

Review of Termination of Post-Reformation President In Indonesia's State Systems

Setiyanto¹

{Setiyanto.miharjo@sieradproduce.com}

Setiyanto.advokat@gmail.com

¹Law Doctoral Graduate Program Students Jayabaya University
Jakarta, Indonesia

Abstract. One aspect of the study in state administration law that is crucial is filling and dismissal of the position of President. This can be understood given the position of President in Indonesia not only as a representation of the head of government but at the same time the head of state. Before reforms, the state administrative law approach in dismissing the president tends to be approached from political aspects. As the President can be dismissed by the People's Consultative Assembly (MPR) through a Special Session if it violates the direction of the state. This provision is not stated on the torso but in the Explanation of the 1945 Constitution. Benchmarks violate the bow the country is very difficult to determine legally.

Keywords: Termination, Post-Reformation, Indonesia's State Systems

1 Introduction

The reformation of Indonesia in 1998 has implications for changing the institutionalization of democracy. This is the implication after so long the authoritarian regime of the New Order confined freedom (freedom) as the heart of freedom. Democracy itself is indeed a term that is not simple and sometimes has complications here and there. However, the strength of democracy, it can still correct the system it builds on the basis of authentic public aspirations.

The institutionalization of democracy also afflicts the position of President. The President is a strategic position in the form of a republican government which has a very important role in managing the country. The filling and termination of the President's position is important because it determines the sustainability of the country.

During this time before the reform, the dismissal of the president was often more political. This is related to the substance of violation of the state policy. Then, after the amendment to the 1945 Constitution the institutionalization of the termination of the president was far more democratic. Involving the Constitutional Court (MK) in the dismissal of the president so that it has a legal contribution therein.

The responsibility of the President is one reason that the President may be dismissed during his term of office. The 1945 Constitution (UUD 1945) prior to the amendment stated that the President was appointed by the People's Consultative Assembly (MPR), so he was subject and responsible to the MPR. The President is a mandate of the MPR, so he must carry out the course of the country according to the general guidelines set by the MPR. If the

President in exercising his power violates the provisions stipulated by the MPR, the House of Representatives (DPR) as the institution that oversees the running of the government can propose to the MPR to hold a Special Session to hold the President accountable.

In the history of state administration in Indonesia, the dismissal of the President in his term of office before the amendment to the 1945 Constitution has occurred in two government regimes namely during the days of President Soekarno and President Abdurrahman Wahid. President Soekarno was dismissed by MPRS based on MPRS Decree No. XXXIII / MPRS / 1967 concerning Revocation of State Government Power from President Soekarno. This was done by the MPRS after Soekarno delivered an accountability speech entitled Nawaksara which was referred to by Sukarno as voluntary accountability, because in fact the responsibility was given not at the request of MPRS, After the accountability speech was delivered, MPRS requested that the President complete his accountability speech which became known as the Nawaksara Complementary Speech. The things that the MPRS wants to ask the President to complete his accountability speech are for the President to explain the causes of the movement / PKI along with its epilogue and economic setbacks and morals, Accountability regarding moral actions committed by the people should not be part of the responsibility of a President.

In the Abdurrahman Wahid case, according to Saldi Isra there were at least five events which could be used as a reason for the MPR to hold a Special Session in order to hold accountable towards Abdurrahman Wahid namely, *First*, Abdurrahman Wahid once asked that MPRS Decree No. XXV / MPRS / 1966 concerning Prohibitions on the Spread of the Teachings of Marxism, Communism and Leninism was revoked. Even though when viewed from the standpoint of the constitutional proposal this is not right, because the President is bound to run the course of the country including the MPRS decree. This also contradicted the oaths and promises made before the MPR before he was appointed President. In modern democracies such violations constitute very principle violations in the administration of the state. *Second*, the President's statement which states that the DPR's interpellation right is an unconstitutional act. The right of interpellation is related to the President's actions to dismiss several ministers in his cabinet. Even before, the President also considered that the DPR was like a kindergarten. *Third*, the replacement of the National Police Chief from General S. Bimantoro to the General Commission. (Pol). Chaeruddin Ismail carried out unilaterally by the President was considered to have violated the MPR decree, because the replacement required the approval of the DPR, the action clearly violates the provisions set by the MPR. *Fourth*, there is a statement from the President stating that all the special committee in the DPR is illegal so that anything produced by the special committee is not legally valid. This is related to a number of cases such as an indication of the President's involvement in the bullogate and bruneigate scandal. *Fifth*, the President's rejection of two candidates for the chairman of the Supreme Court (MA) proposed by the DPR. This action prevented the President from implementing the provisions of Law No. 14 of 1985 concerning the Supreme Court which states that the Chief Justice is appointed by the President as the Head of State among the Supreme Judges proposed by the Parliament. This also indicates that the President is trying to intervene the Supreme Court as the highest judicial power and be free from interference from other powers that are extra judicial.

