

## Impeachment Mechanism for The President and/or Vice President of Indonesia and United States

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### ARTICLE INFO

### ABSTRACT

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In Indonesia, the impeachment process is regulated in the 1945 Constitution and Law No. 24 of 2003 concerning the Constitutional Court. The process is initiated by the House of Representatives (DPR), which proposes impeachment if the President or Vice President is suspected of violating the law, treason against the state, corruption, or disgraceful acts. After the DPR approves the proposal, the Constitutional Court examines and decides whether any violations have been committed. If the Constitutional Court declares it proven, this decision is sent back to the DPR for final approval. After that, the People's Consultative Assembly (MPR) can dismiss the President or Vice President. Although both countries have similar mechanisms involving parliament and the judiciary, the differences lie in the institutions and stages of the process. Impeachment reflects the principle of checks and balances in the government system to maintain the accountability of high-ranking officials.

## Introduction

Theoretically, the position of the president in the presidential system of government is powerful compared to the position of the prime minister in the parliamentary system of government.<sup>1</sup> This is natural because the presidential system is intended to give birth to a relatively stable government for a certain period (*fixed term office period*). The President can only be impeached during his term of office if he violates the law expressly stipulated in the Constitution. In contrast to the parliamentary system of government, the head of government or the prime minister who leads the cabinet at any time can be overthrown by parliament with a vote of no confidence.<sup>2</sup>

<sup>1</sup> Muhammad Zhafran Shobirin et al., "A Comparison of Presidential Threshold Systems in Presidential and Vice-Presidential Elections in Indonesia and Brazil," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 1–14, <https://doi.org/https://ejournal.pustakaparawali.com/index.php/jicl/article/view/7/1>.

<sup>2</sup> Erwin Chemerinsky, *Constitutional Law, Principles, and Policies* (New York: Aspen Law & Business, 1997).

In Indonesia itself, the president has been impeached. However, what happened in Indonesia was not through *special legal proceedings* but through the political process produced by the DPR and MPR. At that time, the Indonesian constitution did not specifically regulate the mechanism for impeaching the president purely through legal procedures.<sup>3</sup> Because, at that time, the MPR was still the state's highest institution, the election of the President and Vice President became the absolute authority of the MPR.

Judging from the constitutional practice that occurred, an in-depth study analysing the process and procedure of presidential impeachment has vital academic and practical significance.<sup>4</sup> Especially related to the reason why a president can be impeached during his term of office according to the 1945 Constitution. Indonesia's constitutional experience is exciting to study, especially the impeachment of President Soekarno and President Abdurrahman Wahid. President Soekarno was impeached from the presidency because his responsibility was rejected by the Provisional People's Consultative Assembly (MPRS) related to the 1965 G-30 S/PKI Rebellion, which was a criminal act of treason. The MPR impeached President Abdurrahman Wahid for issuing a decree freezing the DPR/MPR, which began with a memorandum of the House of Representatives accusing President Abdurrahman Wahid of being involved in the misuse of money belonging to the Bulog Welfare Fund Foundation, which is a corruption crime. Although the two Presidents have stopped, no criminal justice has ever been conducted against them.

Historically, the first impeachment of a President in the United States occurred to President Andrew Jhonson. In 1868, the *State House of Representatives* charged President Andrew Johnson with felony and misdemeanours, the charge being a violation of the Office Time Act, and was passed by Congress in March 1867 by his veto.

President Andrew Johnson is one of the presidents in the history of the United States who has been impeached; the reason why Andrew John was impeached repeatedly clashed with the Republican-controlled Congress over the reconstruction of the defeated South. Johnson vetoed legislation passed by Congress to protect the rights of those who had been freed from slavery. This clash culminated in the vote of the House of Representatives on February 24, 1868 to impeach the president. On March 5, the trial began in the Senate, where Republicans gained more seats than the two-thirds majority needed to remove Johnson from office.<sup>5</sup> However, by the time the trial ended on May 16, the president had won his acquittal, not because the majority of senators supported his policies but because

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<sup>3</sup> Nurus Zaman et al., "Questioning the Constitutional Court Decision Regarding Age Limit of Presidential and Vice-Presidential Candidates," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 9, no. 2 (2024): 611–29, <https://doi.org/10.22373/petita.v9i2.299>.

