



IMPACT OF THE CULTURE OF POLITICAL DYNASTY ON EARTHING THE CONSTITUTIONAL DEMOCRACY

Siti Marwiyah, Syahrul Boman

Universitas DR. Soetomo, Faculty of Law

Abdul Wahid

Universitas Islam Malang, Faculty of Law

ABSTRACT

Political dynasty becomes a representation of vested interest of the public. There is an elitist interest in power or politics that demands the fulfillment of political rights, which, if necessary is done indefinitely, but the interests of a group of other people or societies that need the protection of their human rights, including their political rights, using the system of constitutional democracy. Constitutional democracy itself is the implementation or enforcement of people's rights in governing the government based on the provisions already outlined by the constitution

Keywords: political culture, political family, democracy, constitution, enforcement.

Cite this Article: Siti Marwiyah, Syahrul Boman and Abdul Wahid, Impact of the Culture of Political Dynasty on Earthing the Constitutional Democracy, International Journal of Civil Engineering and Technology, 8(12), 2017, pp. 1121–1127
<http://www.iaeme.com/IJCIET/issues.asp?JType=IJCIET&VType=8&IType=12>

1. INTRODUCTION

The phenomenon of state life or pattern of governance of Indonesia is not transparent and not open enough to all community. Although in the juridical sphere, it is allowed or there is no a ban, on a family members to involve in building or taking part as a pillar of government such as the use of political rights to seize the position or the seat as a regional leader, but the political phenomenon of dynasties increasingly evidents. Family members who are involved can be tracked easily when there is a local election for regional leaders figure as regent / deputy regent, and mayor / deputy mayor. For example, a husband who had twice served as mayor or regent nominates his wife or his son or other family members to be candidates in the election.

In the realm of the constitution, there is nothing wrong for taking part in the implementation of the democratic party. Family members of the regent or mayor constitutionally have the same political rights as others who are equally egalitarians recognized in their existence. This political right is a form of recognition that in the democratic realm of this country, everyone is entitled to use in accordance with his or her interests.

Some groups had sued to the Constitutional Court to this increasing phenomenon of political dynasty, but the Court decided that whoever family elements still have the right to nominate or be nominated as regent / deputy regent, and mayor / deputy mayor in the democratic party. A number of people question this political rights, because this guarantee is considered as the form of the perpetuation of the cultural practices of the dynasty. The problem is, is it indeed a constitution that recognizes political rights, including decisions imposed by the Constitutional Court as a form of providing opportunities and perpetuation of the practice of dynastic culture?

2. POLITICAL DYNASTY IN PRACTICE

Ari Dwipayana argues that the political trend of the kinship as a neo-patrimonialistic phenomenon. The seeds have long traditionally rooted, namely a patrimonial system, which prioritizes political regeneration based on the genealogical bond, rather than merit system, in considering the achievement. According to him, it is now called neopatrimonial, because there is an old patrimonial element, but with a new strategy. If it used to be direct inheritance, now it is done through procedural politics. Because the son or the family of the elite enters the prepared institution, the political party, therefore, this patrimonialistic is veiled by the procedural pathway (Amir, 2017).

Many experts demands that the practice of political dynasty to be strictly prohibited, because if this practice is rampant in various elections and legislative elections, the process of recruitment and regeneration in political parties do not go well. If the power of the dynasty in some areas increase in size, it will be increasingly prevalent corruption of natural resources and the environment, local revenue sources, as well as misuse of the budget and local budget. This fear is not excessive in line with the number of mayors or district heads and pillars of regional government that are involved in corruption cases.

Idil Akbar states that political dynasty is not the main factor that triggers the rise of corruption, especially in local level. However, in the middle of the transactional and patron-client system of political culture in the country, the extending political dynasty is vulnerable to corrupt practices, because the understanding of how local resources can be more controlled by local leaders and their family.

