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## Legal Analysis of the Grounds and Mechanisms for the Dismissal of the President and/or Vice President in Indonesia

Adensi Timomor<sup>1\*</sup>, Theodorus Pangalila<sup>2</sup>, Brain Fransisco Supit<sup>3</sup>

<sup>1,2,3</sup> Universitas Negeri Manado, Indonesia

Email: [adensitimomor@unima.ac.id](mailto:adensitimomor@unima.ac.id)\*

**Abstract.** The objective of this study is to analyze the grounds and mechanisms for the dismissal of the President and/or the Vice President prior to the expiration of their term of office. The method employed in this research is normative legal research. The findings indicate that the dismissal of the President and/or the Vice President may be based on evidence of legal violations as stipulated in Article 7 of the 1945 Constitution of the Republic of Indonesia, or on the ground that the officeholder no longer fulfills the constitutional requirements to serve as President and/or Vice President. The legal mechanism for dismissal begins with the House of Representatives (DPR) expressing its opinion, followed by a petition submitted by the DPR to the Constitutional Court to adjudicate that opinion. If the Constitutional Court determines that the DPR's opinion is legally substantiated, the DPR may then proceed to propose the dismissal of the President and/or the Vice President. The interpretation suggesting that if either the President or the Vice President is to be dismissed, both must be removed on the basis that they constitute a "single ticket" is erroneous, as the term "single ticket" is not stipulated in the Constitution. The phrase "and/or" placed between the words "President and Vice President" clearly indicates that "and" functions as a conjunction denoting joint responsibility, whereas "or" distinctly separates the two offices, namely, the President and the Vice President, depending on which individual has committed the alleged legal violation. Thus, the word "or" signifies that either the President or the Vice President may be dismissed during their tenure if proven to have violated the law. Liability in this context may apply individually or jointly. In other words, unless it is proven that both have violated the Constitution or committed acts prohibited by it, dismissal should apply only to the individual who has committed the violation; however, if both are proven to have violated the Constitution, they must be dismissed jointly from their respective offices.

**Keywords.** Presidential Dismissal, Constitutional Law, Impeachment Mechanism, 1945 Constitution of Indonesia, Constitutional Court

### A. Introduction

The current political reality in Indonesia increasingly demonstrates an escalation that significantly affects the dynamics of national life, as reflected in the emergence of groups of citizens who have previously served the state as members of the armed forces and have since retired [1]. The community in question consists of retired members of the Indonesian National Armed Forces (veterans). This group considers itself to possess a serious concern and responsibility for the continuity of the state, as mandated by the Constitution of the Unitary State of the Republic of Indonesia. Accordingly, they claim to have constitutional grounds for

their position, as their primary concern is that the state must be governed and administered in accordance with the principles enshrined in the Constitution. One of the issues drawing their attention is the demand for the dismissal or impeachment of the Vice President of the Republic of Indonesia, on the allegation that he has deviated from and committed acts prohibited by the Constitution. However, the grounds advanced by this group must be examined constitutionally through the legal mechanisms prescribed as the rule of the game [2].

This phenomenon has prompted the public, particularly the academic community within higher education institutions, to engage in careful and rational deliberation, setting aside irrationality and subjective sentiment. By employing a *ratio legis* approach or sound legal reasoning, it becomes possible to clarify how the essence of law should be understood in order to realize justice, utility, and legal certainty in addressing the aforementioned phenomenon. Constitutional designs of impeachment vary considerably and determine the balance between political accountability and governmental stability [3]. Accordingly, this study focuses on two principal issues: first, the grounds that may justify the dismissal or impeachment of the President and/or the Vice President prior to the expiration of their term of office; and second, the legal mechanisms governing such dismissal. In addition, this research examines the interpretation of the phrase “and/or” placed between the words “President and Vice President,” particularly in light of the argument that the President and Vice President constitute a single electoral ticket.

