

Measuring the influence of dynastic politics in the MK Decision Number 90/PPU-XXI/2023 on democracy

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Abstract

Purpose: This research reviews the meaning of the influence of dynastic politics after the issuance of the Constitutional Court's decision Number 90/PUU-XXI/2023 on the upcoming 2024 elections because it is related to the application of democracy in Indonesia.

Method: This research was conducted using descriptive research methods using a qualitative approach.

Results: The results of this study indicate that there is an inequality in the distribution of political power ahead of the 2024 elections especially the presidential and vice presidential elections after the Constitutional Court granted the case lawsuit with number 90/PUU-XXI/2023 related to the minimum age of the presidential and vice presidential candidates in Law Number 7 of 2017 about elections. This decision was suspected of the results of the dynastic political games from the parties involved so that they could reflect imperfections in the representation of democracy in politics. With the existence of a political dynasty, the pillar of democracy is in a big threat. Dynastic politics resulted in social mobilisation, because power was only associated with certain groups of people.

Limitations: This study uses fairly short time-series data, so that the addition of a longer time-series will of course give better results.

Contributions: Improvements in democracy in Indonesia should also strengthen democratic norms that apply in society. The 2024 election, it is expected to be carried out by people who use their democratic rights well in choosing the head of state for the achievement of the ideals of the state and democracy.

Keywords: *Dynasty Politics, Democracy, Constitutional Court Decision*

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1. Introduction

In the context of the rule of law, through the 1945 Constitution of the Republic of Indonesia, national legal politics has determined that Indonesia is a state of law (Indonesia, 1945). In his book entitled "A State of Law That Makes Its People Happy", Rahardjo (2009) states that the state is a structure that is not only legal, political, and social but also cultural in nature. Therefore, we can observe the cultural characteristics of a country and display its culture. Indonesia has a view as a state of law with distinctive characteristics, namely the Pancasila state of law. In this case, the concept adopted by the Indonesian state of law since the proclamation of independence until today is not the concept of rechtsstaat or rule of law. Instead, the concept of the rule of law in Indonesia is the concept contained in the articles of the 1945 Constitution of the Republic of Indonesia. This concept creates a new idea of the rule of law, which is derived from the views and philosophy of Indonesia's noble life, namely

the Pancasila state of law where the Pancasila state of law is a state of law built on the principles of Pancasila. The spirit to place the law as the spearhead of legal reform, aims for the law to take its role as the commander of democratic reform that focuses on limiting power to prevent absolutism that leads to "*onregmatigedaad*" and even results in the act of "*ongrondwetting*" (contrary to the basic law) (Likadja, 2015).

Democracy is a system used, including in Indonesia, that prioritizes the sovereignty of the people, which is known as the principle of popular sovereignty. There are 4 types of democratic political systems, namely (Nairobi, Santi, & Afif, 2021):

1. Direct democracy: where citizens have the opportunity to be directly involved in decision-making and make consensus;
2. Representative Democracy in which citizens appoint or elect their representatives and provide instructions for decision-making or consensus;
3. Democracy of trust, namely that community members give trust to appointed representatives in taking trust or making consensus in consultation with those who are also appointed as representatives of the community;
4. Grassroots democracy, which is a direct democratic process as a guide for appointed people's representatives.

Based on social contract theory, fulfilling the rights of every human being cannot be achieved by each person individually, but must be achieved together. The Indonesian Constitution gives freedom to citizens to participate in local and national political contestation. The "political" state, first of all, required that people abandon the idea that equality before the law is the necessary and sufficient condition for the freedom of individuals. It supposed, contrary to the principle of impartiality, an active intervention by the public authorities to strengthen the position of the weakest and limit, utilizing new rights (political or "positive" rights to health, education, housing, etc.), the pressures that increasingly concentrated property could put them under (Khan, 2021). The reform era has given the people the democratic right to judge the candidates for leaders to manage their public affairs. An example of people's participation is participating in government through general elections.

One of the growing leadership issues in politics is dynastic politics where leadership is hereditary within close family circles. This raises concerns about inequality in the distribution of political powers so that it can reflect imperfections in the representation of democracy in politics, which is called power begets power. Dynastic politics can lead to corrupt behavior because it accommodates the exercise of political power only by a group of people related to the family.

The phenomenon of political dynasties occurred in Indonesia ahead of the 2024 elections, especially the presidential and vice-presidential elections after the Constitutional Court granted a lawsuit with Case Number 90/PUU-XXI/2023 related to the minimum age of presidential and vice-presidential candidates in Law Number 7 of 2017 concerning Elections, on 16 October 2023. The court allowed a person who is not yet 40 years old to run for president or vice president as long as they have experience in regional or other positions elected through general elections.

