

# TURNITIN

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**Submission date:** 21-Mar-2024 11:29AM (UTC+0700)

**Submission ID:** 2326519198

**File name:** TURNITIN.docx (100.2K)

**Word count:** 6533

**Character count:** 35746

## Succession of Regional Heads Based on Kinship Relations Judging Concept of the Rule of Law

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### Abstract

This research aims to examine in depth the existence of succession for Regional Heads using kinship relations in terms of the concept of the rule of law and formulate the implications of succession for Regional Heads based on kinship relations for the implementation of government duties in a region in the context of the rule of law. Indonesia, as stated in its constitution, adheres to the concept of a rule of law, this is attached to "Article 1 paragraph (3) of the 1945 Constitution "Indonesia is a state of law"". One indicator of the application of the concept of the rule of law in a sovereign state is the limitation of power in administering the state. The problem studied in this research is related to how the succession of Regional Heads relates to kinship relations in terms of the concept of the rule of law. The research specification used in this writing is descriptive analysis, namely using a method to describe a condition or situation. Indonesia has recently become a disturbing phenomenon. Efforts to limit the existence of dynastic politics have been made by issuing "Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Determination of PERPPU Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors, especially in Article 7 letter r". However, this provision was canceled by the Constitutional Court with the publication of "Constitutional Court Decision Number 33/PUU-XIII/2015". Updates in this research are expected for the relevant agencies to be able to issue regulations that place restrictions on incumbents from being involved in conflicts of interest in the succession of regional heads with kinship relationships.

**Keywords:** *Dynasty Politics, Regional Head, Succession.*

### 1. INTRODUCTION

The rule of law is an idea of statehood in this modern era which is most ideally implemented by countries that have sovereignty at this time. Indonesia as a sovereign country, since the beginning of its independence, has determined the concept of a legal state that aspires to be, namely a democratic legal state that actively aims to realize protection for the entire Indonesian nation and all of Indonesia's blood, promote general welfare, educate the nation's life and participate in maintaining order. a world based on freedom, eternal peace, and social justice.

"The 1945 Constitution of the Republic of Indonesia (UUD) states that the Republic of Indonesia is a democratic legal state (democratische rechtstaat) and at the same time is a

democratic state based on law (constitutional democracy) which is inseparable from each other”<sup>1</sup>.

This is of course very far from what the founding fathers envisioned as stated in the constitution of the Republic of Indonesia<sup>24</sup>. The constitution is a means of limiting government power on the one hand and providing guarantees for the rights of citizens. “According to Mc Ilwan<sup>2</sup>, There are two fundamental elements of the constitution, namely legal limits on arbitrary power and full political accountability from the government to the governed”.

Holders of power should have their powers limited and the limits of their powers regulated in great detail in the Constitution. This is intended so that the current leadership focuses on the welfare of the people, not aiming to fulfill the aspirations and interests of certain groups. The absence of detailed regulations that provide limits on power to the authorities causes several phenomena to occur that disrupt the current government system. One of them is the succession of regional head positions based on kinship relations also known as dynastic politics.

“In the study of regional head succession based on kinship relations or dynastic politics, it is a system built by local elites by utilizing decentralized democracy through regional head election<sup>3</sup>. each region so that it runs well in carrying out government affairs”<sup>4</sup>.

Succession of Regional Heads with kinship relations is closely related to dynastic politics. Succession of regional heads is a means of building dynastic power in their region. The placement of several close relatives was carried out openly. “Regulations regarding limits or prohibitions on succession to Regional Heads based on kinship relationships were regulated in Law Number 8 of 2015 concerning Amendments to Law No. 1 of 2015 concerning the Determination of PERPPU No. 1 of 2014 concerning the Election of Governors, Regents and Mayors, especially in Article 7 letter r, reads, “Indonesian citizens who can become Candidates for Governor and Candidates for Deputy Governor, Candidates for Regent and Candidates for Deputy Regent, as well as Candidates for Mayor and Candidates for Deputy Mayor are those who meet the requirements as follows:..... r”. “does not have a conflict of interest with the incumbent” means not having a blood relationship, marriage ties and/or lineage of one level straight up, down, to the side with the incumbent, namely father, mother, in-laws, uncle, aunt, brother, sister, brother-in-law, children, in-laws unless one term of office has passed”. This article emphasizes the prohibition of succession to Regional Heads to avoid conflicts of interest with incumbents.

However, “the existence of Article 7 letter r of Law Number 8 of 2015 concerning Amendments to Law No. 1 of 2015 concerning the Determination of PERPPU No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors”, was deemed to have violated

<sup>1</sup> Jimly Asshiddiqie, “Makalah Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat UUD 1945,” 2003. disampaikan pada Seminar Pembangunan Hukum Nasional VIII Tema Penegakan Hukum Dalam Era Pembangunan Berkelanjutan<sup>14</sup> Denpasar, 2003, hlm. 3.