<sup>4</sup> Yusril Ihza Mahendra, *Catatan Kritis Dan Percikan Pemikiran* (Jakarta: Bulan Bintang, 2001).

<sup>5</sup> Hamdan Zoelva, *Impeachment Presiden (Alasan Tindak Pidana Pemberhentian Presiden Menurut UUD 1945)* (Jakarta: KONpress, 2014).

quite a minority wanted to protect the presidency and maintain the constitutional balance of power.<sup>6</sup>

The reason Andrew Johnson, the president of the United States, dismissed the American Secretary of Defense was because it violated the Constitution. The dismissal is one of the impeachments of Andrew Jhonson by the House of Representatives of the United States.

Many people think that impeachment and *impeachment* are the same. But in the context of academic terminology, *impeachment* and impeachment are different. Impeachment is demanding the responsibility of the President with the aim of parliamentary supervision of the president if the president violates the law. Meanwhile, the president's impeachment is an essential political or legal process to maintain democracy.<sup>7</sup> This process ensures that the president does not act arbitrarily and is accountable to the people. In this case, impeachment is not just a different language.

The dismissal of the president and/or vice president is a process that must be carried out according to legal procedures, not only using the political process. Because when there is a plan to impeach the head of state, it is undoubtedly due to a violation of the law. As in the Indonesian constitution, the head of state will be impeached when he meets all the requirements for impeaching.

Article 7A of the 1945 Constitution reads *"the president and/or vice president may be dismissed during his term of office by the People's Consultative Assembly on the proposal of the House of Representatives, either if it is proven that he has committed a violation of the law in the form of treason against the state, corruption, bribery, other serious criminal acts or reprehensible acts or if it is proven that he is no longer qualified as president and/or vice president"*.

The impeachment mechanism must be carried out when all of these have been fulfilled. When impeachment is carried out, legal procedures should be applied. In this case, the positive law in Indonesia is violated. Therefore, the settlement process must also be normative.

This change has a far-reaching juridical impact on Indonesia's constitutional process. The President is no longer subject to and responsible to the MPR and is no longer a mandatory MPR to implement the Outline of the State Direction, as stipulated in the 1945 Constitution before the amendment. The MPR can no longer impeach the President because the president has violated the direction of the state, as has happened in Indonesia's constitutional practice so far. The President can only be impeached if he is proven to have committed violations of the law in the form

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<sup>6</sup> Fuad Hasim, "Constitutional Court Ruling Number 90/PUU-XXI/2023 Regarding Aspects of Human Rights," *ANAYASA: Journal of Legal Studies* 1, no. 2 (January 21, 2024): 121–34, <https://doi.org/10.61397/ays.v1i2.98>.

<sup>7</sup> Hufron, "Perbuatan Tercela Sebagai Alasan Pemakzulan Presiden Dan/Atau Wakil Presiden," *Jurnal Ilmu Hukum* 12, no. 23 (2020): 79.

of a) treason against the state, b) corruption, c) bribery, d) other serious criminal acts, and d) reprehensible acts.<sup>8</sup>

From the perspective of constitutional law, an in-depth study to analyse the process and procedure of impeaching the president has vital academic and practical significance. Especially related to the reason why a president can be impeached during his term of office according to the 1945 Constitution. Indonesia's constitutional experience is exciting to study, especially the impeachment of President Soekarno and President Abdurrahman Wahid. President Soekarno was impeached from the presidency because his responsibility was rejected by the Provisional People's Consultative Assembly (MPRS) related to the 1965 G-30 S/PKI Rebellion, which was a criminal act of treason. The MPR impeached President Abdurrahman Wahid for issuing a decree freezing the DPR/MPR, which began with a memorandum of the House of Representatives accusing President Abdurrahman Wahid of being involved in the misuse of money belonging to the Bulog Welfare Fund Foundation, which is a corruption crime.<sup>9</sup> Although the two Presidents have stopped, no criminal justice has ever been conducted against them.

