

## **Impeachment in Indonesia's Democracy System**

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**ABSTRACT:** Process of termination that results in the Impeachment of a person involved in a crime or misconduct can also be used against a president or vice president who violates the law or the constitution while in office. Therefore, it is important to understand the impeachment process of the president both before and after the amendments to the 1945 Constitution. In addition, it is important to understand whether the impeachment process in Indonesia that can remove the president from office is a legal process and is carried out in accordance with the rule of law, or whether the law is only as a power trap for state politics. This investigation is a normative legal investigation. One tool that states can use to maintain checks and balances between the legislature and the executive is the impeachment process. Impeachment is not just a political process but also a legal process. Impeachment allows for the smooth running of democracy and provides legal clarity, thereby fostering political stability.

**KEYWORDS:** Impeachment; Democracy system

### **I. INTRODUCTION**

In the Indonesian dictionary Impeachment means to step down from the throne; dismiss from office; put down his (own) position as king; stop being king. The word impeachment or impeachment is not used in the sound of Article 7A and 7B of the 1945 Constitution, instead preferring the words "dismissed" or "dismissal". Impeachment or dismissal itself can have different meanings in a region. Depending on the country, impeachment may be seen as a legal procedure resulting in the removal or resignation of the president, or may simply be a formal impeachment similar to that used in criminal prosecutions, where impeachment is not part of the legal process. [1]

The principles of impeachment can also vary from country to country and can vary widely. Debates about the interpretation of the reasons for impeachment will also affect the impeachment process itself or can become an exploratory discourse on theory development from an academic standpoint. This is what gives rise to research and provides new perspectives on the impeachment phenomenon that occurs in a country. [2] Reasons The President and/or Vice President in Indonesia can be dismissed during their term of office by the People's Consultative Assembly on the recommendation of the People's Representative Council, if they are proven to have violated the law in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts or if it is proven that he no longer fulfills the requirements as President and/or Vice President as stipulated in Article 7A of the 1945 Constitution while the mechanism for dismissing the President and/or Vice President is regulated in Article 7B of the 1945 Constitution where the dismissal of the President and/or Vice President is carried out by 3 (three) ) state institutions, namely the House of Representatives, Constitutional Court, and people's consultative assembly, each of which has different powers.

According to Law No. 24/2003 the reasons for Impeachment are detailed in Article 10 paragraph (3) of the Law, namely: treason against the state is a crime against state security as stipulated in the law; Corruption and bribery are criminal acts of corruption or bribery as stipulated in the law; Other serious crimes are crimes punishable by imprisonment for 5 (five) years or more; A disgraceful act is an act that can humiliate the President and/or Vice President.

The impeachment trial is a political trial, so there are no known fines or imprisonment. However, after being impeached, a state official can be tried again in a general court with the prosecution process starting from the beginning according to the charges against him. Impeachment is one of the powers possessed by the legislature as a form of control over the actions of all public officials entrusted by the public in carrying out their duties and obligations. If a public official commits a serious violation regulated in the constitution or positive law, then the impeachment process can be initiated against the person concerned and that person can be dismissed from office. The emphasis on impeachment research is more on the mechanism for dismissing the president / vice president before and after the amendment to the 1945 Constitution as research conducted by Fatkhurohman and Miftachus Shujhad (2010). In essence, the impeachment mechanism after the amendment to the 1945 Constitution, the institution involved is the House of Representatives as the proposer, while the Indonesian Constitutional Court acts as the evidentiary party

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and the MPR acted as the decision maker while the implications of the power of the decision against President Soekarno were more political in nature while President Abdurrahman Wahid was dismissed without a mechanism of evidence. The researcher did not mention about the function of impeachment itself for democracy in Indonesia.[3]

Furthermore, research that has a dimensional approach that is similar to the topic of this research is that conducted by Andy Wianto with the title "Impeachment and Implementation of Checks and Balances Mechanisms in the Indonesian Constitutional System". What the author put forward is that even though the checks and balances procedure does not work perfectly because the decision given by the People's Consultative Assembly may differ from the decision of the Constitutional Court, the existing procedure is still a constitutional law mechanism. This is because impeachment occurs in the framework of carrying out the oversight function of the executive as part of a process of checks and balances, which is the basic principle of a rule of law nation. However, the author has not explained clearly about the impeachment process as a legal process and has been carried out in accordance with legal procedures and how does the impeachment impact on Indonesian democracy?