<sup>2</sup> Budiman N P D Sinaga, *Hukum Tata Negara, Perubahan Undang-Undang Dasar* (Jakarta: PT Tata Nusa, 2009). Hlm<sup>23</sup>

<sup>3</sup> Tri Susilo, Wahyu Aji, and Suryo Pratolo, “Pengaruh Politik Dinasti Dan Sistem Pengendalian Internal Terhadap Kinerja Pemerintah Daerah Dengan Akuntabilitas Pelaporan Sebagai Variabel Pemediasi: Studi Empiris Pada Pemerintah Daerah Di Indonesia Tahun 2012-2015,” *Reviu Akuntansi Dan Bisnis Indonesia* 1, no. 2 (2019): 153–70.

<sup>4</sup> Ardika Nurfurqon, “Politik Hukum Otonomi Daerah Studi Terhadap Desentralisasi Asimetris Di Indonesia,” *Khazanah Hukum* 2, no. 2 (2020): 73–81, <https://doi.org/10.15575/kh.v2i2.8504>.

the constitutional rights of citizens and a Judicial Review was submitted by the Petitioner on behalf of Adnan Purichta Hasan, who has the status of a Member of the DPRD of South Sulawesi Province.

Research on dynastic politics has been carried out by Fitriyah.<sup>5</sup> “This research tries to look at the background of the regional head candidates who are taking part in the regional head contest. Then there is centralization and informality carried out by political parties in political recruitment for candidacy in regional elections, apart from that there are additional requirements for the level of electability of candidates and financial capabilities which are pragmatic considerations, so that these conditions provide more space or avenues for candidates with dynastic backgrounds”.

Another research entitled dynastic politics was studied by Azzahra<sup>6</sup>. “This research examines efforts to inhibit the practice of dynastic politics in Indonesia. The practice of dynastic politics in Indonesia has been going on since the pre-reformation era. Previously, dynastic politics tended to occur in the central government, but now the practice of dynastic politics is commonly found in regional governments. It is feared that the massive practice of dynastic politics in this area could harm the principles of democracy, which has the potential to give rise to abuse of power and practices of corruption which will then have an impact on the decline of governance in Indonesia”.

Next, there is Khairi's research<sup>7</sup>, “which discusses the increasing political symptoms of regional head dynasties which are increasing from time to time. Symptoms of dynastic politics in regional head elections have increased over time since direct regional head elections were first held in Indonesia in 2005. Dynastic politics in the 2020 regional head elections occurred in 29 provinces out of 32 provinces that held regional head elections, with the number of Candidate pairs related to dynastic politics reaching 135 candidate pairs or 16.8% of the total 804 candidate pairs participating in the 2020 regional head elections. A total of 58 dynastic political candidate pairs or 42.96% were elected in the 2020 regional head elections, and the remaining 77 candidate pairs were not selected. The most frequently elected head candidates were dynastic political candidates who had a child/daughter-in-law, husband/wife, and brother/sister relationship with their dynastic political patron, reaching 51 pairs of candidates or 88% of the dynastic political candidates elected”.

The difference between this research and previous research is that this research<sup>8</sup> examines the existence of kinship relationships in the election of Regional Heads in terms of the concept of the rule of law. Currently in Indonesia, after the publication of the “Constitutional<sup>12</sup> preme Court Decision no.33/PUU-XIII/2015”, there are no regulations regarding restrictions on the succession of Regional Heads based on kinship relations. So that<sup>7</sup> becomes legitimate and in the future, it will be faced with consistent application of the concept of the rule of law as established by the founding fathers, where the concept of the rule of law is not oriented solely towards power.

<sup>5</sup> Fitriyah, “Partai Politik, Rekrutmen Politik Dan Pembentukan Dinasti Politik Pada Pemilihan Kepala Daerah (Pilkada).” *Politika: Jurnal Ilmu Politik* 11, no. 1 (2020): 1–17.

<sup>6</sup> Farida Azzahra and Ind<sup>6</sup> Fitriani Sukri, “Politik Dinasti Dalam Pemilihan Kepala Daerah: Persimpangan Antara Hak Asasi Dan Demokrasi,” *Japhtn-Han* 1, no. 1 (2022): 105–19, <https://doi.org/10.55292/japhtnhan.v1i1.228>

<sup>7</sup> Halilul Khairi, “Menakar Pengaruh Politik Dinasti Dalam Pemilihan Kepala Daerah Di Indonesia,” *JWP (Jurnal Wacana Politik)* 7, no. 1 (2022): 35, <https://doi.org/10.24198/jwp.v7i1.37770>.

<sup>21</sup>is writing aims to determine the succession of Regional Heads based on kinship relations in terms of the concept of the Rule of Law in Indonesia. It is also hoped that with this research, Legislative Regulations will be issued that provide limits regarding the succession of Regional Heads based on kinship relationships, especially for incumbents who are currently in office so that they are not involved in conflicts of interest or abuse of power.

