



The constitutional legality of presidential family members holding public office in Indonesia: A juridical perspective

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Abstract

This research aims to analyze the position of the President's family members occupying public office within the Indonesian constitutional system, from the perspectives of preventing nepotism and the ethics of power. This phenomenon has sparked debate over potential conflicts of interest and the trading of influence. The research method employed is a normative juridical approach, utilizing a statutory and a conceptual approach. The results indicate that the President's family's involvement in public office currently resides in a legal vacuum, particularly regarding elective offices. The analysis was conducted by synchronizing Law No. 28 of 1999 concerning State Organizers who are clean and free from Corruption, Collusion, and Nepotism, Law No. 30 of 2014 concerning Government Administration regarding the prohibition of the abuse of authority, and Law No. 9 of 2004 concerning State Administrative Courts. This research formulates limitation parameters into two main dimensions. First, Juridical Limitations, which are centered on procedural integrity; violations occur when legal procedures are manipulated through abuse of power for the sake of family interests. Second, Ethical Limitations, which are centered on the principle of impartiality; these limits are crossed when the President's actions create a perception of unfair political access and damage the moral legitimacy of the office. Based on these findings, this research suggests the necessity of regulatory reform to fill this legal vacuum. Furthermore, the internalization of ethics requires a mechanism for recusal or the President's withdrawal from all decision-making processes directly related to the family's political interests, to maintain the dignity of Indonesian democracy.

Keywords: Public office, juridical limitations, ethics of power

Introduction

Two decades post-reform, the phenomenon of kinship-based politics has re-emerged, involving family members of the incumbent President in elective public offices (Mayor of Surakarta, Mayor of Medan) up to the position of Vice President. The legal issue arose when the candidacy involved Constitutional Court Decision Number 90/PUU-XXI/2023, which altered the age requirements for Presidential/Vice-Presidential candidates, directly paving the way for the President's family members who had not yet met the age requirements to run for office.

This decision was considered fraught with conflicts of interest and ethics, given the kinship relationship between the then Chief Justice of the Constitutional Court and the party benefiting from it, which subsequently led to the Decision of the Honorary Council of the Constitutional Court (MKMK). This event became a legal precedent testing the independence of the judicial institution and the boundaries of the ethics of power.

The conflict of interest emerging within the vortex of executive and judicial power is not merely an administrative issue, but a threat to the state's principle of impartiality (Alkostar, 2008) ^[1]. In the constitutional law literature, the existence of a relationship by marriage or blood between the policy-making authority holder and the subject benefiting from the policy creates a perceived conflict of interest (Amsari, 2011) ^[2]. Although procedurally it appears valid, it undermines public trust in the integrity of state institutions. Without strict prevention mechanisms, elective offices that should be spaces for healthy competition turn into means of power preservation through kinship lines (Arsil, 2017) ^[3].

Legally and formally, this issue presents a tension between two principles: the Principle of Political Rights. Article 28D paragraph (3) of the 1945 Constitution guarantees that every citizen, including the President's family, has the right to equal opportunity in government. Principle of Anti-Nepotism: Article 1, number 5 of Law Number 28 of 1999 prohibits nepotism. The formal legal gap lies in the regulatory vacuum that does not explicitly regulate ethical boundaries and conflict-of-interest prevention for the President's immediate family in the elective political realm. Although political rights are guaranteed, the mobilization of the President's power and influence (as a State Organizer) can give rise to a Perceived Conflict of Interest that violates the principles of ethics in power and public trust.

However, the phenomenon of the President's immediate family entering national elective offices through changes in age requirements at the Constitutional Court indicates symptoms of Autocratic Legalism, where legal instruments and judicial institutions are used as shields to legitimize the interests of political dynasties. This practice not only creates an uneven playing field but also obscures the boundaries between citizens' political rights and the ethical obligation of a State Organizer to avoid conflicts of interest (Asshiddiqie, 2006a) ^[4].