The Constitution uses criminal law to describe law violations that are the reason for the president's impeachment.<sup>10</sup> The legal issue is what is meant by the five types of unlawful acts and how the process of proving them so that a president can be declared proven to have committed an illegal act and be impeached from the presidency. In terms of fair legal certainty, understanding the five types of illicit acts is very important so as not to cause multiple interpretations and legal uncertainty. In addition, the process of proof in cases of law violations committed by the president is critical to study so that legal procedures as a procedural basis to prove the criminal acts accused against a president become more precise.

#### *Article II Section 4*

*The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.*

#### *Article 2 Paragraph 4*

*The President, the Vice President and all Civil Officials of the United States, shall be removed from the Office of Impeachment for, and High Conviction, Treason, Bribery, or Other Crimes and Misdemeanors.*

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<sup>8</sup> Nurus Zaman, "Constitution in Legal Political Perspective," *Trunojoyo Law Review* 4, no. 1 (August 8, 2022): 45–68, <https://doi.org/10.21107/tr.v4i1.16487>.

<sup>9</sup> Abdul Rahman, "Pemakzulan Kepala Negara," *Jurnal Pembaharuan Hukum* 15, no. 2 (2019): 10.

<sup>10</sup> Muwaffiq Jufri et al., "Standardisation of the Legislation as a Follow-Up to the Constitutional Court's Decision on Judicial Review of Omnibus Law," *Jurnal Konstitusi* 21, no. 3 (September 1, 2024): 366–91, <https://doi.org/10.31078/jk2132>.

Regarding rules and basic concepts, the mechanisms in Indonesia and the United States have significant differences. Starting from legal procedures to mixing existing political roles. Therefore, it is necessary to study comprehensively and holistically to discover all the dimensions of the differences in impeachment in Indonesia and the United States.

There will be a lot of related studies that discuss the impeachment mechanism in America and Indonesia. However, other studies have limitations that contain the study's legal subject. Actually, the limitations of research are that it focuses more on discussing or examining the content of the study, which has been limited to the formulation of the problem. Limit the sub-discussion to the research to comprehensively and holistically discuss the theme raised in the study.<sup>11</sup>

In this study, if you look at previous studies, it will be different from the focus of the research and the language style. If you look at the research conducted by Muhammad Yopy Adhihermawan (Padjajaran University) with Annisa Nur Fadhila (Padjajaran University), which raised the title "An Examination of the Effectiveness of the Indonesian Presidential Dismissal Mechanism: A Comparison of the Practices of the United States and South Korea". The difference with this study is that in the previous study, which compared three countries, this study only focused on two countries. In addition, if the last research focused only on the effectiveness of the impeachment mechanism, the research will focus more on how it is relevant to the current state situation than the existing mechanism.

Considering that in Indonesia, since the holding of *the legal special proceedings* related to impeachment, there has still been no impeachment. This then raises the question that will be discussed in this study: Is it because of the particular legal proceedings that the President is more careful in terms of elements related to impeachment? Or even before there was a president who had fulfilled the elements of impeachment in the constitution, but because the majority of the political elite were in coalition with him, there was no impeachment mechanism? This critical question will certainly be one of the iconic discussions in this research.

Furthermore, it refers to a previous research conducted by I Gusti Ngurah Santika with the title "Presidentialism and the Problem of the Impeachment Mechanism of the President and/or Vice President Based on the 1945 Constitution After Amendment (Perspective of Legal and Political Struggle)", which was published in the Scientific Journal of Social Sciences 1, vol 5, no.1, 2019 at Undiksha. In this study, it only describes implicitly the problematic of what the President and/or Vice President did and is included in the classification for impeachment. The research that will be conducted will be discussed more complexly related to what was implicitly conveyed in the previous study.

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<sup>11</sup> Safi', Muwaffiq Jufri, and Ansori, *Filsafat Hukum; Mengurai Esensi Hukum Berbasis Multi-Prespektif* (Jakarta: Prenada Media, 2023), 157.