<sup>13</sup>

## 2. METHOD

This research is normative legal research, where in <sup>25</sup>this research the researcher will study and examine various literary sources, for example, books, journals, papers, regulations, and other scientific works that are related to the research object that the researcher is studying. Meanwhile, the nature of this research is descriptive, where the author will describe a problem in a certain area or at a certain time and try to reveal the existing facts completely, where the researcher will <sup>8</sup>y to explain how the succession of Regional Heads is based on kinship relations in terms of the concept of the rule of law. "The research specifications used in the research use several approaches, namely the statutory approach, the conceptual approach, the historical conceptual approach, and the case approach. In this research, the analysis carried out is qualitative analysis, which is a research procedure that produces descriptive data, namely what is stated in writing".<sup>8</sup> "Next, the author concludes deductively, namely concluding things that are general to specific things. Getting a conclusion begins by looking at real factors and ends with drawing a conclusion which is also a fact where the two facts are bridged by theories".<sup>9</sup>

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## 3. RESULTS AND DISCUSSION

"The rule of law is a state concept that has been implemented by modern countries today that upholds the rule of law. However, the interpretation and implementation of each country varies. This can be seen from several examples of countries and governments recognizing that they are a state of law, but their manifestation in running the government is not democratic or not in favor of the people. So the concept of the rule of law that is implemented must be followed by democratic words, containing translations such as "een democratische reechstaat".<sup>10</sup>

"Jimly Asshiddiqie thinks that the idea of the State of Law was built by developing the "legal instrument" itself as a functional and just system, developed by arranging the political, economic, and social institutional superstructure and infrastructure in an orderly and orderly manner, and fostered by building culture and awareness. rational and impersonal law in the life of society, nation, and state. For this reason, the legal system needs to be built (law-making) and enforced (law-enforcing) as it should".<sup>11</sup>

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<sup>8</sup> "Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo, 2003)."

<sup>9</sup> "Aslim Rasyad, *Metode Ilmiah: Persiapan Bagi Peneliti* (Pekanbaru: UNRI Press, n.d.). hlm. 20"

<sup>10</sup> Umi Muslikhah, Halimah Nur Izzati, and Ahmad Fuadi, "Keberadaan Politik Kekerabatan Dalam Konsep Negara Hukum Pancasila," *UIR Law Review* 6, no. 1 (2022).

<sup>11</sup> Jimly Asshiddiqie, *Konstitusi & Konstitusionalisme Indonesia* (Jakarta: Mahkamah Konstitusi Republik Indonesia dan Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia, 2004). Hlm. 122.

“In the concept of the State of Law, it is idealized that what must be the commander-in-chief in the dynamics of state life is law, not politics or economics. Therefore, the jargon commonly used in English to refer to the principle of the rule of law is 'the rule of law, not of man'. What is called government is essentially the law as a system, not individuals who only act as 'puppets' of the scenario of the system that regulates it”.<sup>12</sup>

“For a country that adheres to the concept of a state of law and democracy, the existence of Legislative Regulations as written law functions to regulate the state system to create order and peace in society as well as a means to respond to various developments and legal needs in the dynamics of social activities.”<sup>13</sup>

<sup>2</sup> “According to Bagir Manan, the concept of a modern legal state is a combination of the concepts of a legal state and a welfare state. In this concept, the task of the state or government is not merely to guard security or public order, but to bear the responsibility for realizing social justice, general welfare, and the greatest prosperity of the people.<sup>14</sup> The formation of a legal state in Indonesia is based on Pancasila because Pancasila is the basis for national and state life.<sup>15</sup> The concept of a legal state adopted by the Pancasila legal state (Indonesia) is a welfare state”.<sup>16</sup>

<sup>1</sup> The concept <sup>3</sup> the rule of law, apart from meaning that it is <sup>4</sup> not a state of power (Machtstaat), also implies the recognition of the principle of supremacy of law and the constitution, the adhering to the principle of separation and limitation of powers according to the constitutional system regulated in the constitution, the existence of human rights guarantees in the law. The Constitution, the principle of an independent and impartial judiciary guarantees the equality of every citizen under the law, and guarantees justice for everyone, including against abuse of authority by those in power. “Andi Mattalatta<sup>17</sup> in the article "Politics of Legislative Law" in the concept of a legal state, is the law that governs, not humans in the sense of those who hold power. Law in this case must be interpreted as a hierarchical unity of legal norms that culminates in the constitution. Therefore, the implementation of statutory and legal politics must not introduce laws and/or statutory regulations that are only for the interests of the authorities. The law must not only guarantee the interests of a few people in power but must guarantee the interests of justice for all individuals, and all citizens of the nation. To be able to guarantee this, the legal state that is being developed is not absolute rechtsstaat, but democratic rechtsstaat (democratic rule of law)”.

“Laws are built and enforced according to democratic principles. Laws must not be made, determined, interpreted, and enforced with an iron fist based on power alone (Machtstaat).

<sup>12</sup> Jimly Asshiddiqie, “Gagasan Negara Hukum Indonesia” (2011).

<sup>13</sup> Dixon Sanjaya and Daly Erni, “Kewenangan Pengundangan Peraturan Perundang-Undangan : Perkembangan Pengaturan Dan Peralihan Kewenangan,” *Jurnal Usm Law Review* 7, no. 1 (2024): 208–25.

