



Impeachment of the Head of State: Threats to Presidentialism or Improving the Constitutional System

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Abstract

One crucial element in a presidential-based system is the impeachment process for the president. Prior to the amendments, Indonesia lacked a clear mechanism for removing a president during their term. The removal was determined by a majority vote in the People's Consultative Assembly (MPR), which posed problems because this process was entirely political and did not involve legal aspects. After the amendments, the idea emerged that in a presidential system, a president cannot be removed solely through political means; a legal process must be followed first. Therefore, this article aims to explain the mechanism of presidential impeachment in Indonesia by comparing it with other countries. The method used in this study is normative juridical. Based on the analysis conducted, it is evident that presidential impeachment in Indonesia, in a normative sense, contradicts the principle of checks and balances, particularly because this process does not involve a second chamber.

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I. INTRODUCTION

The amendments to the 1945 Constitution have transformed the dynamics of relationships among state institutions in Indonesia, shifting from a vertical and hierarchical structure to a more horizontal and functional one. This process has also led to the establishment of several new state institutions, such as the Constitutional Court (MK), the Regional Representative Council (DPD), and the Judicial Commission (KY). According to Asshiddiqie, five important aspects emerged from these amendments. First, legislative power has been transferred from the President to the DPR (People's Consultative Assembly). Second, there is a constitutional oversight procedure that grants the Constitutional Court the authority to assess laws based on the Constitution. Third, the MPR is no longer recognized as the highest state institution but is now on par with other high state institutions. Fourth, the MPR does not represent the symbol of people's sovereignty. Finally, the relationships among high state institutions are now governed by the principle of reciprocal influence according to the basis of checks and balances (Asshiddiqie, 2021). The establishment of these new institutions signifies a concrete step towards strengthening the principles of oversight and balance in interactions among state institutions.

One form of checks and balances is the impeachment of the president. In Indonesia, the rules regarding presidential impeachment were elaborated upon after the amendment of the 1945 Constitution. Previously, the impeachment process emphasized political elements over legal ones, as evidenced by the cases of President Sukarno and Gus Dur, which did not involve any judicial process. Impeachment is part of the highest oversight function held by the legislative body.

Over time, an increasing number of articles have discussed impeachment following the amendments to the 1945 Constitution, including comparative studies of presidential impeachment procedures in Indonesia before and after the constitutional changes, such as those researched by Syawawi (2010) and Arry (2016). Additionally, Hadi (2016) has written about comparing the impeachment process in Indonesia with other countries that have a presidential system, such as the United States and the Philippines. However, these studies generally describe the impeachment process in Indonesia without evaluating its alignment with the principles of checks and balances.

The relevance of this study is highlighted by Faiz and Redhani (2018), whose work compares parliamentary roles in the context of presidential impeachment. However, previous studies took a broad approach, covering countries with presidential, parliamentary, and mixed government systems. In contrast, this study will be more specific in discussing countries with a presidential system and a bicameral parliamentary structure, reflecting the conditions in the Republic of Indonesia.

Therefore, this research aims to offer a new perspective by explaining how the process of impeachment of the head of state occurs in Indonesia and evaluating the role of each high institution in that process. The analysis will be conducted through comparisons with impeachment processes in other countries that also implement a presidential system and a bicameral parliamentary structure. With this approach, the researcher hopes to reveal the unique characteristics of the stages of presidential removal in Indonesia.

II. RESEARCH METHOD

This study adopts a normative legal or library research method, focusing on legislation related to impeachment, with reference to the 1945 Constitution of the Republic of Indonesia. The approaches used include textual analysis and literature review from valid sources, as well as a case approach to examine relevant legal issues. This allows for an alignment between textual information and the context of the cases.

The legal materials used consist of primary legal sources, such as the 1945 Constitution, Law No. 24 of 2003 on the Constitutional Court, and Law No. 17 of 2014 (UUMD3), as well as secondary legal materials that include literature and related documents. The process of collecting legal materials begins with the inventory of regulations, followed by citation, summarization, and analysis of the issues under investigation. After the legal materials have been gathered, processing and analysis are conducted using legal arguments based on deductive-inductive logic.

