

## The Phenomenon of Dynastic Politics Following Constitutional Court Decision Number 33/PUU-XIII/2015

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Received: 2021-09-04

Accepted: 2021-11-14

Published: 2021-12-30

### Abstract

This research aims at breaking down the dynamics of dynastic politics after the 2020 simultaneous general election and the dynamics between the nomination of regional heads and dynastic politics following the issuance of the Constitutional Court No. 33/PUU-XIII/2005. The research found that this local politics phenomenon is triggered by the policy on regional autonomy and decentralization after reformation in bringing about new groups with family ties at local levels who occupy positions in the government. Going by the excuses of freedom and human rights, the groups in this dynastic politics have seen a gradual increase in quantity over time. This increase happened after the Constitutional Court decision No. 33/PUU-XIII/2015 ruled in their favor. In the ruling, the Court took human rights into their main consideration for lifting the ban on the dynastic politics law, which in Article 7 (r) UU 1/2015 may give the impression that the right to political participation is removed.

**Keywords:** dynastic politics, 2020 simultaneous general election, constitutionality.

### Abstrak

Penelitian ini bertujuan menjelaskan dinamika politik dinasti pascapemilu serentak 2020 dan dinamika pencalonan kepala daerah dengan politik dinasti pasca keluarnya MK No. 33/PUU-XIII/2005. Hasil penelitian menemukan bahwa fenomena politik lokal ini dipicu oleh kebijakan otonomi daerah dan desentralisasi pasca reformasi yang melahirkan kelompok-kelompok baru yang memiliki ikatan kekeluargaan di tingkat lokal yang menduduki jabatan-jabatan di pemerintahan. Dengan alasan kebebasan dan hak asasi manusia, kelompok-kelompok dalam politik dinasti ini telah melihat peningkatan kuantitas secara bertahap dari waktu ke waktu. Peningkatan ini terjadi setelah putusan MK No. 33/PUU-XIII/2015 memenangkan mereka. Dalam putusannya, MK mempertimbangkan hak asasi manusia sebagai pertimbangan utama untuk mencabut larangan undang-undang politik dinasti, yang dalam Pasal 7 huruf (r) UU 1/2015 memberikan kesan bahwa hak partisipasi politik dicabut.

**Kata Kunci:** politik dinasti, pemilu serentak 2020, konstitusionalitas.

## INTRODUCTION

Regional government is a new system born out of reformation. This translates into decentralization and regional autonomy which those who formulated it thought to be ideal at the time. As the thinking process develops in modern times, all kinds of policies are measured using logic and rational thinking in regard to the implications and repercussions of a decision (Ridwansyah, 2017). It is safe to say that the actors behind the amendments of 1945 Constitution did not predict the repercussions of creating the regional government system, especially considering that Indonesia is an anthropologically and sociological diverse country with thousands of islands within its territory. If people are allowed to elect regional heads, that means there might be small powers appearing at local levels. Power that was once centralized at national level will transfer to few local groups at local levels (Schulte & Klinken, 2007). In theory, reformation and amendment give birth to regional governments. However, in reality both give birth to certain groups that hold and maintain strong power at local levels (Hariyanto, 2020).

Political dynasties emerged following the amendment of the 1945 Constitution. It is also a global phenomenon across countries such as the Philippines, Sri Lanka, Thailand, and even in developed countries such as Belgium and the US. For example, in his research Stephen Hess listed 22 political dynasties in the United States (Purwaningsih, 2015). Therefore, local governments face serious challenges of upholding democracy with the presence and dominance of certain groups in power. The factors that ties the members of these groups together could be similar interest or socialization within families. However, dynastic politics within families dominate the type of dynastic politics across the country. This was stated by Carlos Velasco Rivera in *Political Dynasties and Party Strength: Evidence from Victorian Britain*. Carlos maintained that dynastic politics can only be considered good when it can bring about prosperity and generate ideal policies (Haboddin, 2017). Unfortunately, that is still not the case in some countries that were the focus of his research. The other reason the public develops a negative view about dynastic politics is because it does not offer equal opportunities for people to take part in the election. On the contrary, opportunities increase for candidates within a group or family to gain access to power and thus create inequality for those without the same privilege.

Carlos Velasco Rivera's research echoes the previous work conducted by Siddharth Eapen George and Dominic Ponattu in *Like Father, Like Son? How Political Dynasties Affect Economic Development* which states that there are 145 countries around the world with political dynasties. They argue:

“Political dynasties are ubiquitous in democratic countries, even though many countries democratised to move away from hereditary rule. Nearly 50% of democratic countries have elected multiple leaders from the same family, and 15% are currently led by a descendant of a former leader. Political dynasties are present in over 145 countries around the world, yet we have limited understanding of how they affect economic development (Eapen George, n.d.)”

Both researchers also said that dynastic politics also negatively impacts economic growth in a country for its potentially high group's interest in policy making. This is also in line with Hidayati's research which states that dynastic politics is not only politically detrimental but also creates unhealthy economic competition. As a matter of fact, every government tends to involve people from their own circles in supporting their economic policies (Hidayati, 2014).

The 2020 Regional General Election (Pilkada) was the fourth simultaneous regional election conducted across the country. In finding successors for regional office leadership, this direct election is a new apparatus in Indonesia's democracy, which started in June 2005. Having been run for 15 years, this election has faced many challenges that need to be resolved in order to achieve its democratic substance. A successful election is expected to generate high quality office holders who can live up to the public expectation. Failure to do so means there might be even greater resistance against democracy and the fight to revive the regional autonomy as mandated by reformation will be pointless (Arianto, 2021).

