

Authority Of The Constitutional Court In Impeachment Of The President And/Or The Vice President According To The Basic Law Of The Republic Of Indonesia Of 1945

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Abstract.

One of the important results of the third amendment to the Republic of Indonesia Constitution of 1945 was the impeachment of the President and/or Vice President. Prior to the third amendment to the Republic of Indonesia Constitution of 1945, there was not a single article that regulated the impeachment of the President and/or Vice President. Even though the third amendment has passed 23 years, we have never had the experience of judicial impeachment in constitutional life in Indonesia. The three presidential impeachments that have occurred in Indonesia were not judicial impeachments, but political impeachments. President Sukarno, President Suharto and President Abdurrahman Wahid were impeached but did not use legal mechanisms through the Constitutional Court. This writing will raise two legal issues: first, whether the terms contained in the 1945 Constitution of the Republic of Indonesia, dismissal and dismissal, are appropriate according to Indonesian Law. Second, what is the mechanism for dismissing the President according to the 1945 Constitution of the Republic of Indonesia after the amendment. The method used in this research is normative juridical research. The approaches used in this research are the statutory approach, conceptual approach, historical approach, case approach and comparative legal approach. From the discussion in this article, it can be concluded that the words "dismissal" and "dismissed" are not appropriate. This is based on the idea that "dismissal" and "dismissed" are not legal language. Thus, according to Indonesian law, it needs to be changed with the word "Pemakzulan" for the word "dismissal" and the word "impeached" for the word "dismissed". The impeachment procedure begins with the DPR's opinion that the President and/or Vice President has committed treason against the state, corruption, bribery, other serious criminal acts or disgraceful acts and/or is proven to be ineligible as president and/or Vice President. The DPR's opinion is registered with the Constitutional Court, with the requirement that 2/3 of the DPR members must be present and 2/3 of the DPR members present support the DPR's opinion. If the Constitutional Court decides that the President and/or Vice President have been proven to have violated the law, the DPR holds a plenary session to forward the proposal to dismiss the President and/or Vice President to the MPR. No later than 30 days after the MPR receives the proposal, the MPR is obliged to hold a session to decide on the DPR's proposal. The MPR's decision on the DPR's proposal must be taken at an MPR plenary meeting attended by 3/4 of the members and approved by 2/3 of the total MPR members present.

Keywords: Authority, Constitutional Court, Impeachment and 1945 Constitution.

I. INTRODUCTION

Article 7A of the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution of the Republic of Indonesia, states that: "The President and/or Vice President can be dismissed during their term of office by the People's Consultative Assembly, hereinafter referred to as the MPR, on the recommendation of the House of Representatives, hereinafter referred to as the DPR, either if they are proven to have committed a violation of the law in the form of treason against the state, corruption, bribery, other acts of other serious crimes, or disgraceful acts or if it is proven that he no longer meets the requirements as President and/or Vice President. Article 7A of the Republic of Indonesia Constitution of 1945 is the result of the Third Amendment to the Republic of Indonesia Constitution of 1945.

This impeachment is something new in Indonesian state administration. Before the Third Amendment to the Republic of Indonesia Constitution of 1945, there was no constitutional article that regulated the impeachment of the president and/or vice president.

Furthermore, Article 7B stipulates that:

- (1). A proposal to dismiss the President and/or Vice President can be submitted by the DPR to the MPR only by first submitting a request to the Constitutional Court, hereinafter referred to as the MK, to examine, try and decide on the DPR's opinion that the President and/or Vice President has committed a violation. laws in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts; and/or the opinion that the President and/or Vice President no longer fulfills the requirements to be President and/or Vice President.

- (2). The DPR's opinion that the President and/or Vice President has committed a violation of the law or no longer meets the requirements as President and/or Vice President is within the framework of carrying out the DPR's supervisory function.
- (3). Submission of a request from the DPR to the MK can only be made with the support of at least 2/3 of the number of DPR members present at the plenary session which is attended by at least 2/3 of the total number of DPR members.
- (4). The MK is obliged to examine, adjudicate and decide as fairly as possible on the opinion of the DPR no later than ninety days after the request is received by the MK.
- (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 DPR holds a plenary session to forward the proposal to dismiss the President and/or Vice President to the MPR.
- (6). The MPR is obliged to hold a session to decide on the DPR's proposal no later than thirty days after the MPR receives the proposal.
- (7). The MPR's decision on the proposal to dismiss the President and/or Vice President must be taken at a plenary meeting of the MPR 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 Vice President was given the opportunity to deliver an explanation at the MPR plenary meeting.

