



Guarding the Political Assembly : The Reasons and Assesing Impeachment Clause in Indonesia

Idul Rishan¹, Dian Kus Pratiwi²

¹ Faculty of Law Universitas Islam Indonesia, E-mail: idul.rishan@uii.ac.id

² Faculty of Law Universitas Islam Indonesia, E-mail: 134101102@uii.ac.id

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Corresponding Author:

Idul Rishan, E-mail :
idul_rishan@uii.ac.id

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Abstract

In deliberative democracy, a constitution provides formal procedures for discharging the president and/or vice president during his/her term of office. This research aims to reveal two things. First, the reasons why discharging the president or vice president during his/her term of office is more political than legal. Second, assessment of provisions on discharging the president and/or vice president during his/her term of office. This is a doctrinal legal research using secondary data, and analyzed by the method of statutory approach, historical method, and conceptual method. This study has found that the political forum in MPR cannot be separated from the presidential system, characterized by political and government stability. Therefore, bipartisan decision making in MPR needs strengthening. However, DPR has unwittingly acted as prosecutors as well as justices at the MPR level. In addition, the provisions of Articles 7A-8 of the constitution should be stipulated further.

1. Introduction

In deliberative democracy, a constitution provides formal procedures for discharging the president and/or vice president during his/her term of office. These procedures constitute an integral part of constitutional protection for the political contract between the government and citizens. According to Dicey, “..obedience to the conventions of the constitution is ultimately enforced by the fear of impeachment..”¹

Under the presidential system, there are three procedures for discharging the president during his/her term of office. *First*, impeachment as the most standard procedure in democracies. This procedure is followed by charging the president with crimes or misconduct and shall be approved by the majority of lawmakers. *Second*, a special session held by the parliament if the president is unable to conduct his/her obligations due to illness or passes away. It is also subject to approval by the majority of lawmakers.

¹ Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution*, 3rd Edition ed. (London: MacMillan, 1989).p.365

Third, a referendum with the majority of the votes if provided by law. This procedure has only been adopted in Venezuela, in which Chavez won the 2004 recall referendum.²

The conventional wisdom is that impeachment is more political than legal. However, the 1945 Constitution combines a political forum (impeachment) with legal forum (*forum privilegium*). Under the supreme law of the land, the process shall involve the House of Representatives (DPR), Constitutional Court (MK), as well as People's Consultative Assembly (MPR). Therefore, discharging the president during his/her term of office is not only political, but also legal owing to involving MK. Nonetheless, MPR remains the ultimate authority.³

In their studies, legal scholars have been skeptical of provisions on discharging the president and/or vice president during his/her term of office. In his writing, Muhammad Bahrul Ulum argued that the use of questionnaire rights by the DPR could not uphold the substantive rule of law and justice by bringing the President and/or Vice President impeachment, even though the investigation found violations involving the Vice President. This is because, the impeachment process must go through several stages in accordance with the provisions of 7B of the 1945 Constitution.⁴ In addition, according to Muhammad Fauzan, the dismissal of the president and / or vice president by the MPR, on the proposal of the DPR, which has been tried first by the Constitutional Court, is only limited to political struggles. There has been no proportional constitutional performance of impeachment.⁵ Despite MK's role, the final decision shall be made by MPR through a political process.⁶ The court is said to enforce law by rendering its judgment on impeachment. Furthermore, its final and binding decision shall not be ignored or *atau* overturned by the assembly.⁷

In several studies, such as a study written by Ryan Muthiara Watia have provided comparative insights into some countries such as South Korea⁸ and the Czech Republic, in which impeachment is more legal than political. In South Korea, the Constitutional Court is the ultimate authority competent to render a judgment on the petition of the parliament regarding an alleged violation by the President and/or Vice President.

² & Detlef Nolte Leiv Marsteintredet, Mariana Llanos, "Paraguay and The Politics of Impeachment," *Journal of Democracy*, 24, no. 4 (2013): 117, <https://www.journalofdemocracy.org/articles/paraguay-and-the-politics-of-impeachment/>.

