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**DISMISSAL OF THE PRESIDENT IN THE UNITARY STATE OF THE
REPUBLIC OF INDONESIA**

Novita Sari¹, Dodi Jaya Wardana², Hardian Iskandar³

¹Student of Law Programs, Universitas Muhammadiyah Gresik

^{2,3}Lecturer of Law Programs, Universitas Muhammadiyah Gresik

Email: sari42347@gmail.com

ABSTRACT

The need to prove the DPR's accusations at the Constitutional Court is to clarify whether the President and/or Vice President have violated the law or the President and/or Vice President no longer meet the requirements as President and/or Vice President. Violation of the law is in the form of betrayal of the state, corruption, bribery, other serious crimes or disgraceful acts. The implementation of the Constitutional Court's decision on proving a violation of the law by the President does not lead to the impeachment/dismissal of the president. However, the Constitutional Court's decision depends on the plenary session of the MPR. In other words, the decision of the Constitutional Court which has permanent force and is binding does not necessarily impeach the president/dismissed, but it all depends on the plenary meeting held by the MPR.

Keywords: Termination; President; NKRI.

I. INTRODUCTION

Indonesia is a state of law. This is the affirmation of the 1945 Constitution of the Republic of Indonesia. This shows that in the Indonesian constitutional system every government action must be based on law and not based on mere power. Therefore, the amendments to the 1945 Constitution of the Republic of Indonesia which have been carried out in four stages have had an impact on changing the Indonesian constitutional system. One of the changes in the Indonesian constitutional system is the concept of state power, namely from the concept of distribution of power to the concept of separation of power. The idea of separation and division of state power has its foundations, among others, from the thoughts of John Locke and Montesquieu, known as the Trias Politica theory.

One of the powers referred to by the two scholars is the executive power which has the power to implement the 1945 Constitution of the Republic of Indonesia. what is meant by the Trias Politica theory is held by the President as contained in Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads "The President of the Republic of Indonesia holds the power of government according to the 1945 Constitution of the Republic of

Indonesia". The government power as referred to in Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia is part of the power to implement the 1945 Constitution of the Republic of Indonesia. In the Indonesian state administration system, the President not only implements the 1945 Constitution of the Republic of Indonesia but can also propose a draft of the 1945 Constitution of the Republic of Indonesia to the House of Representatives as expected. regulated in Article 5 of the 1945 Constitution of the Republic of Indonesia. The power of the President as the holder of government power does appear to be very broad and is neither explained nor limited in the 1945 Constitution of the Republic of Indonesia - the 1945 Constitution of the Republic of Indonesia. (DPD), the Supreme Court (MA), the Constitutional Court (MK), the Supreme Audit Agency (BPK) have their own basic laws that explain the position and authority and function of each of these state institutions, except for the 1945 Constitution of the Republic of Indonesia concerning the presidential institution. . Whereas in the Indonesian constitutional structure, the position of the President is the same as that of other state institutions such as the MPR, DPR, DPD, Supreme Court, Constitutional Court, BPK and so on. However, the President's power is not unlimited as explained in the explanation of the 1945 Constitution of the Republic of Indonesia before the amendment, which stated that the President's power was not unlimited. To limit the power of the President as an executive institution so as not to deviate or exceed the limits of his authority mandated by the constitution, it is necessary to have a checks and balances system carried out by the legislature so that there is a control function between state institutions. In the course of constitutional life in Indonesia, there has been a process of dismissing the President before the end of his term of office (impeachment), namely during the reign of President Soekarno where at that time his accountability speech on June 22, 1965 which was known as Nawaksara was not accepted by the MPRS which was chaired by General (TNI) Abdul Haris Nasution in particular related to the G 30/S/PKI incident, thus the reason used by the MPRS to revoke President Soekarno's power was not being able to carry out its obligations as stated in MPRS Decree No. XXXIII/MPRS/1967, namely stating that the President cannot fulfill his constitutional responsibilities and is considered unable to carry out the guidelines and decisions of the MPRS.