<sup>14</sup> Bagir Manan, *Politik Perundang-Undangan Dalam Rangka Mengantisipasi Liberalisasi Perekonomian* (Bandar Lampung: FH-UNILA, 1996). Hlm. 16.

<sup>15</sup> Widiatama Widiatama, Hadi Mahmud, and Suparwi Suparwi, “Ideologi Pancasila Sebagai Dasar Membangun Negara Hukum Indonesia,” *Jurnal Usm Law Review* 3, no. 2 (2020): 310.

<sup>16</sup> Malsal Jajuli Haerudin Hermawan and Rini Irianti Sundary, “Praktik Politik Uang Dalam Pemilihan Kepala Desa Dihubungkan Dengan Asas Jujur Dan Adil Dalam Pemilihan Umum,” *Bandung Conference Series: Law Studies* 2, no. 2 (2022): 1043–50, <https://doi.org/10.29313/bcsls.v2i2.2556>.

<sup>17</sup> “Pusat Pendidikan Pancasila Dan Konstitusi Mahkamah Konstitusi, *Modul Pendidikan Negara Hukum Dan Demokrasi, Pusat Pendidikan Pancasila Dan Konstitusi Mahkamah Konstitusi*, Vol. 29, 2016.”

On the other hand, democracy must be regulated based on law<sup>18</sup>. If state power is too dominant, then democracy will not grow because it is always dictated and controlled by the state and what develops is authoritarianism<sup>19</sup>. The principle of the rule of law must not be enforced by ignoring the principles of democracy regulated in the 1945 Constitution. Therefore, it is also necessary to emphasize that sovereignty is in the hands of the people and is carried out according to the 1945 Constitution (constitutional democracy) which is balanced with the affirmation that the Indonesian State is a rule-of-law state. people's sovereignty or democracy (demokratische rechtsstaat). The legal state in Indonesia is likened to a house project, where it must be built, then maintained, and then passed on to successors.<sup>20</sup>

1 According to the author in Indonesia, the concept of the rule of law as stated in the constitution has not worked as it should, as one of the pieces of evidence that we will discuss is that there is still nepotism with the development of dynastic politics in Indonesia carried out by government bureaucrats, from the regional level to the national level. This is of course very far from what the founding fathers envisioned as stated in the constitution of the Republic of Indonesia. 24 The constitution is a means of limiting government power on the one hand and providing guarantees for the rights of citizens.

Holders of power should have their powers limited and the limits of their powers regulated in great detail in the Constitution. This is intended so that the current leadership focuses on the welfare of the people, not aiming to fulfill the aspirations and interests of certain groups. The absence of detailed regulations that provide limits on power to the authorities causes several phenomena to occur that disrupt the current government system. One of them is the succession of regional head positions based on kinship relations also known as dynastic politics.

“This also has an influence on the issue of the integrity of election organizers, which is an important matter that must begin to be regulated as an effort to build and improve the degree of integrity and quality of elections”.<sup>21</sup>

“The Constitutional Court defines dynastic politics can be interpreted as political power exercised by a group of people who are related by family ties. Furthermore, it is explained on the official website of the Constitutional Court that several things have resulted in the emergence of dynastic politics, including the following:<sup>22</sup> a) The desire within oneself or the family to hold power; b) The existence of organized groups is due to an agreement in togetherness within the group so that group rulers and group followers are formed; c) There is collaboration between rulers and entrepreneurs to combine the power of capital with the

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<sup>18</sup> Jimly Asshiddiqie, *Hukum Tata Negara & Pilar-Pilar Demokrasi* (Jakarta: Sinar Grafika, 2011). Hlm. 132-133

<sup>19</sup> Asshiddiqie. hlm. 133-134.

<sup>20</sup> Kukul Sudarmanto, “Hukum Administrasi Dan Sistem Peradilan Indonesia Yang Berkeadilan Sesuai Asas-Asas Pancasila,” *Jurnal Ius Constituendum* 6, no. 2 (2021), <https://doi.org/10.33476/ajl.v3i1.838>.

<sup>21</sup> Muhammad Syaefudin, “Kewenangan Dewan Kehormatan Penyelenggara Pemilu (DKPP) Dalam Menegakan Kode Etik Pelanggaran Pemilihan Umum,” *Jurnal Usm Law Review* 2, no. 1 (2019): 104, <https://doi.org/10.26623/julr.v2i1.2261>.

<sup>22</sup> <https://www.mkri.id/index.php?page=web.Berita&id=11428>, diakses terakhir pada tanggal 12 Februari 2024.”

power of politicians; and d) There is a division of tasks between political power and capital power, resulting in corruption”.

The succession of regional heads with kinship relations (dynastic politics) in the Indonesian constitutional system has become a very disturbing phenomenon recently. The system of inheriting the position of Regional Head through the Regional Election mechanism in various regions often occurs. Muhtar Haboddin said that the development of kinship politics at the local level was the result of the implementation of procedural democracy<sup>23</sup>.

