



## Case study of the chief justice of the Indonesian constitutional court controversy in dynasty politics

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### Abstract

According to the ruling of the Constitutional Court, regional heads under 40 are eligible to run for president or vice president as long as they have served as regional heads or are currently serving them and have considered the advantages and disadvantages of doing so. 21 reports of alleged Code of Ethics violations were submitted to the Honorary Council of the Constitutional Court (MKMK) following the ruling. MKMK conducted an examination session that ultimately produced results for the delegates. One of the results concerned the accused Chief Justice of the Constitutional Court, Anwar Usman, and the alleged breach of the code of ethics and behavior of constitutional judges against him, which had been reported by Denny Indrayana and associates. Analyzing the effect of this dispute on Indonesian democracy is the goal of this study. Through normative law, or normative juridical law, is the research methodology. analytically and descriptively described in order to explain a state or circumstance that is occurring. The public believes that Gibran Rakabuming will have more options to run for vice president in the 2024 elections as a result of this decision. In the end, setting the age restrictions for presidential and vice presidential candidates must be equitable and take into consideration the needs and aspirations of the community.

**Keywords:** Dynasty politics, rule of law, constitutional court, elections

### Introduction

A constitutional court should be part of Indonesia's legal system to reinforce the checks and balances that enable democracy to be realized and guaranteed. However, the contentious ruling of the constitutional court stunned the people as the deadline for registering presidential and vice presidential candidates drew near. According to the ruling, regional leaders under 40 are eligible to propose themselves for vice president and president. That matter submitted by a Sebelas Maret University student named Almas Tsaqibbiru. Based on penvoy, many people thought the decision was in Gibran's favor Rakabuming and supported by his uncle Anwar Usman who served as chairman of the court constitution so that it makes it easier and moother to become Prabowo Subianto's vice presidential candidate. Then it raised the issue of the existence of dynastic politics carried out by President Jokowi will pass on power to his son. Even though it goes through the chosen election process bnot appointed but it has a negative impact on democracy in the country. Dynasty politics is the process of directing the regeneration of power for the interests of certain groups which aims to gain or maintain power in a country.

This power practice is usually carried out by a group that is

still related family so that there are family members in the power structure. This incident often appears in international and national politics, resulting in a tendency to trap, cause conflict, and disrupt the consolidation of democracy. This is supported by weak legal regulations governing it. In addition, the practice of dynastic politics tends influencing democracy which should be democratic to become undemocratic, because there is interference from those in power. As the last day to register as a presidential or vice presidential candidate drew near, the people was taken aback by the contentious ruling of the Constitutional Court (MK). The minimum age requirement for presidential and deputy candidates under Law Number 7 of 2017 is the subject of Case No. 90/PUU-XXI/2023. On Monday, 16/10, the Constitutional Court approved the election ban. The ruling said that candidates for president and vice president who were chosen through elections, whether they were elected to office as mayor, governor, or DPR/DPD, may nominate themselves as long as they were under 40 years old. Following the Chief Justice of the Constitutional Court's ruling, the Honorable Council The Constitutional Court of Malaysia (MKMK) ruled that Anwar Usman, the Chief Justice of the Constitutional Court (Reported Judge),

had violated the principles of impartiality, integrity, competence, equality, independence, appropriateness, and politeness as stated in the Sapta Karsa Utama. Consequently, the MKMK removed Anwar Usman, one of the Constitutional Justices, from his post as Chief Justice of the Constitutional Court. "Imposing sanctions for the Reported Judge's removal from the position of Chairman Constitutional Court." MKMK Chairman Jimly As shiddiqie made this statement during the Tuesday, July 7, 2023, MKMK Building I Plenary Courtroom announcement of MKMK Decision Number 02/MKMK/L/11/2023, which was attended by MKMK Members Wahiduddin Adams and Bintan R. Saragih. In addition, the MKMK directed the Deputy Chief Justice of the Constitutional Court to oversee the implementation of the election of new leadership in compliance with legislative restrictions, and to do so within two 24-hour periods following the decision's finalization.

Until his term of office expires, Anwar Usman will therefore have no further right to nominate or be nominated as the head of the Constitutional Court. Additionally, Anwar is prohibited from participating in internal investigations and cases involving disputes over the outcomes of elections for the office of president and vice president, DPR member, DPD, and DPRD, as well as elections for governors, regents, and mayors, all of which carry the risk of producing conflicts of interest. A contrary opinion (dissenting opinion) was provided by MKMK Bintan member R. Saragih in MKMK Decision Number 02/MKMK/L/11/2023. Bintan declared that the Constitution was dishonored by dismissing Anwar Usman as a judge. Because Anwar has been shown to have committed a significant infraction, according to this expert who has been a lecturer since 1971. For major infractions, the only punishment that should be meted out is a rude dismissal.