What became the public's attention from this decision was that President Joko Widodo's family, namely his eldest son Gibran Rakabuming Raka, who has not yet reached the age of 40, was nominated as a vice presidential candidate alongside Prabowo Subianto. This nomination was made after the decision of the Constitutional Court Number 90/PUU-XXI/2023 by the Chief Justice of the Constitutional Court, Anwar Usman. Anwar Usman himself is married to President Joko Widodo's sister. This successfully complements the political power of the Joko Widodo family.

The Kompas Research and Development survey showed that 60.7% of respondents said that the advancement of Solo mayor Gibran Rakabuming Raka to the 2024 presidential election was a form of dynastic politics because it tended to prioritize family politics over the interests of the community. Meanwhile, another 24.7% said it was not a form of dynastic politics and 14.6% of respondents said they did not know (Ulya & Meiliana, 2023).

The image of dynastic politics is seen as negative because it results in power deviation which results in the practice of corruption, collusion and nepotism. This results in people becoming apathetic and tending not to determine political attitudes in terms of choosing credible leaders who have important and strategic positions in government.

Based on the descriptions above, the author is interested in discussing dynastic politics ahead of the 2024 elections after the decision of the Constitutional Court Number 90/PPU-XXI/2023.

2. Literature review

2.1 *Dynasty Politics*

Dynastic politics is the process by which oligarchs process the mobilization of power regeneration to achieve or perpetuate power. The power remains in their hands by passing on the power they already have to others who are related to the previous power holder. In a political institution, those who are still closely related to the family are often privileged to occupy various important positions at the top of the organization's institutional hierarchy. This shows that close relatives or family members are used as a tool as a supporting factor for the creation of a strong and long-lasting power.

According to Mosca (Heryanto, 2019), the emergence of political dynasties is caused by the tendency of political elites to pass on their positions of political power to the next generation or below them. This process of inheriting political power occurs by open political positions. In another context (Heryanto, 2019) explains that dynastic politics can continue to develop or stop depending on the actions of the next generation.

Some of the opinions above show that dynastic politics in Indonesia illustrates that by carrying the big names of family figures, the political networks that have been built by members of political dynasties show political contestation within the family as clear evidence that the family has political power and ability in their own country.

Political dynasties in Indonesia are carried out in two ways, namely by design and by accident. Political dynasties by design have been formed for a long time. In terms of relations, the families network in the government has been strong, so that relatives who enter the government or enter political contestation have been arranged in such a way as to engineer the success of their goals. Dynastic politics by accident occurs in situations of government succession that suddenly nominate relatives to replace them in order to maintain informal power over their successors if they win in political contestation.

2.2 *The theory of the rule of law*

The rule of law consists of two syllables: state and law. The state is assumed to be a diplomatic form of a real entity, namely a society that has laws to maintain order. Meanwhile, law is understood as a product of a state that aims to maintain legal order. The term state of law is a translation of the term "*rechtsstaat*". Another term used in Indonesian law is the rule of law, which is also used to mean "state of law". The term *Rechtsstaat* is the fruit of thought to oppose absolutism, which is revolutionary in nature and rests on the continental legal system called civil law. In contrast, the rule of law developed evolutionarily, based on the common law system. However, the difference between the two is now no longer disputed, as it leads to the same goal, namely the protection of human rights.

In modern times, the concept of the rule of law in Continental Europe was developed by Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others using the German term "*rechtsstaat*". Whereas in the Anglo-American tradition, the concept of State

The Rule of Law was developed through the pioneering work of the A.V. Dicey. According to Stahl, the rule of law includes four important elements.

1. Protection of human rights.
2. Power sharing.
3. Government by law.
4. Administrative justice.

Ashiddiqie formulated the existence of 13 main principles of the Rule of Law (Rechtsstaat) that apply today. The 13 main principles are the main pillars that support the standing of a modern state so that it can be called a State of Law (The Rule of Law, or Rechtsstaat) in the true sense, namely (Asshiddiqie, 2006): Supremacy of Law.

1. Equality before law
2. Principles of Legality (Due Process of Law).
3. Limitation of Power.
4. Independent mixed organ
5. Free and Impartial Judiciary.
6. State Administrative Court.
7. Constitutional Court.
8. Protection of Human Rights.
9. Democratic (Demokratische Rechtsstaat).
10. Functioning as a means of realizing the goals of the state (welfare rechtsstaat).
11. Transparency and Social Control.
12. Believe in One True God.