Additionally, this research also compares the impeachment process in Indonesia with that of ten other countries: Argentina, Colombia, Brazil, Uruguay, the Philippines, Bolivia, the Dominican Republic, Chile, and the United States. This comparison is made by analyzing the differences and similarities between the 1945 Constitution and the foundational legislation of these countries, providing deeper insights into the global mechanisms of impeachment.

III. RESULT AND DISCUSSION

3.1. Impeachment: A System or a Threat to Power

According to Jimly (2012), impeachment refers to the mechanism used to hold the president accountable by the parliament when the president is suspected of violating the law. This process emphasizes the procedures followed and does not always end with the resignation or removal of the president. Meanwhile, the term "removal" more specifically refers to the actual act of resignation, dismissal, or removal of the president or other high officials. Historically, the concept of impeachment emerged in England in the 14th century, when parliament used this institution to process high officials involved in cases of corruption or other issues beyond the jurisdiction of ordinary courts. The impeachment process can be understood as a form of criminal justice carried out before the Senate, known as a quasi-political court. This process begins with articles of impeachment, which function similarly to an indictment in criminal proceedings and contain official allegations that trigger the process.

Globally, the position of the president plays a crucial role in influencing the direction of a country, including in aspects of state governance. This indicates that the president's power constitutionally derives from the fundamental law, and the position of the president is strategic and must not be vacant. Within the framework of Indonesia's state system, the principle of popular sovereignty is regulated in Article 1, Paragraph 2, which states that the president is elected directly by the people. However, prior to the reform, Indonesia experienced a period of authoritarianism and centralized power, leading to various issues in the political order. During that time, the president functioned as a *mandataris* (agent) of the MPR (People's Consultative Assembly) and was accountable to that institution (Darmodiharjo, 1985).

The president's power is derivative, obtained through the delegation of authority, and the process of presidential accountability before the amendment of the 1945 Constitution was heavily dependent on the rules agreed upon by the MPR. If the president is deemed to violate the state direction by the DPR (People's Representative Council), the definition of "violation of state direction" is often unclear (Soimin, 2009). However, based on MPR stipulations and state practice, violations of state direction include violations against the GBHN (Guidelines for the Direction of the State) as well as the 1945 Constitution. Before the amendment, the process for removing the president was not clearly regulated, both in terms of grounds and mechanisms. Nonetheless, the DPR had the right to

supervise the president's actions in carrying out the state direction. If the DPR assessed that the president violated the state direction, they would issue a memorandum to remind the president. If there was no response within three months, the DPR would issue a second memorandum. If the second memorandum was also ignored, the DPR would request the MPR to hold a special session to ensure accountability for the president. (Anwar, 1999).

3.2. Impeachment Mechanism in Constitutional Construction

In Indonesia, impeachment is defined as a mechanism that allows the legislature (DPR) to remove the president's powers during their term if certain legal violations occur. This understanding is more limited compared to the concept of impeachment in the United States. The concept became widely recognized following the amendment of the 1945 Constitution, which was an important step to reinforce the presidential system of governance, based on the perspectives of the Ad Hoc Committee I of the MPR Working Body. They identified several characteristics of the presidential system, including: (1) fixed presidential terms; (2) the president as head of state and head of government; (3) the presence of checks and balances; and (4) the existence of an impeachment process (Constitutional Court, 2005).

Before the amendment, the process for dismissing the president in Indonesia was highly political and did not involve judicial aspects. Sukarno and Abdurrahman Wahid were two presidents who faced removal during their terms. Sukarno was removed by the MPRS (People's Consultative Assembly of the Interim Government) due to his involvement in the G-30 S/PKI incident, which led to a rejection of accountability for his speech. Meanwhile, Abdurrahman Wahid was dismissed by the MPR due to allegations of involvement in the Bruneigate and Yanatera Bulog scandals. These cases illustrate that the grounds for removal were primarily political and could disrupt political stability. The absence of legal mechanisms in this process raised concerns that the president's position was vulnerable to political pressure. With the regulation of impeachment in the 1945 Constitution post-amendment, the removal process became clearer and more guaranteed, supporting governmental stability.