If referring to other research conducted by Vanessa Wijaya, Alvina, and Catherine Carisa Khoir (Tarumanegara University), who raised research entitled "The Role of the Constitutional Court in Impeachment and the Difference in Impeachment Procedures in Indonesia and the United States". If, in the previous study, the discussion was limited to how it is related to the role of the state institution in impeachment, then this study will discuss the nature of the state institution's decision on the impeachment mechanism itself. This needs to be studied considering that Article 24 C of the 1945 Constitution of the Republic of Indonesia related to 4 powers of the Constitutional Court and 1 obligation of the Constitutional Court to answer the DPR on alleged violations committed by the President (on mechanisms in Indonesia). Of course, the points in this discussion will be compiled based on the language's character and the researchers' analytical ability.

The last reason why this research is important to do is if you look at the previous research which raised the title "The Process of Impeachment of the President and/or Vice President in the Constitution of Indonesia (Comparative Study with the United States)". Although, in general, the theme raised in the study is the same as the research to be conducted. However, previous research has only focused on what state institutions are involved in the impeachment mechanism. There is a lack of discussion and criticism of the series History of Presidential Impeachment in Indonesia, which is only done through the political process. Of course, the existence of basic rules related to the mechanism of the Presidential Impeachment in Indonesia, which will then be associated with the history of the Impeachment that occurred, is exciting to study. Some of the reasons mentioned above it is enough to be used as a basis or reason related to the urgency of conducting this research.

## Methods

In general, this study focuses on library research. Still, as stated by F. Sugeng Istanto, legal material from library research alone is not enough in legal research, so it must be refined with field research. Therefore, apart from a literature review, a digital field study was also carried out in this research to look for legal material to be discussed through reporting in the mass media, especially electronic media.

Inspection of materials that have been in can be carried out in three stages. First, relevant materials or facts begin to be collected and compiled, coordinated and adapted to the article being studied. Second, the material that has been prepared is explained or described and interpreted according to the article focused on within the framework of the hypothesis.<sup>12</sup> Third, the information presented is evaluated using applicable legal provisions to determine which parts comply and which do not (contradict) with applicable law. Appropriate arrangements will be made, while inappropriate arrangements will be left behind to strengthen the argumentative

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<sup>12</sup> Amiruddin dan Zainal Asikin, *Pengantar Penelitian Hukum* (Jakarta: Rajawali Pers, 2018), 79, <https://www.rajagrafindo.co.id/>.

grounds. The enactment of a statute will strengthen aspects of planning and law enforcement. This is the background that every matter that has a significant impact nationally must have a legal basis.

## Discussion

### Mechanism for Impeaching the President and/or Vice President in Indonesia and the United States

In general, the impeachment rules regulated by the 1945 Constitution are contained in provisions of Article Paragraphs 7A and 7B, but the political process to prove these claims is in the DPR because of formal law. Suppose the questions submitted by the DPR are discussed, and the decision is in the hands of the Constitutional Court in this trial. In that case, the Constitutional Court purely carried out a process of interpreting the law, which narrowed the Constitutional Court's decision. The third process of the MPR is a process of powerful political intensity and governance because the MPR is an embodiment of the DPR, whose members are elected from among representatives of political parties; even though exercising its constitutional power and authority, the MPR cannot be separated from politics. In simple terms, impeachment is impeaching the legislative body against a high state body. In this case, it means from the DPR to the President. So, there are elements of the DPR that propose impeachment, and some parties are subject to impeachment, namely state institutions such as the President or Vice President.<sup>13</sup>

The concept of Impeachment is not written in the 1945 Constitution. Article 7A of the Third Amendment to the 1945 Constitution only regulates that the MPR can recall the president and/or vice president during their term of office. DPR or if it is proven to have violated the law in the form of treason, corruption, bribery, other criminal severe acts or embarrassing acts or if it is proven that it no longer meets the requirements of the President and President and/or Vice President. The concept of impeachment is not explicitly stated in the Constitution. In the amendments to the 1945 Constitution, the three provisions of Article 7 A of the 1945 Constitution stipulate that the MPR, at the suggestion of the DPR, can submit a petition for impeachment to the President/Deputy. President during his term of office if violations are proven. Statutory regulations.<sup>14</sup>

Simply put, the impeachment procedure for the President and/or Vice President begins with the DPR submitting a proposal to dismiss the president and/or vice president to MPR. However, first, a request must be submitted to the Constitutional Court to examine, assess, and decide on the DPR's lawsuit against the President and/or Deputy Nur Habibi. The President violated the provisions of the

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<sup>13</sup> Nur Habibi, "POLITIEKE BESLISSING DALAM PEMAKZULAN PRESIDEN REPUBLIK INDONESIA," *Academia*, n.d.