2.3 Theories of popular sovereignty and state power

Popular sovereignty contains two basic notions: first, democracy as it relates to the system of government, in the sense of how to involve the people in governance; and second, democracy as a principle that is subject to the cultural and historical values of a national community. However, the issue of sovereignty revolves around the meaning of the word state'. It has been said that a state is not a politically organized assembly of individuals. As David Hume explained, power is always vested in the governed, which, if taken away from people with ruthless thinking, will lead to revolutions to overthrow the government (Strong, 1960).

In modern democratic government systems in the world today, a power-sharing system is generally implemented, which divides or separates powers into three branches: executive, legislative, and judicial powers. This division of power aims to create a strong *check and balance* mechanism so that, in the policy-making process, including in relation to the judiciary as the enforcer of the law, the judiciary will be able to fulfil its duties.

The law is not trapped or distorted by pragmatic political interests that prioritize short-term groups, organizations, or individual interests and needs. In this context, the scope of the power of state institutions can be limited by law. If authority and power are not limited by constitutional norms, it is certain that the power held by the ruler, even if it is born from a democratic political process, does not rule out the possibility that in practice, it tends to be manipulative, one of which is the birth of dynastic politics. With the division and separation of powers, decision-making practices can be controlled and supervised by the community.

Sovereignty is never transferred to or held by anyone including state institutions or other parties. State institutions, whatever their name is, are only the executors of people's sovereignty and are always under the supervision of the people. Therefore, any decision to be issued or made by state institutions should reflect the wishes and expectations of sovereign people, whose principles are outlined in the 1945 Constitution.

3 Methodology

This study uses a qualitative descriptive method. This research essentially provides a view of the search for facts with the correct interpretation of the phenomenon under study. This study also used normative research supported by statutory and conceptual approaches. Normative research makes a literature search as the basis for the problem under study by referring to the legal norms contained in applicable laws and regulations in Indonesia and using other legal materials. This research is a literature review that traces legal products, journals, articles, and surveys related to dynastic politics and democracy ahead of the 2024 elections.

4. Result and Discussion

4.1 *Background of the Constitutional Court Decision Number 90/PPU-XXI/2023*

On Monday, October 16, 2023, the Constitutional Court (MK) read 11 decisions on judicial review. Some of the decisions were related to testing the constitutionality of the provisions of Article 169 letter q. of Law 7/2017 on elections, which provides an age limit of 40 years for presidential and vice-presidential candidates. Law 7/2017 on Elections, which provides an age limit of 40 years for presidential and vice presidential candidates. One of them is Case No. 29/PUU-XXI/2023, submitted by applicants PSI et al. In this petition, the petitioners requested that the age requirement be returned to 35 years, as stipulated in the previous Presidential Election Law. Petitioners argued that the provisions of Article 169 letter q. are discriminatory, unscientific, and contrary to the original intent of the 1945 Constitution. Additionally, there was a petition from the Garuda Party in Case No. 51/PUU-XXI/2023 which argues for the same reason. In this application, the Applicant requested an additional alternative requirement, namely "having been a state organizer" to be able to circumvent the minimum age limit of 40 years. All were rejected by the Constitutional Court. However, what caused a stir was Decision No. 90/PUU-XXI/2023. A case that requested the 40-year age requirement for presidential and vice presidential candidates can be ruled out if they have served as regional heads. The Court gratuitously and inconsistently granted the petition.

Before deciding on petition No.90/PUU-XXI/2023, the Constitutional Court emphasized that the age limit for presidential and vice presidential candidates is an open legal policy. The Constitutional Court cited several previous decisions regarding the provision of age requirements in public offices. In several of these decisions, the Constitutional Court stated that the 1945 Constitution provides legislators with discretion to determine the minimum age limit requirements in the laws that regulate them. However, on the same day, the court immediately changed its stance. This can be observed in cases No. 90/PUU-XXI/2023, where the applicant requested an additional alternative requirement, namely "has / is currently holding an office elected through elections, including Pilkada".