The challenges in the 2020 simultaneous general election remain the same: the difficulties in practical application, from the amount of time spent on counting the votes to election monitoring personnel. Voters face difficulties during the voting process where they have to deal with plenty of paper ballots and hundreds of candidates to choose from (Seran, 2019). There are no signs that political parties will improve the electoral system to be as democratic as possible. Political parties have not managed to conduct an ideal recruitment system that is based on caderization and party ideology. Furthermore, the role of the state through legal products has not put pressure on and clearly instructs political parties to conduct things in an ideal manner in regards to political recruitment (Rahmatunnisa, 2021). It is as if political parties were competing against each other to show to the public who is the most democratic, when in fact they reek of elitism and pragmatism. This also happened in three simultaneous general elections in 2015, 2017 and 2018 (Nagara Institute, 2020). In the simultaneous general election, there were 124 candidates of regional heads and deputy regional heads affiliated with political dynasties, a figure that is higher compared to the previous general elections.

It is necessary to look at how this political empire forms in the regional electoral system. Having investigated the number of election candidates who have familial relationships with incumbent officials, this research will go on and examine how many of those actually won the election. The result of the research will shed light on the actual figures as well as show the trends of dominance of political dynasties in simultaneous general elections in Indonesia.

Dynastic politics has been previously banned through Article 7 (r) of Government Regulation in Lieu of Law (Perppu) Number 1 of 2014 which was later stipulated as Law No. 1 of 2015 on Stipulation of Perpu No. 1 of 2014 on Election of Governors, Regents and Mayors into Law (hereinafter referred to as Election Law): Indonesian citizen who are running for governor, deputy governor, district head, and deputy district head, as well as mayor and deputy mayor must satisfy the following requirements: There is no conflict of interest with

incumbent officials. It is further explained that: The absence of conflict of interest means there is no first and second degree consanguinity or affinity with incumbent officials and that covers the official parents, in-laws, uncles, aunts, siblings, children. Running for office is prohibited unless one the official has passed one office term period (Fauzia, 2017).

However, this provision did not last as the Constitutional Court cancelled the regulation No. 33/PUU-XIII/2015. Having discussed the dynamics and constellation of dynastic politics, which is not only a regional phenomenon, but also an international one, especially for the promotion of democracy, the question that remains is whether it is still relevant to defend the Constitutional Court's decision as a justification for the permissibility of dynastic politics in the regional elections. This research will discuss: first; dynastic politics following 2020 simultaneous general election, secondly; the dynamics between regional head nomination and dynastic politics following 2020 simultaneous general election.

Compared to the existing literature, this paper offers a different point of view because it examines dynastic politics with the focus on its constitutionality. However, as a scientific paper, this research will use references from the previous relevant studies, such as Mudiwati Rahmatunnisa's work on "Questioning the Dynastic Politics in Indonesia in the 2020 Simultaneous Regional Elections" published in the *academia praja* journal. The difference between this research and Mudiwati's work is in terms of analytical point of view. Her paper uses a general political theory point of view, whereas this one looks at the issue from the legal point of view, particularly at constitutionalism.

This is similar to the previous article by Bambang Arianto titled "Assessing Dynastic Politics in the 2020 Regional Head Election" which was published in the *JIPP* journal. This paper has a similar point of view and conclusions as the previous research, and that is a political point of view and the same conclusion goes that dynastic politics has a negative impact on democracy in Indonesia. For this reason, his research is clearly different from this one, which looks at the issues from a legal point of view. There is also another relevant work conducted by Muhtar Mahoddin titled "Dynastic Politics in Simultaneous General Elections" which was published in a transformative journal. This paper draws testable conclusions because it states that dynastic politics does not violate any law, but it is considered not healthy from democratic point of view. From a legal point of view, this research strives to elaborate on the conclusion. Ultimately, considering the different focus, this paper has identified a gap in theory and thus will contribute to new insights in the existing literature.

## **DISCUSSION**

### **Dynastic Politics Following 2020 Simultaneous General Election**

The process of granting regional head positions has undergone quite long dynamics and developments, starting from filling in the positions of regional heads during the centralized new order period by being appointed directly from the central government and after reformation regional head elections through the direct election process are still experiencing dynamics and changing mechanisms. This shows a dynamic political system

referring to the provisions of Article 18 paragraph (4) of the 1945 Constitution which gives the right to legislators to interpret the phrase democratic elections, both direct and indirect elections (Wibowo, 2019).

The mechanism for filling in regional head positions affects the number of political dynasties in the administration of regional government. Reflecting on the election of regional heads during the New Order era which was carried out centrally by President Soeharto, the position of regional heads at that time was only considered as government administrator, development administrator and community administrator at the local level. This means that the ultimate power still lies in the hands of the president (Dwinanda, 2017). The implication of this central regional head position filling is at the mercy of the president's will. Filling the position of regional head during the new order was based on close relations, which were dominated by the military and not from the closest family of the President at that time. Candidates for regional heads at that time were generally active officers holding the rank of Lieutenant Colonel and at least the rank of major (Harris, S. (ed), 2017).

Post-reformation, more precisely in 1999 the local elections were conducted with the orientation towards indirect democracy, under the mandate of Article 34 (1) of Law 22 of 1999 on Regional Government, giving authority to the local legislative bodies, both at provincial and district/municipal level, to be able to elect pairs of candidates for regional head positions. Meanwhile, the central government only stipulates and inaugurates the outcome of elections conducted by the local legislative bodies (DPRD). This electoral system did not last long. There was a wave of mass pressure that wanted elections to be conducted democratically through general elections (Hutapea, 2015). Because the regional head election system through the DPRD did allow the public to take part in election of the Governor, District Head and Mayor, as well as considering the prevalent practice of money politics, although these problems are present nonetheless in the direct election by the people (Tjahjoko, 2020).

