



## Understanding Impeaching The President Post-Constitutional Amendments

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### Introduction

Indonesia has transformed to become the third largest democracy in the world. One of the characteristics of a democracy is the regularity of national leadership successions through the holding of general elections. In the Constitution of 1945, it is stipulated that the president and vice-president pair is elected directly for a five-year term, and that they are limited to serving only two terms.

With such 'rules of the game' in Indonesia's political system, a constitutionalist will understand that an individual that has been elected as president must be given the time and opportunity to lead and drive the wheels of government until the end of his/her term. If a serious violation has been conducted by a president, he/she can face impeachment. Even though there is the option of impeaching a president, the provisions regarding this matter are clearly regulated in the Constitution of 1945.

In this regard, the *Koalisi Aksi Menyelamatkan Indonesia* (KAMI or the Coalition to Save Indonesia) declaration that was initiated by several national figures several days ago should be placed in the context of the prevailing political system in order to prevent any mistaken or wild understanding that the coalition has the potential to topple President Joko Widodo before he has finished his second term.

### Constitutional Amendments and Purification to the Presidential System

As well known, the Constitution of 1945 has been amended four times. The first amendment took place in 1999, the second amendment in 2000, the third amendment in 2001, and the fourth amendment in 2002.

The first amendment was adopted by the *Majelis Permusyawaratan Rakyat* (MPR or People's



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No. 22 / 26 August 2020  
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Consultative Assembly) on 19 October 1999. The adoption of the first amendment was arguably a historical milestone that successfully separated the spirit of conservatism and romanticism among certain groups that tended to regard the Constitution of 1945 as a 'holy' document that could not be touched by any ideas of making changes to it. The first amendment covered changes to nine articles in the Constitution of 1945 (Asshiddiqie, 2015: 262-263).

One of the main focus of the first amendment was on limiting a president's term of office, so that in future there would no longer be a president that could serve for 32 years like President Soeharto. As such, changes were made to Article 7 of the Constitution of 1945 so that it clearly emphasized that an individual could only serve as President of the Republic of Indonesia for two terms only.

As a follow up to the first amendment, the second amendment made changes to three other fundamental issues. Firstly, it gave a stronger basis for the existence of local governments. Second, it continued the efforts to strengthen the role of the *Dewan Perwakilan Rakyat* (DPR or House of Representatives) in the process of state administration. Thirdly, it gave broader additions to the human rights provisions.

Then, the agenda of change was continued again in the Annual Session of the MPR in 2001. The text of the third amendments to the Constitution of 1945 was adopted by the MPR on 9 November 2001. In contrast with the previous two amendments, the changes in the third amendment were more aimed at state institutions, such as changing the election process for the president and vice president that was initially elected via the MPR to become a direct electoral process, changing from a unicameral system to a bicameral system, and accommodating the existence of a Constitutional Court.

The final amendment in the agenda to reforming the constitution was determined in the Annual Session of the MPR in 2002. The fourth amendment was more focused on resolving outstanding aspects from the previous three amendments. These included changes to transitional rules and additional regulations as well as revoking the explanation to the Constitution of 1945.

In sum, there were four fundamental changes in the constitutional amendment process that led to the strengthening of the presidential system. First, the election of the president and vice president would be conducted directly by the people and no longer by the MPR. Second, the institutionalization of the president and vice president's term of office of five years with a maximum of two terms in office was made permanent. Third, the transfer of the legislative function that was originally heavily concentrated in the executive branch under the New Order era became the authority of the legislative body, even though it still needed to discuss and obtain the approval of the president. Fourth, removing the position and role of the MPR as the state's highest body.





Various fundamental changes came about as a result of the four stages of amending the constitution in line with what Arend Lijphart once said were the three main elements of a presidential system, namely (1) a president or head of government should be elected for a fixed term, (2) a president should be elected directly, and (3) a president is the sole head of the executive branch (Lijphart, 1994:91-105). The consequence of a fixed term was that an elected president could not easily be toppled by parliament as the legislative branch. The process of impeaching a president and/or vice president could only take place via a judicial process.

The main points of a presidential system, as defined by Lijphart, are also found in the amended constitution. Aside from regulating limits to a president's term and the direct election of a president and vice president on a single ticket, the amended constitution also regulated the impeachment of a president and vice president through a judicial mechanism. As such, in the words of Hanta Yudha, the amendments to the constitution that took place in the early years of Reformasi was an effort to purify the presidential government system in Indonesia (Yudha, 2010:78).

## **Impeachment Provisions**

The provisions concerning impeachment are regulated in Article 7A and Article 7B point (1) of the Constitution of 1945. A president and/or vice president can be removed from office if it is lawfully proven that a violation has been committed. Further, what is meant to be 'violation' is explained by Article 7A as follows: (1) betrayal of the state; (2) corruption; (3) bribery; (4) other serious crimes; and (5) disgraceful behavior.

Based on the provisions of Article 7B point (1) of the Constitution of 1945, the process of impeaching a president and/or a vice president is as follows: (1) the DPR is of the opinion that the president and/or vice president has committed a violation of the law; (2) the DPR submits a request to the Constitutional Court to made a decision; (3) the Constitutional Court conveys its decision to the DPR; (4) the DPR submits a recommendation to impeach the president and/or vice president to the MPR; and (5) the MPR holds a plenary session to decide on the DPR's recommendation.