The applicant's legal standing was very weak, but it was granted by the Constitutional Court. The applicant, who is a student, only relied on the applicant's desire to become president and was inspired by the Mayor of Solo, Gibran Rakabuming. The applicant's legal standing statement is also only contained in 3 pages. The Applicant did not clearly explain the constitutional losses. The basis of the loss is only based on the applicant's admiration for Gibran Rakabuming as the Mayor of Solo, who cannot become a presidential candidate due to the enactment of the provisions of Article 169 letter q. of the Election Law. Election Law. This argument certainly has no direct relationship with applicants. If this petition is filed by Gibran, constitutional loss is clear because it is directly experienced as a petitioner. The explanation of constitutional loss also does not touch on alternative requirements related to elected officials or elected officials proposed by the applicant. This means that the loss is not connected to the petition and the reason for the petition; therefore, the legal standing is weak. However, the Constitutional Court, which is usually strict in examining legal standing, seemed to soften it by accepting the applicant's legal standing. The applicant was not old enough to be a candidate regional head. He was neither a regional head nor a member of the legislature nor a candidate. However, the Constitutional Court easily gave him a free pass to fulfil the requirements of becoming an applicant. What is a shameful consideration and insult to common sense? (Perludem, 2023).

Several parties also reported alleged violations of the Code of Ethics by constitutional judges related to this decision. In this decision, the Constitutional Court should prioritize the judicial restraint approach because the article tested in the decision is included in the open legal policy norm.

4.2 *Dynastic Politics after Constitutional Court Decision Number 90/PPU-XXI/2023 with a democratic state*

The issue of political dynasties surfaced after Gibran Rakabuming Raka was entitled to run as a presidential and vice-presidential candidate following a Constitutional Court (MK) ruling that changed the requirements for presidential and vice-presidential candidacy. The Constitutional Court, chaired by Gibran's uncle Anwar Usman, stated that a person who is not yet 40 years old can run as a presidential or vice presidential candidate, as long as they have experience as a regional head or other position

elected through elections. Shortly after, Gibran was announced as the vice-presidential candidate to accompany Prabowo Subianto, who was carried by the Advanced Indonesia Coalition (KIM). The KIM itself is a line of political parties that are mostly supporters of Jokowi's government. The KIM comprises the Gerindra Party, Golkar, PAN, Democratic Party, Moon Star Party, Gelora Party, Garuda Party, and Prima.

To prevent conflict and overlap between the levels of government, it is necessary to emphasize the roles, authority, and jurisdiction of each level. Hence, it is clear that a written constitution plays an essential role in the federal government system. The existence of judicial institutions to interpret the constitution, which must be an independent body, sound interpretation, equitable resolution of disputes, and conflict among other government arms, are important features in addition to the constitution's supremacy (Adedeji, 2022). The Constitutional Court, in carrying out its duties, is given the authority to test laws against the constitution, which is *judicial review*, which is the authority of the Constitutional Court so that all legal products must be in accordance with the constitution and there are no more legal provisions that are out of the corridors of the constitution. In this case, the Constitutional Court does not have the authority to determine the age limit for presidential and vice presidential candidates in Election Law. This is the domain of legislators, namely, the DPR and the president. Unfortunately, a simple and open legal policy was implemented and created a political burden for the court to decide. The Court should carry out its function to resolve disputes, provide fair legal certainty, provide constitutional solutions, and resolve differences in interpretation by providing a final interpretation based on the constitution.

The Constitutional Court Decision Number 90/PPU-XXI/2023 cannot be separated from the political context because this decision is related to the registration deadline for presidential and vice-presidential candidates. So that the analysis favors Gibran as the son of President Jokowi, so it is feared that the view will emerge that this is one of the president's agendas to pass Gibran as a vice presidential candidate. Moreover, the position of the Chief Justice of the Constitutional Court has a family relationship with the president because judges cannot be related to the case being handled. Anwar Usman, who was not present in several Constitutional Court decisions, suddenly participated in deciding cases number 90 and 91, even though this case had a huge potential conflict of interest, because his nephew's name was mentioned in the application. Public opinion in this case considers the existence of dynastic politics. This decision provides a red carpet for the president's son to become a presidential or vice presidential candidate.

According to the Constitutional Court, Decision no. 90/PUU-XXI/2023, if there are no strong restrictions on power, there will be acts of arbitrariness by the authorities that may remove people's rights and human rights freedoms. This is necessary to fulfil the principle of checks and balances to lead to the principle of good governance, with the aim of establishing the principles of a democratic state. In addition, the claim that the maximum age of presidential and vice-presidential candidates violates the constitution states that all citizens have the right to equal opportunities in government, as stated in Article 28D paragraph 3 of the 1945 Constitution of the Republic of Indonesia. Every human right and there are restrictions in Article 28 J Paragraph 2 of the 1945 Constitution unless it fulfils the requirements specified in the constitution, laws, and KPU regulations.