The current political reality is permissive with political dynasty. It makes the political dynasty still has an appeal, while its existence on the political stage is still strong. Minister of the Interior of the Republic of Indonesia, Tjahjo Kumolo said there was no problem with political dynasties, because the existing relevant decisions of the Constitutional Court are final and binding. Tjahjo said that these political dynasties do not always interpreted negatively. If there is any region related head entangled political dynasty corruption, it should not necessarily be generalized, that a political dynasty was the root of the main problems of corruption. It is supposed to be seen on a case by case basis.

In addition, Ahmad Bakir Ihsan, a political observer from the State University of Jakarta argues, that in a country that has established a democratic system, such as the United States, for example, political dynasty has become commonplace. The Kennedy clan is an example of the most famous political dynasty in the US. When Kennedy came to power, his brother also

became Attorney General. But this was not an critical issue, because it is according to ability, and there was no rule which is violated (Amir, 2017).

In Indonesia, the political dynasty becomes a problem, as it becomes the power as a political rente that is often ended with the practice of collusion and nepotism. Corruption is finally inevitable as well, because power is considered as a profit-seeking purpose, although there is no direct dealing with corruption with the group, because each people has consciousness and choice.

Ahmad Bakir Ihsan further states that the factor of corruption is more on how to treat the power. By considering the adage from Lord Acton, that is power tends to corrupt it is clear that the root problem of social life and nationhood is a matter of abuse that comes from power (Amir, 2017). This power is misused because in power buildings, there is a lot of privilege or attraction of interest and profit.

Political dynasties can harm the process of democratic election when closing the contest for other contestant in a egalitarian way. This case often happens in many regional election in Indonesia. The ruling leader often joins the election for second term, by using any means. There is also a mentality among the local elites to keep themselves in power, which is one way to advance the wife, husband, sister, or other family members, to replace his or her position.

3. UNDERSTANDING THE LEGAL IDEA OF POLITICAL DYNASTY

The verdict from the constitution court with regard to constitutional rights in politics can be read not as a form of the correctness of political dynasty, but as a token of appreciation and protection of political rights of every citizen. Constitutional Court is the guardian of the values of Pancasila which live in the community or can be the drafting of legal values that live in the community (Isra et al., 2010).

The verdict imposed by the constitutional court is a form of legal ideals, meaning that judges decide in accordance with the constitutional norms constitute their noble ideals. Juridical norms, among which is constitutions, are established to regulate human life in relation to other human beings or citizens' relations with their country. In this arrangement, there are rights and obligations outlined. Such rule as a person can or should do or do not do anything, is based on a juridical norm governing it.

The Indonesian legal norm system is in a multi-layered, and multi-tiered system as well as in groups, where the norms are applicable, sourced and based on higher norms, and ultimately based on the Pancasila (Soeprapto, 1998). According to Satjipto Rahardjo, law should be able to give happiness to the people and nation. To achieve that happiness, law as a tool must be able to be practiced in an extraordinary and progressive manner. Society does require order, therefore society needs law. However, Feri Amsari (2009) states that the rule of law should not prevent the man to act progressively so that the law becomes alive and touching aspects of justice in society. The substance of law is a way to achieve the purpose of the law, because, philosophically the purpose of establishing the law or legislation in legal state is to achieve peace in the sense of harmony between the value of the order with tranquility (Purbacaraka & Soekano, 1993). Such a law is an illustration of a product that has aspirations, some of which are in contact with a number of citizens or human rights that are guaranteed protection of their human rights.

The terms of legal idea is same with term of *rechtidee*, as formulation of miscellaneous values, such as justice, truth, honesty, aesthetics, and togetherness that highly have role in the human life, either as social or individual creature (*zoon politicoon*). The existence of such values is a priori by details and assortment of the contents, which is called as natural value (Koesno, 1996). Such values as fairness, expediency or egalitarian are among a number of

values inherent in the construction of the establishment of legal principles. The classical doctrine of jurisprudence has taught a number of elements that determine the legal value, that are the rule of law (*rechtssicherheit*), usefulness (*zweckmassigkeit*) and justice (*gerechtigkeit*) (Helmi, 2007). All three of these elements must be considered in the enforcement of law and applied proportionally, so that in turn can produce decisions that meet the expectations of those seeking justice (Ali, 2007).