The term President literally means “head,” namely the Head of State (in a state with a republican form of government) [4]. Based on several provisions of the 1945 Constitution of the Republic of Indonesia, the term President may be interpreted in multiple senses: as the presidential institution, as the office of the President, as an individual holding the office, or as a presidential official [5]. In certain contexts, the term President is used to denote the presidential state institution or the presidential office itself [6]. In this study, the term President and/or Vice President refers to the office—that is, a public office attached to an individual, which embodies specific authorities and the scope of such authorities. When a person is referred to as the President and/or Vice President, it signifies that the powers and functions inherent in the office are vested in that individual. Conversely, when it is stated that the President and/or Vice President is dismissed, this means that the office and its attached powers no longer vest in that individual; consequently, the person ceases to hold the position—namely, removal from office. Accordingly, all authorities, rights, and obligations inherent in the office of the President and/or Vice President automatically terminate upon such dismissal [7].

With regard to the legal mechanism, Moenir (2013), as cited in Gumohung (2022), defines a mechanism as a series of operational processes or instruments employed to resolve problems related to work procedures, aimed at achieving optimal results [8]. Furthermore, Lorens Bagus (1996), as cited in Dananjaya (2022), defines a mechanism as the interaction among various components within a system or whole that, even unintentionally, produces activities or functions consistent with its objectives [9]. When examined in relation to the dismissal of the President and/or the Vice President in Indonesia, the interaction among various components signifies the involvement of more than one state institution, each influencing and producing reciprocal effects upon the other, thereby generating a cause-and-effect relationship. The term legal mechanism indicates that such a process is grounded in and governed by the prevailing legal provisions regulating the dismissal of the President and/or the Vice President in Indonesia. With respect to the concept of dismissal of the President and/or the Vice President, several terms are commonly associated with such removal, one of which is *pemakzulan* (impeachment).

The term *impeachment* derives from the verb *to impeach*, which means to accuse, indict, suspect, or call upon someone to account for their actions [10]. Jimly Asshiddiqie (2021) explains that *to impeach* originally means to demand accountability. If the charges are proven, the consequence is *removal from office* (dismissal). In other words, impeachment does not in itself constitute dismissal; rather, it is a process of prosecution based on alleged legal violations committed by the President and/or the Vice President [11]. The Indonesian term *pemakzulan* derives from the word *makzul*, meaning to cease holding office or to be dethroned. Thus, *pemakzulan* refers to the process or act of removing an officeholder from office [12]. Accordingly, impeachment signifies a procedural mechanism aimed at effecting removal from office, but it does not automatically result in the definitive termination of the President's and/or Vice President's tenure before the expiration of their constitutional term.

This study employs the theory of the modern rule of law state, particularly emphasizing the division of powers theory advanced by Sir Ivor Jennings. According to the theory of division of powers, there exists a system of *checks and balances* within the relationships among state institutions, whereby each institution exercises oversight over the others to prevent encroachment upon their respective competences, the exceeding of constitutional authority, abuse of power, or arbitrary conduct. This principle equally applies to the Executive, namely, the President, such that, through the operation of checks and balances, the exercise of presidential power remains subject to institutional control in order to prevent arbitrariness, excess of authority, and/or abuse of power.

In the Netherlands, several legal thinkers have sought to refine and develop the ideal of the rule of law state, notably Paul Scholten and M. Scheltema. According to Paul Scholten's conception of the rule of law state, as cited in Moeliono (2020), its principal elements are as follows: 1) The recognition of citizens' rights vis-à-vis the state (or the monarch). This element comprises two essential aspects:

a) individual rights that, in principle, exist beyond the scope of state authority; and  
b) any limitation upon those rights may only be imposed by statute, namely through generally applicable legislation. Embedded within this element is also the principle of equality before the law. 2) The separation of powers. Following the doctrine advanced by Montesquieu, Scholten identifies three distinct branches of state power that must remain institutionally separate: the legislative power (law-making), the executive power (law-implementation), and the judicial power (law-adjudication). Furthermore, Scholten emphasizes that the evaluation of legislation should not be confined solely to its formal aspects, but must also take into account its substantive content [13].

The concept of the rule of law according to M. Scheltema, as cited in Nainggolan (2018), comprises four principal principles, each accompanied by derivative elements.