The mechanism for electing regional heads then underwent development, with the issuance of Law 32 of 2004 on Regional Government. The provisions of Article 56 emphasize that the election of regional heads and deputy regional heads is carried out directly in one pair of candidates. Pairs of regional heads can be nominated by a political party or a joint coalition of political parties. This election mechanism is meant to eliminate the weaknesses and shortcomings in the election mechanism carried out by the DPRD. The decision by the legislators to change the mechanism for electing regional heads is based on the fulfillment of substantial democracy that provides participation for the community to exercise their political rights (Nopyandri, 2017). For the very first time after the reformation era, direct elections for regional heads were held in 2005. Back then, regional head elections were held in 226 regions, covering 11 provinces and 215 districts and cities and were carried out separately.

It did not stop there. Changes to the regional head election mechanism occurred in 2014, through Law No. 22 of 2014 on the Election of Governors, District Heads and Mayors, the provisions for regional head elections returned to the election mechanism by the DPRD.

This change in the election mechanism is based on the *ratio legis* as a result of the direct election evaluation which incurs large political costs, both costs incurred by the state and political costs incurred by candidate pairs. This can potentially lead to political corruption in the administration of local government. Shortly after, this provision received a fairly strong rejection and required the President to issue simultaneous general election laws which restored the mechanism for direct election of regional heads by the people. Certainly not without reason, the return of the mechanism of direct elections by the people is based on democratic principles and mass action that did not want their rights and opportunities to be represented by the DPRD.

This phenomenon, according to Philip Mawhood and J. A. Chandler, emphasizes that local government has great potential and opportunity to realize democratization because of the decentralization process as well as greater representation and accountability. This democratization can only be realized when the people take part in the main events of democracy, namely at the moment when the change of power takes place (Kusmanto, 2014). The following is the differences of content between both laws:

**Table 1**  
**The Difference of Provisions between the Law No. 22 of 2014 and Law No. 1 of 2015**

Contents of Provisions	Law. No 22/2014	Law No. 1/2015
The methodology of regional head election	Regional heads are elected indirectly by members of legislature	Regional heads are elected directly by members of legislature
Regional head election committee	The members of the election committee come from elements of a faction of at least 1 person from each faction in the DPRD.	Regional head election committee is established by Regional General Election Commission (KPUD)
The funding of regional head election	General election is funded through state budget	General election is funded through state budget
Principles that underlie regional head elections	Regional head elections are conducted in democratic, free, open, honest, and fair manner.	Regional head elections are conducted in democratic, direct, public, free, confidential, honest and fair manner.
The candidate for election and requirements for candidacy	Election participants are participants nominated by a faction or a combination of factions in the Provincial DPRD and Regency/Municipal DPRD	Participants are political party cadres nominated by political parties or coalitions of political parties if they meet the requirements for securing votes of at least 25% (twenty five percent) of the accumulated

		valid votes in the previous general elections for DPRD members.
Requirements for being a regional head candidate	There is no conflict of interest with the Governor, District Head, and Mayor or does not have any familial relationship with the incumbent or has passed the waiting period of one office term.	There is no first and second degree consanguinity and affinity with an incumbent official unless one has exceeded the waiting period of one office term. (has been canceled by the Constitutional Court through Decision No. 33/PUU-XIII/2015)

The table above shows that both direct and indirect regional head elections open up opportunities or potential for dynastic politics to emerge. Looking at the mechanism of regional head elections by the DPRD from the legal provisions of Law No. 22 of 2014, it is possible for dynastic politics to develop because there is a provision stating that participants who register themselves as regional head candidates are participants who are nominated or promoted by faction members in DPRD. So this gave birth to cross-office dynastic politics, which allowed the families of DPRD members to be nominated as regional head candidates. For example, a husband serves as a member of the DPRD while his wife is nominated as a regional head. This electoral system is no different from direct regional head elections, which are both opening up the political space for the dynasty to grow, because there are gaps in the recruitment process of political parties that are yet to become democratic.

This dynamic demonstrates that the electoral system significantly influences dynastic politics, Word Bank in *How Do Political Dynasties Affect Economic Development Theory and Evidence from India*, describes that “electoral rules and party structure significantly influence where political kinship arise and persist (Siddhart Eapen George, et al., 2018). This situation is precisely what Mosca feared as all ruling classes in a society always desire to become hereditary (Giamarco Daniele, et al: 2014, 4). In a social environment where dynastic politics has changed the structure and social patterns from an equal to a higher level, this practice is used to gain power, popularity, and create influence over other individuals.

Dynastic politics, which is prevalent today in Indonesia’s regional elections, has existed since the 2005 elections. The data from the Ministry of Home Affairs during 2005-2015 recorded 59 regional heads who had ties of kinship with other government officials, whether direct blood relations or other close relationships (Rahmatunnisa, 2021).

For this reason, a law was passed to restrict the growth political dynasties and its negative impact on the administration of regional government, especially in the regional head elections, considering that regional governments as representatives of the central government deals directly with the interests of the community, so there should be no personal interests by each



office holder (Rustandi.R, 2017). The provisions of Article 7 (r) of the Regional Head Election Law states that candidates for regional heads must not have interests with incumbents.

Changes in the dynamics of regional head elections that occurred in Indonesia had implications for increasing political desire in one family to continue to perpetuate power by 'passing' it from one family member to another. This happened following the decision of the Constitutional Court Number 33/PUU-XIII/2015 which canceled the provisions of Article 7 (r) of the *Pilkada* Law, explicitly stating that the dynastic politics in the election is constitutional according to the mandate of the 1945 Constitution.