## **II. RESEARCH METHODS**

The data source for this research is using secondary data in the form of primary legal documents, secondary legal materials, and tertiary legal materials because they are normative. The statutory approach and the conceptual method are both used in this investigation (conceptual approach). To examine or offer solutions to the topic of this study, the data collected, both primary, secondary and tertiary legal documents, were evaluated using theoretical and conceptual tools. The results of qualitative data analysis are presented descriptively.

## **III. RESULTS AND DISCUSSION**

### **1. Impeachment Process**

#### **A. Before The Amendment**

Article 1 Paragraph (3) of the 1945 Constitution states that "Indonesia is a state of law". This idea is a modern idea that has many perspectives and is concrete. Padmo Wahjono, citing Oemar Seno Adji's statement in Indonesia, the rule of law concluded that the application of the principle of rule of law lies in two things, namely (1) the Rechtsstaat theory which is characterized by the recognition of human rights, the Trias Politica, the existence of a government based on law and the existence of administrative justice; and (2) the theory of the Rule of Law which is characterized by the existence of a constitution based on human rights, the existence of equality according to law for all mankind and the principle that law overcomes everything.

The word "state" and the word "law" can be interpreted in an exaggerated manner by anyone depending on the point of view that person uses in seeing the state and law. There are two main traditions of the rule of law in the world, namely the rule of law state in the Continental European tradition called Rechtsstaat and the rule of law in the Anglo Saxon tradition called the Rule of Law. The elements that must be included in the Rechtsstaat are first, recognition of human rights (grondrechten); second, the separation of powers (scheiding van machten); third, government based on law (wetmatigheid van het bestuur); and fourth, administrative justice (administratieve rechtspraak). Meanwhile, the elements that must be contained in the Rule of Law are first, supremacy law (supremacy of law); second, equality before the law; third, a constitution based on human rights.[4]

The concept of the Rule of Law in a democratic government is first, constitutional protection; second, the judiciary is free and impartial; third, free general elections; fourth, freedom of expression; fifth, freedom of association and opposition; and sixth, civics education. An independent judiciary is emphasized as a very important pillar in both the rule of law and the rule of law tradition. In other words, the existence of an independent and impartial judiciary is an important prerequisite for both rule of law traditions. Indonesia, when it was formed as an independent and sovereign country, found that the 1945 Constitution itself still did not regulate clearly and in detail the mechanism for dismissing the President and vice president.[5] Whereas the 1945 Constitution only regulates the transfer of powers from the president to the vice president if the president dies, stops or is unable to carry out his obligations during his term of office as stated in Article 8 of the 1945 Constitution. -eyes are based on political interests, not on the issue of law violations committed.

Dismissal of President Soekarno who was dismissed through MPRS Decree Number XXXIII/MPRS/1967, which stated the reason for his dismissal was political. The president is deemed unable to carry out his obligations without mentioning which constitutional violations he has committed. Furthermore, in the MPRS Decree regarding the revocation of President Soekarno's power, it was also emphasized regarding the settlement of subsequent legal issues, which involved Dr. Ir. Soekarno carried out according to legal provisions in order to uphold law and justice. This is contrary to the principle of equality before the law and the constitutional forum privilegium.

Article 8 of the 1945 Constitution which requires the Vice President to replace the President's position when there is a power vacuum, does not apply. Because at that time there was no Vice President. The succession of the country's leadership from Soekarno to Suharto, with This was not because of Soekarno's death or cessation, but because of a condition that was considered unable to carry out his obligations. In the constitutional life of the Republic of Indonesia before the amendment to the 1945

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Constitution, the people's consultative assembly could also dismiss the president before the end of his term of office. This is stated in the provisions of Article 4 people's consultative assembly Decree No. III/MPR/1978 concerning the Position and Working Relations of the Highest Institution with/or between High State Institutions which explains the reasons for the dismissal as follows: a. At own request; b. Permanently disabled, c. Truly violate state policy.

