

The Role of the Constitutional Court in Impeachment and the Differences in Impeachment Procedures in Indonesia and the United States

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Abstract

This research aims to study the impeachment of the president and/or vice president comparatively. The countries compared are countries that adhere to a presidential system, namely Indonesia and the United States. Issues that upbring by this research are how is the role of constitutional court in terms of impeachment and how significant differences in impeachment procedures both in Indonesia and United States. Using normative legal research or library research methods. This research only discusses written regulations, so this research is closely related to libraries because it will require additional data in the library. The results of research, scientific works, statutory regulations, legal theories, and opinions of scholars or doctrine. The power to proselytize the President and/or Vice President is vested in representative bodies, namely the People's Representative Council in the Indonesian Constitutional System and the People's Representative Council in the American Constitutional System.

Keywords: Impeachment, President, Vice President; Indonesia; United States.



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INTRODUCTION

In the history of the Indonesian nation, two presidents were removed before their presidential terms ended, namely former President Soekarno and former President Wahid. In this case, there was a dispute between two state institutions, the People's Democratic Party on one side and the President on the other. History records the dispute between the President and the Democratic Party, which began in 1966-1967, when President Soekarno submitted his progress report to the MPRS. In fact, developments in the national situation at that time did not support President Soekarno. In other words, there was very little support for President Sukarno. Therefore, at the MPRS Special Meeting in 1967, the MPRS ratified Decree MP.13 which canceled President Soekarno's national government powers. XXXIII / MPRS / 1967. The second conflict between democracy and the president occurred during the government of President Abdullahman Wahid in the region. The MPR's oath announced at the 1999 general election, and disagreements with President Abdullahman Wahid continued to make the Democratic Republic less confident in the prosecution of President Abdullahman Wahid. After President Abdurrahman Wahid was removed through an MPR decree, disputes continued. III / MPR / 2001. This Presidential Decree contains material regarding the withdrawal of state power from President Abdul Rahman Wahid, who was later replaced by Megawati Su, who was then Vice President. Kano Putri took over. (Kristiyanto, 2013). (Budiman, 2018) It is believed that impeachment refers to the process of prosecuting the wrongdoing of a public official or state official.

In essence, impeachment is a political trial for state officials. (Zoelva, 2011) Stated as a political court which is a legislative procedure for trying civilians. The contents are as follows: "Impersonation is a special legislative oversight of administrative personnel. It is a political act that is punishable by resignation and possibly barring from office, rather than criminal penalties or imposing compensatory sanctions."

Within the scope of the Constitution of the Republic of Indonesia, Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia regulates that the President has the highest authority in administering the national government. On that basis, Indonesia implemented a presidential system. Therefore, since the amendment to the 1945 Constitution of the Republic of Indonesia, the presidential system has been strengthened and improved. One of the corrective and perfecting steps is through bomb management and organization in Articles 7A and 7B. According to this provision, the President and/or Vice President of the Republic of Indonesia may not overthrow the People's Democratic Republic during their term of office except for special reasons regulated in the 1945 Constitution of the Republic of Indonesia. In addition, it is also stipulated that the Constitutional Court will participate in the impeachment process to determine whether the Democratic People's Republic can impeach its opinions against the President and/or Vice President. Therefore, the President and/or Vice President cannot be impeached solely for political reasons or because they like or dislike them, but must be based on the laws and regulations regulated in the 1945 Constitution of the Republic of Indonesia. Based on the description above, this research will study the impeachment of the president and/or vice president comparatively. The countries being compared are countries that adopt a presidential system, namely Indonesia and the United States. Through a comparison of the two countries, similarities and differences can be drawn in the legal regulations related to the impeachment of the president and/or vice president.

RESEARCH METHODS

Use normative legal research methods or written literature research to review current research. This research only discusses written regulations, so this research is very closely related to libraries because it will require other data in libraries. The author uses various supporting data to check literature studies, such as draft laws, research results, scientific writings, statutory regulations, legal theories, and scientific or doctrinal opinions. This research uses qualitative analysis, namely interpreting existing data using words or sentences instead of numbers. The data sources used in this sense are: Primary legal materials, namely legislation and binding legal rules regarding Impeachment. Secondary legal materials, namely research materials that provide explanations of primary legal materials, such as the results of seminars or other scientific meetings, even opinions from legal experts as long as they are relevant to the object of this research, namely Impeachment.