³ See: Articles 7A, 7B, and 24C paragraph (2) of the 1945 Constitution

⁴ Muhammad Bahrul Ulum, "Mekanisme Pemakzulan Presiden Dan/Atau Wakil Presiden Menurut UUD 1945 (Antara Realitas Politik Dan Penegakan Konstitusi)," *Jurnal Konstitusi* Volume 7, no. 4 (2010): 144, internal-pdf://182.153.80.184/112023-ID-mekanisme-pemakzulan-presiden-danata.pdf.

⁵ Muhammad Fauzan, "Dalam Proses Impeachment Presiden Menurut Sistem Ketatanegaraan Republik Indonesia," *Jurnal Dinamika Hukum* 11, no. 1 (2011): 71-86.

⁶ Eko Noer Kristiyanto, "Pemakzulan Presiden Republik Indonesia Pasca Amandemen Uud 1945," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, no. 3 (2013): 331, <https://doi.org/10.33331/rechtsvinding.v2i3.63>.

⁷ Ali Marwan Hsb, "Putusan Final Mahkamah Konstitusi Dalam Hal Pemakzulan Presiden," *Legislasi Indonesia* 14, no. 3 (2017): 275-84.

⁸ Ryan Muthiara Wastia, "Mekanisme Impeachment Di Negara Dengan Sistem Presidensial: Studi Perbandingan Mekanisme Impeachment Di Indonesia Dan Korea Selatan," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 31, no. 2 (2019): 237, <https://doi.org/10.22146/jmh.39068>.

Under the constitution, the court has the authority to make a final decision on the petition.⁹ Likewise, impeachment in Czech Republic is instituted by the Senate and approved by the House of Representatives, but ruled by the Constitutional Court. Thus, impeachment in both countries is more legal than political.¹⁰

Those differing perspectives are necessary to broaden academic horizons. Nevertheless, impeachment should be more political than legal. This study is aimed at explaining why impeachment under the presidential system should be more political than legal. This article offer a different point of view from existing research. In so doing, provisions on discharging the president and/or vice president during his/her term of office will be assessed.¹¹ Departing from the background above, this descriptive and analytical study will be centered around two research questions. The questions are: (1) why is the impeachment under 7B of the 1945 Constitution more political than legal. (2) what should be assessed in provisions on discharging the president and/or vice president during his/her term of office?

2. Method

This research is a doctrinal legal research. By using secondary data sources in the form of primary legal materials, secondary legal materials, and tertiary legal materials. With the literature study data collection method, the data obtained are analyzed by the method of statutory approach, historical method, and conceptual method related to the focus of research on the process of impeachment of the president and/or vice president in Indoneia. Using the statutory approach method, the author examines how the mechanism for the impeachment of the president and/or vice president is constitutionally in Indonesia. While the historical approach method, used to see how the practice of impeachment of the president and/or vice president in Indonesia so far. And the conceptual approach is used to reconstruct how the mechanism of impeachment of the president and/or vice president in the future.

⁹ Youngjae Lee, "Law Politics and Impeachment: The Impeachment of Roh Moo Hyun From a Comparative Constitutional Perspective' *The American Journal of Comparative Law*, Volume 53, Number 2, April 2005, p. 406," *The American Journal of Comparative Law* 53, no. 2 (2005): 406, doi:10.1093/ajcl/53.2.403.

¹⁰ Maxim Tomoszek, "Impeachment in The U.S Constitution and Practice: Implication of The Czech Constitution'," *International and Comparative Law Review* 17, no. 1 (2017): 142, doi: <https://doi.org/10.2478/iclr-2018-0005>.

¹¹ Assessment of constitutional performance is introduced by Ginsburg and Huq. To assess constitutional performance, it is essential that constitutions and legal and political realities be analyzed. Therefore, the gap between *Das Sollen* and *Das Sein* can be bridged Tom Ginsburg and Aziz Z. Huq, *Introduction: Assessing Constitutional Performance, Assessing Constitutional Performance*, 2016, <https://doi.org/10.1017/CBO9781316651018.001>.

3. Results and Discussion

Political Forum for Impeachment under the 1945 Constitution

There are three reasons why impeachment under the 1945 Constitution is more political than legal. *First*, purification of the presidential system following the American tradition. *Second*, political and government stability, and *third*, compromises between The Realists and Idealists.