President Suharto was impeached by force after the de facto people did not support him. When he found out that he had lost the people's support by cleverly he impeached himself so that he was free from the law to be brought to court even though the MPR should have had the opportunity to dismiss him long before 1998 due to his arbitrary actions that violated the law and the constitution. Likewise with B.J. Habibie whose accountability speech was rejected by the MPR which had legal consequences that he could not run again in the presidential election for the next period. If viewed from the rule of law, the MPR's denial of accountability for president BJ Habibi was not based on the issue of law violations committed by him, but only based on political interests due to the controversy over his position.

Discourse about the dismissal of President Abdurrahman Wahid began to surface when his name was linked to the Rp 35 billion case involving Yanatera Bulog funds in May 2000. In addition to this case, another case related to the dismissal of President Abdurrahman Wahid was the issue of the accountability of the Sultan of Brunei Darussalam's funds amounting to US\$ 2 million. which according to some parties, should be included as state income/revenue, not personal. The 236 members of the DPR politicians immediately responded to this problem by submitting a proposal to exercise their right to conduct an investigation.[6] The move to dismiss President Abdurrahman Wahid, which was originally scheduled through the mechanism of the MPR Special Session on August 1, 2001, for being strongly suspected of having committed a crime (Corruption) regarding the Bulog Yanatera Fund, and assistance from the Sultan of Brunei, has been initiated with DPR Decree Number: 33/DPR RI/ III/2000-2001, dated February 1, 2001 and DPR RI Decree No. 47/DPR-RI/IV/2000-2001 dated April 30, 2001 concerning the Stipulation of the DPR RI memorandum to President KH Abdurrahman Wahid, in fact the MPR Special Session was held earlier on July 23, 2001 for responding to President Abdurrahman Wahid who dissolved the MPR, DPR, and suspended the Golkar Party through a Presidential Decree (Decree) dated July 22, 2001.

In the end, the dismissal of President Abdurrahman Wahid from his post was not due to a suspected corruption case, but was dismissed due to resistance to the President's decree on the dissolution of the MPR, which was deemed to have violated the constitution Constitution 1945 and the State Policy. The impeachment of President Abdurrahman Wahid was an exception to the rule of mandating independent elections as a rare and extraordinary act, which violated the structural independence between the executive and the legislature. With the end of President KH Abdurrahman Wahid's administration, the investigation process for alleged corruption has ended, which has never been tried, even though the perpetrators involved, such as Deputy Head of Bulog Ir Sapuan, have been sentenced by a judge. Therefore, the dismissal of President Abdurrahman Wahid from office is only a political process and not a legal process for the crimes or violations that have been alleged against him. Prior to the amendment, the 1945 Constitution did not contain clear rules regarding the mechanism for dismissing the President and/or Vice President during his term of office, so that at that time the reasons for dismissing the president did not have clear legal certainty, so whether legal issues were violated by the president did not become a reference, dismissing the president in it is more on political interests and will. Here it shows that Impeachment is only a tool to remove the president from his position politically.

### **b. Termination After Amendment**

Amendments to the 1945 Constitution regulate the mechanism for electing the President and Vice President directly by the people (Article 6A Constitution 45). The political agreement behind the formation of this article is democracy and the presidential system of government. These two aspects are manifested in the Direct Presidential Election which directs strong legitimacy from the people towards the President and Vice President. Thus, the people clearly have sovereignty over the President and Vice President Amendments to the 1945 Constitution also encourage the independence of the judiciary which is based on the provisions of the 1945 Constitution, which is further emphasized by the MPR Decree No. X/MPR/1993 concerning the main points of Development reform as the State's Guide which has determined that the functions of the judiciary and the executive are strictly separated in the framework of creating an independent, clean and professional judiciary.[7] Based on the mandate of this Decree, the Government then submitted a bill which was finally approved by the DPR-RI to become Law Number 35 of 1999 concerning the Standardization of Law Number 14 of 1970 concerning Basic Provisions of Judicial Power. With the enactment of Law Number 35 of 1999 the dualism of judicial development was developed under one roof under the Supreme Court.

