

Impeachment Process of the President and/or Vice President in the Government System of Indonesia, the United States and Germany.

¹ Agus Prasetia Wiranto

¹ Faculty of Law, Sultan Agung Islamic University

*Corresponding Author:

agusprasetiawiranto@gmail.com

Abstract

The impeachment process against the President and/or Vice President is an important constitutional mechanism in the system of government of a democratic country. In Indonesia, this process is regulated in the 1945 Constitution which involves the House of Representatives (DPR), the Constitutional Court (MK), and the People's Consultative Assembly (MPR). This process aims to ensure that there is a mechanism to supervise the abuse of authority carried out by the executive. On the other hand, the United States and Germany have different impeachment mechanisms, each with a legal and procedural basis that is well established in their constitutions. In the United States, the impeachment process begins in the House of Representatives and ends with a trial in the Senate. Meanwhile, in Germany, which adopts a parliamentary system, impeachment is more juridical with the role of the Federal Constitutional Court (Bundesverfassungsgericht) which decides on the dismissal of the President if proven to have violated the basic law. This study aims to compare the impeachment process in Indonesia, the United States, and Germany, as well as to analyze the application of this mechanism in the context of democracy and the rule of law.

Keywords: *Impeachment, President, Vice President, Indonesia, United States, Germany, Democracy, Rule of Law.*

1. INTRODUCTION

Indonesia is a country that was born through a colonial process that lasted for centuries, causing that Indonesia was formed into a democratic country and a unitary state which is the principle of the state that it adheres to. (Huda and Ni'matul, 2015) The preamble to the 1945 Constitution shows the democratic prerogative, as contained in Article 1 paragraph (1) and paragraph (3), that Indonesia is a unitary state with a republic form and is governed by the rule of law, not a great power. (Susanti, 2018)

As a democracy based on the law, Indonesia adheres to a presidential system of government (Assiddiqie, 2019). In this system, the President and Vice President hold executive power that comes directly from the people's mandate through elections. The President's position as head of state as well as head of government makes him a central figure in the administration of government. However, in practice, this great power must be balanced with a monitoring mechanism (*checks and balances*) so as not to cause abuse of authority that can harm the state and the people (Assiddiqie, 2018).

One form of mechanism for monitoring executive power is through the *impeachment* process. Impeachment is a constitutional mechanism to dismiss the President and/or Vice President before the end of their term of office if proven to have committed a violation of the law, treason against the state, or other despicable acts (Arliman, 2020).

This will be more interesting when compared to the practice of impeachment in other countries. United States, *impeachment* has been part of an established system *of checks and balances* and is strictly enforced under the Constitution. Meanwhile, in Germany, which adheres to a parliamentary system with the president as the symbolic head of state, the impeachment process is more juridical than political.

Thus, the study of the impeachment process of the president and/or vice president is important to study, especially in the context of comparisons between Indonesia, the United States, and Germany. Through comparative analysis, it is hoped that a deeper understanding of how each country balances executive power, the rule of law, and democratic principles can be found. This study is also expected to contribute to strengthening the Indonesian constitutional system so that the impeachment mechanism can run fairly, objectively, and in accordance with the spirit of the constitution.

2. METHODS

The research method used by the author in this study is normative legal *research* or also called literature research. Normative legal research is the process of seeking truth and legal solutions in the legal text itself, without having to go to the field to observe directly (Soekanto and Mamudji, 2019) In this case, what is studied is literature material or secondary data, which consists of primary legal materials, secondary legal materials and tertiary legal materials.

3. RESULTS AND DISCUSSION

1. Comparison of the stages and procedural mechanisms of impeachment of the President and/or Vice President between Indonesia, the United States, and Germany

The Indonesian constitutional system regulates the mechanism for impeaching the President and/or Vice President through a multi-layered process. The House of Representatives is authorized to propose dismissal if there are allegations of violations of the law such as treason, corruption, bribery, serious crimes, reprehensible acts, or no longer meet the requirements for office. The proposal was submitted to the Constitutional Court (MK) for examination and legal decision. If the Constitutional Court states that the allegations are proven, the results are submitted to the House of Representatives to be forwarded to the MPR which then decides on dismissal or rejection through a plenary session (Yuliandri, 2020). This mechanism reflects the balance between the legal aspects (MK) and the political aspects (MPR) in the Indonesian presidential system.

Unlike in Indonesia, the United States has an *impeachment* system regulated in the Constitution, especially in Article II paragraph 4 and Article I paragraph 2-3 (Widodo, 2019) These articles state that the President, Vice President, and other high-ranking officials can be impeached on charges of treason, bribery, or other serious crimes (*high crimes and misdemeanors*). *The House of Representatives*, which has the authority to propose and approve impeachment laws or formal indictments, is where impeachment proceedings begin. The indictment was sent to the Senate, which acts as a court, after a majority of members of the House approve it. If the person being tried is the President, the Chief Justice *acts* as the chairman of the Senate session. The impeachment decision can only be passed with the approval of two-thirds of the members of the Senate (Susansi, 2018).