From the provisions of Articles 7A and 7B it can be concluded that the impeachment of the President and/or Vice President is a complicated matter. It is not an easy job to submit a DPR request to the Constitutional Court, which can only be done with the support of at least 2/3 of the number of DPR members present at the plenary session which is attended by at least 2/3 of the total number of DPR members. If you succeed in passing the provisions of Article 7B paragraph (3), there is still Article 7B paragraph (7), which is no less complicated than the provisions of Article 7B paragraph (3), namely that the MPR decision on the proposal to dismiss the President and/or Vice President must be taken at the MPR plenary meeting, which is attended by at least 3/4 of the total members and approved by at least 2/3 of the total members present. Article 24C paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that the Constitutional Court is obliged to provide a decision on the DPR's opinion regarding alleged violations by the President and/or Vice President according to the Constitution.

II. LEGAL PROBLEMATICS

The position of the President/Vice President is quite strong, and cannot be overthrown politically during his term of office. This means that the President/Vice President cannot be impeached due to policy decisions (*doelmatigheid beslissing*) made or carried out by the President/Vice President in the administration of state government.¹ Therefore, as the highest state officials, both of them can set policies (*doelmatigheid beslissing*) in the meaning of *beleidsgebied*. Such government policies do not fall within the realm of judicial authority, meaning they cannot be brought before a judge. A citizen or group of citizens who are supporters (constituents) during a general election may no longer support the government's policies in question, but they cannot revoke the political mandate that was given at the last general election.² This study will raise legal issues, whether the words dismissal or dismissal as contained in Article 7A and Article 7B of the 1945 Constitution of the Republic of Indonesia are correct. What is the procedure for dismissing the President and/or Vice President according to the 1945 Constitution of the Republic of Indonesia after the amendment.

III. METHODS

The method used in this research is normative juridical research. The approaches used in this research are the statutory approach, conceptual approach, historical approach, case approach and comparative legal approach.

IV. RESULTS AND DISCUSSION

D.1. The words "dismissed" and "dismissal"

The Big Indonesian Dictionary (KBBI) defines the word Makzul: to stop holding office; abdicate. Impeach: 1) dethrone, remove from office; 2) put down his (own) position as king, stop being king. The 1945 Constitution does not use the words makzul, impeachment or impeach, but the term dismissal, dismissal, as stated in Articles 7A and 7B of the 1945 Constitution.³In the future, it would be appropriate that when the word dismissal or dismissal in the 1945 Constitution is changed to the word impeached, impeachment is specifically used for the President and Vice President, not against other public officials. The procedures thereof relate solely to constitutional procedures, different from the dismissal of public officials in general.⁴In America, impeachment is not only applied to the President and Vice President, but based on Article 2, Section 4 of the US Constitution, it also includes accusation of wrongdoing to all civil officers of the United States. It is inappropriate to use the impeachment nomenclatuur for impeaching the president and vice president, according to the 1945 Constitution.

D.2. Impeachment Has Legal Connotations (*Rechtmatigheid*)

In the Introduction to this text, it was stated that Article 7A of the 1945 Constitution provides arguments for impeaching the President and/or Vice President while in office. The arguments for impeaching the President and/or Vice President while in office are as follows: Proven to have committed a violation of the law in the form of:

1. Treason against the country;
2. Corruption;
3. Bribery
4. Other serious crimes
5. Or disgraceful acts;
6. Even if it is proven that he no longer meets the requirements as President and/or Vice President.

In America, Article II Section 4 of the US Constitution lists the reasons for impeachment:

- a. Treason
- b. Bribery
- c. Or other high crimes and;
- d. Misdemeanors

The reasons for impeachment have legal connotations (*rechmatigheid*), not related to policy (*doelmatigheid*) or regulations, which have legal connotations. A "*beleid*" is not *doelmatigheid* when it is part of the modus operandi of a crime. A difference of opinion with the President of the USA is not a reason for impeach no matter how big the difference of opinion is. Likewise with disgraceful acts. The disgraceful act referred to in the constitutional article must also be understood in the sense of disgraceful act according to law, meaning that the disgraceful act is related to written legal rules.

D.3. Legal Process at the Constitutional Court

As a follow-up to the provisions of Article 7A and Article 7B of the 1945 Constitution, it is regulated in Article 10 paragraph (2) of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 regarding the Constitutional Court which states as follows:

The Constitutional Court is obliged to give a decision regarding the opinion of the DPR that the President and/or Vice President are suspected of having committed legal violations in the form of treason against the state, corruption, bribery, other serious criminal acts, or disgraceful acts, and/or no longer fulfill the requirements as President and/or Deputy President as intended in the 1945 Constitution of the Republic of Indonesia.