“Succession of Regional Heads with kinship relations is closely related to dynastic politics. Succession of regional heads is a means of building dynastic power in their region. In the study of regional head succession based on kinship relations or dynastic politics, it is a system built by local elites by utilizing decentralized democracy through regional head elections.<sup>24</sup> Each region should run well in carrying out government affairs.”<sup>25</sup>

“Efforts to limit the phenomenon of dynastic politics in government, especially the succession of Regional Heads, have been regulated in Law Number 8 of 2015 concerning Amendments to Law No. 1 of 2015 concerning the Determination of PERPPU No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors, especially in Article 7 letter r, reads, “Indonesian citizens who can become Candidates for Governor and Candidates for Deputy Governor, Candidates for Regent and Candidates for Deputy Regent, as well as Candidates for Mayor and Candidates for Deputy Mayor are those who meet the requirements as follows:..... r. “does not have a conflict of interest with the incumbent” means not having a blood relationship, marriage ties and/or lineage of one level straight up, down, to the side with the incumbent, namely father, mother, in-laws, uncle, aunt, brother, sister, brother-in-law, children, in-laws unless one term of office has passed. This article emphasizes the prohibition of succession to Regional Heads to avoid conflicts of interest with incumbents.”

The provisions in the regulations above are an effort to limit the phenomenon of succession to public office through the electoral system mechanism that occurs in government, both at national and regional levels. The existence of the phenomenon of dynastic politics has received attention from the public, because the impact of its existence is felt directly by the public, especially regarding the improvement and effectiveness of performance implementation for social welfare.

“The restrictions created by the lawmakers aim to create justice in the context of a democratic society. However, restrictions must be based on court decisions that have permanent legal force. The reason put forward by the makers of the law was to create inequality and prevent the development of dynastic politics. The incumbent lawmaker's concern that he will use all efforts within the authority he has to ensure that he and/or his

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<sup>23</sup> Muhtar Haboddin, “Politik Keluarga Dalam Pilkada Serentak,” *Jurnal Transformatif* 3, no. 2 (2017): 1–15, <https://transformatif.uib.ac.id/index.php/jtr/article/view/110>.

<sup>24</sup> Susilo, Aji, and Pratolo, “Pengaruh Politik Dinasti Dan Sistem Pengendalian Internal Terhadap Kinerja Pemerintah Daerah Dengan Akuntabilitas Pelaporan Sebagai Variabel Pemediiasi: Studi Empiris Pada Pemerintah Daerah Di Indonesia Tahun 2012-2015.”

<sup>25</sup> Nurfurqon, “Politik Hukum Otonomi Daerah Studi Terhadap Desentralisasi Asimetris Di Indonesia.”



family are elected in the regional head election contest is thought to be the basis for the enactment of this article.”<sup>26</sup>

The existence of this arrangement is based on the fact that there is often abuse of power/authority carried out by incumbents to obtain benefits for their family or relatives to become the next Regional Head. For example, the incumbent has access to policies and budget allocations, has facilities and allowances, and has the advantage of ongoing programs. The incumbent can also mobilize his subordinates so that the competition for regional head candidates becomes unbalanced. This arrangement aims to create fair competition for each candidate for Regional Head and prevent the emergence of dynastic politics.

“Besides that, The existence of the phenomenon of political dynasties received attention from the community. The impact of the dynasties’ existence was felt directly by the community, especially in the lack of improvement and effectiveness of performance implementation for public welfare.”<sup>27</sup>

“However, “the existence of Article 7 letter r of Law Number 8 of 2015 concerning Amendments to Law No. 1 of 2015 concerning the Determination of PERPPU No. 1 of 2014 <sup>46</sup>ncerning the Election of Governors, Regents, and Mayors”, was deemed to have violated the constitutional rights of citizens and a Judicial Review <sup>12</sup>s submitted by the Petitioner on behalf of Adnan Purichta Hasan, who has the status of a Member of the DPRD of South Sulawesi Province.

“The application for a Judicial Review by the applicant was carried out because the constitutional rights of citizens were harmed by the implementation of the provisions of Article 7 letter r of Law Number 8 of 2015 concerning Amendments to Law No. 1 of 2015 concerning the Determination of PERPPU No. 1 of 2014 concerning the Election of Governors, Regents and Mayors, namely that the existence of norms in this Article of the Law will restrict the applicant's constitutional rights because there are discriminatory differences between the applicant and other Indonesian citizens in law and government, as well as hindering the applicant from resulting in not having equal opportunities in government, which is due to the implementation of norms in the Articles of the Law which are reviewed regarding the requirements for Indonesian citizens who can become Candidates for Governor and Candidates for Deputy Governor, Candidates for Regent and Candidates for Deputy Regent, as well as Candidates for Mayor and Candidates for Deputy Mayor .”<sup>28</sup>

“The Constitutional Court granted the request for Judicial Review on the basis that it violated citizens' rights, especially the right to vote and be elected, especially in the world of politics. In the Constitutional Court Decision No. 33/PUU-XIII/2015 which cancels the existence of Article 7 letter r along with the explanation of Law (UU) no. 8 of 2015 concerning Amendments to Law no. 1 of 2015 concerning Stipulation of Government Regulations instead of Law no. 1 of 2014. The decision of the Constitutional Court automatically means

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<sup>26</sup> Muhammad Anwar Tanjung and Politik Dinasti, “Portraits Of Justice In The Politics Of The Election Of Regional Head In Indonesia,” *Jurnal Ius Constituendum* 6, no. April 2021 (2021): 144–65.

