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The obligation of Constitutional Court to give a decision on opinion of Council Representatives in process of termination Indonesian President

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Abstract. The 1945 Constitution as a constitution in post-reform Indonesia in 1998 underwent four amendments starting with the first amendment in 1999, the second amendment in 2000, the third amendment in 2001 and ending with the fourth amendment in 2002, by establishing 13 Articles and 3 Articles of Transitional Rules and 2 Articles of Additional Rules. Subhan Ali stated that changes to the constitution are a consequence of the life of a nation that aspires to create stronger and more certain constitutional conditions. Changes to the Constitution make this nation have a foundation to build a more progressive but also accountable country. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, states: "Indonesia is a country based on law.

Keywords. obligation, court, termination

Introduction

The 1945 Constitution as a constitution in post-reform Indonesia in 1998 underwent four amendments starting with the first amendment in 1999, the second amendment in 2000, the third amendment in 2001 and ending with the fourth amendment in 2002, by establishing 13 Articles and 3 Articles of Transitional Rules and 2 Articles of Additional Rules. Subhan Ali stated that changes to the constitution are a consequence of the life of a nation that aspires to create stronger and more certain constitutional conditions. Changes to the Constitution make this nation have a foundation to build a more progressive but also accountable country. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, states: "Indonesia is a country based on law." [1]

Article 7B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, stipulates that proposals for dismissal of the President and/or Vice President can be submitted by the House of Representatives to People's Consultative Assembly, only by first submitting a request the Constitutional Court to examine, adjudicate, and decide on opinion of House Representatives that the president and/or vice president have violated the law in the form of treason against the state, corruption, bribery, other serious crimes or disgraceful acts; and/or opinion that President and/or Vice President no longer meet the requirements as President

and/or Vice President. In paragraph (2) it is formulated, the opinion of the DPR that the president and/or vice president has violated the law or no longer fulfills the requirements as president and/or vice president is in the context of carrying out the supervisory function of the DPR. [2]

Paragraph (3) stipulates that the submission of a request by DPR to the Constitutional Court can only be carried out with the support of at least 2/3 the total members of DPR who are present at a plenary session attended by at least 2/3 the total members of the DPR. Representatives of the People. In Paragraph (4), then the Constitutional Court is obliged to examine, try and decide in the fairest way possible on the opinion from DPR in no later than ninety days after the request of the DPR is received by the Constitutional Court. Paragraph (5) If the Constitutional Court decides that the President and/or Vice President is proven to have violated the law in the form of treason against the state, corruption, bribery and other serious crimes, or disgraceful acts; and/or it is proven that the President and/or Vice President no longer fulfill the requirements as President and/or Vice President, the People's Representative Council holds a plenary session to forward the proposal to dismiss the President and/or Vice President to the People's Consultative Assembly. In paragraph (6) the People's Consultative Assembly is obliged to hold a session to decide on the proposal of the People's Representative Council no later than thirty days after the People's Consultative Assembly accepts the proposal. Paragraph (7) The decision of the People's Consultative Assembly on proposal to dismiss the President and/or Vice President must be taken at a plenary session by People's Consultative Assembly attended by at least 3/4 of the total members and approved by at least 2/3 of the total members present, after the President and/or Vice President has been given the opportunity to present an explanation at plenary session of the People's Consultative Assembly.

The involvement of the Constitutional Court in the process of dismissing the President during his term of office is only limited to obligations, not authority. The decision of the Constitutional Court in the process of dismissing the President and/or Vice President is not final but can be annulled by the People's Consultative Assembly, this is a sign that there is still political supremacy over the law, so that the dream of realizing Indonesia as a democratic legal state will be difficult to come true. The formulation of the problem in this study is: Legislative Ratio Obligation of Constitutional Court to Give a Decision in Opinion House of Representatives on Process Dismissing the President of Indonesia

Research Method

This research is a normative legal research.[3]

Research Results and Discussion

Judicial Power based on Article 1 point 1 of Law Number 48 of 2009 concerning judicial power states that judicial power is the power of an independent state to administer justice in order to enforce law and justice based on Pancasila and the 1945 Constitution Republic of Indonesia, for sake of the rule of law in Republic Indonesia. Based on Article 24 paragraph (2) year 1945 Constitution Republic of Indonesia "Judicial power is exercised by a Supreme Court and courts under it within the general court environment, religious court environment, military court environment, state *administrative court* environment and by a Constitutional Court". Then in Article 2 of the Constitutional Court law, the Constitutional Court is one of the state institutions that exercises independent judicial power to administer justice in order to uphold law and justice.[4]

The Constitutional Court as a court of first and last instance does not have an organizational structure as large as the Supreme Court which is apex of judicial system whose structure is vertical and horizontal, Jimly Asshiddiqie stated that the Supreme Court is essentially a court of justice while the Constitutional Court is a court of law. The *Constitutional Court* in exercising its powers has 4 (four) powers granted by Constitution which are expressly stated in Article 24C paragraph (1) year 1945 Constitution Republic of Indonesia is its final nature to review laws against the Constitution, decide on disputes over the authority of state institutions whose powers are granted by the Constitution, decide on dissolution of political parties and decide on disputes over general election results." In addition to 4 (four) powers granted by Constitution, the Constitutional Court also has obligation to decide in application of the House Representatives regarding the dismissal of the President and/or Vice President during their term of office as stated in Article 24C paragraph (2) Constitution Republic of Indonesia. Republic of Indonesia "The Constitutional Court is obligated to render a decision on opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution". By looking by the authorities and obligations of the Constitutional Court as described above, it shows that the Constitutional Court functions as (1) guardian of Constitution; (2) constitutional interpreters; (3) the guardian of democracy; (4) protection of human rights.[5]

