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Dual Legitimacy and Constitutional Court's Role in Presidential Impeachment Review

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ABSTRACT. The role of the Indonesian Constitutional Court within Indonesia's constitutional system is particularly significant in the impeachment mechanism of the president and/or vice president. Following the amendments to the 1945 Constitution, the Court is vested with authority under Article 24C, paragraph (2), to examine and decide upon opinions of the House of Representatives regarding alleged serious legal violations committed by the President. Nevertheless, tension arises between the political legitimacy of the House of Representatives as a representative institution and the legal legitimacy of the Constitutional Court as a judicial body. This tension produces what may be described as dual legitimacy, namely the contestation between political authority and legal authority within the impeachment process. This study critically analyzes the position of the Constitutional Court in such proceedings and juridically examines the limits of its authority as determined by the Constitution. The findings indicate that although the Court plays a decisive role in assessing the legality of accusations, the final decision on removal remains with the People's Consultative Assembly. This confirms that impeachment in Indonesia is a hybrid process combining legal and political elements, thus requiring clearer regulation and stronger institutional design to prevent overlapping authority among state institutions.

KEYWORDS: Constitutional Court; Impeachment; Legitimacy; Politics; House of Representatives.

INTRODUCTION

The Constitution, as the supreme law of a state, serves as the fundamental foundation for the functioning of government and the life of the nation. All elements of the state, including high state institutions and citizens, are bound by the norms enshrined in the Constitution, including the President as both head of state and head of government. Within the Indonesian constitutional system, violations of constitutional provisions by the President not only carry political implications but may also trigger serious legal consequences, namely removal from office during the term of office. This mechanism of removal is commonly referred to as impeachment (Asshiddiqie, 2021).

Conceptually, impeachment does not automatically result in removal from office. Rather, it refers to a formal process of accusation against a high-ranking state official alleged to have violated the law or committed other serious misconduct. In this sense, impeachment constitutes a legal political process aimed at examining the validity of allegations against the President, the outcome of which may lead either

to removal or exoneration. Therefore, impeachment should be understood as a mechanism of constitutional accountability rather than merely a political instrument to overthrow power.

In the Indonesian context, this process involves a complex interaction between legislative and judicial institutions, particularly between the House of Representatives, which submits its opinion, and the Constitutional Court, which is tasked with examining and adjudicating the legal validity of such opinion (Whittington, 2019). This institutional interplay gives rise to debates concerning the boundaries of legitimacy between political and legal institutions in determining the fate of a President.

Prior to the amendments to the 1945 Constitution, the mechanism for the removal of the President and Vice President in Indonesia was regulated differently under the prevailing constitutional system. Article 4 of the People's Consultative Assembly Decree No. III/MPR/1978 constituted the primary legal basis governing the position and working relationship among high state institutions, including the authority of the People's Consultative Assembly to remove the President or Vice President before the expiration of their term of office (RI, Sekretariat Negara, 1978). Under this provision, the People's Consultative Assembly could decide on removal based on several grounds, including voluntary resignation, permanent incapacity to perform official duties, and serious violations of the state policy guidelines that had been established (Rohmah & Sari, 2022).

Thus, the pre-amendment removal mechanism predominantly emphasized the political authority of the People's Consultative Assembly, with relatively limited and less juridical constraints. This differs significantly from the post-amendment constitutional framework, which underscores the role of judicial institutions, particularly the Constitutional Court, in ensuring that the process is conducted in accordance with the principles of the rule of law and the protection of constitutional rights.