Over time, dynastic politics has increased following that decision and also due to the mechanism for direct and simultaneous regional head elections throughout Indonesia which began in 2015. On the other hand, since there are no restrictions on the incumbent's family or other state officials to nominate themselves as regional heads, it increases the likelihood that candidates from one's family relationship will succeed the power of regional heads. The Ministry of Home Affairs recorded that between 2005-2015, there were 57 regional heads tied to political dynasties. Meanwhile, following the Constitutional Court's decision, there were 87 regional heads after 2015, 2017 and 2018 regional elections. This is a very significant rise in three years in three simultaneous regional elections, compared to the 2005-2015 period.

The increase in the number of regional heads tied to political dynasties is not without reason. There are several political factors that can explain how political dynasties emerge, as stated by Yoes C. Kenawas in *The Rises Of Political Dynasti in Social Society*: (1) political parties tend to choose popular candidates in order to increase their popularity and increase the possibility of winning the regional head elections; (2) the selected candidate is a candidate with access to resources such as money, either as a 'political dowry' or funds that will be used for running political campaigns ahead of the election (Kenawa, 2015). Consequently, political recruitment in a political party prioritizes families and descendants of government officials. Michaels also has similar notion:

“Even in democracies, there is a tendency for those in power to maintain their position. Representative democracy necessitates political parties as organizations to aggregate diverse political opinions and interests, but such political organization “gives birth to the dominion of the elected over the electors, of the mandatories over the mandators, of the delegates over the delegators.”

This situation was later understood by Jeffrey A. Winters as a symbiotic relationship which he called a sultanistic oligarchy, even though in the event of emergency or political tension, mutually beneficial relations between political party elites occur. The oligarchs would carry out any strategy to maintain power and would use access to certain positions as gifts to supporters and strategies to deal with political opponents (Jonathan Chen: 2019).

The widespread practice of dynastic politics in local government is directly proportional to the practice of corruption in the administration of local government. (Hapsari, 2021). Although dynastic politics is not the main factor that triggers corruption at the local level, in the midst of transactions and patronage of dynastic political culture that is increasingly vulnerable to corrupt practices, the more family members are in strategic government



positions, the greater the scope of control over the resources in a region (Marwiyah, 2017). When formulating several factors that can lead to the birth of political corruption in the administration of government, Inge Amundsen believed favoritism to be a way or mechanism for abuse of authority by officials “*Favouritism is quite simply the normal human proclivity to favor friends, family and anybody close and trusted. In the political sphere, favouritism is the penchant of state officials and politicians, who have access to state resources and the power to decide upon the distribution of these, to give preferential treatment to certain people when distributing resources*” (Amundsen, 1999).

The close link between dynastic politics and corruption above can be seen in the corruption cases in Banten Province, Cimahi City and Kutai Kertanegara Regency. Corruption in Banten Province was committed by Governor Ratu Atut Chosiyah who was suspected of bribery in the election dispute and corruption in the procurement of medical devices. The corruption committed by the Governor of Banten was revealed when Akil Muchtar and Tubagus Chaeri Wardana (the younger brother of Ratu Atut Chosiyah) were arrested. Atut herself was named a corruption suspect with a total state financial loss of 34.9 billion (Haboddin, 2017). In December 2016, the Corruption Eradication Commission (KPK) named Cimahi Mayor Atty Suharti Tochija and her husband Itoch Tochija as suspects for accepting 6 billion in bribes for a market development project’s permit for the city of Cimahi. Atty Suharti was the elected mayor in the 2012-2017 regional elections and sought to be reelected in the 2017 regional elections. Meanwhile, her husband was the Mayor of Cimahi for two office terms (2002-2012) (Ibrahim, 2020). Towards the end of December 2020, KPK launched a sting operation against the Regent of Klaten Sri Hartini on suspicion of accepting a bribe of 12.8 billion for job transfers. Sri Hartini herself was the Regent of Klaten who was elected in the 2005 local elections and the wife of the Regent of Klaten in 2005-2015. These practices then further strengthen the negative views towards dynastic politics in local government.

There was a significant increase in the practice of dynastic politics in the latest 2020 *Pilkada*. Research by the Nagara Institute (12 October 2020) found that 124 candidates for regional heads and deputy regional heads were in the political dynasty circles. In detail, there are 57 candidates for Regent and 30 candidates for Deputy Regent, 20 candidates for Mayor and 8 candidates for Deputy Mayor and 5 candidates for Governor and 4 candidates for Deputy Governor. The practice of dynastic politics in the 2020 regional elections was dominated by 67 men and 57 women.

Such an increase in dynastic politics practices in the 2020 simultaneous regional elections means that the competition in the regional elections comes not only from outside the kinship circles, but also comes from within the kinship/family circle. There are 3 types of kinship political contests in the 2020 elections.

The first type is *Pilkada* that is contested by candidates with some kinship or some family relationship. A case in point is the election of the Mayor of South Tangerang, which was fought by three pairs of candidates who are all family members of state officials. They are, first;

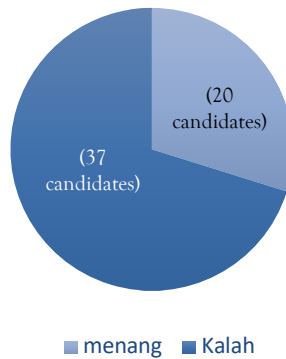
Siti Nur Azizah, the daughter of KH. Ma'aruf Amin (vice president of the Republic of Indonesia 2019-2024) promoted by the Democratic, PKS and PKB parties. Secondly, Rahayu Saraswati Djojohadikusumo, the nephew of Prabowo Subianto (Minister of Defense of the Great Indonesia cabinet) who ran using the tickets from PDI-P, Gerindra, PSI, PAN, Hanura Nasdem, Perindo, Garuda, and Berkarya party. Lastly, Pilar Saga, who is the son of Ratu Tatut Chasanah (Regent of Kab. Serang of 2016-2021), was backed by Golkar, PPP, PBB, dan Gelora party. Out of the three pairs of candidates with kinship ties to incumbent officials, Pilar Saga, who is the son of Ratu Tatut Chasanah, won the battle.

