

JURIDICIAL IMPLICATIONS OF THE CONSTITUTIONAL COURT DECISION NUMBER 90/PUU-XXI/2023 IN THE PERSPECTIVE OF LEGAL SOCIOLOGY

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Abstrac

This study aims to examine the juridical implications of Constitutional Court Decision Number 90/PUU-XXI/2023 from the perspective of Legal Sociology. The issue of the obstruction of democracy due to conflicts of interest, aimed at maintaining political dynasties that indirectly reflect the practice of nepotism surrounds the decision, especially with the difference of opinion among the judges. This research is qualitative in nature and uses normative legal research methods, that rely on secondary data in the form of research results or journals. The results show that the Constitutional Court Decision No. 90/PUU-XXI/2023 which contains amendments to Law No. 17/2017 Article 169 letter q, which regulates the age limit for candidacy for president and vice president does not have a formal defect and does not conflict with the Judicial Power Law. However, this decision caused controversy because of the family relationship between the Chief Justice of the Constitutional Court and his nephew. From the perspective of legal sociology, the decision can be seen as a deviation from the principle of judicial independence that has the potential to create conflicts of interest and reduce public trust in the judicial system. In addition, this decision also exacerbates social inequality caused by political dynasties that utilize the law as a tool to maintain political dominance. The stifling of democracy is reflected in the limited public access to political processes and legal decisions, as well as the practice of nepotism that raises concerns about the logical consistency of decisions made quickly. Disagreements among judges, through dissenting and concurring opinions, indicate different values in interpreting the law.

Keywords: *Implication; Law; Constitutional Court; Decision; Sociology.*

INTRODUCTION

The main characteristic of the republican form of government is that the highest sovereignty comes from the people (Asshiddiqie 2006), which means that a political decision and policy making is based on the interests of the people. The people have the right and obligation to oversee the course of government, including electing state leaders through general elections. General elections are the main principle upheld in a democratic system (Sukriono 2009), and must be implemented in the government structure of a country as a fundamental value in the life of the nation and state.

Indonesia is a democratic country, this is clearly recorded in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (after amendment), namely sovereignty is in the hands of the people and implemented according to the Constitution. The above provision shows that the power over the people is no longer entirely in the People's Consultative Assembly (before the amendment), but must follow the provisions in the Constitution (Darmadi 2011).

In addition to the changes in the content of the article, the third amendment of the 1945 Constitution of



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the Republic of Indonesia also established an institution that acts as the guardian and interpreter of the constitution, namely the Constitutional Court. The Constitutional Court is a state institution that exercises judicial authority established with the aim of safeguarding the constitutional rights of citizens, and ensuring that no state institution acts beyond the authority granted by the constitution (Sundariwati 2024).

The constitution itself is the basic law that is the pillar of the establishment of a state, so it is considered the highest law. Therefore, the people of the nation and state must recognize its existence because it is a form of the highest consensus of the people. In order to implement the constitution as superior law, the 1945 Constitution of the Republic of Indonesia includes Article 24C Paragraphs 1 and 2 which regulate its authority (Sutiyoso 2010).

Paragraph 1, states that the court shall hear cases at the first and last instance with a final decision in the case of judging laws against the Constitution, resolving disputes over the authority of state institutions regulated by the Constitution, dissolving political parties, and resolving disputes over election results. Paragraph 2, emphasizes that it is obliged to give a decision based on the opinion of the DPR on suspicion of misconduct by the president and/or vice president in line with the provisions of the Constitution (Faqih 2010).

In its development as the sole interpreter of the constitution, it has caused a lot of unrest especially among legal activists such as lawyers, judges, law lecturers or researchers, law activists, law students, and ordinary people who

really need justice and legal certainty. The cause of the unrest is that the Constitutional Court as the sole interpreter of the constitution is expected to play an institution that has superbody authority, especially in handling cases related to its authority (Darmadi 2011).

This means that the Constitutional Court can interpret the law unilaterally without being challenged considering that the decision issued is final and binding, so that if there are parties who feel aggrieved by the Constitutional Court's decision, they cannot file other legal remedies. In addition, the Constitutional Court Judges have great authority in interpreting the constitution as the basis for judicial review, which allows them to interpret matters that are contrary to the principles of justice to the issues raised. Therefore, thanks to the great authority possessed by Constitutional Court Judges even though there are rules related to judicial review, the Constitutional Court can ignore these legal restrictions for example in the Constitutional Court Decision Number 90/PUU-XXI/2023, which is considered to be a topic that triggers pros and cons in the midst of society (Wulandari 2024).