Furthermore, Article 10 paragraph (3) states that:

The provisions as intended in paragraph (2) are in the form of:

- a. Treason against the state is a criminal offense against state security as regulated in law;
- b. Corruption and bribery are criminal acts of corruption or bribery as regulated in law;
- c. Other serious crimes are crimes that are punishable by imprisonment for 5 (five) years or more;

- d. Disgraceful acts are acts that can lower the dignity of the President and/or Vice President;
- e. No longer meeting the requirements to be President and/or Vice President is a requirement as stipulated in Article 6 of the 1945 Constitution of the Republic of Indonesia.

The explanation of Article 10 of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court states that:

Paragraph (1):

The Constitutional Court's decision is final, that is, the Constitutional Court's decision immediately acquires permanent legal force from the moment it is pronounced and no legal action can be taken. The final nature of the Constitutional Court's decision in this law also includes final and binding legal force.

Paragraph (2):

What is meant by "DPR opinion" is the DPR's opinion regarding alleged violations by the President and/or Vice President taken in plenary decisions in accordance with the Law on the MPR, DPR, DPD and DPRD and DPR Regulations on Rules of Procedure.

Article 11.

For the purposes of implementing the authority as intended in Article 10, the Constitutional Court has the authority to summon state officials, government officials or members of the public to provide information.

Furthermore, Articles 80 to 85 regulate the following matters:

Article 80:

- (1). The applicant is the DPR
- (2). The applicant is obliged to explain clearly in his/her petition the allegations:
 - a. The President and/or Vice President have committed legal violations in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts; and/or
 - b. The President and/or Vice President no longer fulfills the requirements as President and/or Vice President based on the 1945 Constitution of the Republic of Indonesia
- (3). In the application as intended in paragraph (2), the applicant is required to include the DPR's decision and the decision-making process regarding the DPR's opinion as intended in Article 7B paragraph (3) of the 1945 Republic of Indonesia Constitution, minutes and/or minutes of the DPR meeting, accompanied by evidence regarding the allegations as intended in paragraph (2).

Article 81 states as follows:

The Constitutional Court submits the petition which has been recorded in the Constitutional Case Registration Book to the President no later than 7 (seven) working days after the petition is recorded in the Constitutional Case Registration Book.

Article 82 states that:

In the event that the President and/or Vice President resigns when the examination process is stopped and the petition is declared invalid by the Constitutional Court.

Article 83 stipulates that:

- (1). If the Constitutional Court is of the opinion that the application does not meet the requirements as intended in Article 80, the ruling states that the application cannot be accepted;
- (2). 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 to be President and/or Vice President, the decision states that it confirms the opinion of the DPR;
- (3). If the Constitutional Court decides that the President and/or Vice President are not 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 decision states that the application is rejected.

Furthermore, Article 84 states that:

The Constitutional Court's decision regarding a petition based on the DPR's opinion regarding alleged violations as intended in Article 80, must be decided within a period of no later than 90 (ninety) days after the petition is recorded in the Constitutional Case Registration Book.

Article 85 stipulates that:

The Constitutional Court's decision regarding the DPR's opinion must be conveyed to the DPR and the President and/or Vice President.

Article 86 of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court states that: The Constitutional Court can further regulate matters necessary for the smooth implementation duties and authorities according to this Law.

Henceforth, the Constitutional Court promulgates Constitutional Court Regulation Number 21 of 2009 concerning Procedure Guidelines in Deciding on the Opinion of the House of Representatives Regarding Alleged Violations by the President and/or Vice President, hereinafter referred to as PMK 21. The party requesting the Constitutional Court's decision on the opinion of the DPR is the DPR represented by The leadership can appoint their attorney,⁵ while the respondent is the President and/or Vice President who can be accompanied and/or represented by their attorney.⁶

Procedures for submitting a DPR petition, the submission is submitted in writing in Indonesian to the Constitutional Court and made in 12 copies. The DPR is obliged to explain clearly in its petition the alleged legal violations that have been committed by

- a. President and/or Vice President in the form of treason against the state, corruption, bribery, other serious criminal acts, or disgraceful acts;
- b. The President and/or Vice President no longer fulfills the requirements to be President and/or Vice President.

In the event that the DPR's opinion is related to the allegation that the President and/or Vice President has committed a violation of the law as intended in Article 3 paragraph (3) letter a, the application must contain details regarding the type, time and place of the law violation committed by the President and/or Deputy President. In the event that the DPR's Opinion relates to allegations that the President and/or Vice President no longer fulfill the requirements as President and/or Vice President based on the 1945 Constitution, the application must contain a clear description of the conditions that are not fulfilled.

