

THE PHENOMENON OF POLITICAL DYNASTIES: A COMPREHENSIVE ANALYSIS FROM CONSTITUTIONAL LAW, LEGAL PHILOSOPHY, AND COMPARATIVE PERSPECTIVES

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ABSTRACT

Since the general elections for the regions in 2004 based on Law Number 32 of 2004, in Indonesia there have been many practices of political dynasties caused by weak regulations so that political dynasties need to be weakened through the function of legal control resulting in acts of collusion, corruption and nepotism. The term "political dynasty" was coined after Decision of The Supreme Court of the Republic of Indonesia Number 33/PUU-XII/2015 Regarding Review of Law Number 8 of 2015. The method used in this research is empirical juridical method. Research data was collected through data collection techniques such as library research and observation. The study results show that the practice of political dynasties in Indonesia has increased. Although the Indonesian state has regulated political dynasties so that they do not develop as stated in Article 7 letter r of Law Number 8 of 2015. However, through Decision of The Supreme Court of the Republic of Indonesia Number 33/PUU-XIII/2015, the regulations contained in Article 7 letter r of the Law -Law Number 8 of 2015 has been canceled and declared contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force.

KEY WORD: Dynastic politics, state administrative law

INTRODUCTION

Democracy is a system which has been used by many countries (Huntington, 1993), one of them is Indonesia. The concept put forward in democracy is people's sovereignty which means that the people have the rights and obligations to participate in the implementation of government through direct elections. (Franck, 1992; Majid *et al.*, 2018; Halking & Panggabean, 2021).

Since the commencement of general elections for the regions in 2004 based on Law Number 32 of 2004 concerning Regional Government, various regions in Indonesia have carried out direct general elections for the regions (previously the regions were appointed by the central government). However, as the general

election process for the region progressed, the term "political dynasty" was coined after the Decision of The Supreme Court of the Republic of Indonesia Number 33/PUU-XII/2015 Concerning Review of Law Number 8 of 2015. The main problem being tested is the regulation regarding the limitation of the political rights of a person who will participate in general elections to the regions, specifically aimed at people who have family relations (direct or hereditary or evenly married) which is contained in the elucidation of Article 7 letter r Law Number 8 of 2015 Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations in lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents and Mayors to Become Laws.

Political dynasty can be interpreted as a political power by a group of people who still have a connection in family relationships (Sari *et al.*, 2022), has occupied the same position in the past (Asako *et al.*, 2015), individuals over several generations who have significant political influence and agency (Purdey & Purdey, 2016). The presence of these political dynasties cannot be separated from the role of regional governments and political parties which do not base the consideration of regional head candidates on the basis of quality and credibility, but rather on the basis of party interests to gain power in the regions. According to Luluardi & Diniyanto (2021), political dynasties grew as resources, community support, and access to political parties. The existence of this political dynasty, in addition to creating a monopoly, can also kill democracy (Sari *et al.*, 2022) by retaining power through appointing a leadership within the family member to replace his position.

The many practices of political dynasties are caused by weak regulations so that political dynasties need to be weakened through the function of legal control so that acts of collusion, corruption and nepotism of family officials will not occur. As a democratic country, Indonesia should have the ability to change politics within a democracy through the active participation of the people in the political process (Sari *et al.*, 2022).

Political dynasty is one of the serious problems in the Indonesian constitutional system which causes corruption and has a negative impact on society because of personal interests above the interests of society. This creates legal injustice (van Mierlo, 2023), the form of injustice that is created is a legacy of leadership for family and relatives which can create corruption, collusion, and nepotism.

METHODOLOGY

Research methods are used to obtain theoretical knowledge from various series of systematic activities using certain methods to study, study or investigate and analyze a problem. The method used in this study is empirical juridical, namely observing legal phenomena based on facts (Indriati & Nugroho, 2022). The author uses primary and secondary data collected through data collection techniques such as literature studies and observations of the phenomenon of political dynasties in Indonesia in terms of constitutional law, legal philosophy, and comparison. The legal materials in this study are (1) Law Number 32 of 2004 concerning Regional Government, (2) Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations in lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents and Mayors Become Laws, (3) Decision of The Supreme Court of the Republic of Indonesia Number 011-017/PUU-I/2003, and (4) Decision of The Supreme Court of the Republic of Indonesia Number 33/PUU-XIII/2015. The

data that has been collected is then analyzed qualitatively to draw a conclusion.

RESULTS

After the ratification of Law Number 32 of 2004 concerning Regional Government, Regional Head Elections are carried out through direct general elections, all political parties can nominate candidates for regional heads and deputy regional heads in the elections to the regions to be held. (Azzahra & Sukri, 2022).

The selection of party cadres to be nominated as candidates for regional heads is actually the prerogative of political parties. In this case, political parties will conduct internal candidacy to determine potential candidates to bet on regional elections. The candidacy itself is a crucial component in the political process, because the candidacy for regional head candidates will be the input of the long regional general election process (Tapinongkol *et al*, 2019; Azzahra & Sukri, 2022).

Based on data from the Ministry of Home Affairs it shows that political dynasties within local government have increased. The rise of political dynasties has occurred since 2015, of the total regions in Indonesia, as many as 61 or 11 percent have become leaders in the regions. Whereas in 2020, political dynasties experienced a significant increase. The Nagara Institute has noted that out of 541 regions in Indonesia, as many as 80 regions or 14.78 percent (Putri *et al.*, 2021).