In addition, in 2001 the MPR also dismissed President Abdurrahman Wahid before the end of his term in the Special Session because it was considered to have violated the 1945 Constitution of the Republic of Indonesia and the State's policy related to the Bulog Yanatera case and the Sultan of Brunei Darussalam aid fund, dismissed General Police S. In the end, the MPR dismissed the President. Abdurrahman Wahid because it was declared that he had seriously violated the direction of the state, namely because of the absence and refusal of President Abdurrahman Wahid to give accountability at the Special Session of the People's Consultative Assembly of the Republic of Indonesia in 2001 and the issuance of the Decree of the President of the Republic of Indonesia on July 23, 2001.

After four amendments to the 1945 Constitution of the Republic of Indonesia had a major influence on the power of the President, the position of the President was no longer a mandate and was no longer responsible to the MPR. The positions of the two institutions, both the President and the MPR, are equal and to reinforce the Presidential government system in Indonesia where the President's term of office is fixed (fixed term) so as to create a stable government within a certain term of office. The President can only be dismissed before the end

of his term of office if the President commits violations of the laws stated in the constitution. Article 7A of the 1945 Constitution of the Republic of Indonesia explains the reasons for the dismissal of the President during his term of office, namely in the form of betrayal of the State, corruption, bribery, other serious crimes or disgraceful acts or no longer fulfilling the requirements as President.

Article 7B of the 1945 Constitution of the Republic of Indonesia explains the mechanism for dismissing the President, namely that the proposed dismissal of the President can be submitted by the DPR to the MPR by first asking the Constitutional Court to examine, try, and decide on the opinion of the DPR that the President and/or Vice President are proven to have violated the law and no longer fulfill the requirements as President and/or Vice President as stated in Article 7A of the 1945 Constitution of the Republic of Indonesia, so there are three institutions that must be passed related to the impeachment process, namely the investigation process carried out by the DPR, the Constitutional Court examines, hears, and decides on a juridical basis and lastly The MPR will decide whether the President is dismissed or remains in office so that the dismissal of the President in his term of office is no longer only through a political mechanism in the DPR and MPR but also must go through a legal mechanism in the Constitutional Court. technical aspects of the impeachment such as how the DPR collects evidence and investigations related to the function of the DPR to conclude that the President is proven to have fulfilled the elements of Article 7A. In relation to the Constitutional Court, it is obligatory to examine, hear, and decide on the opinion of the DPR on the suspicion that the President has violated the laws mentioned in Article 7A of the 1945 Constitution of the Republic of Indonesia, whether in this case the Constitutional Court's decision is final and binding or is it merely a material for the MPR's consideration in making a decision if the President found guilty of violating the law.

Based on the description of the background above, this paper contains 2 (two) problem formulations, namely:

1. The urgency of proving the DPR's accusations at the Constitutional Court.
2. The application of the Constitutional Court's decision on proving a violation of the law by the president.

II. METHOD RESEARCH

Considering this is a normative legal research, the method used is a legal research method that aims to find solutions to legal issues and problems that arise in them, so that the results to be achieved then are a prescription about what should be on the issue raised. Peter M Marzuki in his book *Legal Research*, states that legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced.

III. RESULTS AND DISCUSSION

Proof of the Allegation of the People's Assembly in the Constitutional Court

The 1945 Constitution of the Republic of Indonesia stipulates that the President and/or the Vice President may be dismissed during their term of office by the MPR at the recommendation of the DPR, either if it is proven that they 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 they no longer fulfill the requirements. requirements as President and/or Vice President.