In the case of Abdurrahman Wahid, the process of delivering the memorandum had also been carried out. But this matter was not heeded by the President. He even issued a notice in

the early hours of July 23, 2001, this became the peak of the President's panic in the face of political pressure that wanted him to step down from power. One of the contents of the information was to freeze the MPR institution. The freezing of the MPR as an institution whose constitutional position is above the President clearly reflects panic rather than the rationality of institutionalizing democracy¹⁰. This was also sufficient reason for the MPR to accelerate the Special Session.

2 Method and Research Objectives

This paper will examine how the pattern of dismissal of the President based on reform 1945 Constitution. In addition, identifying various legal debates regarding norms benchmarks for dismissal of the President, such as the formulation of the meaning of "disgraceful deeds. Other than that, how does the procedural law of the Constitutional Court anticipate various dynamics in context dismissal of the President. These matters are examined in the perspective of constitutional law, and What is the mechanism for terminating the president before and after the amendment to the 1945 Constitution?

3 Result and Discussion

3.1. Pre-Reformation

During the New Order era, the position of President was an institution that experienced problems. First, in the constitutional norms (the 1945 Constitution) at the time it was stated that "the President and Vice President hold their office for five years and afterwards can be re-elected to the same office for only one term". This norm gives birth the interpretation that the same President can be nominated many times as long as he is elected. This legitimized the authoritarian New Order regime. Second, the benchmark of biased dismissal. Because, Article 8 and the Explanation of the 1945 Constitution (Pre-Amendment) use indicators as one of the benchmarks for the dismissal of the President is a violation of the state's direction (Pancasila of the Constitution and / or GBHN). This is reinforced by MPR Decree No.III / MPR / 1978 which regulates procedures ranging from giving memoranda (dissatisfied statements) to the President to holding a special session asking for the President's accountability. Two Presidents were dismissed (impeached) with this model, namely Soekarno because the accountability speech entitled Nawaksara along with his complement was rejected by the MPRS in the 1967 MPRS plenary session and President Abdurrahman Wahid was dismissed through MPR Decree No. II / MPR / 2001 without giving accountability speeches. Whereas Suharto used the "stop" mechanism in accordance with Article 8 of the 1945 Constitution (Pre-Amendment).

In the case of President Soekarno, he was dismissed because his accountability speech entitled Nawaksara and his complement was rejected by the MPRS at the 1967 MPRS plenary session. How can a president be assigned the responsibility of managing the nation's morals which is very heavy?

With regard to the dismissal of Sukarno, there are interesting things, especially the transition from Soekarno to Suharto. When studying the history of legal documents, the event

of the transfer of power of President Soekarno to Suharto began after the rebellion The 1966 Indonesian Communist Party, known as the G30SPKI. President Soekarno at that time issued a Presidential Order / Supreme Commander of the Armed Forces of the Republic of Indonesia / Great Leader of the Revolution / Mandatory of the MPRS on March 11, 1966 which instructed General Soeharto the Minister of the Army Commander to make special efforts to overcome the threat of danger to the safety of the running of the government and the course of the revolutionary authority of the leader great revolution and the integrity of the nation and state.