The 1945 Constitution stipulates the following state institutions: the People's Consultative Assembly, the President, the People's Representative Council, the Regional Council, the Supreme Court, the constitutional court and other institutions not regulated in the 1945 Constitution. After the amendments to the 1945 Constitution it was regulated regarding the mechanism for dismissing the president, namely what is stated in Article 7A of the 1945 Constitution which states that the President and/or Vice President can be dismissed during their term of office by the People's Consultative Assembly on the recommendation of the People's Representative Council, both if it is proven that they have violated the law in the form of treason. against the state, corruption,

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bribery, other serious criminal acts, or disgraceful acts or if it is proven that they no longer meet the requirements as President and/or Vice President. (2) The opinion of the DPR that the President and/or Vice President has violated the law or has no longer fulfilled the requirements as President and/or Vice President is in the context of carrying out the supervisory function of the DPR. (3) Submission of requests from the DPR to the Constitutional Court can only be made with the support of at least 2/3 of the total members of the DPR who are present at a plenary session attended by at least 2/3 of the total number of members of the DPR (4) The Constitutional Court is obligated to examine, adjudicate, and make the fairest decision on the opinion of the DPR in no later than ninety days after the request of the DPR has been received by the Constitutional Court. (5) If the Constitutional Court decides that the President and/or Vice-President is proven to have violated the law in the form of betrayal of the state, corruption, bribery, other serious crimes, or disgraceful acts, and/or it is proven that the President and/or Vice-President is no longer fulfilling conditions as President and/or Vice President, the People's Representative Council holds a plenary session to forward the proposal to dismiss the President and/or Vice President to the People's Consultative Assembly. (6) The People's Consultative Assembly is obliged to hold a meeting to decide on the proposal of the People's Representative Council no later than thirty days after the People's Consultative Assembly accepts the proposal. (7) Decisions of the People's Consultative Assembly on proposals dismissal of the President and/or Vice President must be taken at a plenary meeting of the People's Consultative Assembly attended by at least 3/4 of the members and approved by at least 2/3 of the members present, after the President and/or Vice President has been given the opportunity to convey an explanation in the plenary session of the People's Consultative Assembly.

The legal basis for impeachment is also regulated in Article 24 c (2) The Constitutional Court is obliged to give a decision on the opinion of the House of Representatives regarding alleged violations by the President and Vice President according to the Constitution.

Related to the discourse of impeachment or impeachment against President Susilo Bambang Yudhoyono (SBY), which at that time was very much discussed, especially related to the progress of the investigation into the Century Bank case. The results of the temporary conclusions of the DPR special committee regarding Century Bank showed that the government was only supported by two factions, namely the Democratic Party and the National Awakening Party (PKB), while 7 other factions (PKS, Golkar Party, PDIP, Gerindra, Hanura, PPP and PAN) stated that the grant Century Bank's bailout is deemed to have been a violation and violated the law. At first the accusations of wrongdoing only pointed to monetary authority officials and aides to the President, but in its development there have been political parties which, although not "vulgarly" directing targets at the President, because they are considered to be partly responsible for the Century Bank bailout process. The discourse on impeachment of the President then seemed to have received fresh air when the Constitutional Court also stated its readiness to carry out the impeachment process, after it issued Constitutional Court Regulation No. 21 of 2009 concerning Guidelines for Procedures in Deciding the Opinion of the DPR regarding Alleged Violations by the President and/or Vice President.

The reasons for the dismissal of the President and/or Vice President as stipulated in the 1945 Constitution, are not political in nature and focus on violations of the law, namely: a. betrayal of the state b. corruption and bribery c. other serious crimes d. despicable acts. proven to no longer fulfill the requirements as President and/or Vice President which are further elaborated in Article 10 paragraph (3) of Law No. 24/2003 concerning the Constitutional Court, namely: a. treason against the state is a crime against state security as stipulated in the Act b. corruption and bribery are criminal acts of corruption or bribery as stipulated in the Act c. Other serious crimes are crimes punishable by imprisonment for 5 (five) years or more d. A disgraceful act is an act that can humiliate the President and/or Vice President e. No longer fulfilling the requirements as President and/or Vice President is a condition as stipulated in Article 6 of the Constitution.[8]

Therefore, if the President and/or Vice President are proven to have violated the rules stipulated in the 1945 Constitution and in Article 10 paragraph (3) of Law No. 24/2003, the President and/or Vice President can be directly impeached from their positions without the need through the political agenda of the DPR. The discourse on SBY's impeachment never materialized because legally the submission of the request by the DPR to the Constitutional Court over the suspicion that the president and vice president had betrayed the law was not fulfilled because 2/3 of the total members of the DPR did not submit a request to the Constitutional Court and the Centuri Pansus itself did not can prove that President SBY is actually involved in the Centuri case.