The reasons for violating the law are also determined in a limited manner, namely only violations of the law in the form of; (a) betrayal of the state; (b) corruption; (c) bribery; (d) other serious crimes; or (e) disgraceful conduct. Betrayal of the state is a crime against state security, most of which have been regulated in the Criminal Code. In the Criminal Code, crimes against state security include treason that is internal (hoog verraad) and external (landverraad) as regulated in Title I Book II of the Criminal Code. These crimes include:

- a. Makar against the head of state (Article 104);
- b. Makar to include Indonesia under foreign rule (Article 106);
- c. Makar to overthrow the government (Article 107);
- d. Rebellion (Article 108);
- e. Conspiracy and/or participation to commit crimes referred to in Article 104, Article 106, Article 107, and Article 108 of the Criminal Code;
- f. Establish relations with foreign countries that are hostile to Indonesia (Article 111);
- g. Establish relations with foreign countries with the aim that foreign countries assist an overthrow of the government in Indonesia (Article 111 bis);
- h. Broadcasting secret letters (Article 112 – Article 116);
- i. Crimes regarding state defense buildings (Article 117–Article 120);
- j. harming the state in diplomatic negotiations (Article 121);
- k. Common crimes committed by enemy spies (Article 122 – Article 125);
- l. Hiding enemy spies (Article 126); and
- m. Cheating in terms of selling military goods.

Violations of law in the form of corruption and bribery can be combined into one, namely criminal acts of corruption and bribery both regulated in the Criminal Code and in other laws, such as Law Number 31 of 1999. According to Hamdan Zoelva, what can be categorized as corruption and bribery include :

Corruption crime as regulated in Article 2 and Article 3 of Law Number 31 of 1999 which consists of:

1. An unlawful act of enriching oneself or another person or a corporation that may harm the state's finances or economy;
2. The act of abusing the authority, opportunity or facilities available to him because of his position or position with the aim of benefiting himself or another person or corporation that can harm the country's finances or economy.
 - a. The previous crime was bribery related to state positions, judges, and advocates as regulated in the Criminal Code, state administration positions, as well as contractors, construction experts and building supervisors related to the public interest and the TNI.

b. Other criminal acts related to criminal acts of corruption, namely acts committed intentionally to prevent, hinder or thwart directly or indirectly investigations, prosecutions and court examinations in corruption and bribery cases.

The next reason is a disgraceful act which in terms in the United States is called a misdemeanor. From a legal perspective, the term misdemeanor actually refers to a minor crime. However, in the context of impeachment, misdemeanor is a disgraceful act, which, although not a criminal offense, is an act that is considered despicable by the public and should not be committed by the President and/or Vice President. If the said act is carried out, it will damage the image and honor of the President and/or Vice President.

Furthermore, in the minutes of amendments to the 1945 Constitution of the Republic of Indonesia, there were two reasons for impeachment of the President, namely reasons for violating the law and reasons for being incapacitated or permanently absent, permanent illness, memory loss and others. If at any time when he has been appointed as President, the person concerned no longer meets the requirements, then the President shall be impeached on the grounds that he no longer meets the requirements as President. If you pay attention to Article 6 paragraph (2) which states, "the requirements to become President and Vice President are further regulated by law". In the event that the statement that says "further regulated" implies that the law may not make new requirements other than only further elaboration of the conditions mentioned in Article 6 paragraph (1).

1. Impeachment Process in the House of Representatives

If the proposal for the right to express an opinion is accepted at a plenary meeting, the DPR forms a special committee (Pansus) to examine this issue by conducting an investigation, seeking evidence, requesting testimony from witnesses and related parties, including discussing it with the President.

If the DPR plenary meeting on the results of the discussion of the Special Committee accepts the DPR's opinion statement with the approval of at least 2/3 of the DPR members who are present at the plenary meeting attended by at least 2/3 of the members submit an application to the Constitutional Court to examine and hear the DPR's opinion. In other words, the results of the investigation conducted by the Special Committee are decided by the DPR in a plenary meeting. If the results of the Special Committee find evidence that the President fulfills the provisions of Article 7A of the 1945 Constitution of the Republic of Indonesia, namely treason against the State, corruption, bribery, other serious crimes or disgraceful acts or no longer meets the requirements as President and is approved by the DPR, then the DPR must first brought the case to the Constitutional Court for examination and trial before proceeding to the MPR.

