's access to police services.

However, as discussed in section 6.1, being "protected" by the police or state apparatus and going against the village "norms" is not an ideal position. Not only is it seen as disruptive but it can damage community, or more commonly, male pride. This suggests police, and the RPK, need to cooperate with respected female community leaders, and some male leaders such as local *kyai*, so as to ensure the local RPK has local legitimacy and support.

### 6.4 Civil Society Organizations: Providing Options and Influencing Community Norms

A number of CSOs have begun working *around* informal dispute resolution issues. They work by contributing to the social context and discourse in which informal dispute resolution mechanisms operate. As seen in Case Example 2 some NGOs are involved in opening options and providing moral support in a limited number of cases involving women. They are often value driven, commonly Islamic, and are more inclined to work with, and support, the village "middle-class" rather than the poor.

## 6.5 Court Mediation Annex

Our discussions with one judge at the Surabaya State Court indicated that the mediation service was underutilized and that since its inception at the beginning of 2004 had not been able to resolve one case. All cases that attempted mediation went to court.

This finding, which is very similar to the mediation annex pilot in Batu Sangkar (West Sumatra), suggests that alternative dispute resolution mechanisms are more appropriately located outside the courtroom. If a dispute does arrive at the courthouse it has invariably passed through (and not been resolved by) a variety of alternative and conciliatory-type informal processes. That said, if a mediation service is properly socialised (as it stands, not even all the judges in the Ponorogo District Court, let alone the majority of villagers, were aware of the mediation service), made accessible and provides legitimate non-judges as mediators, then it is possible that the community will think of it as a realistic option. Trained mediators are likely to be, and become as time progresses, highly skilled in mediating and resolving local disputes.

## 7 Recommendations

### 7.1 A Village Dispute Resolution Body?

A variety of dispute resolution actors, rather than mechanisms, are available for dispute resolution in East Java. These actors are more accessible to some than others. Women and the poor often find it difficult to find an actor that can uphold their interests and rights. Further, there is some difficulty in ensuring continuity of decisions. Once a village head, for example, is no longer in power it is possible that the disputes he resolved, particularly those involving long-term assets or interests, will unravel. A village dispute resolution body where women, the poor, ethnic minorities and other marginal groups are represented would provide a clear and accessible forum for resolving disputes and upholding decisions.

Some informants did express concern with mandating that village disputes are resolved in a centralised dispute resolution body. Their main concern was that the current flexibility to seek justice where one's interests are best represented would be lost and that the centralised body would only empower village government elite. Similarly, the analysis in section 6.1 suggests that legislating, or insisting on particularly norms, and indeed processes, without providing individual choice runs the risk of becoming illegitimate and seriously back-firing. These concerns could be addressed in a number of ways:

- Ensure a clear process of appeal.
- Introduce a panel-like dispute resolution body; consider mandated women representation.
- Allow disputants to select which panel members will mediate/adjudicate their dispute.

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- Consider adopting a secret ballot system of establishing panel members.
  - Ensure the body is widely socialised.
  - Involve community leaders such as *kyai* and other respected leaders.

## 7.2 Multi-actor Dispute Resolution

Often disputes are unresolved because an actor biased towards one party. This is most common in inter-village disputes where village heads often act advocates rather than facilitators. Diprose recommends:

Include both sides of disputants and their leadership in meetings seeking to resolve problems and use more than one facilitator of these meetings (if then one facilitator is seen to be biased, there is greater chance that this will be neutralized by the other facilitator, this is why a group of *Kyai* or government representatives are most successful at resolving disputes).<sup>39</sup>

## 7.3 Women Policing

Improve women's access to police services and ensure police services are relevant to women's needs. There are number of actions that could be taken:

- Increase the number of women police. More specifically increase the number of women police based at the *kecamatans*.
- Pilot police and women *posko*, desks or support groups at the *kecamatan* police stations (*polsek*).
- Ensure the community is involved in the *posko's* so as to ensure community cooperation and acceptance.
- Encourage women's NGOs to work with the *posko* in order to provide support services.