1) Major Influence of the American Model

The drafters of the constitutional amendments took lessons from America. There, impeachment was employed against Johnson¹², Nixon¹³, and Clinton.¹⁴ Andrew Johnson was acquitted as a quorum was not achieved in the Senate. On the other hand, Richard Nixon resigned before articles of impeachment against his involvement in the Watergate scandal were voted on. Twenty four years later, Bill Clinton met the same fate as Johnson. He remained in office due to the fact no quorum was achieved in the Senate. It is crystal clear that the Senate has the sole power to try all impeachments. From a historical point of view, impeachment originated from the United Kingdom. Murphy says that “*one of the constitutional provisions borrowed from the English political tradition is impeachment, a governmental tool that allows for the removal of judges, officials, and leaders who are corrupt or have committed some sort of crime related to their public offices*”.¹⁵

Those drafting the American constitution separated political accountability from legal accountability. Under the presidential system in America, impeachment is a political forum instituted by the House Representatives and requires the concurrence of 2/3 of the senators present. Therefore, the court does not render a judgment on the inquiry into an alleged serious violation by the president and/or vice president. The Supreme Court is only represented by the Chief Justice presiding over proceedings. In the political forum, the Senate considers articles of impeachment and evidence and takes a vote to acquit or convict.¹⁶

According to Sunstein, impeachment should be the last resort if the president is proven to have abused his/her power. Hence, the House can charge the President of the United States with abuse of power. Nonetheless, a president may be impeached for, among others, murder or rape. It shows that impeachment is merely possible under exceptional

¹² John Whiteclay Chambers, *Encyclopedia of the American Presidency, History: Reviews of New Books*, vol. 23, 1994, <https://doi.org/10.1080/03612759.1994.9950852>.

¹³ Paturangi Parawansa from the Golkar Fraction. Mahkamah Konstitusi Republik Indonesia, *Naskah Komprehensif Buku (IV) Jilid 1 Perubahan UUD 1945* (Jakarta: Sekretariat Jenderal Mahkamah Konstitusi, 2010). p517.

¹⁴ Soedijarto from the Group Delegation Fraction. Andi Matalatta and Jimly Asshiddiqie from the Expert Team. *Ibid.*, p. 385 & 508. Mahkamah Konstitusi Republik Indonesia.

¹⁵ John Murphy, *The Impeachment Process* (New Uork: Chelsea House Publishers, 2007).p.14

¹⁶ Rotunda Ronald, “An Essay on the Constitutional Parameter of Federal Impeachment,” *Kentucky Law Review* 76, no. 3 (1976): 707.

circumstances.¹⁷ As juries and judges, the Senate has the authority to call witnesses, dismiss charges, issue rulings, and establish procedures.¹⁸

There must be consequences of the political forum. For instance, the interests of political parties and support for the president may bias the decisions made. However, it is the consequence of the political forum.¹⁹ Sometimes, the political decisions are highly controversial. It cannot be separated from the fact that political stability is preferred over legal rationality. The worst scenario is that the president remains in office despite being proven to have violated law. In so doing, he can gain support from the political parties.²⁰ The history of impeachment in America shows that political support is of critical importance.

Clinton, for example, was charged with perjury in investigations into his affair with Monica Lewinsky. He was also accused of obstruction of justice. In the Senate, however, a quorum (2/3) was not reached so that he was acquitted and remained in office. Both charges were defeated as no conviction was secured. The affair was not the contributing factor in impeachment. The acquittal resulted from the Senate's inability to interpret misdemeanors and high crimes. Impeachment should adhere to procedures and standard of proof.²¹ It is clear that Clinton was acquitted as his privacy was respected.²²

Logically, the political decision is deemed to be a legal reality. According to Hirsch, it is intended to maintain the balance of the presidential system. The charges is always specific and the decisions are made by political parties. In other words, the Senate constitutes a political forum. In America, the House acts as prosecutors and the Chief Justice presides over the proceedings, but the final decision to convict is made by 2/3 of the senators present.²³

¹⁷ Cass R. Sunstein, "Impeaching The President," *University of Pennsylvania Law Review* 147, no. 2 (1998): 305-12.