First, the principle of legal certainty encompasses several components: a) the legality principle; b) the requirement that laws regulate the exercise of public authority in such a way that citizens are able to foresee what may reasonably be expected; c) the prohibition of retroactive legislation; d) the statutory guarantee of fundamental rights; and e) the existence of an independent judiciary free from interference by other branches of power. Second, the principle of equality requires that the exercise of public authority be regulated by law in the material sense and that a separation of powers be maintained. Third, the principle of democracy includes the right of citizens to vote and to be elected; the requirement that regulations governing public authority be enacted by parliament; and parliamentary oversight of governmental action. Fourth, the principle of government for the people entails the statutory

protection of fundamental rights and the operation of government in an effective and efficient manner [14].

M. Scheltema further argues that by the end of the twentieth century, the functions of the state had expanded significantly, particularly in that governmental responsibilities were no longer confined to the maintenance of public order. The government increasingly assumed responsibility for various aspects of social life. Societal development and the growing complexity of public needs could no longer be adequately addressed solely through the formal application of the legality principle. As a result, the formal rule of law state attracted criticism. Scheltema therefore observes that governmental policy discretion became increasingly embedded within statutory regulations. This development was made possible through the delegation of legislative authority to the executive branch for the issuance of implementing regulations, as well as through the recognition of *Freies Ermessen* (German) or *pouvoir discrétionnaire* (French), which enables the government to exercise discretionary power in order to secure a more equitable public order and to fulfill societal needs [15].

Throughout the twentieth century, the concept of the rule of law continued to evolve. The role of government in state administration transformed as state activities expanded to regulate a broad range of public affairs. The classical liberal rule of law state thus developed into a prosperity-oriented rule of law state [16]. Governmental actions undertaken in the public interest, aimed at realizing genuine and tangible prosperity rather than illusory welfare, came to be regarded as legitimate within this new conception of the state. The transition from the prosperity-based rule of law state to the welfare state began in Western Europe, where the state was increasingly required to provide social security for the elderly and financial support for the unemployed. Whereas prior to the 1960s the state was expected primarily to ensure material prosperity, subsequent developments reflected broader societal demands—not only for material well-being but also for spiritual and social welfare. Consequently, the contemporary rule of law state is often characterized as the welfare state (*verzorgingsstaat*) [17]. E. Utrecht distinguishes between the classical rule of law state (formal rule of law) and the modern rule of law state (material rule of law). The formal rule of law refers to a narrow and formal conception of law, limited to written statutory regulations. In contrast, the material rule of law encompasses not only statutory legality but also the substantive dimension of justice [18].

The type of rule of law adopted by Indonesia, in accordance with the spirit and explicit affirmation of the Preamble to the 1945 Constitution, is neither a *Polizei Staat* (police state), nor a *Nachtwächterstaat* (night-watchman state), nor merely a *Wohlfahrtsstaat* (prosperity state). Rather, Indonesia embraces the concept of a welfare-based rule of law state. The Republic of Indonesia, as founded upon the 1945 Constitution, aspires not only to material prosperity but also to spiritual well-being. The people seek a just and prosperous life in both physical and spiritual dimensions. For this reason, the Indonesian rule of law is characterized as a welfare state [19], [20].

According to Jimly Asshiddiqie (2021), in reformulating the core ideas of the rule of law and adapting them to the contemporary Indonesian context, thirteen fundamental principles of the modern *Rechtsstaat* may be identified. These thirteen principles constitute the principal pillars sustaining a modern rule of law state, enabling it to be properly described as a *rule of law* or *Rechtsstaat* in its substantive sense. The thirteen principles are as follows: 1) the supremacy of law; 2) equality before the law; 3) the principle of legality (*due process of law*); 4) constitutional limitations on governmental power; 5) the functioning of independent state organs that exercise mutual control; 6) an independent and impartial judiciary; 7) the availability of administrative judicial review; 8) the availability of constitutional adjudication;

9) the guarantee of human rights protection; 10) a democratic character (*democratic rule of law* or *demokratische rechtsstaat*), ensuring that law-making processes are democratic and participatory; 11) the function of the state as an instrument for achieving national objectives within the framework of a welfare state; 12) the existence of a free press and transparent, accountable governance supported by effective social control mechanisms; and 13) adherence to the principle of belief in the One and Almighty God [11].