The publication of the verdict coincided with the amendment of Law No. 7/2017 Article 169 letter q. The decision contains changes related to the age limit for nominating presidents and vice presidents, which is considered to hamper democracy because conflicts of interest, and political dynasties are involved. In addition to the issue of obstructing democracy due to the involvement of conflicts of interest aimed at maintaining political dynasties, the decision is indirectly suspected of the practice of nepotism because the decision

making stage carried out quickly, so that it is determined by a vote that does not agree (Wafa, Fitrah, and Amin 2024).

Therefore, the change in the age limit for presidential and vice presidential candidacy causes the issue to be complicated, disputes prevailing views, raises public questions about rational policies, and the effects of certain groups regarding the change in the decision. The issue of obstruction of democracy, due to conflicts of interest aimed at maintaining political dynasties as well as the emergence of allegations of nepotism practices after the issuance of Constitutional Court Decision Number 90/PUU-XXI/2023, is included in the study of legal sociology due to the fact that the Constitutional Court's decision and legal sociology depend on each other.

According to the author, the social context can influence a decision, and social conditions can also influence the way and outcome of legal decisions. Constitutional Court decisions can reflect or change the habits, and principles of society. The sociology of law looks at how the Constitutional Court's decision is accepted, interpreted and implemented in everyday life. In addition, legal sociology looks at the workings of how the Constitutional Court's decisions influence the power dynamics within government institutions among groups in society. Constitutional Court decisions can also drive public policy or legislation by strengthening or overhauling existing legal structures. Society can then respond to the Constitutional Court's decision in various ways such as protesting, supporting, or changing behavior that shows the dynamics of legal sociology.

The Constitutional Court's decision actually has a significant impact on legal structuring, aimed at protecting citizens' equity while contributing to stability and justice in the legal structure. The binding force of a Constitutional Court decision also differs from that of a general court. It is not solely binding on the parties in the case such as the Applicant, Government, DPR/DPD or permitted related parties, but also applies to all individuals, state institutions, and legal entities in the territory of the Republic of Indonesia (Prang 2011).

Sociology of law is part of the social field that examines the interaction of law and society. In Soerjono Soekanto's opinion, there is a close relationship between law, elements, and socio cultural principles in society (Ali 2016). According to him, a good regulation is a regulation that reflects the norms believed by the community. This indicates the importance of the position of social elements in legal drafting procedures. Therefore, law making should accommodate the social nature so that the implementation of the law does not conflict, and can develop and be well accepted in the midst of social life (Mushafi and Marzuki 2018).

RESEARCH METHODS

This research applies normative legal research methods, with qualitative research types. Qualitative research is a type of research used to explain the situation as it is, without using data related to numbers or numbers (Darmadi 2011). Thus, the author aims to provide a more holistic explanation of the Juridical Implications of Constitutional Court Decision No. 90/PUU-XXI/2023 in the

perspective of Legal Sociology. The normative legal method is an approach that refers to laws, regulations, and decisions that are in force (Roza and S 2019). In this research journal, the author analyzes Law Number 7 of 2017 concerning Elections Article 169 letter q, and Constitutional Court Decision Number 90/PUU-XXI/2023 especially regarding changes to the contents of the article in the law, and the implications of the issuance of the decision. The data utilized by the author in this research is secondary data derived from secondary legal materials (Soekanto 2021). Includes research results or journals in the form of works from legal groups including legal sociology, which are next relevant to the research title.

RESULTS AND DISCUSSION

1. The verdict has no formal defects.

The Constitutional Court in administering justice to examine, hear, and decide cases still indicates the principle of organizing judicial power that is simple and fast (Sutiyoso 2010). The application to examine the formal validity of Law Number 7 Year 2017 on Elections Article 169 letter q, interpreted in Decision Number 90/PUU-XXI/2023 was determined not to have a formal defect, because the Constitutional Court still considers the decision taken to remain valid, regardless of ethical violations that may have been committed by one of the judges in the decision making process. In addition, the Constitutional Court chose to be cautious and not to actively change or expand the interpretation of the law through progressive steps, because it has the potential to create new legal uncertainty. Finally, the Constitutional

Court ended by fending off all the claims raised because it could not necessarily be used as a judgment to grant the demands of justice seekers, so that the decision was declared not contrary to the Judicial Power Law.