¹⁸ Allan J. Litchman, *The Case For Impeachment* (United States: Harper Collins Publishers, 2017).p.14

¹⁹ *Impeachment is best understood as a legislative rather than a judicial process. Impeachments are treated as insular and unique events, as opposed to extreme forms of factional dispute. Senate trials are viewed as potentially destructive rather than potentially transformative in the political system. As a result, the impeachment process remains the one bicameral function that is treated as exogenous to the bicameral system. Deprived of its underpinnings, impeachment is reduced to a univocal process with little purpose beyond its conclusion...*" Jonathan Turley, "Senate Trials and Factional Disputes: Impeachment as a Madisonian Device," *Duke Law Journal* 49, no. 1 (1999): 1-2, <https://doi.org/10.2307/1373063>.

²⁰ Laurence Tribe and Joshua Matz, *To End A Presidency: The Power of Impeachment* (New York: Basic Books, 2018).p.353

²¹ Richard A. Posner, *An Affair of State: The Investigation, Impeachment, and Trial of President Clinton* (London: Harvard University Press, 1999).p.95.

²² The President, Vice President and 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 II, section 4, U.S. Constitution).see: Michael J. Gerhardt, "Impeachment Defanged and Other Institutional Ramifications of the Clinton Scandals," *Maryland Law Review* 60, no. 1 (2001): 59-96.

²³ Charles L. Black Jr. and Philip Bobbitt, *Impeachment: A Handbook* (London: Yale University Press, 2018).p.190

If convicted in the Senate, the president shall merely be politically held accountable. Hence, he/she shall be removed from office. Subsequently, he/she shall be brought to justice as a citizen. Hirsch, therefore, says that the impeachment clause is never sufficient.²⁴ This tradition was upheld by the drafters of our constitutional amendments when formulating Articles 7A and 7B of the 1945 Constitution. As a consequence, MPR still has the ultimate authority to impeach the president and/or vice president.

2) Political and Government Stability

Political and government stability is another reason why impeachment is more political than legal. Library research shows that it is hard to implement provisions on impeachment. Despite serious allegations of violations, it is virtually impossible to impeach the president.

Once again, launching impeachment is a herculean task. It shall go through a lengthy and complex process. Impeachment constitutes a political process, even though articles of impeachment are proven. It requires a bargain and consensus. In impeachment, the president is held politically accountable. He/she will be brought to justice after his/her removal from office. The mechanisms are not simple. There are stages and verifications in each state institution as stipulated by the constitution. Therefore, it is not easy to launch impeachment.²⁵

A study conducted by Kim shows that impeachment is an unusual event under the presidential system. Nevertheless, impeachment constitutes a difference between the presidential system and parliamentary system. It is aimed at ensuring political and government stability. According to Kim, discharging the president can have greater political consequences. Impeachment can also lead to social and political crises and have detrimental impacts on investment and economic growth.²⁶ Thus, political and government stability was discussed when Articles 7A and 7B were being drafted.

3) Compromise between The Realists and Idealists

There are two groups during the transition.²⁷ *First*, the realists or elements of the New Order. *Second*, the idealists represented by the opposition. The former was reflected by the Golkar and TNI-Polri Fractions. The latter were represented by the PDIP, PPP, and

²⁴ Alan Hirsch, *Impeaching the President: Past, Present, and Future* (San Fransisco: City Lights Book, 2018).p.20-25

²⁵Subsequent to the political transition, impeachment is practically impossible in Indonesia. Its probability is minimized by our party system. Under the multi-party system, a consensus may never be reached. It is clear that the president's grand coalition will not allow the consensus to be achieved in DPR and MPR. So far, only PKS and PAN have been the opposition. However, they only make up 16.4% of the lawmakers. Meanwhile, the Democrats make up 9.4% of the DPR members. On the other hand, the grand coalition dominates by controlling three-quarter seats. As a consequence, DPR can never perform its supervisory functions properly. Idul Rishan, "Pemakzulan Presiden Di Negara Demokrasi," *Harian Kedaulatan Rakyat*, June 15, 2020.

²⁶ Young Hun Kim, "Impeachment and Presidential Politics in New Democracies," *Journal of Democratization* 21, no. 3 (2014): 519-20.