The urgency of this research stems from the absence of explicit legal norms prohibiting nepotism in elective national offices. While the Civil Servant Law (UU ASN) strictly prohibits nepotism for lower-level bureaucrats, the presidency has ethical immunity that facilitates relatives in political contests. This condition demands a deconstruction of the meaning of nepotism in Indonesian constitutional law, so that the principles of meritocracy and the ethics of power

do not merely become normative jargon, but juridical boundaries capable of guarding the integrity of the democratic system from the threat of neo-nepotism (Asshiddiqie, 2006b)^[5].

This phenomenon is important to study because it tests the effectiveness of the Anti-Law and the Principles of Checks and Balances post-Reform. This research aims to provide a critical reflection on power practices and offer recommendations to strengthen the meritocracy system in Constitutional Law. This research will elaborate deeper on juridical boundaries, namely authority limitations based on formal regulations to prevent the misuse of state facilities, as well as the ethics of power, which are moral propriety standards for holders of the highest power to maintain state impartiality even in the realm of elective office (Asshiddiqie, 2010)^[6].

Furthermore, this issue touches on aspects of constitutional ethics that require every power holder not only to submit to formal legal texts but also to public morality and general principles of good governance. Practices that blur the lines between domestic/family interests and public interests constitute a degradation of reform values. Therefore, redefining the boundaries of the ethics of power is urgent so that the law does not merely serve as an instrument of legitimacy for elite interests, but remains a guardian of justice for all citizens.

Based on the background and conflict of norms above, this research focuses the study on two main questions; whether the involvement of the President's family in election contests (case of elective office) can be categorized as a practice of nepotism based on Law Number 28 of 1999 concerning State Organizers who are Clean and Free from, and how are the juridical boundaries and ethics of power in preventing conflicts of interest of the President towards immediate family members occupying public office, both elective and non-elective, in the Indonesian constitutional system.

Method

The research method used is Normative Juridical, which is prescriptive-analytical. This research focuses on written legal norms (law in books), legal doctrines, legal principles, and court decisions to assess their consistency and suitability with the principles of Good Governance and the ethics of power. The approaches used are the conceptual, statutory, and case approaches.

Results and Discussion

1. Analysis of the President's Family Involvement in Election Contests (Case of Elective Office) According to Law Number 28 of 1999 Concerning State Organizers Who Are Clean and Free From

The Problem of Normative Vacuum in Elective Office. This research highlights the crucial role of the President's family members within the Indonesian constitutional structure, particularly in relation to the principle of preventing nepotism. Currently, the involvement of the President's immediate family in public office, predominantly elective (elected) office, is in a legal vacuum. Although there are legal instruments such as Law No. 28 of 1999 concerning State Organizers who are clean from, Law No. 30 of 2014 concerning Government Administration, and Law No. 9 of 2004 concerning PTUN, existing regulations are not rigid enough to address potential conflicts of interest and trading in influence in political contests.

Dialectics of Article 28D paragraph (3) of the 1945 Constitution: Between Rights and Privileges Normatively, Article 28D paragraph (3) of the 1945 Constitution guarantees that every citizen has the same opportunity in government. This article is a manifestation of the principle of equality before the law. However, in practice, this article is often cited as a "shield of legality" to justify dynastic politics, with the argument that limiting officials' families violates citizens' constitutional rights (Asshiddiqie, 2011)^[7]. The interpretation of this constitutional right should not be done atomistically or separately from the spirit of the constitution as a whole. The right to equal opportunity must be placed alongside the principle of the Rule of Law (Rechtsstaat), which demands justice and freedom from the abuse of power (Asshiddiqie, 2023a)^[8].

Distortion of "Equal Opportunity" The concept of "equal opportunity" cannot be interpreted as providing a "red carpet" or special privileges to individuals with blood relations to the executive power holder. When a President's family member participates in a political contest while the President is still in office, the principle of equality for other citizens who lack access to power is distorted (Asshiddiqie, 2023b)^[9].

Limitation Parameters and Regulatory Solutions. To overcome this problem, two dimensions of limitations are needed. First, Juridical Limitations (The Red Line), which emphasize procedural integrity to prevent manipulation of legal rules for family interests. Second, Ethical Limitations (The Moral Compass), which focus on the principle of impartiality to prevent perceptions of injustice and maintain the moral legitimacy of the office.