## 7.4 Strengthen Women's Rights Discourses

Encourage and strengthen the capacity of women's NGOs, and other groups working *around* dispute resolution, to lobby and engage community actors in order to create a political context where community leaders, including men and women, are encouraged to address and adapt their norms and processes to the needs and interests of women.

## 7.5 Inter-village Forums

Inter-village disputes are often the most difficult to resolve. The establishment of "inter-village forums" would go some way to increasing cooperation amongst villagers and strengthening inter-village "meta-rules". One possibility is to develop co-operation and strengthen inter-village decision-making through development projects. KDP, the World Bank/Government Of Indonesia's large-scale community-driven development project, provides for some inter-village dialogue, however, it is not sustained and often only

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<sup>39</sup> Diprose (2005), p. 130.

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involves small numbers of villagers. SPADA (Support for Poor and Disadvantaged), a new World Bank funded community driven project, envisages villages will apply for multi-village grants, requiring larger numbers of villagers to work with each other and the various village governments over a sustained period of time.

#### 7.6 Administration Tribunal

Currently there are no clear processes or pathways for addressing administration disputes that arise between local (village and *kecamatan*) and *kabupaten* government. As Indonesia's decentralization deepens the number of these disputes is likely to increase. These disputes, as well as reducing the efficiency and quality of government service delivery, often have wider impacts on community relations (see Case Study 2: *Grosok*).

The establishment of a dedicated administrative dispute tribunal could:

- Create a clear and accessible pathway for these disputes to be resolved
- Facilitate the accumulation of expertise on administrative issues
- Ensure a response from the *kabupaten* government, which is often where action is required
- Be linked to the District Court so as to facilitate monitoring of the tribunal
- Ensure faster and fairer decision-making by flattening the power imbalances often present in the *musyawarah* process of resolving hierarchal administrative disputes.

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## 9 Appendix I: List of Ponorogo Informants

No.	Date of interview	Name	Institutions	Positions	Phone number/ address
1.	Feb 12, 2005, 1.30 pm	Budi	Radarmadiun Biro Ponorogo	Chief of Biro Ponorogo	Jl. Thamrin 33 Ponorogo HP: 08125974186
2.	Feb 12, 2005, 4 pm	Aries Isnandar	YLBHI		Jl. Pramuka 112A Ponorogo Phone: 0352-486 961
3.	Feb 13, 2005, 7.15 am	Sukarni	Bagian Hukum Pemda Ponorogo	Kepala Bagian	Jl. Tentrem Desa Balong, Kec. Balong HP: 0813 357 00724
4.	Feb 13, 2005, 9.15 am	Sutrisno	SH Terate	Pengurus Cabang Ponorogo	Dusun Ngunut, Desa Sampung, Kec. Sampung HP: 0812 348 2923
5.	Feb 13, 2005, 10 am	Dwi Pertiwi	Masyarakat	Tokoh perempuan dan	Dusun Sampung Lor Desa Sampung, Kec. Sampung
		Sulistiyanto		Staf kecamatan Sampung	
		Rima		Korban dan pelaku perselingkuhan	
6.	Feb 13, 2005, 3 pm	Ibu dan Bapak Azis	Masyarakat	Tokoh agama	Dusun Sampung Kidul, Desa Sampung, Kec. Sampung
7.	Feb 14, 2005, 9.20 am	Mahmudi	Pengadilan Agama	Wakil Ketua	Jl. Juanda
8.	Feb 14, 2005, 10.20 am	Komari	Pengadilan Negeri	Ketua	Jl. Juanda 23 Telp. 0352-481645
		Sartono		Wakil ketua	
		Sudarsono		Panitera	
		Erna		Panitera	
9.	Feb 14, 2005, 1.30 pm	I Wayan Sukena	Kepolisian Resort (Polres)	Wakil Kepala	
		Aris		Kasatreskrim	
10.	Feb 14, 2005, 4 pm	Fajar Pramono	ISID (Institut Studi Islam Darussalam) Gontor	Staf pengajar	HP: 0812 324 9764
11.	Feb 14, 2005, 8 pm	Binti Maisaroh	Yayasan Muslimah Melati	Ketua	