²⁷ Ruti G. Teitel, *Transitional Justice* (United States of America: Oxford University Press, 2002).p.3

PBB Fractions. The realists preferred political and government stability while the idealists favored the rule of law in Articles 7A and 7B.

How the final decision on impeachment should be made was the subject of debate. The idealists preferred a political forum to legal forum. It can be seen from the minutes of the meetings on impeachment clauses. In the second half of the constitutional amendments, according to the PPP Fraction, the forum for impeaching the president and/or vice president was debated, resulting in Articles 7A and 7B.²⁸

According to the Golkar Fraction, impeachment constitutes a political forum. Thus, MK should only render a judgment on the petition lodged by DPR, but the final decision should be the sole power of MPR.²⁹ Valina Singka, representing the Group Delegation Fraction, recommended strict requirements and threshold in the parliament for impeachment. Thus, political instability could be avoided.³⁰

On the other hand, the idealists, represented by the PDIP Fraction, favored the rule of law. They promoted the role of the judiciary in deciding impeachment.³¹ The PDIP Fraction proposed that impeachment be a legal forum in the Constitutional Court, the ruling of which is final and binding.³² As a member of the PDIP Fraction, Palguna criticized Jimly Asshiddiqie, a member of the Expert Team. According to Asshiddiqie, the president and/or vice president may be impeached in a political process. Then, he/she may be brought to justice. Palguna, however, is of the opinion that it violates the rule of law. Impeachment should be decided by the judiciary through its final decision. On the contrary, the president should be held legally accountable before being held politically accountable.³³

Debate on whether impeachment should be a legal or political forum can be found in almost all countries in which the constitution is drafted. One of them is the United States. As quoted from Sunstein, Madison proposed that the judiciary have the final say in impeachment. He also suggested that the House charge the president and/or vice president, but the Supreme Court pass judgment. Nevertheless, Hamilton said that the political forum should prevail over the legal one. From his point of view, the Senate should try impeachment.³⁴

²⁸ Lukman Hakim Saifuddin in Mahkamah Konstitusi, *Naskah Komprehensif Buku (III) Jilid 1 Perubahan UUD 1945* (Jakarta: Sekretariat Jenderal MKRI, 2010). p.517

²⁹ See: Rully Chairul Azwar, Hatta Mustafa, Jakob Tobing, Agun Gunandjar Sudarsa see; Konstitusi.p.259,393 & 434

³⁰ See: Valina Singka Subekti Mahkamah Konstitusi Republik Indonesia, *Naskah Komprehensif Buku (IV) Jilid 1 Perubahan UUD 1945*.p.497

³¹ Therefore, when the second amendment was being drafted, a clause stating “discharge the President and/or Vice President during his/her term office if proven to have violated the Constitution, violated the state policy guidelines, committed treason against the state, perpetrated crimes, committed bribery, and/or committed disgraceful acts, as convicted by the Constitutional Court” was proposed Konstitusi, *Naskah Komprehensif Buku (III) Jilid 1 Perubahan UUD 1945*. p.310

³² See: Hobbes Sinaga in Konstitusi. p.285.

³³ See: I Dewa Gede Palguna in Mahkamah Konstitusi Republik Indonesia, *Naskah Komprehensif Buku (IV) Jilid 1 Perubahan UUD 1945*. P.504.

³⁴ Cass R. Sunstein, *Impeachment: A Citizen's Guide* (United States: Harvard University Press, 2017).p.72

In his opinion “The convention, it appears, thought the Senate the most fit depositary of this important trust. . . . It is not disputed that the power of originating the inquiry, or, in other words, of preferring the impeachment, ought to be lodged in the hands of one branch of the legislative body”.³⁵ To maintain political and government stability, the founding fathers of America decided that impeachment shall be tried by the Senate.

In short, the drafters attempted to reach a compromise between both conflicting views. Thus, they combined the political and legal processes in impeachment. The legal forum is held in the Constitutional Court and the political forum is represented by MPR. This legal policy was made to reach a consensus.³⁶ Hence, this legal policy was adopted during the political transition. Finally, MPR has the ultimate authority to discharge the president. As a drafter, Palguna³⁷ even states that this choice was made to maintain political stability under the presidential system.