DISCUSSION

The phenomenon of political dynasties in Indonesia (Luluardi & Diniyanto, 2021) raises the pros and cons in society because it is considered to have hurt democratic values (Mukti & Rodiyah, 2020). However, the fact that the practice of this political dynasty has support or approval for the protection of the right to vote and the right to be a candidate is based on the Decision of The Supreme Court of the Republic of Indonesia Number 011-017/PUU-I/2003 with consideration of constitutional rights as rights guaranteed by the constitution (laws and regulations). international invitations and conventions).

According to the perspective of constitutional law, the Indonesian state has regulated political dynasties so that they do not develop as stated in Article 7 letter r of Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 Year 2014 concerning the Election of Governors, Regents and Mayors to Become Law, which states that: "Indonesian citizens who can become Candidates for Governor and Candidate for Deputy Governor, Candidate for Regent and Candidate for Deputy Regent, as well as Candidates for Mayor and Candidate for Deputy Mayor are who meet the following requirements: letter r (has no conflict of interest with the incumbent)".

Explanation in Article 7 letter r of Law Number 8 of 2015, what is meant by "does not have a conflict of interest with the incumbent" is that he does not have blood relations, marital ties and/or straight lineage up, down, to side with the incumbent, namely father, mother, in-laws, uncles, aunts, brothers, sisters, in-laws, children, in-laws unless they have passed 1 term of office.

Based on the Decision of The Supreme Court of the Republic of Indonesia Number 33/PUU-XIII/2015, the laws and regulations listed in Article 7 letter r of

Law Number 8 of 2015 have been declared contrary to the 1945 Constitution of the Republic of Indonesia and do not have binding legal force so that the provisions contained in Article 7 letter r of Law Number 8 of 2015 are cancelled. In other aspects, the banning of political dynasties is contrary to various rules regarding human rights (table 1).

Table 1. Provisions on Human Rights that contradict the prohibition on Political Dynasties

Provisions or Legislation	Contents
Article 21 point 1 Universal Declaration of Human Rights	Everyone has the right to take part in the government of his country, directly or through freely chosen representatives
Article 5 paragraph (1) Law Number 39 of 1999 concerning Human Rights	Everyone is recognized as an individual human being who has the right to demand and receive equal treatment and protection in accordance with human dignity before the law
Article 15 Law Number 39 of 1999 concerning Human Rights	Everyone has the right to fight for their right to self-development, both individually and collectively, in order to develop their community, nation and state
Article 43 paragraph (1) of Law Number 39 of 1999 concerning Human Rights	Every citizen has the right to be elected and vote in general elections based on equal rights through direct, public, free, secret, honest and fair voting, in accordance with the provisions of laws and regulations

Since of the Decision of The Supreme Court of the Republic of Indonesia Number 33/PUU-XIII/2015 or since the cancellation of Article 7 letter r of Law Number 8 of 2015, the government has not made any new laws and regulations to prohibit the existence of political dynasties in Indonesia. The reason for the Constitutional Court's decision in this decision is that supervision in the implementation of regional head general elections has not been effective, especially the candidates for head and deputy regional head involving the incumbent's family.

In research ([Mendoza et al, 2012](#); [Azzahra & Sukri, 2022](#)), Political dynasties practice in various democratic countries occurs in the United States and the Philippines (table 2)

Table 2. Political dynasties practice in various democratic countries

Country	Political Dynasties Practice
America	Arrangements related to the nomination of candidates for President in America must go through tiered regeneration. Despite the absence of research on the practice of Political Dynasties at the Local Government level in the United States, there are some of the most prominent Political Dynasties in the United States, such as The Bushes, one of two families that produced two Presidents, namely George H. W. Bush and George Bush. George Sr., son of Senator Prescott Bush of Connecticut, was a member of Congress, Diplomat, Director of the CIA, and Vice President before

	winning the Presidential election in 1988. Their eldest son, George W., won the Presidential election 12 years later. In 2016, George H. W.'s son, Jeb, served as Governor of Florida before running for President.
Philippines	Related to the political dynasties practice in the Philippines, it can be said that the Philippines is a country with quite high political dynasties. In 1995-2007, an average of 31.3% of members of Congress and 23.1% of governors were replaced by family relatives. In the 1995 election, there were 83 members of Congress elected in the third term, of which 36 were replaced by family relatives in the next election. In the same study, it is estimated that 40% of all provinces in the Philippines have governors and representatives of Congress who are related by blood or marriage.

The models or methods that exist in political dynasties have patterns by design and by accident (Sari *et al.*, 2022). Political dynasties by design are formed through a network of kinship and strong relationships and are arranged long ago and planned by means of relatives entering the scope of government or participating in political activities to occupy certain positions. Meanwhile, by accident political dynasties are characterized by a change of leadership between husband and wife or father and child.

CONCLUSION

Based on the research results, it can be concluded that the practice of political dynasties in Indonesia has increased. Although the Indonesian state has regulated political dynasties so that they do not develop as stated in Article 7 letter r of Law Number 8 of 2015. However, through Decision of The Supreme Court of the Republic of Indonesia Number 33/PUU-XIII/2015, the regulations contained in Article 7 letter r of the Law Number 8 of 2015 has been annulled and declared contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force.

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