In general, the process of impeachment charges against the president in Indonesia involves the work of three state institutions: the DPR, the Constitutional Court, and the MPR. The DPR functions to propose charges as part of the right to express opinions. This right can be proposed if supported by at least 25 members of the DPR who accuse the president or vice president of legal violations, including treason, corruption, or other dishonourable acts. The proposal must include documents that contain: (1) the substance and reasons for the charges; and (2) valid evidence regarding the alleged violations or unmet requirements. The proposal is submitted to the leadership of the DPR and then announced in a plenary session. Subsequently, the Deliberation Body sets a schedule for the proposers to explain their proposal to all factions. The plenary session then decides

the eligibility of the proposal. If rejected, the proposal cannot be reintroduced during that session period; however, if accepted, the DPR forms a special committee from all factions to prepare a report. If the report is rejected, the process concludes; if accepted, the report will be submitted to the Constitutional Court for a decision. The mechanism at the Constitutional Court itself takes place within 90 days after the case registration and consists of six steps of trial, including:

1. First Step: Initial Hearing for Examination
2. Second Step: Response from the President or Vice President
3. Third Step: Evidence Presentation by the DPR
4. Fourth Step: Evidence Presentation by the President or Vice President
5. Fifth Step: Submission of Conclusions by the DPR or the President or Vice President
6. Sixth Step: Final Decision Announcement

In processing the opinion of the DPR (House of Representatives), the Constitutional Court has three possible decisions. First, the decision may declare that the application is not acceptable due to failure to meet the stipulated formal requirements. Second, the decision could reject the application on the grounds that the evidence presented is insufficient to prove the wrongdoing of the President or Vice President. Third, the decision might support the opinion of the DPR, stating that the President or Vice President has been proven to violate the law or does not meet the qualifications for office. If the Constitutional Court supports the DPR's opinion, then the DPR will continue the process by holding a plenary meeting to propose the removal of the President or Vice President to the MPR (People's Consultative Assembly). After receiving the proposal from the DPR, the MPR is obligated to convene a session to discuss and decide on the proposal, including considering the decision of the Constitutional Court, with a maximum timeframe of 30 days after receiving the proposal.

3.3. Impeachment Regulations: A Comparative Constitutional Review of Several Countries

The impeachment procedure for heads of state is generally divided into two parts: legal aspects and political aspects. The legal aspect is carried out in court following specific procedures, while the political aspect involves the legislative body, the outcome of which is determined through voting. In this paper, the researcher will explore the impeachment process in several countries that adopt a presidential system and have a bicameral parliamentary structure.

a. Process of Removing the Head of State in the United States

In the legal framework of the United States, the House of Representatives initiates impeachment charges against the President. If a majority agrees, the charges are discussed in a Senate trial. The Chief Justice presides over this trial, with Senate members acting as jurors to determine the President's guilt. A two-thirds majority in the Senate is required to impeach the President, who can be removed for treason, bribery, high crimes, or other misdemeanours.

b. Process of Removing the Head of State in Brazil

In Brazil's legal framework, the authority to initiate impeachment proceedings against the President lies with the Chamber of Deputies. This can only begin if at least two-thirds of the Chamber members approve. The Federal Senate then has the right to adjudicate the charges related to impeachable offenses. According to the Brazilian Constitution, the President can be removed for committing a crime or impeachable offense. If two-thirds of the Chamber agrees on the impeachment charge, the President must suspend their duties until a judicial decision is made. If no decision is reached within 180 days, the suspension is lifted.

b. Process of Removing the Head of State in Argentina

In Argentina's legal framework, the House of Deputies has the right to initiate impeachment charges against the President. Charges can only proceed if two-thirds of the present members approve. The impeachment case is then sent to the Senate, presided over by the Chief Justice of Argentina. The President is deemed guilty only if two-thirds of the Senate members present agree on the illegal conduct.