Even though the president and/or vice president is convicted by the Constitutional Court, MPR shall still convene a plenary meeting. Its judgment will be forwarded by DPR to propose impeachment to MPR. The assembly shall make the decision on impeachment during a plenary session attended by at least $\frac{3}{4}$ of the total members. It requires the approval of at least $\frac{2}{3}$ of those present after the president and/or vice president been given the opportunity to explain.

This choice is quite moderate. MK is involved to accommodate the idealists’ point of view, but MPR has the ultimate authority to impeach the president and/or vice president. However, some people believe that the court’s decision on impeachment is final as stipulated by Article 24C paragraph (1) of the 1945 Constitution. Does it violate the rule of law?

The debate should be interpreted in its context. There are two reasons for it. *First*, Articles 7A and 7B is aimed at upholding the rule of law. From a historical point of view, they resulted from a political consensus. In other words, Articles 7A and 7B are legal realities to uphold the supreme law of the land.

Second, the court’s decision is indeed final. There were fierce debates on its role in impeachment. According the Reform Fraction, provisions on the role should be made clear. For instance, MK should answer or pass judgment. Judgment always has legal consequences so that both legal forum and political forum are legitimate. Thus, the Reform Fraction proposed that MK only answer charges brought by DPR.³⁸

³⁵ Corey Brettschneider, *On Impeachment: The Presidency on Trial* (New York: Penguin Books, 2020). P.73

³⁶Impeachment has three dimensions, i.e. issue of facts (investigations in DPR), issue of law (MK’s involvement), and political process (in MPR). See: Hardjono in Mahkamah Konstitusi Republik Indonesia, *Naskah Komprehensif Buku (IV) Jilid 1 Perubahan UUD 1945*. P.520

³⁷ I Dewa Gede Palguna, *Mahkamah Konstitusi: Dasar Pemikiran, Kewenangan, Dan Perbandingan Dengan Negara Lain*. (Jakarta: Konstitusi Press, 2018). p.218-219.

³⁸See: Patrialis Akbar in Mahkamah Konstitusi Republik Indonesia, *Naskah Komprehensif Buku (IV) Jilid 1 Perubahan UUD 1945*. p.521.

However, the finality does not apply to judgment on impeachment. According to Laica Marzuki, it means that MPR, instead of MK, has the final say in impeachment.³⁹ Under Article 24C paragraph (1) of the 1945 Constitution, MK has the authority to adjudicate at the first and final instance, the judgment of which is final, to review laws against the constitution, judge on authority disputes of state institutions whose authorities are granted by the constitution, judge on the dissolution of a political party, and judge on disputes regarding the result of a general election. On the other hand, MK shall render a judgment on the petition of DPR regarding an alleged violation by the President and/or Vice President as stipulated in Article 24C paragraph (2) of the 1945 Constitution. Therefore, the court's role played in impeachment is different from its role under Article 24C paragraph (1) of the 1945 Constitution.⁴⁰

It is assumed that MK plays no significant role in discharging the president and/or vice president during his/her term of office. Nonetheless, the conclusion is hasty. The court still has a crucial role in impeachment. The president and/or vice president be impeached if proven to have committed a violation of law in the form of treason against the state, corruption, bribery, other felonies, or disgraceful acts or if proven that he/she no longer qualifies as the president and/or vice president.

However, there is no provision on legal and political consequences if the president and/or vice president is convicted by MK.⁴¹ On the contrary, it can be interpreted that charges are dismissed and cannot be forwarded to MPR. Although MPR decides impeachment, MK plays a key role in it.

Assessing Articles 7A-8 of the 1945 Constitution

As a constitutional mechanism, the political forum for impeachment has its drawbacks. Thus, Articles 7A-8 of the 1945 Constitution need assessing, even though it is seemingly impossible to implement them. In other words, this political forum shall be stipulated in a proportional manner. There are four indicators in this assessment. They are provided in the table below.

³⁹ Laica Marzuki, "Pemakzulan Presiden / Wakil Presiden Menurut Undang-Undang Dasar 1945," *Jurnal Konstitusi* 7, no. 1 (2010): 26.

⁴⁰ See and compare Article 24C paragraphs (1) and (2) of the 1945 Constitution.