Following the amendments to the 1945 Constitution of the Republic of Indonesia, the role of the Constitutional Court in the impeachment process of the President and/or Vice President has been explicitly regulated, particularly under Article 24C paragraph (2). This provision affirms that the Constitutional Court has the authority to adjudicate the opinion of the House of Representatives regarding alleged serious legal violations committed by the President and/or Vice President. This development marks the formal inclusion of the judiciary in a process that was previously dominated by political institutions. Nevertheless, an understanding of the Court's authority in impeachment cannot be separated from other constitutional provisions, namely Articles 7A and 7B of the 1945 Constitution. Article 7A specifies the types of violations that may serve as grounds for impeachment, including treason, corruption, bribery, other serious criminal offenses, or disgraceful conduct, as well as circumstances in which the President no longer meets the qualifications for office. Meanwhile, Article 7B regulates the procedural stages of impeachment, ranging from the House of Representatives's proposal, judicial review by the

Constitutional Court, to the final decision by the People's Consultative Assembly (Permadi, 2007).

Considering this constitutional structure, it can be concluded that the 1945 Constitution does not position the Constitutional Court as the sole authority in the impeachment process. The Court functions primarily as a judicial reviewer that provides a legal assessment of the House of Representatives's opinion, rather than as the ultimate political decision-maker. The Court's decision determines the legal validity of the brought forward but does not directly result in the removal of the President and/or Vice President. The final decision remains within the authority of the People's Consultative Assembly, which politically determines whether the President should be removed from office.

Therefore, although the Constitutional Court holds a significant role in ensuring that the impeachment process is conducted in accordance with constitutional principles, it cannot be regarded as a single authority possessing absolute power to decide the fate of the President. This reflects the collective nature of the impeachment mechanism in Indonesia, which involves a combination of legal and political considerations embedded within different state institutions. Such developments indicate the progression of Indonesian democracy toward a more controlled, transparent, and accountable system of governance, particularly in relation to the accountability of high-ranking state officials.

RESESEARCH METHOD

In examining the dynamics of dual legitimacy between the House of Representatives and the Constitutional Court, as well as in analyzing the nature of the Court's authority within the impeachment mechanism, this study employs a library-based research approach. Such an approach is characteristic of normative juridical research, which primarily utilizes secondary data drawn from authoritative legal materials, including statutory regulations, legal doctrines, and scholarly works (Ahmad, A, Fachrurrazy, M, et al, 2024) (Degdo Suprayitno, 2024). Through a comprehensive review of books, academic journals, scientific articles, and relevant legal documents, this study identifies that the interaction between legislative and judicial institutions in the impeachment process reflects an enduring tension between political legitimacy and legal legitimacy.

From the standpoint of constitutional law scholarship, the House of Representatives, as a political body representing popular sovereignty, tends to base its impeachment opinions on ethical considerations and standards of public propriety. Conversely, the Constitutional Court, functioning within a constitutional and procedural legal framework, assesses such opinions through more rigorous and structured normative parameters. The literature further reveals varying interpretations of constitutional provisions governing impeachment, particularly Articles 7A, 7B, and 24C of the 1945 Constitution. This plurality of interpretations creates a relatively wide interpretative margin for the Court in determining whether presidential conduct constitutes a serious legal violation, thereby potentially

opening space for political considerations, especially when intertwined with prevailing power dynamics.

Moreover, the examination of legal documents and insights from legal practitioners suggests that the impeachment process in Indonesia embodies a hybrid character, integrating both legal and political dimensions. Within this framework, the Constitutional Court is frequently confronted with a dilemma between upholding legal objectivity and responding to the surrounding political realities. Consequently, the findings of this literature-based analysis indicate that, although the Court's authority is normatively constructed as a legal function, it remains susceptible to political influences embedded both in the substance of adjudicated cases and in the broader dynamics of inter-institutional relations (Sulistiyowati & Maharani, 2024).

RESULT AND DISCUSSION

The Dualism of Legitimacy between the House of Representatives and the Constitutional Court in the Impeachment Process

The phenomenon of dual legitimacy between the House of Representatives and the Constitutional Court in the context of the impeachment of the President and/or Vice President reflects a conflict between two forms of legitimate authority within the constitutional system, namely political authority and legal authority (Hufron, 2018). The House of Representatives, as a legislative body directly elected by the people through general elections, derives political legitimacy to represent public will, including in expressing opinions that the President or Vice President has committed serious legal violations.