The DPR is required to attach to its request evidence in the form of:⁷

- a. Minutes and/or minutes of the DPR's decision-making meeting that the DPR's opinion is supported by at least 2/3 (two-thirds) of the number of DPR members present at the Plenary Session which was attended by at least 2/3 (two-thirds) of the total members of the House of Representatives;
- b. Documents resulting from the implementation of supervisory functions by the DPR which are directly related to the application material;
- c. Minutes and/or minutes of DPR meetings;
- d. Evidence regarding alleged violations by the President and/or Vice President which is the basis for the DPR's opinion.

Evidence that supports the DPR's opinion can be in the form of letters or writings, witness statements, expert statements, statements from parties, instructions and other evidence in the form of information spoken, sent, received or stored electronically with optical devices, or similar with that. Evidence that supports the DPR's opinion must be accompanied by a list of evidence.⁸ The Registrar checks the completeness and requirements of the application. Applications that are incomplete and/or do not meet the requirements are notified to the DPR to be corrected and/or completed within a maximum period of 3 (three) working days after the notification of the incompleteness is received by the DPR. The Registrar sends a registered application file to the President and/or Vice President within a maximum period of 3 (three) days after the application is recorded in the Constitutional Case Register Book accompanied by a request for a

written response to the said application. The written response of the President and/or Vice President is made in 12 (twelve) copies and must be received by the Registrar no later than one day before the first session begins.

The trial was conducted by a Plenary of Judges which was attended by at least 7 (seven) constitutional judges. The Plenary Session is chaired by the chairman of the Constitutional Court and is open to the public. The trial took place in 6 (six) stages as follows:

- a. Stage I: Preliminary Examination Session
- b. Stage II: Response by the President and/or Vice President
- c. Stage III: Evidence by the DPR
- d. Stage IV: Proof by the President and/or Vice President
- e. Stage V: Conclusions both by the DPR and by the President and/or Vice President
- f. Stage VI: Saying the Farewell

At the preliminary examination, the leadership of the DPR and their legal representatives must be present. The President and/or Vice President have the right to attend the Preliminary Examination Session. In the event that the President and/or Vice President cannot attend the Preliminary examination session, they can be represented by their legal representatives. In the preliminary examination:

- a. The Constitutional Court examines the completeness of the application and the clarity of the application materials;
- b. The Constitutional Court gives the DPR leadership and/or its legal representatives the opportunity to complete and/or correct the petition immediately;
- c. After completion and/or revisions have been made, the Constitutional Court orders the DPR leadership to read and/or explain the request;
- d. After reading and/or explaining the application, the chairman of the session gives the President and/or Vice President or the legal representative who represents them the opportunity to ask questions in order to clarify the material of the application;
- e. The chairman of the session can give the judge the opportunity to ask questions to the DPR leadership regarding the clarity of the petition material.

In Phase II proceedings, the President and/or Vice President must be present in person and may be accompanied by their legal representative to provide a response to the DPR. These responses can take the form of:

- a. Whether or not the DPR opinion decision-making process is valid;
- b. DPR opinion content material;
- c. Obtaining and evaluating written evidence submitted by the DPR to the Constitutional Court.

The Constitutional Court provides the opportunity for the DPR leadership and/or their legal representatives to provide feedback. The Chair of the Session gives the judges the opportunity to ask questions to the President and/or Vice President.

In stage III of the trial, the DPR is obliged to prove its arguments with the following evidence:

- a. Documentary evidence;
- b. Witness Statement
- c. Expert Statement;
- d. Instruction;
- e. Other evidence.

The Constitutional Court examines evidence in a sequence tailored to needs. In examining the evidence submitted by the DPR, the Constitutional Court gives the President and/or Vice President and/or their legal representatives the opportunity to ask questions and/or examine it. In the Phase IV trial, the President and/or Vice President have the right to provide objections to the evidence presented by the DPR, and provide evidence to the contrary. The types of evidence submitted by the President and/or Vice President are basically the same as the types of evidence submitted by the DPR. The order of examination of evidence submitted by the President and/or Vice President by the Constitutional Court is adjusted to the needs. The Constitutional Court provides the DPR and/or its legal representatives with the opportunity to ask questions,

request explanations, and examine the evidence presented by the DPR. The order of examination of evidence submitted by the President and/or Vice President by the Constitutional Court is adjusted to the needs. The Constitutional Court provides the DPR and/or its legal representatives with the opportunity to ask questions, request explanations and examine the evidence presented by the President and/or Vice President.