⁴¹ See: Article 7B paragraph (5) of the 1945 Constitution.

Table 1: Assessing Provisions on Discharging The President And/Or Vice President during His/Her Term of Office

No	Article	Provision	Assessment
1	7A	Disgraceful acts (misdemeanors)	Need to be interpreted by or in laws
2	7B	MK procedures	Need to be regulated by laws
3	7B (7)	Decision making in MPR	Strengthening the role of DPD as the second chamber in MPR
4	Article 8 (3)	Power vacuum if the president and vice president are removed	Needs to be regulated by an MPR decree

Several provisions on impeachment shall be interpreted comprehensively by or in laws. For instance, the provision on disgraceful acts.⁴² Despite not being crimes, disgraceful acts can be denounced and shall not be perpetrated by the president and/or vice president.⁴³ However, they should be made clear. The constitution does not define them at all. Thus, it is open to interpretation.

Another indicator is procedures in MK. According to Hiariej, its procedures need stipulating accurately in laws. The court should not issue a regulation on impeachment.⁴⁴ Article 7A of the 1945 Constitution stipulates the President and/or Vice President can be discharged if proven to have committed, among others, felonies. There are two procedures MK can follow to render judgment on the violation by the president and/or vice president. On the one hand, felonies cannot be separated from criminal procedures. On the other hand, MK only passes *constitutief vonnis*, instead of *condemnatoir vonnis*. It has impacts on evidence and speedy trial in the court.⁴⁵

Third, decision making in MPR should strike a balance between two chambers. Pursuant to the 1945 Constitution, DPD has no significant role in the decision making. Meanwhile, in impeachment the decision making is bipartisan. As the second chamber, DPD is of no vital importance. There is a great inequality between DPR and DPD. In theory,

⁴² Nevertheless, for the sake of legal certainty, treason against the state, corruption, bribery, and other felonies as well as qualifications for being the president and/or vice president should be stipulated further by laws. See: Article 7A of the 1945 Constitution.

⁴³ Disgraceful acts are close to misdemeanors in the American Constitution. From a legal point of view, misdemeanors are less serious crimes. However, in terms of impeachment, misdemeanors refer to disgraceful acts. In other words, the president and/or vice president can be denounced he/she commits them Mahkamah Konstitusi RI, *Hukum Acara Mahkamah Konstitusi* (Jakarta: Sekretariat Jenderal MKRI, 2019). p.454

⁴⁴ See: The Constitutional Regulation No. 21 of 2009 on the Procedures of Rendering a Judgment on the Petition of House of Representatives regarding an Alleged Violation by the President and/or Vice President.

⁴⁵ Interview with Eddy O.S. Hiariej, Yogyakarta, 14 October 2020.

bicameralism is based on the principles of internal checks and balances. It also applies to impeachment. However, the relation between both chambers is not equal.⁴⁶

DPD in the 1945 Constitution reflects weak bicameralism. It is only the auxiliary organ of DPR.⁴⁷ DPD may perform several functions so that the lawmakers (DPR and the president) consider DPD as an “auxiliary organ”, instead of a main state organ. In its verdict, MK also deems DPD as an auxiliary organ.⁴⁸ On the contrary, DPR is the sole legislative body with supervisory functions. However, it is not the only legislative body. The parliament is comprised of DPR, DPD, and MPR.⁴⁹

To establish the principle of checks and balances in the parliament, DPD needs strengthening. Thus, both chambers will be equal. Under the current system, DPD can have no prominent role in discharging the president and/or vice president during his/her term of office.⁵⁰

In most countries adopting the presidential system, e.g. the United States, Argentina, Brazil, and the Philippines, the second chamber is key to impeachment. It shall institute proceedings to try impeachment and convict or acquit the president after the first chamber bring charges against him/her. This vital role is based on the principle of “double checks” requiring political representation, regional or territorial representation, and/or functional representation. Thus, the people can be represented better, including in impeachment.⁵¹

Nonetheless, the provisions on the quorum have not allowed DPD take part in making political decisions in MPR. Pursuant to the 1945 Constitution, DPR members, as the prosecutors and judges in impeachment, make up 3/4 of the MPR members. Hence, DPR members can make decisions on behalf of MPR without involving DPD members. This is the logical consequence of the political forum in impeachment which should be

⁴⁶ Sartori categorizes parliamentary systems into three types. *First*, weak bicameralism. In this bicameralism, the first chamber is far more dominant than the second chamber. *Second*, strong bicameralism. This type of bicameralism features two chambers with equal powers. *Third*, perfect bicameralism. Under this system, two chambers are equal and proportional. See: Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (U.K.: Palgrave Macmillan, 1994).