Secondly, the same thing also happened in the elections in North Sulawesi, to Olly Dondokambey, a candidate for governor, who is also the brother of Adriana Dondokambey and Altje Dondokambey (members of the Indonesian House of Representatives for 2019-2024). He was running against two other candidate pairs, namely Cristian Eguina Paruntu who was paired with Sehan Salim Landjar. The two pairs of candidates have ties to government officials, namely Cristian Eugenia Paruntu, the mother of Adrian Jopie Paruntu, a member of Indonesia's House of Representatives 2019-2024, while the candidate for deputy governor Sehat Salim is the husband of Nursiwin Dugio, a member of the DPRD for North Sulawesi Province. The last pair is Vonnice Penambunan and Hendri Korneles. Vonnice Penambunan is the younger brother of Jonhy Penambunan, a member of the North Sulawesi DPRD. The *Pilkada* for the Governor of North Sulawesi, which brought together the three pairs of candidates, was ultimately won by Olly Dondokambey.

Third, the *Pilkada* is contested by candidates in one kinship or one family relationship. This practice occurred in the regional head elections for the Regent in Pangkajene Regency, Islands, South Sulawesi Province. In the 2020 *Pilkada*, the majority of candidates who have a family relationship with the incumbent are Syamsuddin A. Hamid who is the district's Regent for two periods (2010-2021). The *Pilkada* was fought by Andi Ilham Zainuddin, the brother-in-law of Syamsuddin A. Hamid who was paired with Rismayani, who was the wife of Syamsuddin A. Hamid. The unusual part of this election is that candidates run against pairs who are member of their own family, namely Muhammad Yusran Lologau, who is the nephew of Syamsuddin A. Hamid. Meanwhile, another contender was Andi Nirawati, the wife of Kamrusammad who is a member of the DPR-RI. Muhammad Yusral Lologau achieved victory in this political contest.

After the *pilkada* on December 9, 2020, this research looks at how many and whom of those tied to political clans won the 2020 election. The research found there were 54 candidates, consisting of 20 women and 34 men who are relatives of incumbent officials who won the election. On the other hand, 70 candidates for regional head consisting of 37 women and 33 men lost the battle. The official record from the election commission shows that the losing candidates finished in different places. There were 49 candidates for regional heads and deputy regional heads who finished in second place, while those who finished in third place were 13 people, and 8 candidates for regional heads came in fourth place (Rahmatunnisa, 2021).

The participation of female candidates in the 2020 regional head election were influenced by their relationships with incumbents or other government officials. The data shows that 57 women who ran as candidates for regional heads and deputy regional heads had ties with political dynasties. The following chart shows the electoral outcomes for the female candidates with such ties.



The diagram shows there were 20 women with ties of kinship who won the election, which consists of 13 elected Regent/Mayor candidates, 6 elected Deputy Regent/Deputy Mayor candidates and 1 elected Deputy Governor candidate. Meanwhile, 37 out of 57 female regional heads and deputy regional heads who had family ties with the incumbent or other government officials lost the election. It was recorded that the number of election defeats among female candidates affiliated with dynastic politics consists of 25 candidates for Regent/Mayor, 9 candidates for Deputy Regent/Deputy Mayor, 1 candidate for Governor and 2 candidates for Deputy Governor. In addition, it was found that the number of wives of incumbents who took part in the 2020 simultaneous regional elections were as many as 29 people, including 11 people who won, and 18 people who lost, according to the provincial as well as regency and municipal General Election Committee. 20 elected female candidates who have ties of kinship with incumbents is a fairly high figure. This disrupts the nature of women's political representation, which is expected to serve public interests, but instead consider the election as the opportunity to take over the power from their husbands. Not only in terms of electability, in terms of candidacy, the high number (57) of female candidates also interferes with the nature of the recruitment process in political parties which is becoming increasingly pragmatic (Institute, 2020).

Based on data obtained after the 2020 simultaneous regional elections, of the 124 candidates associated with political dynasties, only 54 people won, while the rest lost. There are various reasons for their defeat. First of all, the defeat, of course, was largely influenced by the democratic decision of the general public. However, although the number of defeats was quite high relative to the number of nominations, this shows a declining trend of dynastic

politics in Indonesia's democracy as compared to the statistics from the previous regional head elections. During the 2005-2015 period, there were 57 regional heads, and in the subsequent regional elections in 2015, 2017 and 2018, there were 87. In the 2020 regional head election, which was 'only' one election, candidates with ties to incumbents reached 54, which is only 3 candidates higher than the figure from the 2005-2015 period when there were several regional elections taking place.

Based on the description above, the 2020 simultaneous regional elections are the fourth simultaneous regional elections after the Constitutional Court's decision, which canceled the law that banned the practice of dynastic politics in elections. The data shows that there is a significant upward trend for dynastic politics. Therefore, it is crucial to examine and review the legal consideration in the Constitutional Court's decision, to see how the Constitutional Court views other political rights restrictions. This will allow us to assess whether the Constitutional Court's decision should continue to apply in the future.