<sup>14</sup> Zainal Arifin, "ANALISIS YURIDIS MEKANISME PEMAKZULAN PRESIDEN DAN WAKIL PRESIDEN MENURUT UUD NEGARA REPUBLIK INDONESIA TAHUN 1945 (SETELAH PERUBAHAN)," *Jurnal Hukum Unissula* 36, no. 1 (2020): 46–58.

law. The DPR's statement is part of the DPR's supervisory mandate. At the request of the DPR, a statement to the Constitutional Court can only be given if the number of supporters is at least 2/3 of the number of DPR members attending the plenary session. The Constitutional Court is obliged to investigate the DPR's request and make a fair decision no later than ninety days after the DPR receives the DPR's request. The Constitutional Court may decide that the President and/or Vice President have been proven to have violated statutory regulations or that the President and/or Vice President no longer fulfills the requirements of the President and/or Vice President.<sup>15</sup>

The DPR can hold a plenary session to convey to the MPR the decision of the Constitutional Court on the petition to impeach the President and/or Vice President. In this case, the Constitutional Court of the Republic of Indonesia acts as a state institution in the Indonesian constitutional system due to amendments to the 1945 Constitution of the Republic of Indonesia. As a constitutional body, this institution was formed to be the guardian and interpreter of decisions regarding laws and court decisions. The staging procedure at the Constitutional Court means that the Petitioner is the Leader of the DPR, can appoint a legal representative, and the Respondent is the President or can be accompanied or represented by a legal representative.<sup>16</sup> In a trial at the Constitutional Court, there are six stages, including (MK Regulation No. 21 of 2009, Article 9 Paragraph (3)) namely Stage I (Examination Hearing), Stage II (President's Response), Stage III (Proof by the DPR), Stage IV (Evidence by the President), Stage V (Conclusion of the Parties), and finally Stage VI (Pronunciation of Decision).<sup>17</sup>

Suppose the Constitutional Court rejects the opinion of the DPR and decides that the President has not been proven to have violated any of the regulations in Article 7A of the 1945 Constitution. In that case, the impeachment mechanism process against the President will stop and cannot be forwarded to the MPR.<sup>18</sup> However, if the Constitutional Court decided that the President was proven to have violated holding a plenary session to forward the proposal to dismiss the President to the MPR.<sup>19</sup> So, the MPR must maintain a session to decide on the DPR's proposal within three days of receiving it. Then, the MPR decision on the proposal to dismiss

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<sup>15</sup> Vicki Dwi Purnomo and Kelik Endro Suryono, "The Collapse of the New Orde Regime Resulted in Changes in Indonesia's Economic Policy," *Jurnal Pengabdian Masyarakat Formosa* 1, no. 5 (December 30, 2022): 395–406, <https://doi.org/10.55927/jpmf.v1i5.2230>.

<sup>16</sup> Berlian Three et al., "A Comparison of Religious Freedom Guarantees for Adherents of Local Religions Between Indonesia and Japan," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 15–28, <https://doi.org/https://ejournal.pustakaparawali.com/index.php/jicl/article>.

<sup>17</sup> R. Wahjoe Poernomo Soeprapto, "Meaningful Participation Through Online Channels in Legislation Making in Indonesia via Dpr.Go.Id Page," *Trunojoyo Law Review* 6, no. 2 (2024): 190, <https://doi.org/https://doi.org/10.21107/thr.v6i2.25960>.

<sup>18</sup> Muhammad Aksan Akbar, "Politik Hukum Pemberhentian ( Pemakzulan ) Presiden Dan/Atau Wakil Presiden Di Indonesia Dalam Prespektif Negara Hukum Dan Demokrasi," *Unpatti* 26, no. 325–340 (2020).

<sup>19</sup> Rian Saputra, M Zaid, and Devi Triasari, "Executability of the Constitutional Court's Formal Testing Decision: Indonesia's Omnibus Law Review," *Journal of Law, Environmental and Justice* 1, no. 3 (November 29, 2023): 244–58, <https://doi.org/10.62264/jlej.v1i3.18>.



the President must be taken at the MPR plenary meeting attended by at least 2/3 of the total number of MPR members, namely 711 members and approved by at least 2/3 of the total members present.