⁴⁷ Ni'matul Huda, “Gagasan Amandemen (Ulang) Uud 1945 (Usulan Untuk Penguatan Dpd Dan Kekuasaan Kehakiman),” *Jurnal Hukum Ius Quia Iustum* 15, no. 3 (2008): 373–92, <https://doi.org/10.20885/iustum.vol15.iss3.art4>.

⁴⁸ Enny Nurbaningsih, “Implikasi Putusan Mahkamah Konstitusi Nomor 92 / Puu-X / 2012 Dan Alternatif Model Hubungan,” *Mimbar Hukum* 27, no. 1 (2015): 1–13.

⁴⁹ Mohammad Fajrul Falaakh, *Pertumbuhan Dan Model Konstitusi Serta Perubahan UUD 1945 Oleh Presiden, DPR, Dan Mahkamah Konstitusi* (Yogyakarta: Gadjah Mada University Press, 2014). p.179-182.

⁵⁰ Saldi Isra & Zainal Arifin Mochtar, “Model Kamar Parlemen: Catatan Untuk Penataan Kelembagaan DPD Indonesia,” *Jurnal Media Hukum* 14, no. 2 (2007): 252.

⁵¹ Pan Mohamad Faiz and Muhammad Erfa Redhani, “Analisis Perbandingan Peran Kamar Kedua Parlemen Dan Kekuasaan Kehakiman Dalam Proses Pemberhentian Presiden,” *Jurnal Konstitusi* 15, no. 2 (2018): 231, <https://doi.org/10.31078/jk1521>.

considered. Thus, the constitution should be amended⁵² and its implications should be prevented by laws.

Fourth, impeachment can lead to power vacuum after the removal of the president and vice president. The constitution stipulates that if the President and Vice President are discharged during their term of office simultaneously, the caretaker of the presidential office shall be jointly the Minister of Home Affairs, Minister of Foreign Affairs, and Minister of Defense. At the latest thirty days thereafter, MPR shall convene a session to elect the President and Vice President from two candidate President and Vice President pairs proposed by a political party or a combination of political parties whose candidate President and Vice President pair acquired the first and second majority vote in the previous general election. This clause can provoke a political crisis if no candidate is proposed. The probability stems from different political constellations during and after the election. It is probable that the impeached president and vice president are supported by the minority in MPR. In addition, other non-legal factors should be considered. For example, the expiry of term of office. It can be more or less than two years or less than six months and influence political parties. Considering the abovementioned calculation, a deadlock is entirely possible. Therefore, Article 8 paragraph (3) of the 1945 Constitution should be interpreted in an MPR decree to prevent power vacuum if the president and vice president are removed from office.

4. Conclusion

First, the president and/or vice president can be discharged during his/her term of office through the political forum at MPR, instead of the legal forum at MK. It is the consequence of the presidential system. Further, the political forum is chosen due to political and government stability. Hence, it is hard to institute impeachment in the presidential system. Even it is confirmed by original intent and original text of the constitution. It is clear that the drafters were inspired by impeachment in America. As a moderate legal policy, MK is involved before the final decision is made by MPR.

Second, the political forum in impeachment needs to be assessed. For instance, the decision making in MPR. After the 1945 Constitution was amended, the political forum in MPR is closer to the unicameral system. The political decision made tends to be partisan. In other words, DPR acts as prosecutors and judges in the political forum. Despite the bicameral system, DPR does not need to involve DPD to reach a quorum. In addition, several essential provisions need to be stipulated further in MPR decrees and laws. Those provisions are related to articles of impeachment, procedures MK, and power vacuum.

⁵² According to Article 22C paragraph (2) of the 1945 Constitution, the sum of all the members of DPD shall not exceed one third of the sum of the members of DPR.

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