Meanwhile, Germany has a different impeachment mechanism than Indonesia and the United States because it has a parliamentary system of government with the Federal President as the symbolic head of state (Huda, 2018) Based on Article 61 of the Basic Constitution of Germany (*Grundgesetz*), *the Bundestag* (Federal Parliament) or *the Bundesrat* (The State House of Representatives) may impeach the Federal President if it is deemed to have intentionally violated a basic law or federal law. This impeachment application was submitted to *the Bundesverfassungsgericht*, the Federal Constitutional Court, which has full authority to examine and decide the case. Then the Constitutional Court can determine dismissal from office if proven guilty (Puspitasari, 2020).

2. Legal basis that can be used to impeach the President and/or Vice President in Indonesia, the United States, and Germany

The legal basis for the impeachment of the President and/or Vice President in Indonesia is regulated in the 1945 Constitution Articles 7A and 7B. Article 7A states that the President or Vice President can be dismissed by the MPR if proven to have committed treason against the state, corruption, bribery, serious crimes, reprehensible acts, or no longer meet the requirements for office. Article 7B stipulates that the House of Representatives is authorized to submit a motion for dismissal to the MPR after requesting the consideration of the Constitutional Court (MK). This provision emphasizes the balance between political and legal functions in maintaining the accountability of state leaders (Yunanto, 2020).

In the United States, the legal basis for impeachment is set out in Article II Paragraph 4 of the Constitution which states that the President, Vice President, and civil servants can be dismissed if proven to have committed treason, bribery, or other serious crimes (Kusnardi et al, 2018) The impeachment process begins in *the House of Representatives* that files formal indictments (*articles of impeachment*), then continued with a trial in the Senate led by the Chief Justice of the Supreme Court. Through this two-chamber system, the impeachment mechanism is designed to prevent abuse of power and enforce the principle *of checks and balances* between the executive and legislative institutions (Lijphart, 2020).

The legal basis for the impeachment of the German Federal President is set out in *Article 61 of the Grundgesetz* (Basic Constitution), which states that the Bundestag or Bundesrat can accuse the President of violating a basic law or federal law. The charges were brought to the Federal Constitutional Court (*Bundesverfassungsgericht*) to decide

whether the President was guilty and deserving of dismissal. This mechanism emphasizes the legal aspect of the constitution rather than the political one, because decisions are in the hands of the highest judicial institution, reflecting a parliamentary system that prioritizes the rule of law and maintains the integrity of the president's office as a symbolic head of state (Siregar, 2019)

3. The role of institutions in impeachment proceedings in Indonesia, the United States, and Germany

In the Indonesian constitutional system, the impeachment process involves three main institutions, namely the House of Representatives (DPR), the Constitutional Court (MK), and the People's Consultative Assembly (MPR). The House of Representatives has a role as the proposer of impeachment, that is, if there are allegations of gross violations of the law committed by the President and/or Vice President (Manan, 2018), the House of Representatives must first conduct an investigation and then submit a request to the Constitutional Court to examine and decide on the alleged violations. The Constitutional Court plays a role in assessing the legal correctness of the allegations filed by the House of Representatives, whether the President really violated the provisions as stipulated in Article 7A of the 1945 Constitution. After the Constitutional Court declares that violations are proven, then the MPR will hold a hearing to make a final decision in the form of dismissal or rejection of the impeachment of the President and/or Vice President (Fitrah, 2020)

Meanwhile, in the United States, the impeachment process involves two main legislative institutions, namely *the House of Representatives* and the Senate, as well as the *Supreme Court* in a limited role (Assiddiqie, 2019). *The House of Representatives* acts as an investigative and prosecuting agency in the early stages of the impeachment process. This institution has the authority to draft and ratify articles of impeachment against the President. After the House approved the indictment, the case was delegated to the Senate which acted as the impeachment court. In the Senate trial, *the Chief Justice* (Chief Justice of the Supreme Court) presides over the trial if the defendant is the President. The final verdict is in the hands of the Senate, which requires the approval of two-thirds of the members to decide on the President's removal from office.

In Germany, the institutions that play a role in the impeachment proceedings against the Federal President are *the Bundestag* (Federal Parliament), *the Bundesrat* (Federal Council), and the Federal Constitutional Court (*Bundesverfassungsgericht*). The Bundestag or Bundesrat can file impeachment charges if the President is suspected of violating basic law or other federal laws. The impeachment application must be approved by a two-thirds majority of the members of the institution concerned (Huda, 2020). After the charges are approved, the case is handed over to the Federal Constitutional Court, which acts as the highest judicial body to examine and decide whether the President has indeed committed a violation of the law. If proven, the Court can issue a dismissal decision. The involvement of these institutions reflects a strong *system of checks and balances* in maintaining the accountability and integrity of the President's office in Germany (Manan, 2018)

4. CONCLUSION

Overall, the impeachment mechanisms in Indonesia, the United States, and Germany show differences that reflect the character of their respective government systems. Indonesia with a presidential system involves the DPR, Constitutional Court, and MPR in a layered mechanism; The United States with a two-chamber system places the House of Representatives and Senate as the main implementers; while Germany with a parliamentary system gives final authority to the Federal Constitutional Court. All three have a firm legal basis in the constitution of Articles 7A and 7B of the 1945 Constitution, Article II Paragraph 4 of the US Constitution, and Article 61 of the *Grundgesetz* which affirms that impeachment can only be carried out for gross violations of the law. Thus, impeachment in the three countries has become a constitutional instrument to maintain accountability and apply the principle of *checks and balances* in the constitutional system.