The President and Vice President who are directly elected by the people cannot be brought down during their term of office, unless they violate the law based on matters stated in the 1945 Constitution. In political history, President Soekarno and President Abdurrahman Wahid have been victims of interpretations of the 1945 Constitution which were not set constitutional procedures but only based on the politics of imposing impeachment. Therefore, the Amended 1945 Constitution includes constitutional procedures regarding impeachment so that there is consistency in the application of the rule of law, namely that there are no exceptions to the application of law, even against the President.

## **2. Impact of Impeachment on Indonesian Democracy**

Presidential impeachment has raised empirical questions, legal issues, and normative concerns. There is a clear and urgent question whether impeachment is consistent with the principle of popular sovereignty that underlies democracy – or is it contrary to democracy as the survival of the nation?



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impeachment in the era of democracy is not used as a tool to get rid of criminals or "bad actors" from the presidency. On the contrary, impeachment is commonly and very effectively used as a tool to resolve deep political crises. The appointment of the president from office through the mechanism through the holding of regular elections, limiting the term of office, and the normal apparatus of political selection is the essence of a democratic government.[9] The authority and obligations of the Constitutional Court in examining disputes examined and tried by the Constitutional Court have more to do with political and constitutional issues in our country. This also has an impact on the parties that can exercise constitutional control, namely most state institutions. The successful cases of removing directly elected presidents through impeachment since 1967 have not had a negative impact on the development of democracy in Indonesia, on the contrary, it can be implied that the main essence of the principle of checks and balances guarantees the freedom of each branch of state power while avoiding interaction or interference from one power to another is increasingly maintained. Through the consolidation of democracy which began with a total reform process, then the 1945 Constitution which had been sacred for more than 30 years, in the end the 1945 Constitution also underwent changes. From 1999 to 2000, and until now, the 1945 Constitution has undergone a fourth amendment. From the fourth amendment to the 1945 Constitution, Impeachment against the President and/or Vice President, which is confirmed in Article 20 paragraph (1).

In the process and/or procedure for dismissing the President and/or Vice President, detailed in Articles 7A, 7B of the 1945 Constitution. The role of the DPR is also increasingly broad in the initial initiative to process allegations against the President and/or Vice President who committed crimes, and violations, as well as permanent (permanent) incapacity to carry out their duties subsequently from the results of the DPR Plenary Session with certain requirements that decide the President and/or Vice President guilty, then the results the decision of the DPR is submitted to the Constitutional Court which will evaluate and decide on the results of the decision of the DPR. From the decision of the Constitutional Court regarding guilt, and the ability of the President and/or Vice President to carry out their duties, the DPR immediately asked the MPR to hold a special session.[10]

The mechanism for the Special Session of the MPR, up to its decision, is a formalized political process in the form of legal products (statutory regulations). Because of that the impeachment process is very effectively used as a tool to resolve deep political crises. In other words, the core of the idea of constitutional democracy is to create a balance in socio-political interactions and this can be achieved even if the head of state uses the impeachment route.

## C. CONCLUSION

One of the features possessed by a country to maintain checks and balances between the legislative and executive powers is the impeachment process. Not just a process political but Impeachment is also a legal process because through impeachment there is legal certainty so as to provide stability in government. The impeachment mechanism that exists in Indonesia is a logical consequence of strengthening the Presidential government system that the post-reform wish to adopt. The mechanism for the impeachment process before the amendment to the 1945 Constitution was still unclear, whereas after the amendment the impeachment process was regulated in more detail in the 1945 Constitution, although the political element through the DPR as the initial initiator of investigations into crimes committed by the president/vice president still exists. Based on comparative evidence every president who has experienced impeachment is in practice much more than simply getting rid of criminals or other bad actors, on the contrary, impeachment serves as a way out of the deep structural crises that presidential systems of government sometimes experience. Such conceptualizations of impeachment are not only accurate.

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