<sup>27</sup> Umi Muslikhah, Wira Atma Hajri, and Dasul Santoso, “Political Dynasty and Its Implications for People’s Welfare,” *International Journal of Innovation, Creativity and Change* 10, no. 2 (2019): 246–52.

<sup>28</sup> “Putusan Mahkamah Konstitusi No. 33/PUU-XIII/2015” (2015).

that the provisions of the quo article do not have binding legal force. So that there are no longer any restrictions on dynastic politics because the opportunity is open for family relatives of officials in power to participate in the election of Candidates for Governor and Candidates for Deputy Governor, Candidates for Regent and Candidates Deputy Regent, Candidates for Mayor and Candidates for Deputy Mayor because it is the constitutional right of every citizen according to the decision of the Constitutional Court.”

“In this case, the Constitutional Court in its opinion stated, *“That, with all the considerations above, this does not mean that the Court is denying the fact that the incumbent regional head has various advantages, as stated by the President, so it is therefore important to formulate restrictions so that these advantages are not misused by the incumbent regional head for his interests (if he wants to run for re-election), his family members, his relatives, or certain groups close to him. However, such restrictions must be directed at the incumbent regional head, not at his family, relatives, or certain groups. This is because these benefits are attached to the incumbent regional head so the possibility of misuse is also attached to the incumbent regional head. The family of the incumbent regional head or certain groups may only benefit from such a situation if there is a role or involvement of the incumbent regional head, regardless of whether the role or involvement of the incumbent regional head is carried out directly and openly or indirectly and covertly. It is against such possibilities that restrictions on incumbent regional heads should be formulated in the norms of the law.”* Strictly speaking, restrictions must be aimed at how to limit the incumbent from using or exploiting all kinds of facilities related to his position in the political contestation of the Regional Election.<sup>29</sup>”

“According to Nuruddin Hady<sup>30</sup>, if we look closely at the juridical reasons given by the Constitutional Court, it is because they conflict with the Human Rights Articles contained in the 1945 Constitution. Some of the Constitutional Court's arguments are as follows: First, according to the “Constitutional Court, the restrictions contained in the formulation of Article 7 letter r and explanation of Article 7 letter r of Law no. 8 of 2015 do not meet the requirements as intended in Article 28J paragraph (2) of the 1945” Constitution and at the same time contains discriminatory content and because the a quo provisions are related to the rights of every citizen to equal treatment in law and government, the a quo provisions are in itself, it also contradicts “Article 27 paragraph (1) of the 1945 Constitution”. In its decision, the Constitutional Court concluded that the real problem was the suboptimal monitoring mechanism for incumbent regional heads by institutions that have the authority to carry out supervision. Second, the Constitutional Court argued that the formulation of “Article 7 letter r and the Elucidation of Article 7 letter r of Law no. 8 of 2015” contains discriminatory content. The quo provisions clearly (and were recognized by the lawmakers) contain differences in treatment based solely on a person's birth and kinship status. According to the Constitutional Court, in such circumstances “Article 7 letter r of Law no. 8 of 2015” will be difficult to implement in practice, especially by Pilkada organizers”.

The granting of the request for judicial review by the Constitutional Court shows a trend of increasing succession of Regional Heads based on kinship relations. Data processed by the

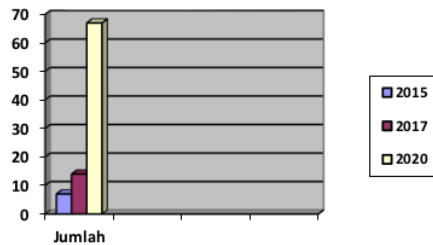
<sup>29</sup> Putusan Mahkamah Konstitusi No. 33/PUU-XIII/2015.