After the President was allowed to explain at the plenary meeting of the People's Consultative Assembly (UD RI 1945 Article 7B), the decision made on the proposed impeachment of the President by the MPR is not a justisial (judicial) decision but a political decision (*politieke beslissing*). The examination in the plenary session at the MPR is not a justisil trial but a constitutional political forum. This is because examining the proposal to impeach the President is not part of the realm of judicial power, as stated in Article 24 of the 1945 Constitution. If the results of the MPR plenary meeting later impeach the President, the decision will only be limited to removal from office. So, the MPR's decision regarding the impeachment of the president may not impeach the president from office even though the Constitutional Court previously decided that the DPR's opinion was proven to be that the president was guilty. However, this does not mean that the decision taken by the MPR is such as overruling the justice decision. However, impeaching the President is within the MPR's authority, not the judiciary's.<sup>20</sup>

The mechanism above is one application of the check-and-balance system in Indonesia between 3 different divisions of power. If such a mechanism is not implemented, the President, as head of state and head of government, will have the potential to issue policies that may contain elements that exceed the limits of government authority, including those that are unacceptable to common sense, not supported by facts, and beyond the bounds of reasonableness.

In the United States constitutional system, the impeachment process against the President and/or Vice President involves 2 (two) state institutions, namely the Senate and the House of Representatives. 20 Article I Section 2 determines that "The House of Representatives shall appoint their Speaker and other Officers; and shall have the sole Power of Impeachment". From the provisions above, the impeachment process begins with an indictment by the House of Representatives. This means that the House of Representatives has the authority (sole power) to impeach the President and/or Vice President. Then, the House of Representatives first formed a committee tasked with drafting Articles of Impeachment, which contained the reasons that allowed the House of Representatives to impeach the President and/or Vice President.<sup>21</sup> The indictment was carried out based on Article II Section 4 of the United States Constitution, namely that the President and/or Vice President committed Treason, Bribery, or other high Crimes and Misdemeanors.

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<sup>20</sup> Mukhlis Mukhlis et al., "Regional Regulation Problems in the Field of Salt Industry Development Perspective of Farmers in Sampang Regency," *Trunojoyo Law Review* 6, no. 1 (February 29, 2024): 78–95, <https://doi.org/10.21107/tr.v6i1.23321>.

<sup>21</sup> Mulatua Pohan et al., "Pemberhentian Presiden Melalui Mekanisme Impeachment Berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Locus Journal of Academic Literature Review* 3, no. 1 (2024): 141–57.

Then, the Senate tries the indictment for impeachment of the President and/or Vice President from the House of Representatives. Article I Section 3 of the United States Constitution provides, "The Senate shall have the sole Power to try all Impeachments". This means that the Senate has the authority (sole power) to try charges made by the House of Representatives. For the impeachment process against the President, the Senate trial is chaired by the Chief Justice of the Supreme Court (When the President of the United States is tried, the Chief Justice shall be president) . After conducting an examination, the Senate issued a decision. To make this decision, 2/3 of the members must attend the Senate session. This is determined in Article / Section 3 of the United States Constitution: "And no Person shall be convicted without the Concurrence of two-thirds of the Members present". The Senate's decision in an impeachment case depends on whether the President and/or Vice President are impeached.<sup>22</sup>

The Senate cannot issue decisions in the form of criminal or civil sanctions. However, dismissal by the Senate does not cause the President and/or Vice President to be free from other responsibilities, such as charges under criminal law, judicial processes and so on. Based on the explanation above, the impeachment process in the United States consists of 2 (two) levels, namely the House of Representatives and the Senate and the trial is led by the Chief of Justice of the Supreme Court. This means that the impeachment process in the United States is carried out in a court atmosphere. Therefore, in impeachment, justice must be upheld, which is the basis of a trial.