2. Impeachment Process in the Constitutional Court

The Constitutional Court Regulation Number 21 of 2009 concerning Guidelines for Proceeding in Deciding the Opinion of the DPR regarding Alleged Violations by the President and/or Vice President contains 23 articles which are divided into 10 chapters. The chapters contained in it are Chapter I (General Provisions), Chapter II (Parties), Chapter III (Procedures for Submitting Applications), Chapter IV (Case Registration and Session Scheduling), and

Chapter V (Trial), Chapter VI (Termination of the Examination Process), Chapter VII (Judges Consultative Meeting), Chapter VIII (Decision), Chapter IX (Other Provisions), and Chapter X (Closing Provisions).

Based on Article 23 of the Constitutional Court Regulation No. 21/2009, this regulation comes into force on the date of stipulation (ie December 31, 2009). There are three types of decisions of the Constitutional Court (MK) that can be produced through the trial process regarding the application for an assessment of alleged violations of the President and/or Vice President submitted by the DPR related to the impeachment process.

The three types of rulings include, among others, that the application cannot be accepted because it does not meet the completeness as stated in the Procedure for Submitting an Application. In addition, other rulings may state that the Constitutional Court confirms the DPR's opinion that the President and/or Vice President are proven to have violated the law in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts. Meanwhile, the third type of ruling is that the application is rejected by the Constitutional Court if the opinion of the DPR regarding alleged violations by the President and/or Vice President is not proven.

In the Constitutional Court Regulation Number 21 of 2009 it is also stated that the Constitutional Court's decision is juridical final and binding on the DPR as the party submitting the application. Meanwhile, in the Miscellaneous Provisions Chapter, it is stated that the Constitutional Court's decision to grant the DPR's request does not rule out the possibility of the President and/or Vice President being proposed in criminal, civil, and/or state administrative trials in accordance with the principles and respective procedural laws.

3. The People's Consultative Assembly Impeachment Process

The procedure for Impeachment in the MPR institution is regulated in chapter XV (Article 83) concerning Procedures for the dismissal of the President and/or Vice President during their term of office. MPR RI Decree No. 13/MPR/2004 concerning Amendments to the Rules of Procedure of the MPR RI) The MPR leadership then invites MPR Members to attend the Plenary Meeting which is scheduled to cancel the proposal to dismiss the President and/or Vice President submitted by the DPR. The MPR leadership also invites the President and/Vice President to deliver an explanation related to the event of his dismissal at the Plenary Session of the Assembly. The President and/or the Vice President are required to be present to provide an explanation of the proposed dismissal. If the President and/or Vice President is not present to deliver an explanation, the Assembly will still make a decision on the proposal to dismiss the President and/or Vice President. Decisions on the proposed dismissal of the President and/or Vice President submitted by the DPR after the Constitutional Court's decision is carried out through the majority vote voting mechanism. The requirement for majority voting is that it is taken in a meeting attended by at least a quorum of the Assembly Members (quorum), and approved by at least 2/3 of the total Members present who meet the quorum.

Implementation of the Constitutional Court's Decision Regarding Proof of Law Violations by the President

A) Soekarno case

reshuffle the Working Cabinet III into Working Cabinet IV which also places the Chair and Deputy Chairperson of the DPRGR, the Chair and Deputy Chairperson of the MPRS, the Chair and Deputy Chairperson of the DPA, and the Chairperson of the National Design Council as Ministers. Thus the position of the four state bodies is under its position. After that, Soekarno finally made a last attempt on June 22, 1966 at the same time as the inauguration of the MPRS leadership, by doing what he called a voluntary accountability speech. The DPRGR was dissatisfied with President Soekarno's accountability speech entitled Nawaksara at the 1966 MPRS General Session, particularly matters relating to the causes of the G 30S/PKI. Therefore, the DPRGR at that time submitted a statement of opinion to the President and a memorandum to the MPRS requesting that the President's Nawaksara speech be completed.