Ahead of the data collection period for presidential and vice presidential candidacies for the 2024 elections, the Constitutional Court issued Decision Number 90/PUU-XXI/2023 which sparked debate in the community (Wafa et al. 2024). The reason was that the decision was indirectly, related to the pairing of Prabowo Subianto and Gibran Rakabuming Raka, who at that time was the President's son. This decision began, after a student from Sebelas Maret University filed a judicial review regarding the amendment of Article 169 letter q of Law No. 17/2017 on elections (Wulandari 2024). The article is about changing the age limit for nominating the president and vice president which stipulates, "must be at least 40 years old or have held positions obtained through general elections" (Cahayani et al. 2024).

According to the author, the amendment to the article certainly made it possible for Gibran who was 37 years old at the time, and served as the Mayor of Surakarta to run as a vice presidential candidate. This is because the person concerned has met the requirements listed in the changes to the contents of the article, both in terms of substantial and procedural. This conformity shows that the changes to the contents of the article have been carried out legally, and in accordance with the applicable provisions without any irregularities in the procedure for making them. Thus, it can be concluded that the decision does not have

a formal defect, but the problem is that the decision is indirectly related to the family relationship between Gibran and the Chief Justice of the Constitutional Court who issued the decision, so that the decision raises controversial issues.

2. Decisions That Raise Controversial Issues

Constitutional Court Decision Number 90/PUU-XXI/2023 is considered to create a conflict of interest, and establish a political dynasty. Because at that time the Chief Justice of the Constitutional Court who decided the decision was Anwar Usman who had a family relationship with President Joko Widodo and his son, Gibran Rakabuming Raka (Wulandari 2024). According to the author, this family relationship is the cause of the debate. Many parties consider that changes to the content of this article have the potential to hamper democracy, because it is considered the result of a deliberate design by Anwar Usman, with the aim of supporting Gibran as a vice presidential candidate. On the other hand, the principles of independence and impartiality in the Constitutional Court's decision were questioned (Wafa et al. 2024), given the allegation that the decision was also influenced by relations from the executive. Finally, Anwar Usman was considered to have violated the principles and code of ethics of the Constitutional Court. This assumption had an impact on the dismissal of Anwar Usman from his position as Chairman of the Constitutional Court (Tambunan et al. 2024). In addition, it is possible that indirectly the practice of nepotism plays a role in this decision making process, because concerns arise regarding the

logical consistency of decisions that are decided quickly. The rapid decision making process leads to opposing and supporting opinions among judges, as a result of which decisions are not unanimous.

3. The implications of the verdict in the perspective of legal sociology.

1) Deviations from the principle of judicial independence

From the perspective of the sociology of law, the Constitutional Court's decision which implicitly involves family relationships can be seen as a deviation from the principle of judicial independence. The principle of judicial independence is the essence of the freedom of judges or the independence of judicial power, which aims to prevent abuse of authority or power by state bodies. Freedom comes from the word free, which means the freedom of individuals or groups to not be bound by anything and from anyone. If the word freedom is applied to judges, it means that judges are prohibited from being shackled by anything in carrying out their duties as judges (Adonara 2016). This principle is also one aspect of independent power as stipulated in the Judicial Power Act, which explains that judicial power is an independent authority to seek justice centered on upholding law and justice. Independent power, means that the judiciary should run freely and not be affected by the interference of other powers whether from the executive, legislative, or other powers including influences derived from family relationships. As expressed by H.L.A. Hart that, a concept of law contains elements of power that are centered on

certain obligations legal symptoms that appear from social life (Uthman 2009). Based on this expression, according to the author power and law do have a reciprocal relationship, but the task of the law here is to protect so that power does not deviate because the law regulates the limitation of power in order to create justice for society.