### **B. Method**

The type of research employed in this study is normative legal research, also known as library research [21]. Normative legal research is conducted by examining secondary data or legal materials, focusing exclusively on library-based sources. It analyzes law as a set of norms or rules in force. These applicable legal norms consist of written positive law enacted by legislative institutions, including the constitution, codifications, statutes, government regulations, presidential regulations, and other statutory instruments [22]. The normative juridical method is appropriate when the object of analysis concerns both the juridical aspects and the value content embedded within a legal rule [23]. Normative legal research emphasizes the analysis of law as a system of norms governing individual conduct in society. Within this approach, law is understood as a framework guiding human behavior [24]. According to Peter Mahmud Marzuki (2005), normative legal research constitutes a process of identifying legal rules, legal principles, and legal doctrines aimed at resolving specific legal issues [25].

The approaches applied in this study are the statute approach and the conceptual approach. The statute approach involves examining all statutory regulations and legal instruments relevant to the legal issue under investigation. Meanwhile, the conceptual approach is undertaken by referring to scholarly views and legal doctrines, enabling the researcher to identify the ideas that give rise to legal definitions, legal concepts, and legal principles pertinent to the issue being analyzed [26].

### **C. Result and discussion**

The requirements applicable to candidates for, and incumbents of, the offices of President and/or Vice President are set forth in Article 169 of Law Number 7 of 2017 on General Elections, which enumerates twenty qualifications that must be fulfilled by presidential and vice-presidential candidates. When these requirements are read in conjunction with Article 7A of the 1945 Constitution of the Republic of Indonesia, which provides that the President and/or the Vice President may be dismissed during their term of office by the People's Consultative Assembly (MPR) upon the proposal of the House of Representatives (DPR) if it is proven that they no longer meet the qualifications to hold office, it can be argued that Article 169 of Law Number 7 of 2017 serves as the normative benchmark for determining whether the President and/or the Vice President may be dismissed prior to the expiration of their term [27].

The Law on the Constitutional Court further clarifies that the phrase "no longer meeting the qualifications as President and/or Vice President" refers to the requirements stipulated in Article 6 of the 1945 Constitution [28]. Accordingly, one of the constitutional grounds for dismissing the President and/or the Vice President before the end of their term is proof that they no longer satisfy the qualifications set forth in Article 6 of the Constitution. For example, if the President and/or the Vice President suffers from an illness that renders them physically and mentally incapable of performing the duties and obligations of the office, such circumstances may constitute failure to meet the constitutional requirements [29].

Therefore, if it is established that the President and/or the Vice President no longer fulfills the qualifications as stipulated in Article 169 of the Law on General Elections, the DPR may initiate impeachment proceedings by submitting an accusation to the Constitutional Court (MK) for examination, adjudication, and decision. If the Constitutional Court determines that the qualifications are indeed no longer satisfied, the DPR may, on that basis, propose to the MPR the removal from office of the President and/or the Vice President before the completion of their term.

During their tenure, the President and/or the Vice President are subject to constitutional prohibitions concerning certain acts that may not be committed while in office. Article 7A of the 1945 Constitution of the Republic of Indonesia provides that the President and/or the Vice President may be dismissed during their term of office by the People's Consultative Assembly (MPR) upon the proposal of the House of Representatives (DPR) if it is proven that they have committed legal violations in the form of treason against the state, corruption, bribery, other serious criminal offenses, or disgraceful conduct. Comparative constitutional practice demonstrates a fundamental distinction between criminal grounds and political grounds for removal, a distinction that is particularly relevant in interpreting Article 7A of the 1945 Constitution [3]. In many constitutional systems, criminal grounds are designed to ensure legal accountability, whereas political grounds function to preserve governmental stability within the framework of checks and balances.

The findings of this study clearly indicate that the President and/or the Vice President may be dismissed only if it is proven that they have violated constitutional provisions. Recently, however, certain groups within society, comprising retired members of the Indonesian National Armed Forces (TNI), the Indonesian National Police (POLRI), and other community groups, have called for the dismissal of the Vice President for the 2024–2029 term. Constitutionally, their views must be respected, as the Constitution guarantees freedom of expression as part of the fundamental rights of citizens.

In their eight-point demand, particularly concerning the dismissal of the Vice President, reference is made to a decision of the Constitutional Court, namely Decision Number 90/PUU-XXI/2023. Pursuant to Law Number 24 of 2003 on the Constitutional Court, the Constitutional Court is vested with the authority to: (1) conduct judicial review of statutes against the 1945 Constitution; (2) adjudicate disputes concerning the constitutional authority of state institutions whose powers are granted by the Constitution; (3) decide on the dissolution of political parties; and (4) resolve disputes concerning general election results.