ADVICE

For Indonesia, the United States, and Germany, the improvement of the impeachment mechanism needs to be directed at strengthening objectivity, transparency, and the rule of law. Indonesia needs to clarify procedures and oversight between institutions so that it is free from political interests, while the United States must minimize politicization by maintaining ethics and legislative integrity so that the process remains based on the constitution and legal evidence. Germany needs to maintain its stable judicial system while increasing public understanding of impeachment mechanisms to strengthen legal and democratic awareness.

THANK YOU

Praise be to Allah SWT for all the blessings and gifts given so that this research can be completed properly. The author expresses his deep gratitude to the family, especially his beloved wife, who always provides support and motivation in every step of this research. Not to forget, the author would like to thank the academics and parties who have provided constructive suggestions and criticisms, as well as to all parties involved in the smooth technical and administrative process during the process of compiling this journal.

BIBLIOGRAPHY

Books

- Asshiddiqie, Jimly. (2018). *Indonesian Constitution and Constitutionalism*. Jakarta: Sinar Grafika.
- Asshiddiqie, Jimly. (2019). *Constitutional Law and the Pillars of Democracy*. Jakarta: Sinar Grafika.
- Asshiddiqie, Jimly. (2019). *Comparison of the Constitutions of Countries in the World*. Jakarta: Constitution Press.
- Huda, Ni'matul. (2015). *Indonesian Constitutional Law*. Jakarta: RajaGrafindo Persada.
- Huda, Ni'matul. (2020). *Comparison of the Constitutional System: A Study of Indonesia, the United States, and European Countries*. Jakarta: Rajawali Press.
- Kusnardi, Moh., & Ibrahim, Harmaily. (2018). *Introduction to Indonesian Constitutional Law*. Jakarta: Sinar Grafika.

- Lijphart, Arend. (2020). *Presidential and Parliamentary Government System: A Comparative Study*. Translation by Tri Wibowo. Jakarta: Rajawali Press.
- Manan, Bagir. (2018). *Presidential Institutions in the Governance Systems of Various Countries*. Bandung: Alumni.
- Manan, Bagir. (2018). *Constitutional Theory and Politics*. Bandung: FH UII Press.
- Soerjono Soekanto & Sri Mamudji. (2019). *Normative Law Research: A Brief Review*. Jakarta: Rajawali Press.

Journal

- Arliman, Laurensius. (2020). "Presidential Impeachment in the Indonesian Constitutional Law Perspective." *Indonesian Journal of Legislation*, 17(3).
- Arliman, Laurensius. (2020). "Presidential Impeachment in a Comparative Perspective of the Constitutional System." *Indonesian Journal of Legislation*, 17(4), 377–392.
- Fitrah, Rahmat. (2020). "The Authority of the Constitutional Court in the Impeachment Process of the President and/or Vice President in Indonesia." *Journal of Law Ius Quia Iustum*, 27(2), 275–294.
- Huda, Ni'matul. (2018). "Comparison of the Government System of Indonesia, the United States, and Germany." *Journal of Constitution*, 15(4), 711–730.
- Puspitasari, Rini. (2020). "The German System of Government in the Perspective of Constitutional Law." *Journal of Right Vinding*, 9(2), 233–247.
- Siregar, Dian. (2019). "The Position of the Federal President in the German Constitutional System." *Journal of Law and Development*, 49(3), 401–418.
- Susanti, Dyah Ochtorina. (2018). "The State of Law and Democracy in the Perspective of the Indonesian Constitution." *Constitutional Journal*, 15(2), 25.
- Susanti, Ratna. (2018). "The United States Presidential System of Government: An Analysis of the Impeachment Mechanism." *Journal of Law and State*, 5(1), 45–60.
- Widodo, Joko. (2019). "The Impeachment Mechanism in the United States Constitutional System and Its Relevance to Indonesia." *Journal of Constitution*, 16(2), 355–372.
- Yuliandri. (2020). "The Position of the Constitutional Court in the Process of Impeachment of the President and/or Vice President in Indonesia." *Journal of Justice*, 9(2), 177–190.
- Yunanto, Sri. (2020). "The Role of the Constitutional Court in the Impeachment Process of the President and/or Vice President." *Indonesian Journal of Legislation*, 17(2), 145–160.