Analysis of the position of the President's family members in public office cannot be separated from the macro legal framework governing state management. This research is based on tracing primary and secondary legal materials, which are the objects of normative juridical analysis. In this context, legal instruments in Indonesia must be understood not merely as static texts, but as manifestations of reform ideals that demand a strict separation between public interest and private or family interest (Effendy, n.d.).

However, research findings indicate a tension between existing legal norms and political reality. The involvement of the President's family in public office currently falls into a legal vacuum, particularly regarding elective or general-election offices. This phenomenon sparks serious debate over potential conflicts of interest and the trading in influence, which often fall outside the reach of existing positive law (Hadjon, 2011)^[11].

The legal synchronization analysis conducted on three main instruments—Law No. 28 of 1999 concerning State Organizers who are Clean from, Law No. 30 of 2014 concerning Government Administration regarding the prohibition of abuse of authority, and Law No. 9 of 2004 concerning State Administrative Courts—shows that the current legal regime does not yet have rigid instruments to limit the movement of kinship politics in the context of direct elections (Hamidi, 2011)^[12]. The core legal issue in this discourse lies in constitutional interpretation. As a basic norm (grundnorm), the 1945 Constitution of the Republic of Indonesia (UUD 1945) establishes fundamental principles for the filling of public offices. Article 28D paragraph (3) explicitly states that "Every citizen has the right to obtain equal opportunity in government" (Haryono, 2014)^[13]. Textually, this article is a manifestation of the principle of

equality before the law and human rights in the political realm.

However, in the context of this thesis, the article often undergoes a functional shift. Article 28D paragraph (3) is often used as a "shield of legality" to justify the practice of political dynasties. The arguments advanced are based on the premise that every official's family member is a citizen with constitutional rights that cannot be abridged, so that restrictions on them constitute discriminatory acts (Indrayana, 2023) ^[14]. However, using the pretext of human rights obscures the essence of power ethics. When the constitutional rights of the President's family are exercised without ethical limits, they can undermine the principle of fairness in political contests by giving access to power resources not possessed by other citizens (Isra, 2010) ^[15]. To address the normative vacuum and constitutional dialectics, this research formulates limitation parameters into two main dimensions: Juridical Limitations and Ethical Limitations.

Juridical Limitations (The Red Line): The first dimension concerns procedural integrity. Juridical limitations are defined as the red lines that must not be crossed under positive law. Violations in this dimension occur if legal procedures are manipulated through abuse of power for family interests. In this context, state administrative law and corruption criminal law work to detect whether there is a power intervention that alters the flow of formal legal procedures to smooth the way for the official's family.

Ethical Limitations (The Moral Compass) The second dimension, often more challenging to measure but crucial, concerns the principle of impartiality. Ethical limits are crossed when the actions of the President or state officials create a perception of political access injustice in the public's eyes. This ethical violation undermines the moral legitimacy of public office, even if it does not explicitly violate criminal laws. Ethics demands that officials not only act in accordance with the law but also avoid situations that could raise public doubt about their neutrality.

Based on the analysis of the normative vacuum and the limitations outlined above, this research asserts the need for concrete steps in state management. First, regulatory reform is needed to fill the legal vacuum that currently allows nepotism practices to hide behind electoral democratic procedures. New regulations must define the boundaries of conflicts of interest more specifically for elected officials. Second, in addition to a regulatory approach, the internalization of ethics requires a mechanism for recusal or resignation. The President or state officials whose families participate in political contests or occupy public office should withdraw from all decision-making processes directly related to their family's political interests. This mechanism is crucial to maintain the dignity of Indonesian democracy and ensure that public office remains oriented towards the people's interests, not merely the interests of groups or families.

2. Analysis of Juridical Boundaries and Ethics of Power in Preventing Conflicts of Interest of the President Towards Immediate Family Occupying Public Office, Both Elective and Non-Elective, in the Indonesian Constitutional System.