Empirical analyses of Constitutional Court decisions reveal a trend toward what are often described as “megapolitical cases,” in which Constitutional Court rulings carry substantial political implications [30]. These findings indicate that the Constitutional Court not only performs a juridical function but also plays a significant role in shaping political and constitutional dynamics. With particular regard to the Court's first constitutional authority, namely, judicial review of statutes against the Constitution, its review of Law Number 7 of 2017 on General Elections has generated diverse perceptions and interpretations concerning the scope and limits of the Court's authority. Questions have arisen as to how far the Constitutional Court may extend its interpretative function and what constitutional boundaries constrain the exercise of its review power.

Based on the Constitutional Court's authority, it is evident that its primary domain concerns determining whether a norm is constitutionally permissible or impermissible. The power of judicial review entails analyzing a legal norm, whether contained in a particular article or statute, and assessing its conformity with the 1945 Constitution of the Republic of Indonesia.

If the norm under review is found not to contradict the Constitution, the Court, within its authority, declares that the norm remains valid and binding. Conversely, if the norm is found to be inconsistent with the Constitution, it must be brought into conformity through the formulation of a new norm consistent with constitutional provisions.

The subsequent question concerns which institution holds the authority to undertake such re-norming. It is clear that the Constitutional Court's authority in this context is limited to "reviewing." The act of review necessarily produces a legal outcome; however, if the reviewed norm is found defective, the Court does not automatically replace or rewrite the defective provision, as doing so would implicate the domain of legislative authority. The ultimate formulation of a new norm is therefore entrusted to the law-making institution. This distinguishes the review function from the Court's other three authorities, which involve the power to "decide" specific constitutional disputes.

If the Court's authority to "review" were extended to include the direct creation of new norms, such action would arguably exceed its constitutional mandate. In several passages of its legal reasoning in Decision Number 90/PUU-XXI/2023, the Constitutional Court asserted that once a statutory provision is subjected to constitutional review, the legislature's *open legal policy* becomes exhausted. If this reasoning is accepted, then the 1945 Constitution should clearly delineate the respective domains of the legislature and the Court in situations where ambiguity or normative deficiency is identified in a statutory provision. Under such circumstances, if the Court's review power were to be accompanied by delegated authority to formulate new norms, this delegation would require explicit constitutional grounding.

The rationality underlying the Court's legal considerations in Decision Number 90 reflects an understanding of the Constitutional Court as the ultimate guardian of the Constitution, functioning as the final bulwark in safeguarding constitutional supremacy.

The delegation of authority to formulate new norms as a consequence of judicial review of statutes against the 1945 Constitution of the Republic of Indonesia by the Constitutional Court reflects a constructive policy development within Indonesia's constitutional system. Based on the foregoing analysis, the demand for the impeachment of the Vice President for the 2024–2029 term must, from a constitutional perspective, be assessed in accordance with clearly defined constitutional parameters. Any such impeachment must rest upon constitutionally valid legal grounds and must be pursued through constitutionally prescribed procedures, thereby ensuring legitimacy from legal, political, and sociological standpoints.

Moreover, the impeachment mechanism cannot be viewed solely through a legal lens. Although grounded in constitutional law, the process inevitably interacts with broader political and social dynamics, including pressures from segments of society and, most significantly, the internal dynamics within the House of Representatives (DPR). As a representative institution composed of political party factions, the DPR is inherently influenced by competing political interests, particularly those related to power. Consequently, even where the legal requirements for impeachment appear to be formally satisfied, the procedural stages within the DPR will inevitably involve political contestation. It is highly probable that at least two opposing blocs will emerge: one supporting impeachment and the other rejecting it. Thus, the impeachment process represents not only a juridical procedure but also a political process embedded within the broader constitutional framework.