The effect of Constitutional Court Decision Number 90/PUU-XXI/2023 in the implementation of the upcoming 2024 General Election if there is a conflict of interest will result in various problems, including causing unequal competition in elections, which can affect the accountability of organizing elections, lead to dynastic politics, and finally lead to political corruption (Dewi, 2021).

This political dynasty practice indicates that there were problems in the political recruitment process. The main filter to attract qualified candidates and cadres to be included in political contestation is the main task of political parties. The study of the political recruitment process is important because if recruitment is not good, it will also have a negative impact on political parties that will actually give birth to political dynasties.

The practice of political dynasties. The tendency to form political dynasties also has an unhealthy impact on democracy, as the checks and balances of government that are necessary in a democracy are weakened. In addition, this process will further open opportunities for there-establishment of political oligarchies.

Political Dynasty will also continue to occur if the rules or laws governing a democratic system do not change. Due to its inclusive and closed nature, it is very difficult for a political dynasty to find a mistake. It is very difficult to uncover practices of abuse of power in a closed group of people because each individual tries to protect each other. At first glance, there is nothing wrong with the dynastic politics. In particular, when referring to the postulates of democracy, every citizen has the same right to be elected and vote. However, it cannot be denied that the political dynasties developed thus far have harmed the essence of democracy. Democracy is characterized by at least three characteristics. The first is the trias politica-style division of power, namely the executive, judiciary, and executive. This was intended to create a process of checks and balances between government institutions. Second, democracy is characterized by an open succession of leadership through fair, honest, and open elections. Third, the people are holders of sovereignty, not the government, let alone politicians. With the rise of political dynasties, the three pillars of democracy are under a great threat. The system of checks and balances will certainly not be effective when all lines are controlled by relatives. Meetings or sessions that are supposed to determine the lives of many people are similar to family gatherings.

Democracy is strongly influenced by the level of community participation because it is a manifestation of people's basic right to be involved directly or through their representatives in a political process. In addition, open and secure political space is needed for all communities to participate (Stefanus, 2021). It embodies empowering citizens involved in government processes, monitoring resources, and resolute activities for a direct impact on government decisions. In this review, citizen participation appears to be associated with citizen empowerment as a fundamental right of the people, as well as impetuous joint commitment in development processes (Mwesigwa, 2021).

To ensure that the concept of democracy from, by, and for the people is truly implemented and realized through the structuring of the system and the quality of the election organizer, there are several important elements that need to be considered. Among them is the implementation of fair and democratic elections that fulfil several conditions, such as the involvement of political parties, the role of election organizers, and the enforcement of a code of ethics. Additionally, there are five conditions for realizing elections with integrity: transparency, accountability, professionalism, impartiality, and independence. Issues related to money politics and illegal campaign funds must also be addressed to strengthen the basic principles of elections. Although political dynasties do not violate the rules of democracy, in practice, they resist social mobilization, as power is only associated with certain groups of people (Haryanti, 2019).

5. Conclusion

5.1 Conclusion

After the discussion in this research, the following conclusions can be drawn: Dynastic politics is a phenomenon that still occurs in Indonesia and is a big agenda that must be changed so that ethics in politics are truly visible from a democratic perspective. The phenomenon of dynastic politics, which is thick with elements of kinship, has implications for the dynamics of political parties in Indonesia. The Constitutional Court Decision Number 90/PUU-XXI/2023, involving the conflict of interest of President Joko Widodo's family, has led the public to argue that dynastic politics have occurred. However, the choice is to the people themselves to choose the head of the state according to their rights. If dynastic politics continue to grow in the Indonesian government environment, it will be difficult to realize the noble ideals of the system in Indonesia, because it is contrary to the principles of democracy.

5.2 Advice

Following the Constitutional Court's decision ahead of the 2024 elections and efforts to uphold democracy in Indonesia to eradicate dynastic politics, several suggestions are given, including:

First, we encourage the role of political parties so that there is an awareness from political parties not to support candidates for the head of state who lead to dynastic politics. Consequently, political parties must be more selective in bringing up candidates to the head of the state.

Second, providing awareness and political education to the community as prospective voters, where they must be given political education that candidates for heads of state representatives who have the potential to build dynastic politics should not be elected, because not only do they ignore democratic values, but also have the potential to be abused. Therefore, in this context, the social movements carried out by civil society forces must be directed.

Third, the role of mass media is also very important in providing more objective and rational information about the dangers of dynastic politics in our democratic system.

Fourth, for the Constitutional Court, as an independent institution, to carry out its duties by maintaining the integrity, code of ethics, and behavior of constitutional judges as a moral and ethical guide for judges in carrying out their constitutional duties and relationships in society.

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