On the basis of this memorandum, a Special Session of the MPRS was convened to demand accountability. Since the beginning of the implementation of guided democracy, Soekarno has shown signs of being authoritarian. Among them, the most prominent ones began with the dissolution of the DPR as a result of the 1955 general election, which was then based on Presidential Decree No. 4/1960, the DPRGR was formed. Then on November 13, 1963, Soekarno became President of President Soekarno. Because the accountability conveyed by President Soekarno was unacceptable, then through Decree No. XXXIII/MPRS/1967, the Assembly removed government power from Sukarno and appointed Suharto as acting President. Article 8 of the 1945 Constitution which requires the Vice President to replace the position of the President in the event of a power vacuum, does not apply. Because at that time there was no Vice President.

At that time, the MPRS stated that President Soekarno, as a mandate, had been unable to fulfill his constitutional responsibilities and was deemed unable to carry out the MPRS guidelines and decisions (Articles 1 and 2 of MPRS Decree No. XXXIII/MPRS/1967 concerning Revocation of State Government Powers from President Soekarno). This succession of state leadership from Soekarno to Suharto was thus not due to the reason for Soekarno's death or cessation, but because of the condition that was considered unable to carry out his obligations. There is no clear definition of this. However, the author concludes that in terms of state administration and practice, this condition is ultimately used as a reason for dismissing the President during his term of office. Although there is no clear measure of the reasons for the dismissal of the President, in practice the impeachment process has occurred to the President of the Republic of Indonesia.

In the MPRS Decree concerning the revocation of President Soekarno's power, it was also emphasized that the determination to settle further legal issues involving Dr. Ir. Soekarno, carried out according to legal provisions in order to uphold law and justice. This further confirms that the *prelegiatum* forum as a process of law enforcement of a Head of State and/or Head of Government through ordinary criminal justice while the person concerned is still in office, is not recognized by the 1945 Constitution or in the practice of state administration.

B) Suharto's Case

Following the rampant student action in the country demanding President Soeharto to step down from the presidency. On May 21, 1998, the 32-year-old ruler during the New Order

finally declared his resignation from office. At that time the cabinet was declared demisionary and then the position of President was replaced by Vice President B.J. Habibie, followed by the appointment of his oath of office before the Supreme Court.

At that time, there was euphoria among the wider community welcoming Suharto's resignation, including some groups who later questioned the legitimacy of B.J.'s leadership. Habibie. Among other things, opposing arguments against the replacement process stated that Habibie did not have strong legitimacy to hold the power of the President. Referring to the provisions of Article 4 of MPR Decree No. III/MPR/1978 concerning the position and working relationship between the highest state institutions and/or between high state institutions, it was stated that one of the reasons for the dismissal of the President by the MPR before the end of his term of office was at his own request.

As a consequence of this condition, the provisions of Article 8 of the 1945 Constitution juncto apply. Article 2 paragraph 1 MPR Decree No. VII/MPR/1973 regarding the absence of the President and/or Vice President of the Republic of Indonesia, so Habibie was sworn in before the Supreme Court, in connection with the condition of the MPR/DPR building which was still crowded with masses so that it was not possible to use it for taking oaths and promises of the new President. . Thus the status of B.J. Habibie is constitutionally legitimate as President of the Republic of Indonesia, replacing Suharto until his term of office expires.

In the midst of Suharto's arbitrary treatment, under normal constitutional conditions, he actually had the opportunity to be dismissed by the MPR before the end of his term of office, even long before 1998. end of his term of office on the grounds that he truly violates the State Policy.