<sup>30</sup> Nuruddin Hady, “Implikasi Putusan Mahkamah Konstitusi Nomor: 33/Puu-Xiii/2015 Dalam Upaya Memutus Dinasti Politik Dan Antisipasi Pada Pilkada Mendatang,” *Arena Hukum* 11, no. 3 (2018): 484–99, <https://doi.org/10.21776/ub.arenahukum.2018.01003.4>.

author collected from various sources recorded a fluctuating increase in the number of candidates running for regional head nomination who were indicated to have a kinship relationship with the incumbent. In the “2015 simultaneous regional elections, which were attended by 269 regions consisting of 8 provinces, 171 regencies, and 26 cities, 7 regional head candidates were related to the previous incumbent. Meanwhile, in the 2017 Simultaneous Regional Election, there were 101 regions consisting of 7 provinces, 76 Regencies, and 18 Cities, of which 14 Regional Head candidates were related to the incumbent. Finally, in the 2020 Simultaneous Regional Election, 141 Regional Head candidates were related to the incumbent. The increasing trend can be seen in the following table 1:

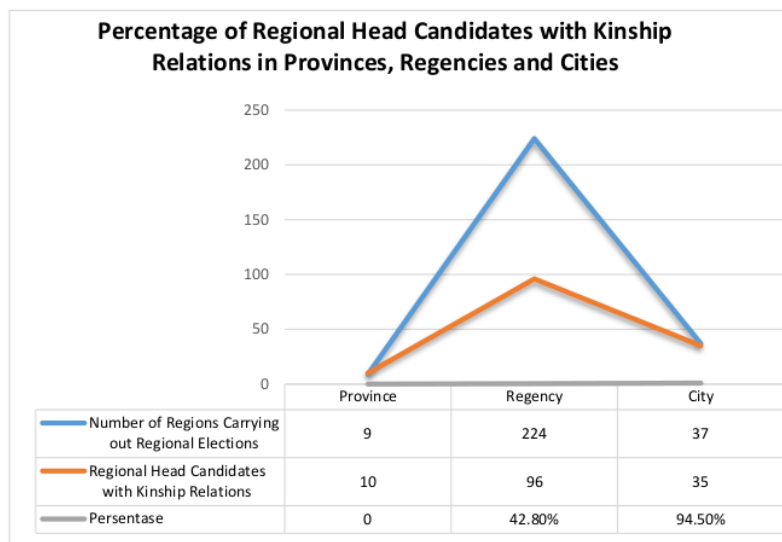
**Table 1. Succession of Regional Heads with Kinship Relations in Several Direct Regional Elections**

Source: author's processed data



Based on the table above, the succession of regional heads based on kinship relations in the implementation of the 2020 simultaneous regional elections in various regions of Indonesia has increased quite significantly. This can be seen from the diagram above. Data processed by the author shows that compared to the previous Pilkada event, Succession to the position of Regional Head based on kinship relations in the 2020 Simultaneous Regional Elections, there were 141 candidates in the Simultaneous Regional Elections who were affiliated with kinship relationships, with the following details:

**Diagram 1. Distribution of Regional Head Candidates with Kinship Relations in Several Provinces, Regencies and Cities**



Based on the graph above, the distribution of regional head succession with kinship relations at the nomination stage is almost in all regions holding the 2020 post-conflict regional elections. In the post-conflict local elections in the province alone, two candidates ran for candidacy who were involved in kinship relations, namely Marlin Agustina, wife of Muhammad Rudi (Mayor of Batam Period 2016-2021) and Isdianto, the younger brother of Muhammad Sani (Governor of Riau Islands period 2010-2015 & February-April 2016), both of whom are running for Governor of the Province. Riau islands. Then for the City area, candidates who have kinship relationships account for almost 100% of the total areas that carry out the Regional Head Election. Another interesting thing is that of the total of 141 Regional Head candidates, there are 57 female candidates and 42 of them are the wives of previous Regional Heads. Another pattern of kinship politics that occurred in the 2020 Simultaneous Regional Election was the emergence of the wife of the incumbent, namely in the Regional Election of Riau Islands Province, Indragiri Hulu Regency, Banyuwangi Regency, and South Buru regency. Apart from wives, some give birth to younger siblings of incumbents, such as in the Regional Election of Serang Regency and Makassar City, children of incumbents such as in the Regional Election of Gowa Regency, South Sulawesi, or nephews, as is the case in South Tangerang City, namely the Regional Election of Pangkajene and Islands Regency.

The phenomenon of succession to regional head positions based on kinship relations has given rise to several polemics from several experts. This happens because the succession of regional heads with kinship relationships that occurs in several regions in Indonesia leads to abuse of power or acts of corruption.

According to several experts, the implementation of regional head succession with kinship relations has an influence on the regional head election process, among others. "According to Geys, when viewed from a democratic perspective, this dynastic political phenomenon is not something wrong, because the election of family members of regional heads to replace them as regional heads is carried out democratically based on the free choice of voters and

is carried out following democratic mechanisms and applicable laws. Therefore, quite a few voters prefer candidates from the families of the ruling regime because they no longer want to gamble on their future”.<sup>31</sup>

“Kinship networks can be a strong attraction for winning candidates for District head. In simple terms, it can be said that a person's level of trust will be higher in their own family compared to other people (Aspinal & Sukmajati, 2015). There are several types of kinship politics. First, the emergence of the incumbent's desire to form a political family at the local level so that he can maintain his power. Second, the formation of kinship politics is closely related to the support of large parties in representative institutions. This of course will have implications for support from political elites.”<sup>32</sup>