Regarding the *rechtsidee*, the law is closely related to the cultural connection of a nation, as was stated by Gustav Radbruch (as cited in Guritno, 2013) that the definition of the law is a cultural understanding, which is called *kulturbegriff*. Hence, the *rechtsidee* is an overall unity of human intellectual that seek to embody the *rechtsidee* culture. This culture is an abstract phenomenon, whose form is as normative provisions, as a way that used to embody a will be real like how did the real terms of a right that is recognized and protected.

Rudolf Stammler argued that the goal of the law is the construction of thinking which is a must to drive to the ideals of law desired by the community, thereby ideal of law has a function for direction for the achievement of the ideals of the community. Although it was realized that the end point of the legal ideals of society may not be achieved completely, the ideals will give positive benefits in which the ideals can direct law as a positive law in regulating the life of the community and the nation (Saleh, 1998). Stammler further confirms the opinion, that the legal principles is made to make the short term and long term positive benefits.

Referring to the view of Mahfud M. D., that there is a serious problem that plagued the establishment and enforcement in Indonesia, in which laws are made and enforced as loss of life. The law is easily penetrated by momentary interests which contradicts with the goals and purposes of the law (*Pancasila*) (Mahfud M. D, 2011). With this opinion, the legal ideals must be implemented to enforce the juridical norm and the constitution.

The reactions in the application of legal principles it is difficult to avoid, such as when a constitutional judges recognize political rights of family members in the implementation of democratic party. Reactions to the verdict on the one hand should be understood, because people make a political dynasty as a source of serious problems of the nation, particularly regarding the problem of irregularities to the omnipotence, but on the other hand, people should also be given the understanding that the constitutional norms (juridical value) also has a legal ideals that must be respected.

4. DESACRALIZATION OF CONSTITUTIONAL DEMOCRACY

Political dynasty is a form of attitude and behavior and political culture that is built and maintained a person or group of people who do not have a strong determination to end his or her rule. Power maintained with all sorts of ways, including by involving sons, wives, relatives and other family members. Many discourse about the root causes of the occurrence of a political dynasty. First, the desire within family to seize and hold power in a sustainable manner. Second, there is a neatly organized or networked group that together make the agreement forming the ruling group and the followers, in which each eager to benefit and continue it, so that power became one of the targets that is supposed to be materialized.

Third, there is a collaboration between the authorities and businessmen to combine capital strength with political support. This collaboration will determine a person or a number of people to follow the democratic party election. This collaboration is a combination of these forces that determine the process of constitutional democracy.

Fourth, there is a power sharing tasks between political and capital powers, that will cause corruption or various types and abuse of power. This power of capital and politics becomes the decisive determinant of the direction of democratic development. The purpose of

determining the development of democracy is the quality of organizing its democratic party relating to the political rights of the people.

Differences in dealing with political dynasties can be read in various opinions submitted by some parties. According to Gamawan for example, the 1945 Constitution never forbids the ruling leader relatives to stand for election because everyone has the same rights to vote and be elected. However, it is also mentioned that the restrictions to ensure the rights and freedoms of others are based on justice and other norms (Abdila, 2017). These restrictions are already listed in Article 28 A (2) 1945, stating that 1) each person shall respect the human rights of others in the orderly life of society, nation, and state, and (2) in carrying out the rights and freedoms, everyone shall be subject to the restrictions established by law with the sole purpose of securing the recognition and respect for the rights and freedoms of others and to meet the fair demands in accordance with considerations of morality, religious values, security and public order in a democratic society.