It became interesting because the Presidential Order above or well known as Supersemar was later legitimized by the Provisional People's Consultative Assembly Decree (MPRS) Number IX / MPRS / 1966 regarding Presidential Order / Supreme Commander in Chief of the Armed Forces of the Republic of Indonesia / Great Leader of the Revolution / Mandate of the MPRS. The MPRS decree is valid until the MPR results of the general election are formed (the second dictum). For the author, the issuance of MPRS Decree Number IX / MPRS / 1966 above is odd and anomalous in terms of statutory law. Because, how can the MPRS institution which has a higher position than the president legalize the products of his subordinates, namely the president (Supersemar). Then, MPRS Decree Number XXXIII / MPRS / 1967 was published on the Revocation of State Government Power from President Soekarno. In the dictum considering the MPRS provisions it is clear that this Decree was published because President Soekarno's Speech on June 22, 1966 entitled Nawaksara and Presidential Letter Number 01 / Pres / 1967 concerning Complementary Nawaksara did not meet the expectations of the people in general because it did not clearly contain the responsibility of President Soekarno's policies regarding G30SPKI and the epilogue, economic decline and moral decline.

There are two important matters in the stipulation of the MPRS as mentioned above, which are (a) stating that President Sukarno has been unable to fulfill constitutional responsibilities, as befits a Mandate's obligation to the People's Consultative Assembly (Provisional), as giving a mandate, which is regulated in The 1945 Constitution (Article 1) and Stipulation of the Provisions of the People's Consultative Assembly (Provisional) No. XV / MPRS / 1966, and (b) appoint General Suharto, MPRS Decree No. IX / MPRS / 1966 as Acting President based on Article 8 of the 1945 Constitution until the election of the President by the People's Consultative Assembly as a result of the General Election (Article 4).

In fact, Article 4 of the MPRS Decree Number XXXIII / MPRS / 1967 was violated by the MPRS itself by then issuing MPRS Decree Number XLIV / MPRS / 1968 concerning the Appointment of MPRS Decision Number IX / MPRS / 1966 as President of the Republic of Indonesia. Because, in the provisions of the previous MPRS Decree (MPRS Decree Number XXXIII / MPRS / 1967), General Soeharto was only an Acting President until he was elected by the MPR from the General Election. Not by the Provisional MPR (MPRS).

The reason for appointing General Soeharto as President --- one of them --- in considering the letter g of MPRS Decree No, XLIV / MPRS / 1968 was stated: "that the psychological stability of the people and foreign trust will increase, if the President's Official with all his power appointed as President of the Republic of Indonesia ". The reason, in the writer's opinion, is very pragmatic and political. There is no justification from the juridical aspect.

While in the case of the dismissal of President Abdurahman Wahid in 2001, he was dismissed by MPR Decree Number II / MPR / 2001 without giving an accountability speech. The dismissal was due to President Abdurahman Wahid refusing to attend the special session of the People's Consultative Assembly and instead issued a Presidential Decree on July 23, 2001, one of which contained a freeze on the DPR / MPR. This event was actually the end of the conflict with the DPR Special Committee's accusation against President Abdurahman Wahid who was accused of misusing the assistance of the Sultan of Brunei in the amount of two million US dollars. So limited to the alleged political argument as if the law.

3.2. Post Reformation

Now after the reformation, the 1945 Constitution has been changed. In Article 7A and Article 7B of the 1945 Constitution (Amendments) it is formulated that in principle the dismissal of the President no longer uses political benchmarks but is juridical. First, the President can be dismissed if he violates the law in the form of betrayal of a corrupt state, bribery of other serious crimes or disgraceful acts or is no longer eligible as President. Second, before the MPR dismissed the President, the procedure that must be taken is the DPR submitting an opinion regarding the alleged violation of law committed by the President at the Constitutional Court (MK). The Court then conducts an examination and if it is proven that the ruling of the Constitutional Court based on Article 83 paragraph (2) of Law No.24 of 2003 concerning the Constitutional Court is to state that it justifies the opinion of the DPR. Then, the DPR held a plenary session to continue the proposal to dismiss the President to the MPR. MPR must hold a hearing for decide on the DPR's proposal no later than thirty days after the MPR accepted the proposal. The decision of the MPR was taken at the MPR plenary meeting which was attended by 3/4 of the total number of members and was approved by at least 2/3 of the total number of members present, after the President was given the opportunity to submit an explanation in the MPR plenary meeting. The same thing applies to the dismissal of the Vice President.