### Materials and Methods

This research is normative legal or normative juridical research. nature analytical descriptive, which is used to describe a condition or situation is happening or taking place with the aim of being able to provide as thorough or detailed data as possible. The research object of the Constitutional Court case study is analyzed based on legal theory or pthe applicable laws and regulations. Through a statutory regulatory approach (*statute approach*) and case decision approaches (*case approach*) which means with prerepresentative of the judiciary. Secondary data was carried out by means of library research (*Li brary Research*), analyzed qualitatively using logical and interesting thinking deductive conclusions. The approach is descriptive and contextual, which is meaningful brelated to or in accordance with the conditions that occur. A scientific study to understand a phenomenon in natural social contact by prioritizing the interaction process in-depth communication between researchers and the phenomena they want to discuss to memppetinformation as detailed as possible in depth and quality.

### Results and Discussion

The nomination of Gibran Rakabuming Raka, the eldest son of Indonesian President Joko Widodo, as vice presidential candidate in the 2024 election has sparked controversy in the political arena Indonesia. This controversy was related

to the practice of dynastic politics, which was considered wrong a form of political corruption. Criticism of Gibran's candidacy as vice presidential candidate came from various groups, including political parties, political observers and the general public. Critics These criticisms include: Dynasty politics is considered a form of political corruption. In politics dynasty, power is held by a handful of families or certain groups. This can hinder healthy political competition and make it difficult for new entrants to advance in the country political. Gibran's candidacy is considered a form of nepotism. Nepotism is a practice giving positions or benefits to close relatives without regard to qualifications. In this case, Gibran is considered not to have sufficient experience and capacity to do so became vice president. Gibran's candidacy is considered a form of succession to power Jokowi family. If Gibran is elected vice president, that will give Jokowi's family a chance to be in power for two consecutive terms is getting bigger. This is considered undemocratic and contrary to the principle of equality.

Responding to these criticisms, Gibran and his supporters said that Gibran's candidacy was a form of democracy. They also said that Gibran had sufficient experience and capacity to become vice president. In the legal consideration read by Constitutional Judge M. Guntur Hamzah, the Court held that filling public positions *in case*. The President and Vice President need to involve the participation of qualified and experienced candidates. However, in relation to the positions of President and Vice President, even though they are also elected through elections, due to the age of the candidates for President and Vice President, this is part of what is required for constitutional testing. due to its rationality, the positions of President and Vice President according to reasonable reasoning are less relevant to be linked to the age requirements of the candidates for President and Vice President. Guntur continued that there are alternative requirements in the form of experience of having previously or currently holding a position as an official elected through elections (elected officials) for candidates for President and Vice President who are under 40 years of age. Because 2 of the 5 constitutional judges who granted part of case No.90/PUU-XXI/2023 only agreed to the minimum age requirement of 40 years or experience as governor and 3 other judges agreed on a minimum age limit of 40 years or have/are currently holding positions elected through elections, including District head.

Constitutional justices Enny and Yusmic have different reasons regarding the alternative conditions only to have experience as Governor. Meanwhile, the 3 constitutional judges are Chief Constitutional Court Anwar Usman, Guntur Hamzah, and Manahan MP Sitompul open up opportunities not only for Gu bernur, but have/are currently holding positions elected through elections including head area. Furthermore, through MK Decision No.90/PUU-XXI/2023, the MK considers that there is "delivery of authority" from the legislators, which is stated by the DPR and the President in sidang perkara No.29/PUU-XXI/2023, No.51/PUU-XXI/2023, dan No.55/PUU-XXI/2023 handed over to the Constitutional Court to decide this case. However, this statement cannot be seen as an institutional transfer of authority. The formation of the law is Constitutional authority must be interpreted in the context of the division of powers. Where it is clear that the authority to

form laws is within the realm of legislative and executive power (not judicial). This episode led to reflections on President Jokowi's dynasty politics, including the idea that because dynasties are based on blood, they are a primitive form of power reproduction. and the offspring of very few individuals. Dynastic politics can be explained as a process that guides the renewal of power for specific groups' objectives in order to acquire or hold onto power within a nation. The current political phenomenon of candidates from the family environment emerging as head of state in power is evidenced by the assertions made by many Indonesians that power is passed down to those in close proximity. This political regime came into being out of worry.