When a proposal for impeachment is submitted to the House of Representatives (DPR), its political character becomes immediately apparent. The DPR is inherently a political institution; consequently, the processes conducted within it are political in nature. An

impeachment hearing is therefore a political proceeding, and it does not entail criminal sanctions such as fines or imprisonment. However, once an official has been impeached and removed from office, that individual may subsequently be tried in ordinary criminal proceedings, initiated independently and based on formal charges brought against them. Within the framework of impeachment, if the political hearing in the DPR secures approval from the required majority of members, the matter is then referred to the Constitutional Court for comprehensive and substantive examination from the perspective of the Constitution and statutory law, in order to determine whether a constitutional violation has in fact occurred. Viewed from the standpoint of the DPR's constitutional functions, impeachment constitutes an expression of legislative authority, representing a form of parliamentary oversight over the conduct of public officials.

Nevertheless, a fundamental issue arises in relation to the DPR's oversight function. Although oversight is constitutionally mandated, it may, in practice, be temporarily neglected when the issue at hand implicates the political interests of particular parties—especially major parties that dominate parliament or coalitions controlling a parliamentary majority. This occurs because political processes and dynamics are often analyzed primarily through political logic as the dominant premise. In other words, the oversight function may be subordinated, at least temporarily, to partisan interests and power-oriented objectives. Political logic within the DPR has evolved into an institutional culture that is invoked in certain agendas and has shaped a distinctive style of parliamentary politics, even though not all members of parliament necessarily subscribe to this approach [31], [32].

In the impeachment process, the constitutional mechanism involves three institutions: the House of Representatives (DPR), the Constitutional Court (MK), and the People's Consultative Assembly (MPR). Although the initial issue arises from an alleged constitutional violation committed by a state official, namely, the President and/or the Vice President, the core of the matter is fundamentally legal in nature. However, when the allegation of constitutional violation is addressed within the DPR, the resolution process tends to be dominated by political considerations, while the legal dimension assumes a comparatively secondary role, except at the stage of adjudication before the Constitutional Court.

This situation raises a critical question: why are allegations of constitutional violations processed politically once they enter the parliamentary arena, rather than being directly referred to the Constitutional Court, whose constitutional function is to serve as the guardian of the Constitution? Ideally, such a referral would presuppose that constitutional justices are genuinely independent, not representing any particular institution, and are drawn from professional backgrounds under strict qualification standards. Their appointment should ensure freedom from relational networks or affiliations that could create connectivity structures capable of generating subjective bias in constitutional adjudication.

#### **D. Conclusion**

The grounds for dismissing the President and/or the Vice President are as follows: first, if the President and/or the Vice President suffers from illness resulting in the loss of physical and mental capacity to perform the duties of office; second, if the President and/or the Vice President is proven to have committed legal violations as stipulated in Article 7A of the 1945 Constitution of the Republic of Indonesia, namely treason against the state, corruption, bribery, other serious criminal offenses, or disgraceful conduct during their tenure; and third, as a legal consequence of no longer fulfilling the constitutional requirements or committing such violations, members of the House of Representatives (DPR) may exercise their right to express

an opinion, which is subsequently submitted to the Constitutional Court for examination, adjudication, and decision.

The legal mechanism for dismissing the President and/or the Vice President proceeds as follows. First, the DPR plays a decisive role in the initial stage of the process as an extension of its oversight function, culminating in the formal expression of its opinion that the President and/or the Vice President has committed a constitutional violation or no longer meets the qualifications for office. The DPR then petitions the Constitutional Court to conduct legal review and verification. Second, the Constitutional Court examines, adjudicates, and renders a juridical decision on whether the President and/or the Vice President has indeed committed the alleged violation or ceased to meet the constitutional qualifications. Third, the People's Consultative Assembly (MPR) is constitutionally obligated to convene a plenary session to decide upon the DPR's proposal within thirty days of receiving it. The decision to dismiss must be adopted in a plenary session attended by at least three-quarters of the total membership of the MPR and approved by at least two-thirds of the members present, after the President and/or the Vice President has been afforded an opportunity to present an explanation before the Assembly.

With regard to the interpretation that if either the President or the Vice President violates the Constitution, both must be dismissed jointly on the ground that they constitute a "single ticket," such an interpretation is erroneous. The Constitution and statutory law do not prescribe joint dismissal on that basis. The term "ticket" merely refers to the pairing of candidates at the time of nomination for the presidency and vice presidency. It would be illogical to conclude, for instance, that if one of them were to die in office, the other must also cease to hold office solely because they were elected as a pair.

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