**Table 2**

**Comparison of the Figure for Dynastic Politics in Simultaneous Regional Elections**

No.	Year	Comparison of the Figures for Dynastic Politics Practices in Simultaneous Regional Elections Across Different Time Periods
1	2015-2014	(59 candidates)
2	2015, 2017, 2018	87 candidates
3	2020 (candidates)	(124 candidates)
4	2020 (elected candidates)	(54 candidates)

Source: data was self-processed from the Press Release Nagara Institute and data on the results of the 2020 regional elections are independent data obtained by researchers from the General Election Commission

The table shows an increasing trend for political dynasties across all time periods of regional head elections. This trend is also expected to grow along with the victory of candidates associated with political dynasties in the 2020 Simultaneous Regional Head Elections, which reached a total of 54 people. Ultimately, the existence of the candidates associated with dynastic politics will further increase the number of autonomous regional leaders with ties to political dynasties

**The Trend for Regional Heads Candidacy with Ties to Political Dynasties Following the Decision of the Constitutional Court and How It is Viewed from Islamic Perspective**

Before the Constitutional Court lifted the prohibition on conflicts of interest in Article 7 (r) of the Regional Head Election Law, the legislators were already worried about the practice of dynastic politics. Article 13 (q) in conjunction with Article 46 (n) of Law No. 22 of 2014 on the Election of Governors, Regents and Mayors, a prohibition of conflicts of interest with incumbents has been regulated. The prohibition against conflicts of interest is even more explicitly stated in Article 46 (n). This is different from Article 7 (r) which was canceled by

the Constitutional Court, which describes the meaning of conflict of interest in detail. However, the decision in Law 22/2014 had not been implemented before the President finally issued a Perpu which was then followed up with Law 1/2015. Therefore, the serious intention of the legislators to avoid conflicts of interest between the incumbent and their relatives has not been carried out.

The legislators were right to be concerned considering the data released by the Ministry of Home Affairs. Since the direct elections were held in 2005-2014, there have been at least 57 elected regional heads and deputy regional heads who have kinship ties with incumbents (Sutisna, 2017). However, looking at the *ratio decidendi* of the government in regulating the prohibition of conflicts of interest with the laws chosen in the Regional Head Election Law, a misconception occurs.

The government's argument for banning political dynasties is because the incumbent has access to policies, state facilities, attached benefits, program excellence, and control over the civil servants. (Vide Constitutional Court Decision No 33/PUU-XIII/2015: p.139). In fact, the incumbent supervision regime and the kinship regime (nomination) are two different things and have their respective consequences for a fair election. For example, The General Election Supervisory Agency (Bawaslu) since 2015-2020 separated the incumbent and kinship supervisory regimes in formulating the *Pilkada* Vulnerability Index (IKP). Across the three dimensions that are measured by Bawaslu in the IKP, namely the dimensions of organizer, contestation and participation, supervision of incumbents and kinship is included in the dimension of contestation whose variables are separated and have their own elements.

Based on the distinction between the incumbent and kinship supervisory regime above, the existence of norms governing the supervision of incumbents and kinship (nominations/conflicts of interest) cannot be considered equal. Similarly, the law that governs one of them cannot be used to solve the problem of the other's. The relevant authority should regulate these two entities together (Murdiyani, 2016).

This misconception was also wrongly responded to by the Constitutional Court, which considered the problem of the *Pilkada* Law not to be related to dynastic politics, but to the supervision of incumbents. Therefore, the Constitutional Court canceled the law on dynastic politics and requested the legislators to focus on supervising incumbents instead. Ultimately, this decision did not solve the problem and seemed insensitive to the practices and problems of incumbent supervision and dynastic politics.

The legal framework for *Pilkada* that we have today has not been able to solve the problem of incumbent supervision. For example, the incumbent's ability to control policies, government facilities, and programs is not something that can be monitored easily. A case in point is when the Klaten Regent and the Mayor and Deputy Mayor of Semarang distributed Social Funds (bansos) for handling the Covid-19 pandemic to attract public sympathy. Similarly, the findings show a trend in the budget allocation for the programs funded by the Social Funds, which has increased in regions with incumbent candidates, for example, in

Central Java. Based on the 2018 Regional Revenue and Expenditure Budget (APBD), the allocation of Social Funds and grants stood at Rp5.6 trillion. Ironically, this amount exceeds the caps for the Social Funds and grants in the 2017 APBD-P, which was Rp5.34 trillion and the 2016 APBD-P, Rp5.35 trillion (Hadi, 2020).

The above practices are further exacerbated by the partiality of institutions involved in the incumbent's supervisory mechanism. This is because Pilkada organizers such as Bawaslu have limitations in certain aspects in supervising incumbents. Non-Bawaslu Supervision can actually be performed by APIP, the Ombudsman and law enforcement bodies such as the Police, the District Attorney's office, and the KPK. These institutions at the same time have supervisory authority because the existence of a supervisory regime for the implementation of the incumbent's duties and powers beyond the regional elections clearly intersects with the supervisory function in the regional elections. Unfortunately, this supervisory function has not been well coordinated, even though coordination is the dominant factor for the success of an institution carrying out its supervisory function. The difficulties predicted by Van Poeltje seem to be proven by the sectoral egos of government institutions, which seem too proud to collaborate with, ask for help and consult other government institutions. The problem of coordination in this case refers to the problem of collaboration among relevant institutions.

After the Constitutional Court decision, the practice of dynastic politics also increased. As a matter of fact, this research found that in the 2015 Regional Head Elections alone, there were 28 regional heads suspected to have ties with incumbent officials. In addition, the data released by the Nagara Institute shows that there were 86 regional heads tied to political dynasties in 2015, 2017 and 2018 *Pilkada*. This proves that the Constitutional Court's decision has enabled and increased the practice of dynastic politics.