### **The nature of decisions regarding the impeachment mechanism in Indonesia and the United States**

The President who is carrying out the Impeachment process will, of course, wait for the results of that process. Does he meet the requirements to be impeached according to the law? Valid, or cannot be impeached because all the elements of impeachment are not enough strong to prove. Of course, by looking at the description above of the impeachment process The President and/or Vice President in Indonesia is a legal process, because The mechanism is clearly regulated in Indonesian positive law. Even though on constitutional practice is often said to be a series of political processes.

Of course, things are not wrong because in the process, there is political intervention to determine the final result. Because this research is based on legal analysis, we view the impeachment process of The President and/or Vice President

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<sup>22</sup> Bethany Albertson and Kimberly Guiler, "Conspiracy Theories, Election Rigging, and Support for Democratic Norms," *Research & Politics* 7, no. 3 (July 28, 2020): 205316802095985, <https://doi.org/10.1177/2053168020959859>.

in Indonesia as a legal process. Therefore, the output of this process is a legal product in the form of a decision.<sup>23</sup>

The provisions of the Indonesian Constitution state that there are four authorities of the Constitutional Court, along with one obligation of the Constitutional Court. In this case, it is the Constitutional Court's obligation to answer the opinion of the DPR, which alleges violations by the President and/or Vice President; of course, this is very different from the decisions tried by the Constitutional Court through the other four authorities. Within the four powers of the MK, the decision decided by the MK is final and binding, so no institution can review the MK's decision, unlike the MK providing the DPR's answer regarding this impeachment, because procedurally what the MK decided is still not in the final process. Based on Article 7B of the 1945 Constitution of the Republic of Indonesia, the process will continue in the MPR after going through the Constitutional Court.

If, in the final stage of the impeachment process, the MPR is designed only to make ceremonial decisions and must be in line with the decisions of the Constitutional Court as a judicial institution, then there will be no legal problems. With a design like this, the Constitutional Court's decision is final and binding. This means that no other institution may review its decision. Therefore, the role of the Constitutional Court as a "sword" and "shield" is perfect. However, the design of the 1945 NRI Constitution does not state that. By the 1945 Constitution of the Republic of Indonesia, the decision of the Constitutional Court, which states that the President has been proven to have violated the law and/or no longer meets the requirements as President, after going through the DPR Plenary, will enter the final determination at the MPR.

The authority to make the final decision in the impeachment process rests with the MPR, an institution called the DPR, plus DPD members. "In this case, the nature of the Constitutional Court's decision is not final if the final decision taken by the MPR is not in line with the Constitutional Court's Decision because, in terms of the division of authority, the authority to dismiss the President and/or Vice President is the MPR. If so, the nature of the Constitutional Court's decision is only a recommendation to the MPR, So the final and binding decision is generally the decision made by the MPR."<sup>24</sup>

They are pretty different regarding impeachment procedures in Indonesia and the United States. Apart from the other methods, the restrictions in these two countries also have different rules. If the impeachment procedure in Indonesia is only limited to the President and/or Vice President, this is different in America

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<sup>23</sup> Ngudi Astuti and Dewi Setyarini, "Advancement of Gibran in Political Contestation As Vice President of The 2024 Election in The Perspective of Political Ethics of The Indonesian Nation," *Journal of Social Science (JoSS)* 3, no. 1 (February 12, 2024): 1174–95, <https://doi.org/10.57185/joss.v3i1.273>.

<sup>24</sup> Muh Risnain and Sri Karyati, "Menimbang Gagasan Perubahan Konstitusi Dan Tata Cara Perubahan Konstitusi Republik Indonesia 1945," *Kajian Hukum Dan Keadilan* V, no. 1 (2017): 114–18.

where impeachment is not limited to the President and Vice President, but can also be impeached against other civil officials.<sup>25</sup>

The impeachment process in the United States is a complex process with several stages and outcomes that may give rise to political conflict because, in the process, there are also political practices. The impeachment verdict in the United States rendered by a majority vote of the Senate is final and binding on the public. Because in practice in America, there seems to be an agreement that no institution is allowed to carry out legal reviews of majority voting decisions issued by the Senate. Even in this case, the Supreme Court in America has decided not to interfere with the power to sue and try Congress. It exists in procedural Impeachment in the United States. Two Based on this, the nature of the Impeachment decision from a majority vote of the Senate is final and binding. Of course, in this case, the Senate in the impeachment process in America is led by the Chief Justice of the Supreme Court. Even though, in this case, the House of Representatives claims that elements of Impeachment have occurred, if the Senate deems that no elements of Impeachment have been met. The Official suspected of Impeachment will be acquitted through the Senate, as with President Andrew Johnson.<sup>26</sup>