c. Process of Removing the Head of State in Chile

In Chile's legal framework, the Chamber of Deputies has the right to submit charges against the President. The case proceeds to the Senate if a majority of the Chamber approves. The Senate acts as a jury to determine whether the President can be impeached, requiring a two-thirds majority to reach a decision.

d. Process of Removing the Head of State in Colombia

In Colombia's legal framework, the House of Representatives holds the authority to submit charges for the President's removal. The charges are then sent to the Senate, which assesses their validity. During this process, the President is automatically suspended. The Senate can impose three types of sanctions: (1) removal from office, (2) temporary suspension, or (3) permanent suspension. Serious violations are referred to the Supreme Court for trial, which also has jurisdiction over general criminal charges. The Senate can form an investigation team to examine the allegations, requiring a two-thirds majority of present members to impose sanctions.

e. Process of Removing the Head of State in Bolivia

In Bolivia's legal framework, the Attorney General has the authority to initiate impeachment against the President. The Chilean Court can hold impeachment trials if the President is found to have committed a crime. However, to start the trial, approval from the Pluri-National Legislative Assembly is required, with at least two-thirds of present members agreeing, as well as the Attorney General's recommendation if needed. If found guilty in the trial, the President is permanently removed.

f. Process of Removing the Head of State in the Philippines

In the Philippines' legal framework, the President can be removed for constitutional violations, bribery, treason, corruption, or serious breaches of public trust. The House of Representatives has the authority to file impeachment articles. Citizens can also propose impeachment through resolutions or support from House members. The proposal must be entered into the Order of Business within ten days and referred to a Committee. After a public hearing, if it gains majority support, it becomes a resolution in the House. The resolution requires at least one-third support from all House members to be approved, after which it moves to the Senate.

g. Process of Removing the Head of State in Bolivia

In Bolivia's legal framework, the Attorney General has the right to initiate impeachment against the President. The Supreme Court has the authority to conduct impeachment trials if the President is found guilty of criminal actions. Starting the trial requires approval from the Pluri-National Legislative Assembly, with at least two-thirds of present members agreeing and the Attorney General's recommendation if necessary. If found guilty, the President is permanently removed.

h. Process of Removing the Head of State in the Dominican Republic

In the legal framework of the Dominican Republic, the authority to submit charges against the President rests with the Chamber of Deputies. Charges can proceed to the Senate if three-quarters of Chamber members approve. Once accepted, the President must be temporarily suspended until a decision on the impeachment case is made. The Senate determines the admissibility of the impeachment charges, requiring at least two-thirds approval from all Senate members. If the charges involve criminal violations, the Dominican Supreme Court has the authority to impose sanctions on the President.

i. Process of Removing the Head of State in Mexico

In Mexico's legal framework, the House of Representatives has the authority to file charges against the President. A President can only be removed if proven to have committed treason against the state or serious criminal violations. The House can submit charges if a majority agrees. The Senate then conducts a trial to decide if the President should be impeached, requiring a two-thirds majority from present Senate members.

j. Process of Removing the Head of State in Paraguay

In Paraguay's legal framework, charges to remove the President can be submitted by the Chamber of Deputies. If two-thirds of the present Chamber members approve, the charges proceed to the Chamber of Senators for trial. The Senate examines the charges and determines the President's guilt. The President can be impeached if two-thirds of the Senate members agree to the removal.

k. Process of Removing the Head of State in Uruguay

In Uruguay's legal framework, the Chamber of Representatives has the authority to submit charges for the President's removal. These charges must be approved by a majority vote to proceed to trial. If two-thirds of the Chamber members agree to the impeachment, the President is temporarily suspended during the process. The Chamber of Senators then hears the charges, and if two-thirds of the Senate members agree to the removal, the President must resign.

l. Process of Removing the Head of State in South Africa

In South Africa's legal framework, the National Assembly has the authority to submit charges for the President's removal. The President can be removed if two-thirds of the National Assembly members agree. Grounds for removal are limited to three: constitutional violations, criminal offenses, and incapacity to perform government duties.

m. Process of Removing the Head of State in Kenya

In Kenya's legal framework, the National Assembly has the authority to submit charges for the President's removal. National Assembly members can propose impeachment motions with support from one-third of other members. If the motion is approved by at least two-thirds of the National Assembly, the Speaker of the National Assembly must inform the Speaker of the Senate within two days. Upon notification, the Senate Speaker must hold a hearing within seven days to consider the impeachment motion and form a special committee for investigation.