It is safe to say that the decision ignored the practical political realities, which shows a number of problems. For example, Bawaslu included aspects of the nomination and involvement of incumbents in the 2015 Pilkada Vulnerability Index. In the 2017 Pilkada, Bawaslu revealed that the candidates with ties to political dynasties is the variable that has the highest level of vulnerability across the four variables measured, namely candidacy, campaign, contestant, kinship). Bawaslu noted that the practice of dynastic politics occurred in 26 regencies/cities or 51% of all regions (Bawaslu, 2017: 52) whereas in 2018 Pilkada, there were 32 regional head candidates who had kinship ties with incumbents across 18 provinces.

For this reason, the misconceptions in passing the law and the response to the Constitutional Court's decision which was not thorough in assessing the problems and practices of Pilkada to date have left us with two main problems, namely the supervision of the incumbent and the dynastic politics. These two problems are way worse than just the practice of dynastic politics, which George and Ponattu said will exacerbate the performance of local governments, as indicated by misallocation of expenditures, behavior that exploits all existing capacities for personal, group and constituents' interests (Siddhart Eapen George, n.d.). Therefore, it is important to break the chain of dynastic political practices that are

intertwined with the incumbent's position. Improvements to future dynastic political regulation are crucial, considering a number of errors in the formulation of the *Pilkada* Law and various criticisms of the Constitutional Court's decision.

Another aspect of the Constitutional Court's considerations which is worth revisiting is the argument limiting the right to nominate incumbents' relatives, which is considered to violate the constitutional rights of citizens. The Constitutional Court relies on the provisions of Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia which is associated with Decision No. 011-017/PUU-I/2003 explaining that the issue of restricting voting rights (both active and passive) in general elections is usually only based on considerations of incompetence, such as age and mental condition, as well as impossibility (Vide Constitutional Court Decision No. 33/PUU-XIII/2015:141). However, this consideration in the context of political and democratic realities seems to be too simplistic. The doctrine and concept of restriction in political contests should be more varied, given the complexity of the problems faced in the implementation of the *Pilkada*.

It can be said that the Constitutional Court has not fully settled the concept of limitation of rights in its legal considerations. Consequently, there is an inaccuracy in applying the concept of restriction when assessing the *Pilkada* Law that regulates dynastic politics. In fact, in the perspective of human rights theory, the doctrine of derogation and limitation in civil and political rights is known (Marzuki, 2013).

Derogation is a mechanism that allows "exceptions" for a country to deviate from its legal responsibilities due to special situations or emergencies. Therefore, the rights that can be derogated are known as derogable rights (Hasani, 2013). Meanwhile, the principle of non-derogable rights emphasizes rights that are absolute/absolute, and therefore cannot be suspended or postponed in any situation or condition (Halili, 2014:98). The non-derogable rights are explicitly stated in Article 28I of the 1945 Constitution of the Republic of Indonesia, including: the right to life, the right to self-integrity, the right to freedom of thought and conscience, the right to religion, the right to freedom from slavery, the right to recognition as a person before the law and the right not to be prosecuted based on retroactive law. For this reason, the provision that regulates dynastic politics in the *Pilkada* Law is certainly not a derogation, because it concerns the right to take part in government.

In contrast to derogation, limitation refers to the limitation of rights carried out by the state in safe conditions without violating the rights of citizens in its territory. It is only by using this concept that the regulation of dynastic politics in the *Pilkada* Law can be called a restriction. Normatively, the provisions for making restrictions are regulated in Article 70 of the Human Rights Law, stating that restrictions on human rights can be carried out if: it is not against the law, necessary in a democratic society, in the country's best interest, to maintain security and public order, to maintain public health and morals or protect rights and freedoms of others. And it is constitutionally reaffirmed in Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia (Alfitri, 2012).



Restrictions on political rights in practice have been carried out by the Constitutional Court in Decision No. 4/PUU-VII/2009. The Constitutional Court restricts an ex-convict on taking part in regional head elections with the following conditions: a) does not apply to elected officials; b) valid for a limited period of time only for 5 (five) years after the convict finishes serving his sentence; c) exceptions are made for former convicts who openly and honestly state to the public that the she/ he is a prisoner; d) not a repeat offender. In its development, although through Decision No. 42/PUU-XIII/2015, the Constitutional Court reconsidered the application of the 5-year term because this requirement was no longer needed on the grounds that an ex-convict who had boldly and openly stated his status, in 2019 through Decision No. 56/PUU-XVII/2019, the Constitutional Court then reformulated the restrictions on the rights of candidates for regional heads bearing suspect status to wait for a 5-year waiting period after passing or serving a prison term. The Constitutional Court's decision is arguably a part of the development of the doctrine that limits rights in the political field, which was previously not known normatively. This decision has certainly become law and was put into effect in the 2020 Pilkada.

This Constitutional Court decision, in addition to drafting new laws and doctrines in political practice and elections, theoretically speaking it can also be construed as a decision that is described as *judicialization of politics*. Alec Stone Sweet stated that, judicialization of politics is the intervention of constitutional judges in legislative processes, establishing limits on law-making behavior, reconfiguring policy-making environments, and sometimes drafting the precise terms of legislation (Sweet, 2002). Simply put, judicialization of politics can also refer to an expansion of the judicial power institution to adjudicate cases regarding public policies with political elements in order to limit the authority of other branches of power that represent the majority (Perwira, 2016). This context shows the position of the Constitutional Court, which is not only testing regulations, but also as a place to solve problems that stem from political realities. Likewise, the Constitutional Court, in its position to resolve various political realities of regional head elections that were tested on it, should also use the *moral reading constitution* approach. The moral reading constitution which Ronald Dworkin considers the constitution as an abstract expression of moral requirements can be applied to concrete cases through the judicial judgment (Strauss, 1998).