Family members are typically highly exposed to politics and have a political inclination. This is the power dynasty. People who maintain close ties to their families in a political institution are frequently granted the opportunity to hold crucial positions at the top of the institutional hierarchy of the organization. As per A.G.N. Ari Dwipayana, the science lecturer in politics at Fisipol UGM, the trend of kinship politics is a neo-sympatrimonialistic system that has been around for a while. It prioritizes political regeneration based on genealogical ties over merit-based systems when evaluating performance. He claims that as it incorporates aspects of the traditional patrimonial system with a fresh approach, it is now referred to as neopatrimonial. The offspring or relatives of the elite join the institutions that have been set up, mainly political parties. "In the past, inheritance was appointed directly, now it is through political channels prosedural." Therefore, procedural channels obscure this patrimonialism. Some political observers also believe that dynastic politics will foster oligarchy politics and a climate that is not conducive to efforts to regenerate political leadership power only rests or is controlled by people who have kinship ties or come from the same family, without giving opportunities for other parties to join in participation, besides that dynastic politics will have a negative impact on bureaucratic accountability and government, because it tends to be greedy and prone to KKN practices (corruption, collusion, and Nepotism). Although there is an opinion that dynastic politics is not a problem if it is Members who rise and occupy positions of office are people who have competence tension and able to provide improvements in government, but it is still dynastic politics which is basically built on family relationships will create an imbalance when personal family factors mix with societal factors general and comprehensive. It cannot be denied that this will always happen somewhere Family or group interests will be a top priority above general interests in dynastic politics.

Indeed, there is nothing wrong with dynastic politics, the law opens up space for anyone to choose and choose, and has been legalized as stated in Para MK judges in the trial (8/7/15), decided and legalized the candidacy of the incumbent family (*concernt*) in regional head elections. The Regional Head Election Law, which forbade this previously, is deemed valid under Article 7 letter r of Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Election of Governors, Regents, and Mayors, according to the constitutional assembly. There cannot be a conflict of interest between the regional head and the

incumbent. This article—better known as the "abolition of dynastic politics"—contradicts the 1945 NRI Constitution's Article 28 J, paragraph (2), which says the following: "In exercising rights and the freedom of each person must submit to the restrictions set by law with the sole purpose of guaranteeing recognition and respect on the rights and liberties of others and to fulfill the just claims in accordance with pmoral considerations, religious values, security and public order in a country democratic society", Up until now, legal experts and political elites have debated the merits and downsides of the Constitutional Court's ruling.

The words "people", "democracy", and the word politics as written in our constitution basically refer to the same thing, namely "polis" or general benefit or the interests of the people or the public. This means that politics in our constitutional understanding must in principle be sourced and at the same time directed towards public or social goals. many people. Dynastic politics is the opposite of the above understanding because in it the basis and goal are personal interests (*private interest*). The concept of democracy that we accept in principle means prioritizing legitimacy and the reproduction of power involving many people. This means that once again we want to emphasize that politics is always a "general" or "public" matter, this principle cannot be distorted by manipulation of money, media and cultural exploitation. *patronage* which is still strong. In the end, what is more important is that we must not forget that Indonesia's first name is a republic, this form was not chosen without a reason that in a republic there are stances, ideals and ethics. In its simplest sense, a republic was a sign of serious opposition to dynastic politics.

Dynastic politics can have a number of detrimental effects on the Republic of Indonesia. One of the most significant is that it can convert the party into the political equivalent of a sin, obstructing its ability to fulfill its intended purpose and leaving it with little alternative but to pursue power. In order to win, party recruiting in this position is mostly dependent on how well-liked and wealthy legislative candidates are.

Here then instant candidates emerge from celebrities, businessmen, "green blood" or dynastic politics who do not go through the ka process derization, the closing of opportunities for people who are reliable and qualified cadres. The circulation of power only revolves around the elite and business circles, so there is a great potential for negotiations and the preparation of interest conspiracies in carrying out state duties, and it is difficult to realize democratic ideals because good and clean government (clean and good governance) is not created. The control function of power is weakened and does not work effectively, resulting in the possibility of deviations in power such as KKN.

## Conclusion

The decision of the Chief Justice of the Constitutional Court has sparked debate regarding the fairness and integrity of the judicial system in maintaining the balance of interests in society. Finally, determining the age limit for presidential and vice presidential candidates needs to take into account the aspirations and needs of the community, as well as maintaining a balance between experience, energy and leadership vision. The decision must be in accordance with justice, and receive broad support from stakeholders

involved in the decision-making process. Steps towards accurate and relevant solutions must also take into account democratic principles and base decisions on the interests of society as a whole.

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