2) Creation of conflict of interest

In addition to family relationships being seen as a deviation from the principle of judicial independence, family relationships also create issues of conflict of interest. A sociologist named Louis Kriesberg explained that, clashes or conflicts of interest focus on patterns of power resistance and deprivation of control of scarce resources, and are more evenly distributed on the thought of political feud (Syawaludin 2014). According to the author, conflicts of interest have the potential to undermine public trust in the justice system. The public will feel that the law no longer functions fairly, but rather is used to protect the interests of certain individuals or groups. Public perceptions of justice are often more decisive than objective legal facts. The sociology of law emphasizes the importance of this perception, where the public assesses justice based on the perceived fairness of the decision process and outcome. This is in accordance with Eugen Ehrlich's opinion, that the average legal progress is not in the legislative body or the decision of the judicial body but is actually inherent in society (Mushafi and Marzuki 2018). So, according to the author, even if a Constitutional Court decision is based on valid law, the public may lose trust if

the decision making process is not transparent or is influenced by the interests of certain individuals or groups.

3) Maintaining political dynasties

This phenomenon also exacerbates social inequality as a result of the issue of maintaining political dynasties. Political dynasty is a rotation of hereditary relations or other than lineage, that has an imperative regarding the stability of family control that triggers relatives to become elites as the keyword for understanding this dynasty (Djati 2013). According to the author, political dynasties utilize the law as a tool to maintain political dominance which refers to a situation where certain individuals, groups or parties have a very large influence on the political process, decision making and policy direction in country or region. The sociology of law views this political dynasty phenomenon as a closed social vertical social movement in society. This means, that individuals who do not come powerful families or groups tend to find it difficult to access political or government positions, even if they have the required abilities or skills. If vertical social movement is not limited in society, then there should be an unequal shift in social status. As stated by Pitirim A Sorokin, social circulation is the most important path in the flow of vertical social movement, such as in political entities (Soekanto and Sulastyowati 2015). Political parties should provide broad opportunities for their members and outside members to change positions to a higher level, so that political parties can be seen as more inclusive and dynamic in creating new qualified leaders.

4) Inhibition of democracy

The of democracy is the end result of familial relationships, that create conflicts of interest and sustain political dynasties. In the context of legal sociology, the obstruction of democracy refers to a condition where basic democratic principles such as public participation, transparency and justice are not properly implemented, which then results in limited public access to political processes and legal decisions. Public participation, transparency and fairness are closely related to political processes and legal decisions. These three components are the main pillars in realizing a democratic and equitable system of governance. Public participation refers to the channeling of people's aspirations by including the public in the decision making process, so that popular sovereignty can be upheld (Roza and S 2019). However, such participation can only be effective if it is balanced with transparency, which is openness in the decision making process which is the main basis for building accountability. Through transparency, judges and court staff should be more careful in carrying out their duties and responsibilities, as they will not be vulnerable to abuse of power, corrupt practices or nepotism. In addition, fairness is key to ensuring that every individual or group gets equal rights and is treated fairly in every legal process. The influence of the subsystems of society especially politics, always influences the formation of law. Politics sometimes intervenes in the stages of drafting and application, therefore the law does not always achieve guarantees or justice in upholding community rights

(Shalihah 2017). In order to enforce community rights, the approach used must be firm and comprehensive. Therefore, Philippe Nonet and Philip Selznick provide a view of the stability of the foundation of the rule of law in society, namely responsive law. Responsive law functions as a means of responding to the needs and aspirations of society. The view that the law becomes a way to reach the target and its responsive character means accommodating the needs, and social interests experienced by the community not by the apparatus (Arianto 2010). It can be concluded by the author, that responsive law emphasizes community involvement in the process of forming and enforcing laws, that prioritize social welfare as the basis of every legal policy taken.