According Haryadi, in the context of democratic election , the quality of the selected power is a mirror quality of most voters. When society is still very paternalistic, relatives tend to be cultural, political, and economic patrons. In fact, without manipulation or mobilization in the elections, paternalistic hegemony which in many places is still strong will bring victory to patron relatives (Abdila, 2017). This degradation becomes a force in building and regulating the politics of dynasties, as each element can be mutually supportive and beneficial. In reality, the relatives can be easily won the local election, unless the patron has a negative track record such as dealing with abuse of power or sexual harassment.

The phenomenon of political relatives can be considered reasonable for the political establishment. The most important underlying aspect is free and fair contestation. In some advanced countries, there are a set the between period of office for the ruling to be contested or engaged in political activities (Abdila,2017). Contestation, thus is referred as another form of efforts of political dynasty culture. Benny Susetyo added that the growing along with widespread political dynasty shows that political parties fail to build the best people selection system to become leaders. Conversely, political parties are subject to the power of capital and choose the shortcut for power. As a result, there is no healthy leadership circulation with criteria related to the quality and ability of the characters. Finally, feudalism grow or develop through political dynasties (Abdila, 2017). Political dynasties constitute a pattern of politics or power-hungry culture within which a cadre outside this kinship is placed or treated to have no right to seize strategic power.

Zulkieflimansyah argues the negative impact of political dynasties is that the party as mere political machine in turn will have no ideal function so that there is no other target except power. In this position, party recruitment is based more on the popularity and wealth of candidates for victory. Moreover, another negative impact is the closing of the opportunity for reliable and qualified cadres and the difficulties in realizing the ideals of democracy because it is not the creation of good and clean governance. Power control functions are weak and ineffective so there is higher possibility of fraud or abuse of power such as corruption, collusion and nepotism (Amir, 2017).

The impact is still followed by a number of other less serious effects related to democracy. The political dynasty will allow fake election, because there are initial arrangements to engage some elements of the family in the election by support of active leaders. This will be very different if the election is done in a fair style, that based on Warren, Ruth, and Leinenweber (1963):

Places complete control in the hands of the people who are governed. The people, since they themselves control the government, make their own laws and decide what rights they are to have, what powers the government may exercise, and what services the government is to give them.

In the construction of a democratic-based government, the power in the hands of the people, should place the people as sovereign owners who are obliged to control the exercise of power implemented by elites elected at the democracy party. However, in political dynasty, the people will have difficulty applying their ruling or controlling role to the regime or the figure of its rulers when the ruling governs the government with dynastic patterns such as applying exclusively patterned, non-transparent power management, incorporating family elements in the government. In this regard, the implementation of democracy party which is constitutionally true because it involves people's sovereignty by proving the involvement of the people in using their political rights, will lose the integrity of constitutional democracy. The operation of power is an integral part to the authenticity of building a democratic system of government (Gafar, 2000).

The culture of political dynasties in any organization of the democratic party, has implications on the management of power that is exclusive, monolithic, and even corrupt, then even though constitutionally, everyone has constitutional rights in the administration of its democratic party, the political dynasty will make serious consequences of desacralizing constitutional democracy itself.

5. CONCLUSION

The political dynasty phenomenon increasingly evident and becomes the representation of interests of group of people. There is an elitist interest in the power or political path that demands the fulfillment of political rights, which, if it is necessary indefinitely, there is the interest of a group of other people or societies in need of the protection of their human rights, including their political rights, which this political right is the embodiment of the life of the state using the constitutional democratic system. Constitutional democracy is the implementation or enforcement of people's rights in governing the government based on the provisions already outlined by the constitution. This right then come into contact with families who are in office, so it is considered by the public could have an impact on the construction of constitutional democracy.