In line with the view to develop the doctrine of restrictions in politics, the researcher then refers to Article 12 of the International Covenant on Civil and Political Rights (ICCPR), which categorizes the reasons for restrictions on civil and political rights. First, it is meant to protect national security and public order. Second, it also aims at safeguarding public health or morals. Third, it is to protect the rights and freedoms of other people, which is in accordance with other rights recognized in the Covenant (Read Law No. 12 of 2005). In addition, these restrictions must be applied proportionally. The principle of proportionality in the restrictions, at least, must be carried out by fulfilling two aspects: it must not be applied in a discriminatory manner and is translated into legislation (Nurhayati, 2016).

The Siracusa's 10th Principle on Provisions for Restriction and derogation of Human Rights in the International Covenant on Civil and Political Rights which is a further translation of the provisions of the ICCPR (UN Doc E, 1984), states that a restriction in the Covenant requires four things, namely: : a) is based on any of the grounds justifying the restrictions recognized by the relevant article of the Covenant; b) responding to public pressure or social needs; c) achieve a legitimate purpose; and d) comparable to that goal (Sudjana, 2002).

The four conditions of restriction above, with the goal to limit dynastic politics have a number of reasons. First, this choice of restriction will be translated into a law, which of course has legal legitimacy. Thus, there are reasons that justify the restriction on candidates tied to dynastic politics. Second, Kompas 2020 R&D survey found that as many as 58 percent of respondents agreed that there were rules that prohibited or restricted dynastic politics (Kompas.Com, 2020). This finding certainly shows the response and public pressure or social need for efforts to limit dynastic politics, which is required by the Siracusa Principles. The results of this survey describes how the will of the community can be a reason to restore the restriction law on candidates with political kinship relations as an effort to maintain the health of democracy. Jeffrey A. Winter explained that in contemporary Indonesian democracy there is an extreme material gap that creates a political gap. Winters' opinion indicates that in Indonesia's social structure there is inequality in the political world. In the absence of legislation by the state, the gap will widen and pragmatic public participation in government will increasingly happen. That is why the normalization of dynastic politics is done for the sake of the health of democracy, which is to restrict the opportunities for the public to start or grow political dynasties, allowing equal opportunities for the public to participate in elections (Arrsa, 2014). The health of democracy itself supports elite circulation, which is ideal to happen, so that the power is not controlled only by a handful of people.

Another aspect of the Constitutional Court's considerations which is worth revisiting is the argument restricting the right to nominate incumbents' relatives, which is considered to violate the constitutional rights of citizens. The Constitutional Court relies on the provisions of Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia which is associated with Decision No. 011-017/PUU-I/2003 explaining that the issue of restricting voting rights (both active and passive) in general elections is usually only based on considerations incompetence, such as age and mental condition, as well as impossibility (Vide Decision of the Constitutional Court No. 33/PUU-XIII/2015:141). However, this consideration in the context of political and democratic realities seems to be too simplistic. The doctrine and concept of restriction in political contests should be more varied, given the complexity of the problems faced in the implementation of the *Pilkada*.

From an Islamic point of view, according to Yusdani, dynastic politics is identical to authoritarianism, a modern political system that has previously been designed in such a way that the people, through their representatives, can only elect children or wives of the old and

established ruling family. Their support of political dynasties are not voluntary or by consent, but by repression. The dynastic politics as an indecent way of reproducing personal power takes advantage of the new democratic system. Dynastic politics is highly associated with money politics, media capitalism, and patronage culture.

Such conditions are contrary to the values of Islamic teachings, especially when it highly regards the value of leadership and expects the government to bring about benefits to the public. This benefit can take the forms of justice or prosperity. Thus, in principle, dynastic politics can harm the substance of politics and democracy that prioritizes the public good. Based on the principles in the fiqh of *siyasa* (politics), the purpose that the government serves is inseparable from what Muslims also want to achieve, namely obtaining happiness in the world and safety in the hereafter. Since this goal cannot be achieved by individuals or in groups such as political dynasties, Islam emphasizes the importance of establishing a state to bring about prosperity to the people as a means to achieve this goal (Iqbal, 2014).

## CONCLUSION

The research found that this local politics phenomenon is triggered by the policy on regional autonomy and decentralization after reformation in bringing about new groups with family ties at local levels who occupy positions in the government. Going by the excuses of freedom and human rights, the groups in this dynastic politics have seen a gradual increase in quantity over time. This increase happened after the Constitutional Court decision no. 33/PUU-XIII/2015 ruled in their favour. In the decision, the consideration of human rights became the main basis for the Constitutional Court to cancel the prohibition against dynastic politics, as if the formulation of Article 7 (r) of the Regional Head Election Law would eliminate political rights to take part in the government. As a matter of fact, this law only 'restricts', where candidates must first wait for 1 office term to nominate themselves for regional head office, if they have ties of kinship with any incumbent. After the waiting period ends, everyone has the right to run for regional head position and there is no loss of political rights in this case. Therefore, it is important to review the decision No. 33/PUU-XIII/2015 which renders dynastic politics constitutional and this is a very reasonable move. In the future, reviving the prohibition on dynastic politics in the nomination of regional heads by referring to the law in Article 7 (r) of the Regional Head Election Law is a well-thought decision where anyone tied to dynastic politics can still nominate themselves after waiting for a certain period of time.

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