The five procedures of impeaching a president and/or vice president can be further explained. Firstly, the opinion of the DPR that the president and/or vice president has committed a violation of the law. The DPR's opinion that an alleged violation of the law has been committed by the president and/or vice president can only become the basis to submit a recommendation of impeachment if is supported by at least 2/3 members of the DPR that are present during a plenary session which itself must be attended by at least 2/3 of all members that make up the DPR. If the opinion of the DPR is based on how much or lack of political support it has by members of the DPR, it means that the





process of recommending impeaching a president and/or vice president during a plenary session of the DPR is not a judicial process, but a political process.

Second, the DPR submits a request to the Constitutional Court to give a decision. After the DPR's allegation that a violation of the law has been committed by the president and/or vice president has received the support of at least 2/3 members of the DPR that are present during a plenary session which itself must be attended by at least 2/3 of all members that make up the DPR, therefore the allegation can be submitted to the Constitutional Court to examine, judge, and provide a decision based on the evidence revealed during a trial. This matter is in accordance with Article 7B point (3) of the Constitution of 1945.

Third, the Constitutional Court provides its decision to the DPR. Based on the request from the DPR, the Constitutional Court must provide a decision on the DPR's opinion at most 90 days since the Constitutional Court first receives the DPR's request. This matter is in accordance with the regulation in Article 7B point (4) of the Constitution of 1945.

If the opinion of the DPR has been proven by a trial of the Constitutional Court, then in the Constitutional Court's ruling it will declare "*membenarkan pendapat DPR*" (validates the opinion of the DPR). However, if the opinion of the DPR is not proven in the Constitutional Court's trial, then in the Constitutional Court's ruling it will declare "*permohonan ditolak*" (request is rejected).

Fourth, the DPR submits a recommendation to impeach the president and/or vice president to the MPR. After the Constitutional Court has provided a decision that the president and/or vice president is proven to have committed a violation of the law with a ruling that states 'validates the opinion of the DPR' therefore the DPR can submit a recommendation to remove from office the president and/or the vice president to the MPR. This matter is in accordance with the regulation in Article 7B point (5) of the Constitution of 1945.

Fifth, the MPR will hold a plenary session to decide on the DPR's recommendation. If the MPR accepts the recommendation by the DPR to remove from office the president and/or vice president, then the MPR must hold a session to decide on the DPR's decision within 30 days at the latest. This matter is in accordance with the regulation in Article 7B point (6) of the Constitution of 1945.

The MPR's decision to remove (or not) from office the president and/or vice president must be taken in a plenary session of the MPR that is attended by at least 3/4 of MPR members and receives the support of at least 2/3 of MPR members in attendance. This is in accordance with the regulation in





Article 7B point (7) of the Constitution of 1945.

Based on the above description, the procedure to impeach a president and/or vice president has two stages. The first stage involves a judicial examination by the Constitutional Court regarding the opinion of the DPR over a suspected violation of the law by the president and/or vice president. The second stage involves the decision to remove from office the president and/or vice president through a process at a plenary session of the MPR.

## No Simple Task

Although the constitutional regulation regarding impeachment is clear, however the political journey of governing since the era of direct elections has always included calls and movements to topple a president in the middle of his/her term. The history of Indonesia's political administration thus far has shown that changes in national leadership is often conducted in conditions full of turmoil and not under normal conditions.

President Soekarno was toppled after a Special Session of the MPRS (temporary MPR) was held in 1967. President Soeharto was forced to step down after he lost the support of parliament as well as several ministers in his cabinet when the Reformasi movement of 1998 was in full swing. President Bacharuddin Jusuf Habibie chose not to put himself forward as a candidate after his accountability speech was rejected by a General Session of the MPR in 1999. President Abdurrahman Wahid was also removed via a Special Session of the MPR in 2001 after he was considered to have taken unconstitutional steps.

Certainly, there will always be groups initiating a movement to topple a president, as if they are impatient for the next general elections in order to compete for power. For example, back in 2007 there was a "*Cabut Mandat*" (remove the mandate) movement that was driven by former student activist in the 1970s, Hariman Siregar. The extra-parliamentary movement demanded that President Susilo Bambang Yudhoyono to step down from office because his government was seen to have failed to bring prosperity.

An important matter that is often forgotten is that such extra-parliamentary movements did not exist alone, but required the presence of a supportive political structure and administrative system. However, in line with the desire to improve the democratic life in Indonesia, the authority to choose and remove a president has been removed and is no longer an inherent part of the MPR. This matter is based on the spirit to create a balance of authority between the various branches of power.





Through the four constitutional amendments, as the author has discussed in this article, the MPR has experienced a significant reduction in its authority. Now the MPR no longer has the authority to choose and remove a president. Major changes have also taken place in Indonesia's administrative system: the MPR is no longer the state's highest body. It is therefore unsurprising if all the efforts to impeach either President Susilo Bambang Yudhoyono or President Joko Widodo did not receive the structural support of political institutions that have the authority to do so, especially without any elements of violating the constitution or the oath of office.

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