RESEARCH RESULTS AND DISCUSSION

In a presidential system, the president and/or vice president are elected directly by the people through general elections and have a clear term of office, for example four (four) years in the United States. (Rusdianto & SH, 2010) or 5 (five) years as in Indonesia (Panduwinata, 2012). Thus, the president and/or vice president have a strong position in the presidential palace system. The presidential system requires the president and/or vice president to have a certain term of office. Therefore, the impeachment of the President and/or Vice President must be based on very strict and limiting conditions or reasons specified by the Constitution. The aim is that the DPR does not use these rights carelessly based on political interests alone. Impeachment focuses more on this process and does not necessarily free you from removal from office as president, vice president or senior government official (Wiyanto, 2016) According to current Indonesian law, if proven the law as regulated in Article 7A of the Constitution the Republic of Indonesia 1945 is violated, then the president and/or vice president can be removed. Meanwhile in the United States, impeachment does not only target the president and/or vice president. According to Article 2, Section 4 of the U.S. Constitution, the President and government officials must determine:

“The President, Vice President and all civil officers of the United States, shall be removed from the Office on Impeachment for, and Conviction of, Treason, Crime, or other high Crimes and Misdemeanors”. If certain reasons are stipulated in the Constitution, impeachment can only be carried out in two countries. In Indonesia, the reasons for impeaching the President and/or Vice President are regulated in Article 7A of the 1945 National Anti-Racism Constitution: “The People's Consultative Assembly can dismiss the President and/or Vice President on the recommendation of the House of Representatives, regardless of whether they are proven to have violated the law by treason, bribery, serious crimes or other heinous acts, or are proven to be illegal. President and/or Vice President”. Even though the 1945 Constitution of the Republic of Indonesia does not mention treason, treason, corruption, bribery, other serious or heinous criminal acts, or is proven to no longer comply with the provisions of Article 10 paragraph (1) concerning the President and/or Vice President, regarding the detailed explanation (3) legal violations of Law Number 24 of 2003, amended by Law Number 8 of 2011 concerning the Constitutional Court, explaining the types of violations. In the United States, the reasons for impeachment are the same as the reasons for impeaching the President and/or Vice President of Indonesia as stated in Article 2 paragraph (4) of the US Constitution, namely that the impeached official is guilty of treason and bribery or minor or serious offenses.

Discussion

The Indonesian national institutions involved in the process of impeaching the President and/or Vice President are the DPR, the Constitutional Court and the People's Consultative Assembly. This is clearly stated in Article 7B of the 1945 Constitution of the Republic of Indonesia:

1. A proposal to recall the President and/or Vice President can only be submitted to the People's Consultative Council by the House of Representatives after first submitting a request to the Constitutional Court to examine, try and determine the opinion of the House of Representatives regarding criminal acts committed by the President and/or Vice President. Laws that consider treason, treason, bribery, other serious crimes, or other heinous acts to be a form of treason; and/or the opinion that the president and/or vice president are no longer eligible to serve as president and/or vice president;
2. The opinion of the House of Representatives that the President and/or Vice President has violated the law or no longer meets the requirements as President and/or Vice President is within the framework of implementing the supervisory function of the House of Representatives;
3. Submission of a request from the People's Representative Council to the Constitutional Court can only be done with the support of at least 2/3 of the total members of the People's Representative Council who are present at the plenary session which is attended by at least 2/3 of the total members of the People's Representative Council;
4. The Constitutional Court is obliged to examine, adjudicate and decide fairly on the opinion of the House of Representatives no later than ninety days after the request of the House of Representatives is received by the Constitutional Court;
5. If the Constitutional Court decides that the President and/or Vice President are proven to have committed a violation of the law in the form of treason against the state, corruption, bribery, other serious criminal acts, or disgraceful acts; and/or it is proven that the President and/or Vice President no longer fulfills the requirements 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 session 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. The decision of the People's Consultative Assembly regarding the proposal to dismiss 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 total members and approved by at least 2/3 of the total members present, after the President and/or the Vice President are given the opportunity to deliver an explanation at the plenary meeting of the People's Consultative Assembly;
8. Based on the regulations above, the impeachment process in Indonesia begins with the opinion of the House of Representatives that the President and/or Vice President has violated the law or is no longer entitled to be President and/or Vice President. The DPR's opinion is often referred to as the right to express opinions which is closely related to the DPR's supervisory function. (Firdaus, 2018) For this reason, Article 79 (4) c of Law Number 17 of 2014 concerning People's Deliberations, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council.