Of the thirteen countries discussed, eleven have a symmetric bicameral structure in their parliaments, while two implement an asymmetric bicameral system. The countries with a symmetric bicameral structure include Chile, Paraguay, Uruguay, Colombia, Brazil, the Philippines, Mexico, the United States, the Dominican Republic, Argentina, and Bolivia. Meanwhile, the countries with an asymmetric bicameral structure are Kenya and South Africa. In terms of state structure, four of these countries are federations, while the other nine are unitary states. The federated countries include Brazil, Argentina, the United States, and Mexico. The unitary countries consist of Bolivia, the Philippines, the Dominican Republic, Chile, Colombia, Uruguay, Paraguay, Kenya, and South Africa. Based on the researcher's analysis, relating to the impeachment model classification proposed by Linan (2007), the following is presented:

Table 1. Classification of countries based on impeachment model

Congressional Model	Mixed Model	Judicial Model
Filipina	Brazil	Bolivia
United States	Republic Dominika	

Argentina	Colombia
Chili	
Paraguay	
Kenya	
Uruguay	
South Africa	
Mexico	

In the context of countries adopting the congressional model, there is variation in the Senate trial's leadership. In some countries, the trial is led by the Chief Justice, while in others, it is not. The explanation is as follows:

Table 2. Classification of countries based on trial leadership in the congressional model

Congressional Model	
Senate trial led by the Chief Justice:	Senate trial not led by the Chief Justice:
<ul style="list-style-type: none"> - Filipina - Argentina - United States 	<ul style="list-style-type: none"> - Mexico - Kenya - Uruguay - Chili - Paraguay

In terms of impeachment model classification, the presidential impeachment mechanism in Indonesia is categorized as a dominant legislative model or congressional model. This refers to the final decision resting with the People’s Consultative Assembly (MPR). However, compared to other countries, significant differences exist. First, in Indonesia's impeachment process, the Regional Representative Council (DPD) does not play a role. Most countries adopting the congressional model generally involve regional representatives in the process. In Indonesia, the dominance of the DPR (House of Representatives) is evident in its greater formal authority compared to the DPD, where the DPR is fully involved in the MPR, while the DPD serves only as a member. The author argues that this situation does not reflect a proper system of checks and balances due to the imbalance between the roles of the DPR and DPD as two chambers in the impeachment process. Second, among the ten countries analyzed, there is no involvement of the Constitutional Court in the presidential impeachment process. This contrasts with practices in Indonesia, where the Constitutional Court provides legal opinions to determine the feasibility of continuing the impeachment mechanism to the MPR.

3.4. Ideal Regulation Model for Impeachment Mechanism of Head of State and Vice Head of State in Indonesia

Political dynasties often pose a serious threat to the continuity of democracy, as they can consolidate power within a single family or group. This risks neglecting public interests and stifling healthy political participation. In this context, an impeachment mechanism granting Parliament the authority to act is crucial. Through this process, if the Head of State is found to be involved in actions detrimental to society and reinforcing political dynasty dominance, impeachment steps must be taken to protect the integrity of the government system. Furthermore, political ethics become equally important in governance. The Head of State and Vice Head of State must be accountable for their actions, especially if these actions violate the principles of democracy and justice.

In cases where evidence indicates that high officials have breached ethical standards through abuse of power or corrupt practices, impeachment proceedings should be initiated to uphold accountability. However, issues arising after the 1945 Constitution amendment include legal ambiguities regarding the impeachment procedures and mechanisms. This process often becomes complicated and non-transparent, leading to confusion among the public and stakeholders. Such ambiguities can result in doubts about the implementation of impeachment, where existing mechanisms do not provide clear guidance on necessary steps, who has the authority to initiate the process, and how decisions are made. Therefore, it is essential to formulate a clear and firm legal framework to ensure that the impeachment mechanism functions effectively, prevents political dynasty practices, and enhances ethics in governance.