The model of the termination of the President (impeachment / impeachment) of Indonesia after the amendment has similarities and influences from the President's dismissal system in the United States. In the United States, the President can only be dismissed if he commits a crime. Article 2 paragraph (4) of the Constitution of the United States states that: ". Only on the basis of betrayal, bribery and serious misconduct, the President, Vice-President and Civil officials can be dismissed or imposed impeachment. Whereas in the German Constitution (Basic Law), reasons for dismissing the President in addition to criminal offenses are also violations of all fields of law stipulated in the Federal Law.

The problem is, in the case of Indonesia, a wave of dissatisfaction with the government of President Susilo Bambang Yudhono (SBY) has strong symptoms. This is based on the disappointment with the rampant corruption in all trias politica elements and the handling of dissatisfaction regarding the welfare of the community. On the other hand, the state administration mechanism that is already clear in the constitution cannot always be used. Given the political dimension often becomes a dynamic process and interacts in social change relations that have strong conflicts of interest between elites.

For example, politically, is it possible to use the potential of impeachment procedures through a constitutional constitutional mechanism while a coalition of political parties under

the leadership of the Democratic Party as the dominant ruling party in parliament forms a political configuration that closes the gap? Not to mention the politics of mutual hostage between parties as the implication of the entanglement of corruption cases that hit the party elite.

From the juridical dimension itself some interesting things are studied in depth. First, does the Court have the competence to provide evidence, especially in the criminal context of violating the President's law. Bearing in mind, the characteristics of the Constitutional Court as a constitutional court are different in character from criminal justice.

Second, is the time given by the constitution in Article 7B paragraph (4) of the 1945 Constitution namely the Constitutional Court obliged to examine, try and decide as fairly as possible within ninety days regarding the impeachment of the President is a natural thing? Given the criminal evidence is not easy and requires in-depth investigation.

Third, can the president who has been impeached then be tried again in the general court from the criminal side? What about the application of the principle of *ne bis in idem*.

Fourth, what if the Constitutional Court is of the opinion that the President violates the law but the MPR decides differently. Does this have any meaning, legal decisions are defeated by political decisions?

In the end, no government system in a democratic context can satisfy. The United States experienced the same thing. Although for example President Obama's policies are very counter-productive and disliked by the public, this cannot be the basis of impeachment. President Obama's system, strategy, policy and method of governing will continue to take effect until his term ends. Except if President Obama commits a criminal offense

As written by Donny Gahril Adian, democracy is not a given. The history of democratic thought and activism is a history of continuous correction of freedom, equality and justice. At least through democracy, there is the potential to foster a dream to build a better constitutional system.

4. Conclusion

Amendments to the 1945 Constitution have fundamentally changed the provisions regarding the reasons, stages, and procedures for the dismissal of the President and / or Vice President in the middle of his tenure. Thus, it can be concluded that the main reason for the impeachment of the two presidents is because the president loses legitimacy because his actions and actions can be categorized as acts that violate the law both criminal law and constitutional law / violation of the constitution including violations of oath of office. Almost similar to the practice in the United States, but in fact that reason is still quite ambiguous. This confusion seems to underlie the publication of the third amendment to the 1945 Constitution. The 1945 Constitution apart from the third amendment seems to be trying to regulate firmly the reasons for the impeachment of the President. This is indeed different from the 1945 Constitution before the changes that did not explicitly regulate the dismissal of the president in his office including the reasons.

Other violations of law other than violations of criminal law such as violations of the Constitution and constitutional obligations as president and violations of religious, moral and

customary values can be used as a reason to dismiss the president in the middle of his term of office, provided the violation is such demeans the dignity and position of the President.

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