As a result of this dynastic politics, many local leaders became influential politicians. So that all families, including children and wives, flock to be involved in the government system. “According to Zulkieflimansyah<sup>33</sup>, the negative impacts of dynastic politics continue: (1) Making the party a mere political machine which in turn clogs the party's ideal function so that it has no other target except power. In this position, party recruitment is based more on the popularity and wealth of legislative candidates to achieve victory. Here then instant candidates emerge from celebrities, businessmen, "green blood" or dynastic politics who do not go through a cadre formation process; (2) As a logical consequence of the first symptom, opportunities for people who are reliable and qualified cadres are closed. The circulation of power only revolves around the elite and business circles, so there is great potential for negotiations and the preparation of interest conspiracies in carrying out state duties; (3) It is difficult to realize democratic ideals because a good and clean government is not created. The control function of power is weakened and does not operate effectively, resulting in the possibility of deviations in power such as corruption, collusion, and nepotism.”

Apart from that, the phenomenon of succession of regional heads based on kinship relations also has a negative influence on the implementation of democracy in Indonesia. First,<sup>34</sup> it is considered to hinder the emergence of new thoughts and ideas in government leadership. Regional heads who come from the same family will tend to maintain the status quo and continue the ideas and thoughts of previous regional heads, so it is not good for the birth of sustainable innovation and creativity. Second,<sup>35</sup> the symptoms of dynastic politics are also seen as an obstacle to the growth of quality and innovative leaders because dynastic politics tends to use popularity in determining the choice of government leaders rather than using the capacity and capabilities of candidates. Third,<sup>36</sup> According to Agustino (2010), at the local political level in Indonesia, it is still held captive by the influence of local strongmen and roving bandits so even though political transformation has been in effect for more than a decade, democracy at the local level is still imprisoned by the interests of local political elites. Next, Agustino added, that the lives of the residents had become very bleak. Within

<sup>31</sup> Khairi, “Menakar Pengaruh Politik Dinasti Dalam Pemilihan Kepala Daerah Di Indonesia.”

<sup>32</sup> Ramlan Darmansyah, Siti Desma Syahrani, and Zulfirrah MS, “Potret Dinasti Politik Dalam Pengisian Jabatan Administratif,” *Journal of Political Issues* 2, no. 1 (2020): 34–46, <https://doi.org/10.33019/jpi.v2i1.28>.

<sup>33</sup> <https://www.mkri.id/index.php?page=web.Berita&id=11428>., diakses terakhir 23 Desember 2023, pukul

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<sup>34</sup> Khairi, “Menakar Pengaruh Politik Dinasti Dalam Pemilihan Kepala Daerah Di Indonesia.”

<sup>35</sup> Khairi.

<sup>36</sup> Alim Bathoro, “Perangkap Dinasti Politik Dalam Konsolidasi Demokrasi,” *Jurnal FISIP UMRAH* 2, no. 2 (2011): 115–25.

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five years of office, the regional head must return the loan funds along with interest (which has been previously determined). Not only that, the regional head's desire to enrich himself (himself) is also another motivation that will certainly cause more misery for the people. Steps that are often taken include: (i) intensification and extensification of taxes and levies, (ii) manipulation of project budgets, (iii) sale of regional assets, to (iv) sale of natural resources belonging to regions and the state.

The succession of regional head positions with the current pattern of kinship relations is increasingly disturbing, this can be seen from a study of the impact of this phenomenon. So to mitigate the phenomenon of succession to regional head positions with kinship relationships, a solution must be immediately found. These include First, strengthening and reinforcing the provisions, in this case, the Legislative Regulations regarding the limits of authority of the incumbent/incumbent in their involvement in the Regional Election. This needs to be realized because the incumbent has the authority to mobilize the masses or use several state facilities to mobilize and support the candidate being promoted. So in this case abuse of power is possible by the incumbent. Second, strengthening the role of political parties in the member cadre formation process. Political parties in Indonesia play an important role in the process of producing regional heads because the provisions of the law instructs that regional heads can participate in the regional elections, one of which is through political party "vehicles". Of course, the cadre process in Political Parties is expected to run well, prioritizing the integrity and capability of the cadres who will be nominated as regional head candidates. The selection process at the internal stage of political parties greatly influences whether or not the candidates put forward are worthy of becoming regional heads. Third, increase public awareness through socialization and political education as potential voters. Education and outreach to the public, in this case, convey the importance of channeling their voting rights well during the post-conflict regional elections. Voters are expected to be able to channel their voting rights by choosing candidates who have the capability and integrity to act as leaders. So that the 5 years leadership period that regional heads have does not hurt the community.

#### 4. CONCLUSION

A succession of regional heads carried out from generation to generation or to other individuals who still have kinship relationships with legal mechanisms through the Regional Head Election is considered a legitimate act. This has caused the trend of an increasing succession of Regional Heads with Kinship Relations to increase from several simultaneous regional elections starting in 2015, 2017, and 2020. The next impact is that the concept of the rule of law mandated in the constitution has shifted to a form of state whose administration is based on power alone. The succession of regional heads with kinship relationships tends to trap and inhibit participation from the wider community because their status and social rights are very different from those of the incumbent family.

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