The birth of Law Number 28 of 1999 concerning State Organizers who are clean and free from Corruption, Collusion, and Nepotism cannot be separated from the great historical context of the Indonesian nation, namely the post-

1998 momentum. This period marked a turning point in the country's legal and political civilization, marked by a strong urge to purify the constitutional system, previously contaminated by practices of power abuse. This law is not merely an ordinary legislative product, but a crystallization of the noble ideals of reform. Its existence is a direct response to the bureaucratic pathologies and past politics laden with kinship. Therefore, the ratio legis (fundamental legal reason) for this regulation is to lay a new foundation for state management with integrity, break the chain of family oligarchy, and return sovereignty to the principle of meritocracy (Levitsky & Ziblatt, 2018) ^[16].

In interpreting Law No. 28 of 1999, there is often a reduction in meaning that only sees this rule as a repressive instrument or a mere punishment tool. Whereas, if examined more profoundly philosophically, this law has a much broader dimension. It is designed as ethical guidance and a juridical foundation for all state organizers (Magnis-Suseno, 2001) ^[17]. Its main goal is to end the practice of power administration based on blood or kinship relations. Such practices, historically, have proven to damage the joints of democracy by closing the space for equal public participation. The law here functions as a guardian of public morality, ensuring that power is no longer viewed as an "inheritance" to be distributed to family members, but as a mandate accountable to the people (Magnis-Suseno, 2016) ^[18].

The most crucial legal substance in this law is contained in Article 1, Section 5, which defines and prohibits nepotism. This article must be interpreted progressively, as the state's effort to provide legal guarantees in the filling of public offices. This norm holds that every public office, especially elective offices (elected through general elections), must be filled based on competence and merit. This means that qualifications, track record, and individual ability must be the sole variables in determining office. This law firmly rejects the utilization of family privileges by active state organizers to place their relatives in positions of power. Without this rule, political competition becomes unbalanced, and procedural democracy only becomes a mask for the perpetuation of political dynasties.

Legally, the goal of Law No. 28 of 1999 is to create a government ecosystem of high integrity. Integrity in this context is translated as the absence of conflicts of interest in every public official's decision-making. This law obliges state organizers to be neutral and objective. This is reflected in the strict prohibition on state organizers committing acts or adopting policies that benefit their families and/or cronies at the expense of the community, nation, and state. The essence of this rule is a strict separation between the private realm (family) and the public realm (state). When a state organizer allows kinship considerations to intervene in their public decisions, they have violated their oath of office. The law is intended to ensure that state resources, official influence, and public facilities are not used to benefit a few people with blood relations to the ruler.

Analysis of the ratio legis of this law finds its greatest relevance when applied to the President's family's involvement in political contests. Given that the President is the holder of the highest executive power and head of state, the potential for abuse of influence is significant. Therefore, the spirit of this law demands far more rigorous ethical restrictions than those imposed on other public officials. Arguments often arise that every citizen, including the

President's family, has constitutionally guaranteed political rights to run for office and to vote (human rights). However, the legal analysis of Law No. 28 of 1999 identifies limitations on these rights in the public interest. The primary purpose of this law is to ensure that, although political rights exist, they are not abused. The emphasis of the violation is not on "who is running for office", but on the process of "how the candidacy happens". If the candidacy is encouraged, facilitated, or smoothed through the mobilization of power influence (trading in influence) attached to the President's office, then it contradicts the ratio legis of this law.

In light of Bagir Manan's view and the General Elucidation of Law No. 28 of 1999, the practice of trading in influence is the core problem intended to be prevented. The office of the President possesses strong authority and symbols of power. When the President's immediate family enters the political arena while the President is still in office, it is difficult to separate the candidate's personal capacity from the influence of the President's office. Therefore, the law mandates that there be no mobilization of apparatus, budget, or policies specifically designed to win the official's family. Preventing political nepotism does not mean banning human rights, but rather fencing so that power privileges do not distort fair play.