As stipulated in Article 7A of the 1945 Constitution, the President and/or Vice President may be removed from office by the People's Consultative Assembly upon the proposal of the House of Representatives if it is proven that they have committed violations of law, including treason, corruption, bribery, other serious criminal offenses, or disgraceful conduct, or if they no longer meet the qualifications required for office.

In practice, the House of Representatives tends to employ ethical, moral, and standards of public propriety in assessing the conduct of state officials. However, this approach is often dominated by political considerations, thereby creating the potential for deviation from the rule of law. When the House of Representatives's authority to assess presidential conduct is grounded primarily in political considerations without strong legal evidence, the impeachment process risks being used as a tool of political bargaining or even as a means of exerting pressure on the executive branch. Therefore, the presence of the Constitutional Court as a judicial institution is essential to balance the process and ensure that it remains within constitutional boundaries. Such balance, however, can only be achieved if both the House of Representatives and the Constitutional Court exercise their respective functions proportionately, transparently, and free from partisan interests.

Pursuant to Article 7B paragraph (1) of the 1945 Constitution, the impeachment mechanism for the President and/or Vice President is carried out through a series of constitutionally mandated stages. The process begins with an official opinion issued by the House of Representatives alleging that the President and/or Vice President has committed legal violations as defined by the Constitution. The House of Representatives then formally submits a request to the Constitutional Court to examine and adjudicate these allegations. Following the Court's decision, the outcome is returned to the House of Representatives as the basis for proposing impeachment to the People's Consultative Assembly. The final stage involves a plenary session of the People's Consultative Assembly to determine whether the proposal for removal will be accepted or rejected. This entire process reflects the principle of checks and balances among state institutions and aims to maintain stability and accountability within a democratic constitutional system.

On the other hand, the Constitutional Court is granted authority under Article 24C paragraph (2) of the 1945 Constitution to assess the House of Representatives's opinion from a juridical perspective, thereby positioning the Court as the holder of legal legitimacy in determining whether are valid and justified under the law. Although the Court's decisions are final and binding, they do not conclude the process, as the ultimate decision regarding removal remains with the People's Consultative Assembly as the highest political institution.

The impeachment procedure of the President and/or Vice President can be further elaborated as follows (Kumoro, 2020).

1. The House of Representatives's opinion regarding alleged legal violations may serve as the basis for initiating impeachment only if it is supported by at least two-thirds of the members present in a plenary session, provided that the session is attended by at least two-thirds of the total membership of the House of Representatives. Since the continuation of this opinion depends heavily on political support within the House of Representatives, the impeachment proposal process at this stage predominantly reflects political dynamics rather than purely legal mechanisms.
2. Once the House of Representatives's opinion obtains the required level of support, the House of Representatives is authorized to submit a formal petition to the Constitutional Court. This petition requests the Court to examine, adjudicate, and decide upon the alleged violations based on facts and evidence presented during the proceedings, in accordance with Article 7B paragraph (3) of the 1945 Constitution.
3. The Constitutional Court is obliged to deliver its decision within a maximum period of 90 days from the receipt of the House of Representatives's petition, as stipulated in Article 7B paragraph (4) of the 1945 Constitution. If the House of Representatives's opinion is substantiated, the Court will declare it justified; otherwise, the Court will reject the petition due to insufficient evidence.
4. If the Constitutional Court confirms that the President and/or Vice President

has committed legal violations, the House of Representatives is constitutionally empowered to propose removal to the People's Consultative Assembly, as provided under Article 7B paragraph (5) of the 1945 Constitution.

5. Upon receiving the proposal, the People's Consultative Assembly is required to convene a plenary session within 30 days to decide whether to approve or reject the removal, in accordance with Article 7B paragraph (6) of the 1945 Constitution.