C) The case of Abdurrahman Wahid

to the explanation of the 1945 Constitution of the Republic of Indonesia is both a violation of the 1945 Constitution of the Republic of Indonesia and a violation In accordance with Article 7 paragraph (2) of the MPR Decree No. III/1978 the reason for holding the President to account before the MPR was a violation of the State's policies by the President. The decree does not explicitly specify the reasons for impeachment, except for reasons to hold the President accountable. The reasons for impeachment are contained in the MPR rules and regulations concerning the authority of the MPR to request and assess the accountability of the President and to dismiss the President during his term of office if the President truly violates the direction of the State and/or constitution. As for what is meant by violation The state's direction according of all the provisions of the MPR that have passed. There are at least two main reasons for the impeachment of President Abdurrahman Wahid as considered in deciding the impeachment of the President, namely because the President took actions that violated the direction of the State, hindered the constitutional process, because he was not willing to attend, and refused to give accountability at the special session of the MPR. In addition, President Abdurrahman Wahid is considered to have committed a serious violation of the constitution, for issuing the Presidential Decree of the Republic of Indonesia dated July 23, 2001.

The edict basically contains the freezing of the MPR and DPR by returning sovereignty to the people and taking action and setting up the necessary bodies to organize general elections within one year, as well as freezing the Golkar Party pending the decision of the supreme court. President Abdurrahman Wahid's action in issuing a decree was considered by the MPR as a

serious violation of the constitution, because it involved the existence of state institutions which were very important in democracy, especially in the Indonesian state administration structure. The MPR is the highest state institution that has the full authority to implement people's sovereignty. Therefore, in order to obtain legal certainty on the status of the special trial, the MPR took a stand on the President's announcement, namely rejecting the President's announcement and considering it an unconstitutional act. On the other hand, the actions of the President who explicitly refused to attend the special session and refused to give accountability to the MPR, were also considered by the MPR as an act that clearly violated the constitution which required the President to be responsible to the MPR. It seems that the President's refusal to attend the special session is related to the President's decision to issue a decree to freeze the MPR, so that there is no accountability to the MPR. The reason for impeachment by the MPR is different from the reason the DPR asked the MPR to hold a special session to hold President Abdurrahman Wahid accountable regarding the results of the report from the Special Committee for Bullogate and Bruneigate which found DPR's suspicions about the President's involvement in the misuse of funds from Bulog Yanatare and Brunei Darussalam Assistance.

Furthermore, in the DPR's memorandum against President Abdurrahman Wahid, there are two violations of state law accused by the DPR of President Abdurrahman Wahid, namely:

- a. Violating the 1945 Constitution of the Republic of Indonesia regarding the oath of office of the President.
- b. Violating MPR Decree Number XI/MPR/1998 concerning the administration of a clean and free state from corruption, collusion and nepotism. Based on this series of events, the MPR RI finally impeached President Abdurrahman Wahid because it was stated that he had truly violated the direction of the State, namely because of the absence and refusal of President Abdurrahman Wahid to provide accountability at the Special Session of the MPR RI in 2001 and the issuance of the Presidential Decree of the Republic of Indonesia on July 23, 2001.

IV. CONCLUSION

Based on the results of research and analysis conducted through the assessment as described in the previous chapters, this thesis comes to a conclusion. The conclusions that can be drawn from the research entitled presidential impeachment in the perspective of the rule of law are as follows, that:

- a. The urgency of proving the DPR's accusations in the Constitutional Court is to clarify whether the President and/or Vice President have violated the law or the President and/or Vice President no longer meet the requirements as President and/or Vice President. Violation of the law is in the form of betrayal of the state, corruption, bribery, other serious crimes or disgraceful acts.
- b. The legal application of the Constitutional Court's decision on proving a violation of the law by the President does not lead to the impeachment/dismissal of the president. However, the Constitutional Court's decision depends on the plenary session of the MPR. In other words, the Constitutional Court's decision which has permanent force and is binding does not necessarily impeach the president/dismissed, but it all depends on the plenary meeting held by the MPR.

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Tap MPR No. III/MPR/1978 tentang Kedudukan dan Hubungan Tata Kerja Lembaga Tertinggi dengan/atau antar lembaga-lembaga Tinggi Negara