After the hearings for evidence by the MK are declared sufficient, the MK gives both the DPR and the President and/or Vice President the opportunity to convey final conclusions within 14 (fourteen days) after the end of the Phase IV hearing. Conclusions are presented orally and/or in stage V of the trial. In the event that the President and/or Vice President resigns during the examination process at the Constitutional Court, the examination process is stopped and the petition is declared invalid by the Constitutional Court. The statement regarding the termination of the examination and the dismissal of the application is stated in the Constitutional Court's decision which was pronounced in the Plenary Session Open to the Public. The Judges' Deliberation Meeting (RPH) was held to make a decision after the trial examination by the Chief Justice of the Constitutional Court was deemed sufficient. The RPH is carried out behind closed doors by a Plenary of Judges with at least seven constitutional judges present. Decision making in the RPH is carried out by deliberation and consensus. In the event that consensus is not reached, the decision is taken by majority vote. In the case of making a decision by majority vote, if there are constitutional judges who wish to submit a different opinion, then the constitutional judge's different opinion is included in the decision. The Constitutional Court's decision on the DPR's opinion must be decided within a period of no later than 90 (ninety) days after the application is recorded in the BRPK.

The Constitutional Court's decision decided in the RPH was read out in a Plenary Session open to the public. The Constitutional Court's decision can state;

- a. Applications cannot be accepted if they do not meet the requirements specified in Article 3, Article 4, Article 5, Article 6 of this Regulation.
- b. Confirm the opinion of the DPR if the Constitutional Court is of the opinion that the President and/or Vice President is 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 is proven not to fulfill the requirements as President and/or Vice President.
- c. The application is rejected if the DPR's opinion is not proven.
- d. The Constitutional Court's decision regarding the DPR's opinion must be conveyed to the DPR and the President and/or Vice President.
- e. The Constitutional Court's decision is juridically final and binding on the DPR as the party submitting the request.

D.4. Indonesia's Experience of Impeachment

Before the amendment to the 1945 Constitution, the process of dismissing the President in Indonesia was very political and did not involve the judiciary. There are 2 Presidents in Indonesia who have been dismissed in the middle of their terms of office, namely Sukarno and Abdurrahman Wahid. Soekarno was dismissed by the MPRS due to indications that Soekarno was involved in the G-30 S/PKI incident. Therefore, in the end the MPRS rejected Soekarno's accountability speech, namely Nawaksara and Nawaksara Complementary.⁹ Meanwhile, President Abdurrahman Wahid was dismissed by the MPR due to the President's alleged involvement in the Bruneigate and Yanatera Bulog cases.¹⁰ From the two cases of dismissal of the President above, it can be seen that the reasons for dismissal of the President at that time were very political and disturbed political stability at that time. The absence of a legal mechanism in the process of dismissing the President raises concerns that the President's position will be easily shaken by his political opponents.

The existence of impeachment provisions in the 1945 Constitution after the amendments provides legal certainty in the process of dismissing the President, thus further guaranteeing government stability. In general, the Presidential impeachment process in Indonesia involves 3 state institutions, namely the DPR, the Constitutional Court and the MPR. The DPR plays a role in the prosecution process, in this case the prosecution process is part of the DPR's right to express opinions. The right to declare can only be proposed if it is proposed by at least 25 members who state that there is an allegation that the President and/or Vice

President has 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 the President and/or Deputy The President no longer meets the requirements as President and/or Vice President.¹¹

V. CONCLUSION

From the discussion above, it can be concluded that the words "dismissal" and "dismissed" are inappropriate. This is based on the idea that "dismissal" and "dismissed" are not legal language. Thus, according to Indonesian law, it needs to be changed with the word "Pemakzulan" for the word "dismissal" and the word "impeached" for the word "dismissed". The impeachment procedure begins with the DPR's opinion that the President and/or Vice President has committed treason against the state, corruption, bribery, other serious criminal acts or disgraceful acts and/or is proven to be ineligible as president and/or Vice President.

The DPR's opinion is registered with the Constitutional Court, with the requirement that 2/3 of the DPR members must be present and 2/3 of the DPR members present support the DPR's opinion. If the Constitutional Court decides that the President and/or Vice President have been proven to have violated the law, the DPR holds a plenary session to forward the proposal to dismiss the President and/or Vice President to the MPR. No later than 30 days after the MPR receives the proposal, the MPR is obliged to hold a session to decide on the DPR's proposal. The MPR's decision on the DPR's proposal must be taken at an MPR plenary meeting attended by 3/4 of the members and approved by 2/3 of the total MPR members.

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