This arrangement gives rise to a form of dual legitimacy that not only reflects the division of functions among state institutions but also generates potential constitutional tensions. On the one hand, the House of Representatives's decision is perceived as a representation of the people's will; on the other hand, the Constitutional Court functions as the guardian of the Constitution, ensuring that impeachment is not misused as a purely political instrument. When conflicts arise between these forms of legitimacy for instance, when the Court rejects the House of Representatives's opinion due to insufficient legal evidence while the House of Representatives persists in pursuing removal a constitutional dilemma emerges: whether legitimacy in a presidential system should be grounded in majority political will or in objective legal facts (Warsito & Budidarmo, 2024).

The Normative or Political Nature of the Constitutional Court's Authority in Assessing the House of Representatives's Opinion

The authority of the Constitutional Court to assess the House of Representatives's opinion regarding alleged violations by the President or Vice President, as stipulated in Article 24C paragraph (2) of the 1945 Constitution, is formally normative in nature. This means that the Court acts as the guardian of the Constitution, adhering to the principles of legality and the supremacy of law. Within this framework, the Court's task is to evaluate the House of Representatives's opinion based on objective legal evidence, free from political considerations or power interests (Jazil & Prasetyo, 2024). The Court's position is therefore crucial as a balancing institution between political dynamics in the House of Representatives and the principles of justice in a rule of law state. When impeachment processes risk being instrumentalized for political purposes, the role of the Court becomes essential in ensuring that such procedures remain within constitutional limits. Accordingly, the independence and integrity of the Court must be rigorously maintained to ensure that it functions as the ultimate safeguard that subjects political actions to the rule of law.

In practice, however, it is unavoidable that decisions related to impeachment carry significant political consequences. Although the Constitutional Court bases its decisions on juridical reasoning, the assessment of alleged violations such as treason, corruption, bribery, or other disgraceful conduct as stipulated in Article 7A of the 1945 Constitution often lies within a grey area between positive law and the interpretation of political and ethical values. Consequently, the political dimension does not arise from the Court's institutional role as a judicial body, but rather from

the substance of the cases it adjudicates, which inherently involve actions of public officials with profound moral and political implications (Santoso, 2023).

Some constitutional law scholars argue that the Constitutional Court's position in impeachment cases falls within the realm of legal-political judgment. In other words, although legal reasoning constitutes the primary basis of the Court's decisions, political elements may implicitly influence legal interpretation, particularly when the Court is required to interpret constitutional provisions that are open-ended or subject to multiple interpretations. This phenomenon arises because presidential actions are not purely normative but are closely linked to public policy, which is inherently political in nature (Wibowo, 2022). The recognition of this political dimension should not be viewed as a weakness, but rather as a reflection of the complex role of the Court in balancing law enforcement with political realities within a presidential system. Therefore, it is imperative for the Court to continuously uphold its independence and professionalism in order to deliver decisions that are not only legally valid but also politically legitimate, thereby maintaining public trust in the institution.

CONCLUSION

Within the framework of the impeachment of the President and/or Vice President in Indonesia, there exists a duality of legitimacy between the House of Representatives as a political institution and the Constitutional Court as a judicial authority. From a constitutional perspective, the authority of the Constitutional Court is inherently normative, as it functions as the guardian of the Constitution by evaluating the House of Representatives's opinion on the basis of objective legal evidence. Nevertheless, in its practical implementation, the impeachment process cannot be fully disentangled from political elements embedded both in the substance of the case and in the broader constitutional context.

The Constitutional Court operates within a legal-political adjudicative framework, demonstrating a complex interplay between legal reasoning and political considerations, particularly when interpreting constitutional provisions that allow for multiple interpretations, especially in relation to public policy issues. In this regard, the independence and integrity of constitutional judges are essential to ensure that judicial decisions remain anchored in legal principles and are not swayed by external political influences.

Accordingly, although the role of the Constitutional Court is ideally designed to be objective and normative, the political dimensions inherent in the impeachment process are, to some extent, unavoidable. This condition necessitates a balanced approach between legal and political considerations to ensure that the impeachment mechanism is conducted in accordance with democratic values and the rule of law, while at the same time preserving institutional stability and public confidence in Indonesia's constitutional order.

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