In the US constitutional system, the process of impeaching the president and/or vice president involves two (two) state institutions, the Senate and the Democratic Party. In Article 1, Article 2 states: "The House of Representatives shall elect the chairman and other officials; and shall have the sole right to exercise power." According to these regulations, the impeachment process begins with prosecution in the DPR. This means that the People's Democratic Party has the right to sue the President and/or Vice President. The prosecution process begins with a proposal by several members of the People's Democratic Republic to impeach the President and/or Vice President, then discussed at the Plenary Session of the People's Democratic Republic to reach a mutual agreement. If an offer is rejected, the offer cannot be continued automatically. However, before entering this stage, the DPP first formed a committee responsible for drafting impeachment clauses, which clarified the reasons for impeaching the President and/or Vice President by the DPP. The indictment was brought pursuant to Article 2, Section 4 of the U.S. Constitution. The President and/or Vice President committed treason, bribery, or other petty crimes.

The Senate will then try to impeach the DPP president and/or vice president. The third section of Article 1 of the US Constitution states: "The Senate shall have sole power to try all impeachments." This means that the Senate has full power to hear the DPP's accusations. Specifically for the impeachment process against the president, the Senate meeting is chaired by the Chief Justice (when the President of the United States is tried, the Chief Justice is responsible). After review, the Senate issues a verdict. To make this decision, two-thirds of the Senate must be present. Article 1, Section 3 of the US Constitution establishes this provision: "No person shall be condemned without the consent of two thirds of the members." The Senate's decision in an impeachment case only includes whether the president and/or vice president are removed from office. The Senate cannot issue decisions in the form of criminal or civil sanctions. Article 1, paragraph 3 of the US Constitution provides that "impeachment shall not exceed disqualification, nullification, and enjoyment of qualifications for honor, trust, or favorable position in the United States." However, the dissolution of the Senate does not save the President and/or Vice President from other responsibilities, such as criminal proceedings and judicial proceedings. This is also provided for in Article 1, Section 3 of the US Constitution, which provides: "However, the convicted person shall be held accountable to the fullest extent of the law and shall be prosecuted, tried, sentenced, and punished".

Based on the explanation above, the impeachment process in the United States is divided into two levels, namely the Democratic Progressive Party and the Senate, and the trial is presided over by the Chief Justice of the Supreme Court. This means that the impeachment process in the United States is carried out in court. Therefore, impeachment must be based on justice.

CONCLUSION

If in Indonesia the object of impeachment is only directed at the President and/or Vice President, then in the United States, impeachment can also be aimed at public officials other than the President and/or Vice President. In Indonesia, there are 3 (three) state institutions that play a role in the impeachment process, namely the House of Representatives, the Constitutional Court and the People's Consultative Assembly, while in the United States it involves 2 (two) state institutions, namely the House of Representatives and the Senate. The impeachment process against the President and/or Vice President in Indonesia involves the Constitutional Court which has the obligation to provide a decision regarding the right to express opinions of the House of Representatives. If the Constitutional Court declares it proven, then the impeachment process can proceed to the People's Consultative Assembly, and if otherwise, the House of Representatives cannot continue the impeachment process. Meanwhile, the impeachment process in the United States does not involve the judiciary, unless the person being impeached is the President, then the Senate trial is chaired by the Chief Justice of the Supreme Court without any voting rights. The institution authorized to try and decide on impeachment is the Senate.

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