In closing, the analysis of the ratio legis of Law Number 28 of 1999 shows that this regulation is a central pillar in maintaining the quality of post-reform democracy. Its legal substance directs to three vital points: first, cultural transformation by changing feudal/kinship culture into a meritocracy. Second, Public Integrity: Placing the nation's interest above crony interests through conflict of interest prevention. Third, Power Control: Preventing trading in influence, especially within the highest power's sphere (the President), to guarantee healthy political competition.

The fundamental problem in constitutional law enforcement in Indonesia today is the gap between *das sollen* (what should be) and *das sein* (reality). The source text highlights a crucial phenomenon: "the failure of positive legal norms to reach nepotism practices in the elective realm". Existing positive law tends to be textual and rigid (legal-positivistic). It is only capable of entrapment for material and administratively burdensome violations. However, it often fails to capture the nuances of subtler power abuse, especially in elective political processes (general elections). When nepotism is carried out in ways that are "formally legal" but "substantially morally flawed," positive law often loses its bite. Consequently, the practice of advancing family in political contests often escapes legal entrapment because no specific article is violated, even though the public senses a real injustice.

Realizing these limitations, partial improvements or mere revisions article by article are no longer adequate. A "systemic legal reconstruction" effort is needed. This means changes must touch upon the basic structure and legal culture, not just the substance of regulations. The proposed strategic recommendations are not merely toothless moral appeals, but are directed at strengthening the constitutional structure capable of fencing the highest executive power from the temptation of nepotism. In Indonesia's presidential system, the President holds a central position as both head of state and head of government. This centralized power carries significant risks if not balanced with strict control mechanisms (checks and balances). As highlighted in the

text, the main weakness (the Achilles heel) in our system is "the absence of a code of ethics that specifically binds the President and Vice President". Other officials, like judges, have the Code of Ethics and the Code of Judicial Conduct (KEPPH). In contrast, DPR members are bound by the DPR Code of Ethics, but the President and Vice President—as holders of the highest executive power—are in a vacuum of formalized ethics. This absence of specific ground rules creates a loophole that allows the President to engage in political maneuvers that benefit their family without feeling they have violated any written rules.

The first and most important strategic recommendation is the formation of a "Constitutional Code of Ethics". This is not merely an ordinary civil servant code of conduct, but a set of high-level norms specifically designed to guard the sanctity of the presidential office. This code of ethics functions as binding moral guidance for the President and Vice President. The formation of this instrument is the answer to the urgent need to separate the President's private realm (as head of family) from their public realm (as head of state). The substance of this code of ethics must strictly regulate behavioral limits for "the President and their immediate family during the active term of office". The phrase "active term of office" is very crucial because it is in this period that the potential for abuse of power is at its peak. The immediate family (spouse, children, in-laws) often serves as the entry point for undue influence, or, conversely, as the primary beneficiary of policies taken by the President.

The most progressive aspect of this recommendation is the call to remove the prohibition on all forms of Perceived Conflict of Interest. In government ethics theory, conflicts of interest are divided into three: actual, potential, and perceived. Positive law usually only reaches actual conflicts of interest. However, this recommendation demands a higher standard for a President. Situations where the President's actions "look or are felt by the public as an effort to benefit the family" must already be considered a serious ethical violation. Why is public perception or "feeling" the benchmark? Because the legitimacy of a leader in a democratic system does not only come from formal legality (election results), but also from public trust. Even if an action "formally does not violate the law," if it creates the perception that the state is managed like a family company, the dignity of the presidential institution will crumble. This rule demands that the President act like Caesar's wife in the ancient proverb: "must not only be clean, but also be seen to be clean from suspicion."

The institutionalization of the Constitutional Code of Ethics is a concrete manifestation of what Jimly Asshiddiqie calls "Constitutional Ethics". In this paradigm, the constitution is not only viewed as a legal document (political and legal) but also as a moral document. The primary demand is "morality of office above personal interest." A statesman must have ethical sensitivity beyond that of ordinary citizens. If ordinary citizens may do anything as long as it is not prohibited by law, a President may not do things that, although legal, are improper. The final goal of this emphasis on morality is "to maintain the dignity of the presidential institution from the degradation of public trust". Trust is the most valuable currency in politics. When the public loses trust because they see their leader busy with their child's political career rather than the state, moral delegitimization occurs, which is dangerous for government stability.