The position of the Constitutional Court (MK) in the impeachment process is closely related to the rule of law concept that upholds legal supremacy according to the 1945 Constitution. Indonesia's rule of law must be able to comprehensively regulate laws within its system. In the context of impeachment, after the DPR submits a petition accepted by the MK, this institution is obliged to examine, adjudicate, and decide on allegations against the President and/or Vice President within 90 days. However, even if the MK finds a violation, this does not automatically terminate the President's and/or Vice President's office. The DPR must hold a plenary session to forward the removal proposal to the MPR, which must decide within 30 days. Unfortunately, the 1945 Constitution does not explicitly stipulate that MK's decisions must be implemented by the MPR. Instead, the MK's legal decisions are enacted through the political decisions of the MPR, which are taken via voting. In this case, even if the MK has determined a violation, the MPR may choose not to remove the President and/or Vice President, potentially creating a situation where political dynasty practices threaten the continuity of democracy by consolidating power within a single family or group.

Therefore, an impeachment mechanism that empowers Parliament to act can prevent such practices. If the Head of State is proven to be involved in actions detrimental to the public and reinforcing political dynasties, impeachment must be pursued. Political ethics are also crucial, where

the Head and Vice Head of State must be responsible for actions that undermine democratic principles. If there is evidence of ethical violations, such as abuse of power or corruption, impeachment proceedings should commence. This process must involve parliamentary investigations, where the inquiry right is used to uncover facts. If sufficient evidence indicates significant violations, the DPR can propose an opinion to continue the impeachment. A plenary session of the MPR must then be held to provide a final decision, requiring at least 75% attendance of members to approve the impeachment. With an ideal regulatory model, the impeachment mechanism in Indonesia functions not only as a legal enforcement tool but also to prevent political dynasty practices and ethical violations, thereby fostering public trust in state institutions

IV. CONCLUSION

Impeachment refers to a country's mechanism for maintaining a balance of power between the executive and legislative branches. In Indonesia, the existence of impeachment is a consequence of strengthening the presidential system implemented after the reform era. The impeachment process for the head of state in Indonesia involves three high state institutions: the People's Consultative Assembly (MPR), the House of Representatives (DPR), and the Constitutional Court. This process falls under the category of a dominant legislative model, as the final decision regarding impeachment lies with the legislative authority, specifically the MPR. However, the researcher argues that the presidential impeachment process in Indonesia does not fully reflect the principles of checks and balances. The process is dominated by the DPR, which raises concerns, and the lack of involvement from the Regional Representative Council (DPD) further emphasizes that this practice is not aligned with those principles. Several recommendations can be made, including:

1. In the process of removing the President or Vice President in Indonesia, the Constitutional Court's decision should be accompanied by an obligation for the MPR to seriously consider that decision, ensuring that removal is based on clear legal reasoning.
2. The concept of impeachment as outlined in the 1945 Constitution remains weak as it tends to be influenced by political situations. Therefore, the rule of law must be strengthened by upholding laws free from interference by power or political interests in every judicial process, including in the Constitutional Court.
3. An agenda for refining the 1945 Constitution is necessary, emphasizing the rule of law as an essential element in the state's legal system. One step that should be taken is to amend Article 7B, paragraph (3), to state that "If the Inquiry Committee finds violations by the President or Vice President, the DPR must submit a request to the Constitutional Court to decide on the alleged violations without using a voting mechanism." Additionally, Article 7B, paragraph (7) should be amended to clarify that "The removal of the President and/or Vice President is carried out by the MPR with the obligation to implement the Constitutional Court's decision."

With these changes, it is hoped that the rule of law can be justly upheld in the impeachment process, thereby creating a democratic rule of law in Indonesia.

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