Suppose you look at the flow of the impeachment process in Indonesia. In that case, this process has a maximum deadline of 90 days, starting when the DPR submits its opinion/proposal for dismissing the President to the Constitutional Court. After that, the Constitutional Court re-checks the correctness of the DPR's opinion/opinion, then continues the proposal as a decision to the DPR regarding whether or not the President has violated the law or reasons. Constitutional, as alleged by the DPR.<sup>27</sup> Suppose the MK's decision states that the President has violated the law. In that case, the DPR will give the MK the decision to hold a special session immediately for a maximum period of 30 days and provide the President with the opportunity to defend himself first.<sup>28</sup> Based on this, the Constitutional Court's decision only functions as a judge in the impeachment process because it is not executory and cannot directly dismiss the President.

## Conclusion

Based on the explanation above, it can be concluded that the DPR submits a proposal to the MPR to dismiss the President and/or Vice President, which is the first step in the impeachment process. However, a request must be submitted to the Constitutional Court to review, evaluate, and provide a decision on DPR cases accusing the President and/or Vice President of violating the law. The moral

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<sup>25</sup> Liptak Adam, "Can Trump Challenge His Impeachment in the Supreme Court?," *The New York Time*, 2019.

<sup>26</sup> Adam.

<sup>27</sup> Hufron, "Perbuatan Tercela Sebagai Alasan Pemakzulan Presiden Dan/Atau Wakil Presiden."

<sup>28</sup> Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia*, 2nd ed. (Jakarta: Sinar Grafika, 2010).

message of DPR supervision includes the DPR's statement. A statement to the Constitutional Court can only be given at the request of the DPR if the number of supporters is at least two-thirds of the number of DPR members present at the plenary session. If the Constitutional Court does not agree with the DPR's opinion and determines that the President has not clarified the issue and has not violated any of the regulations contained in Article 7A of the 1945 Constitution, then the impeachment mechanism process for the President will stop, and cannot be followed up at the MPR.

However, suppose the Constitutional Court is found guilty and proven to have committed a violation of the 1945 Constitution. In that case, the DPR will follow up by holding a plenary session to take the matter of dismissing the President to the MPR. With this, the MPR is obliged to have a trial so that the democratic system in Indonesia has a principle of legal certainty to decide on the DPR's proposal within no later than three days from the time the MPR receives the proposal report. Then, the MPR's decision on the proposal to dismiss the President must be obtained at the MPR plenary meeting attended by at least 2 or 3 of the 711 members of the MPR and approved by at least 2 or 3 of the total members present.

In the context of the Constitution in Indonesia, it is explained that there are four rights of the Constitutional Court, along with one obligation of the Constitutional Court. In this case, it is the MK's obligation to provide an answer to the DPR's opinion, which alleges violations by the President and/or Vice President; of course, this is very different from decisions judged by the MK through the other 4 rights. In the four rights of the Constitutional Court, decisions made by the Constitutional Court are final and binding, so there is no institution capable of testing the Constitutional Court's decision. In contrast, the Constitutional Court provided the DPR's answer regarding this impeachment because procedurally, what the Constitutional Court has decided is still not in the final process. Based on Article 7B of the 1945 Constitution of the Republic of Indonesia, the process will continue in the MPR after going through the Constitutional Court.

They are very different in terms of impeachment procedures in Indonesia and the United States. Apart from the very different methods, the restrictions on these two countries also have different rules. Suppose Indonesia's Impeachment/Impeachment method is only limited to the President and/or Vice President. In that case, this is different from America, which is not limited to the President and Vice President for impeachment but can also be impeached against other civil officials. The impeachment process in the American Union is a complex process with several phases and outcomes that may give rise to political conflict because, in its sequence, there are also political practices. The impeachment verdict in the United States rendered by a majority vote of the Senate is final and binding on the public.

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