The Constitutional Court, which is included in the constitution, is actually part of the state's efforts to give power to each party or state institution. The factions in the People's Consultative Assembly agreed that in process of dismissing the President and/or Vice President, the Constitutional Court, with its powers in judicial domain, has a fundamental role. Basically, all factions agree that the Constitutional Court must be involved in process dismissing the President and/or Vice President. The Constitutional Court together with Supreme Court and judiciary under it, are designated as the executors of judicial power in Indonesia.

The formulation of the Articles in the third amendment to the constitution has explicitly and clearly regulated the dismissal of the President and/or Vice President only for the reasons stated in the provisions of Article 7A, not other reasons indicating that is President and/or Vice President can only be dismissed during their term of office after through a constitutional process involving three institutions, namely the Constitutional Court, the People's Representative Council, and the People's Consultative Assembly. The three institutions involved include a judicial process in the form of examining cases, proposing dismissals by the House of Representatives at the Constitutional Court and passing decisions by the Constitutional Court. The obligation of the Constitutional Court in dismissing the President and/or Vice President emphasizes the operation of the rule of law principle which has the support of constitutional amendments. The decision of the Constitutional Court is a legal decision based solely on legal considerations, and not based on political considerations.[6]

The constitutional obligation of the Constitutional Court is to prove from a legal perspective whether the alleged violation of the law by the President and/or Vice President is correct or not. If it is proven that the President and/or Vice President violated the law, the decision of the Constitutional Court cannot automatically dismiss the President, because this is not the full authority of the Constitutional Court. However, if the decision of the *Constitutional Court* states proven guilty, the People's Legislative Assembly will forward the suggestion of dismissal to the People's Consultative Assembly. The meeting of People's Consultative Assembly will later determine whether the President and/or Vice President whose dismissal has been proposed by the DPR can be dismissed or not from office. The process of dismissing President and/or Vice President in a Constitutional Court decision is relative because the

effectiveness of its implementation depends heavily on political power in the People's Consultative Assembly, meaning that the decision of the Constitutional Court on the opinion of the House of Representatives which is then examined and decided again by People's Consultative Assembly shows that the examination and solving the problem is more of a political process than a legal process because the final result of this is in a political institution, namely the People's Consultative Assembly. After the decision of the Constitutional Court in process of dismissing President and/or vice-President of Indonesia, the People's Consultative Assembly is the institution that will make the final decision to dismiss the President and/or Vice-President.

The nature and force of binding decisions issued by the Constitutional Court related to the dismissal of the President and/or Vice President during their term of office, namely that the Constitutional Court decides the opinion of the House of Representatives on dismissal of the President during his term of office is an obligation of Constitutional Court where the nature of the decisions issued by the Court. The constitution in this case is different from other authorities [4]. The formulation of Article 24C was born as a result of not distinguishing the *impeachment* process at the Constitutional Court as a juridical process with political overtones. Political processes still color the process of dismissing the President and/or Vice President during their term of office as seen from the process which begins with politics in the People's Representative Council and ends with the political process in the People's Consultative Assembly.[7]

The political process can be eliminated by prioritizing the position of the Constitutional Court as part of the independent judicial power actors to administer justice to uphold law and justice, and pay attention to the goals of the state to realize social justice for all Indonesian people. Placing the Constitutional Court in a position that should be able to eliminate political overtones in process of dismissing the President and/or Vice President during their term of office. In order to eliminate the political overtones in this process, the Constitutional Court's decision should be final. The final decision here can be translated from the wording of article 7B "Proposals for the dismissal of President and/or Vice President can be submitted by People's Representative Council to the People's Consultative Assembly only by first submitting a request to Constitutional Court to examine, try and decide on the opinion of the People's Representative Council that is President and / or the Vice President has violated the law in the form of treason against the state, corruption, bribery, other serious crimes or disgraceful acts; and/or the opinion that the President and/or Vice President no longer fulfills the requirements as President and/or Vice President".

Philosophically, seeing the meaning of a rule of law state means that state power is bound by law. The rule of law determines that the government must obey the law, not the law that must obey the government. A rule of law is a state based on law where power is subject to law and everyone is equal before the law. A country will be good if it has good legal arrangements with the enactment of a regulation that applies to a country. The regulations that are made must be precise and truly fair so that the binding strength of an established legal rule is visible, so that the regulations that are made can work according to the expected goals.

Conclusion

Ratio Legis The Obligation in Constitutional Court to Give a Decision on the Opinion of the House of Representatives in the Process Dismissing President of Indonesia is to achieve legal certainty regarding the dismissal of president and the functioning principle of separation of powers in the form of a *check and balances system* in the Indonesian presidential government.

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