The second recommendation highlights the importance of "Transformation of Ethics into Technical Regulations". So far, ethics is often considered soft law, with sanctions limited to moral or social consequences. In the context of hard power politics, moral sanctions are often ignored. Therefore, the researcher emphasizes the need for formalization. The values of integrity contained in ethics must be translated into complex law (positive law). This means that violations of Perceived Conflict of Interest not only result in public condemnation but also carry clear legal or administrative consequences. This process is called the positivization of ethics. This can be done by inserting clauses of the code of ethics into the Law on Presidential Institution or by revising the State Organizer Law.

The application of this recommendation will strengthen the checks-and-balances mechanism. So far, the President's supervision is more political (by the DPR) and legal (by the MK in the event of impeachment). The presence of a Constitutional Code of Ethics will add a new ethical-institutional layer of supervision. Sociopolitically, this regulation will serve as a barrier to the normalization of political dynasties. With rules stating that the mere perception of nepotism already violates ethics, the room for the incumbent's family to utilize state facilities for elective contests will be minimal.

From a deep analysis of these recommendations, it can be concluded that legal reconstruction to prevent nepotism in the elective realm requires two simultaneous strategic steps: at the substance level, creating a new definition of violation that includes Perceived Conflict of Interest, so that legal formalities cannot evade the law. At the structural level: Forming a Constitutional Code of Ethics that binds the President specifically and transforms these ethical values into compelling legal rules (complex law). This step is necessary to save Indonesian democracy from the danger of the privatization of public power. Without the courage to institutionalize these ethics, the cycle of nepotism will continue to repeat, hiding behind the shield of "no law is violated," while national ethics are increasingly eroded.

Conclusion

Based on an in-depth normative-judicial analysis of the phenomenon of the President's family members' involvement in elective public office, this research reaches a fundamental legal conclusion. The main conclusion is that the practice, although appearing procedurally valid, does not meet the elements of nepotism as strictly defined in Article 1, number 5, of Law Number 28 of 1999 concerning State Organizers who are clean and free from Corruption, Collusion, and Nepotism. This proof is not based on political sentiment, but on a precise dissection of legal elements. First, the element of State Organizer has been fulfilled by involving the President and Constitutional Judges as the primary legal subjects holding authority. Second, and most crucial, is the fulfillment of the element of Unlawful Act in a material perspective.

Although the nomination procedure, formally and administratively, might appear legal, serious violations of the General Principles of Good Governance (AAUPB) have occurred. Referring to Article 1, number 6 of Law No. 28 of 1999, in conjunction with Article 53, paragraph (2), letter b of Law No. 9 of 2004 concerning State Administrative Courts, AAUPB is the central pillar of state administration. Violations of the principle of public interest and the principle of professionalism in this process prove the existence of Material Unlawful Acts. This means an action

can still be categorized as unlawful if its substance injures public justice and propriety, even if its formal trappings appear to be satisfied.

Third, the element of Benefiting Family is clearly demonstrated by the granting of political privileges. The opening of access to the office for the President's immediate family was not obtained through equal competition (a level playing field), but through the exercise of power and influence, clearly placing private interests above the interests of the wider community. However, this analysis also finds a complex legal standing problem. Formally and constitutionally, the 1945 Constitution does not contain an explicit prohibition on this matter. The weakness is precisely found at the statutory level, where there is a technical normative vacuum in Law No. 28 of 1999. The existing law has not rigidly defined conflict-of-interest boundaries for the President's family, so this loophole is used to legalize nepotism through democratic procedural channels. Therefore, it can be concluded that the President's family involvement in current elective contests is a legal anomaly: it is valid on the "skin" of procedure, but flawed in the "content" of legal integrity because it contradicts the anti-nepotism spirit and principles of good governance. This condition affirms the failure of existing positive law to reach the new mode of nepotism sheltering behind election procedures.

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