REFERENCE

- [1] Affan Gafar, 2000, Politik Indonesia; Transisi Menuju Demokrasi, Yogyakarta: Pustaka Pelajar.
- [2] Ahmad Subhan, 2012, Kerikil-kerikil Demokrasi, Surabaya: Visipress.
- [3] Amin Guritno, 2013, Menjelajah Pemikiran Filosof Hukum Dunia, Surabaya: Sianiamedia.
- [4] Harris G. Warren, Harry D. Leinenweber, Ruth O.M. Andersen, 1963, Our Democracy at Work, USA: Prentice-Hall, Inc.
- [5] Mahfud M. D, 2011, Pancasila Sebagai Tonggak Konvergensi Pluralitas Bangsa, Sarasehan Nasional 2011 Impelementasi Nilai-Nilai Pancasila Dalam Menegakkan Konstitusionalisme Indonesia, Yogyakarta dan Jakarta: UGM dan MKRI.
- [6] Maria Farida Indrati Soeprato, 1998, Ilmu Perundang-undangan: Dasar-dasar dan Pembentukannya, Yogyakarta: Kanisius.

- [7] M. Hatta Ali, Peran Hakim Agung Dalam Penemuan Hukum (Rechtsvinding) dan Penciptaan Hukum (Rechtsschepping) Pada Era Reformasi dan Trasformasi, Bunga Rampai Komisi Yudisial dan Reformasi Peradilan, Jakarta: Komisi Yudisial.
- [8] Moh.Koesno, 1996, Hukum Adat (Dalam Alam Kemerdekaan Nasional & Persolannya Menghadapi Era Globalisasi), Surabaya: UBHARA Press.
- [9] Purnadi Purbacaraka & Soerjono Soekano, 1993, Ikthisar Antinomi: Aliran Filsafat Sebagai Landasan Filsafat Hukum, Jakarta: CV.Rajawali.
- [10] Roeslan Saleh, 1998, Pembinaan Cita Hukum dan Penerapan Asas–Asas Hukum Nasional, Himpun oleh Mudzakkir (Departemen Hukum Pidana, Yogyakarta: FH UII Yogyakarta
- [11] Saldi Isra, Yuliandri, Feri Amsari, Charles Simabura, Dayu Medina, & Edita Elda, 2010, Perkembangan Pengujian Perundang-undangan di Mahkamah Konstitusi (Dari Berfikir Hukum Tekstual ke Hukum Progresif), Padang and Jakarta: Pusako FH Universitas Andalas dan Sekjend dan Kepaniteraan.
- [12] Feri Amsari, Satjipto Rahardjo dalam Jagat Ketertiban Hukum Progresif, Jurnal Konstitusi, Volume 6, Nomor 2, Juli 2009.
- [13] Helmi, Kajian Terhadap Putusan Perkara No: 827/Pid.B/2005/PN.Bjm Tentang Tindak Pidana Penipuan Jual Beli Batubara, Jurnal Yudisial Vol-I/No-03/Desember/2007.
- [14] Ichwan Abdila, Politik Dinasti sebagai Ancaman Serius Demokrasi, Diselenggarakan oleh FKDI, Surabaya, October 9, 2017
- [15] Zuliansyah Amir, Menjadikan Politik Dinasti sebagai Common Enemy, Diselenggarakan oleh FKDI, Surabaya, October 9, 2017
- [16] Dr. U. Syed Aktharsha and V. Priya. A Study on Impact of Optimum Workplace Culture Policy That Provides Work-Life Balance. International Journal of Management, 7(2), 2016, pp. 66-75.
- [17] K.N. Mohamed Fazil and Dr. D. Kumar, A Study on Livelihood Diversification of Agriculture Labours in Tiruchirappalli District, International Journal of Management (IJM), Volume 6, Issue 1, January (2015), pp. 435-437
- [18] Dr. P.Srinivas Rao, Dr. Padma Charan Sahu, Dr. Sathyapriya J, Vandhana.R, A Study On Trust And Conflict Resolution In Crossculture, International Journal of Advanced Research in Management (IJARM), Volume 4, Issue 3, September - December 2013, pp. 43-49