5) The practice of nepotism in quick decision-making: Generating dissenting opinions and concurring opinions among judges

Responsive law implies that law enforcement should not be carried out inconsistently, as seen in Constitutional Court Decision Number 90/PUU-XXI/2023. The practice of nepotism indirectly influenced the decision-making process, which can be seen from the emergence of concerns about logical consistency in decisions taken quickly. The quick decision also caused disagreement and agreement among the judges, so that the decision was not taken unanimously. When viewed from the perspective of the sociology of law, the practice of nepotism and dissent among judges due to quick decisions, clearly have a relationship that can be understood

as an indication that the social process in the legal system is not going well. As a result, external pressures such as demands for immediate decisions, as well as the influence of personal relationships (nepotism) can affect the way judges interact in interpreting the law, which ultimately creates obstacles in reaching collective agreement. In line with Roscoe Pound's main idea, that law is not something static but a dynamic that develops or what is called law in action in society. Law both the process of making, interpreting and applying it, should be wisely combined with social reality especially in the interests of legal effectiveness (Uthman 2009). Therefore, the author suggests that in order for a Constitutional Court decision to be accepted with awareness, it is necessary to reflect the principle of law in action by connecting the law and the social reality of society. Judges should not only focus on the legal text, but must consider the social, cultural, and economic conditions that develop in society by ensuring that the decisions taken are relevant, effective, and create social justice for the community.

CONCLUSION

1. Constitutional Court Decision No. 90/PUU-XXI/2023, which contains amendments to Law No. 17/2017 Article 169 letter q which regulates the age limit for candidacy for president and vice president, is argued to have no formal defects and does not conflict with the Judicial Power Law with the opinion that first, the Constitutional Court still considers the decision taken to be valid, regardless of ethical violations that may have

been committed by one of the judges in the decision making process. Second, the Court chose to be cautious and not to actively change or expand the interpretation of the law through progressive steps, because it has the potential to create new legal uncertainty. Thirdly, the Constitutional Court ended by dismissing all of the claims that were filed, because it could not necessarily be used as a judgment to grant the demands of justice seekers. Finally, the amendment to the article certainly makes it possible for Gibran to run as a vice presidential candidate, because he has met the requirements listed in the amendment to the article both in terms of substantive and procedural. It is this conformity that shows that the amendment to the content of the article has been carried out legally and in accordance with the applicable provisions, without any irregularities in the procedure for making it.

2. The Constitutional Court Decision Number 90/PUU-XXI/2023 does not have a formal defect, but raises controversial issues including creating conflicts of interest and establishing political dynasties, hampering democracy, the practice of nepotism plays a role in the decision making process, and the fast decision making process that causes opposing and supporting opinions among judges, resulting in decisions not being taken unanimously. All of these issues are related to Gibran's nomination as a vice presidential candidate, because the Chief Justice of the Constitutional Court who decided the decision is Anwar Usman who has a family

relationship with President Joko Widodo and his son, Gibran Rakabuming Raka. This familial relationship is the cause of the controversial issues.

3. From the perspective of legal sociology, the involvement of family relationships in the Constitutional Court's decision reflects a deviation from the principle of judicial independence which should be free from interference from other powers, whether from the executive, legislative or other powers, including influences stemming from family relationships. As H.L.A. Hart said, a concept of law contains elements of power centered on certain obligations in legal symptoms that appear in social life, so that the task of law is to protect power from deviating. Law regulates the limitation of power to create justice for society. In addition, family relationships which are seen as a deviation from the principle of judicial independence, also create issues of conflict of interest. According to Louis Kriesberg, this conflict of interest has the potential to create a pattern of resistance to power that can lead to decreased public confidence in the judicial system. Eugen Ehrlich argued, that the center of legal development should lie with society, not with the legislature or judiciary. Furthermore, this phenomenon also exacerbates social inequality due to political dynasties that close opportunities for vertical social movement. As Pitirim A. Sorokin, political parties should provide opportunities for anyone to rise to a higher position, so that

political parties can be seen as more inclusive and dynamic in creating new qualified leaders. This phenomenon also results in the obstruction of democracy, because the basic principles of democracy are not properly implemented which ultimately limits people's access to political processes and legal decisions. Philip Nonet and Philip Selznick proposed the concept of responsive law, which emphasizes the importance of community involvement in the formation and enforcement of laws that prioritize social welfare. Thus, the law is considered as a way to achieve goals, and its responsive character means accommodating social needs and interests experienced by the community not by the authorities. Finally, the practice of nepotism that influences the decision making process also shows inconsistency in the application of the law, as seen from the differences of opinion among judges. In line with the thinking of Roscoe Pound who emphasized that, the law must be intertwined with social phenomena, judges cannot only be oriented to the legal text but must look at the developing social conditions. The aim is to ensure that the decisions reached are relevant, effective, and create social justice for the community.

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