

Comparison of the Indonesian and South Korea Impeachment System as a Method of Power Limitation

Hotma P. Sibuea

Faculty of Law, Universitas Bhayangkara Jakarta, Indonesia
hotma.sibuea@dsn.ubharajaya.ac.id

Abstract

Abuse of power is a classic universal phenomenon since the time of Ancient Greece. Humanity has developed various methods of controlling and limiting power systems since ancient times. Each country forms and develops methods and systems for limiting (supervising) power with various characteristics according to the needs, aims, objectives, value systems, philosophy, history, and natural environment of each nation. Several systems of control and limitation of power have been developed by mankind, such as the theory of separation of powers, the theory of checks and balances, the judicial review system, and others. All systems and methods of limiting and supervising power are aimed at preventing abuse of authority that results in violations of human rights and the rights of citizens. One of the systems of control and limitation of power developed by mankind is impeachment. The system and methods of impeachment are well known in various systems of government. Impeachment is a method of limiting the power of public officials. With impeachment, public officials can be dismissed during their term of office. In this paper, the impeachment methods and systems that are discussed and compared are the Indonesian impeachment model with a presidential system and South Korea's impeachment model with a parliamentary system. The legal issues (issues) under study relate to the similarities and differences in the methods and systems of impeachment in the two countries. The research method used is the juridical-normative research method. In a conclusion, the research is the Indonesian and South Korean impeachment systems and methods have significant similarities and differences within the framework of different government systems. Amendments to the 1945 Constitution need to be made as a change to a better method and system of impeachment.

Keywords

Indonesian; South Korea; impeachment system; power limitation



I. Introduction

The method and system of impeachment related to the supervision and limitation of power in the hands of the ruler. The impeachment method and system is and is only one of the various power system methods that have been developed by mankind to protect individuals and society as a whole. Aristotle offers the idea of a state based on a constitution (*politeia*). John Locke and Montesquieu offered the idea of separation of powers (*Triass Politica*). The American nation built the idea of a check and balance system among the branches of legislative, executive, and judicial power and others. The power exercised by the ruler needs to be limited and monitored so that there is no abuse of power. Abuse of power will result in violations of human rights and the rights of citizens. Ideally and in a positive sense, the state is a neutral national organization. The state has no interest in him. As a consequence, the power of the state in the hands of the ruler is neutral. In an ideal sense, the power of the state is used by the rulers to manage and carry out the

interests of the nation solely. Arief Budiman commented as follows “Theoretically, the state should side with the people as a whole.”

This ideal image does not always materialize in reality. Personal, family or group interests always influence power so that it is misused for other purposes that are not in the interests of the nation but for certain personal, family, group, or group interests. Arief Budiman commented on the influence of other interests on power as follows “The state should not side with one community group. But, in reality, this is not the case. The state does not appear to be a neutral institution. The state often favors one particular group of people.” The state's siding with one group has logical consequences. Energy and policies set by the state tend to favor the groups in question. The state's siding with one group has logical consequences for the fate of other groups of society. As a result, abuse of power and arbitrariness often occurs because the state has other interests that have an impact on the fate of groups and society as a whole. The problem of abuse of power and arbitrariness due to the influence of powerful interests is a "disease" that is always present in the practice of state administration if power is not limited.

The phenomenon of abuse of power is a classic universal phenomenon that has occurred since ancient Greece. The phenomenon of abuse of power also occurred in the seventeenth century in France during the Montesquieu era in a more modern era. In the era of Hitler and Stalin, the phenomenon of abuse of power also occurred as a result of violations of human rights. In a later era, the phenomenon of abuse of power occurred in Yugoslavia with the result of violations of the rights of citizens and human rights. The African continent was also not spared from the phenomenon of abuse of power. A similar phenomenon occurred in Asia in the era of President Ferdinand Marcos in the Philippines. This phenomenon resulted in violations of the rights of citizens and human rights in the Philippines. The same phenomenon also occurred in Indonesia during the era of the New Order authoritarian regime for 32 (thirty-two) years during Suharto's leadership.

Various systems of control and limitation of power have been developed by mankind since ancient times to prevent abuse of power and arbitrariness of rulers. The idea of limiting and controlling power has long been discussed by mankind in various nations and the surface of the earth since the time of Ancient Greece. The discourse on the method and system of limiting power has spread in modern times since the idea of a democratic state based on the law was born on the European continent. One of the methods of supervision and limitation of power referred to above is impeachment. Impeachment is a method of supervision and limitation of power within the framework of checks and balances. Impeachment which is the topic of discussion in this paper is the model of impeachment of Indonesia and South Korea. Both countries developed the impeachment model as a method and system of limiting power to realize a democratic state life.

II. Review of Literature

Characteristics of Impeachment Models of Indonesia and South Korea

2.1 Characteristics of the Indonesian Impeachment Model

In chapter 1 paragraph (3) of the 1945 Constitution stipulates "The State of Indonesia is a state of law." The Indonesian government system is presidential. The President is the head of state and head of government-assisted by the Vice President. The term of office of the President/Vice President is fixed for 5 (five) years or a fixed executive system. After one term, the President/Vice President may be re-elected only for 1 (one) term of office. The position of the President/Vice President is very strong based on the principle of a fixed executive system. Such a position is feared to give birth to abuse of power and arbitrary

actions. After the constitutional amendment, the impeachment system was developed in Indonesia with a different method. Impeachment aims to strengthen the juridical reasons for the supervision and limitation of the powers of the President/Vice President by the legislature. Supervision and limitation of the powers of the President/Vice President aim to strengthen the presidential system under the constitutional mandeman 1999-2002.

In the Indonesian presidential system of government, impeachment can be carried out against the President/Vice President for reasons set out in the 1945 Constitution. Under Article 7A of the 1945 Constitution, impeachment can be carried out for reasons that are limitative, namely, (1) betrayal of the state, (2) corruption, (3) bribery, (4) other serious crimes, (4) disgraceful acts and (5) proven no longer qualified as President/Vice President through impeachment as happened in the era of Soekarno and Gus Dur (Abdurrachman Wahid). Both Presidents resigned from office for political reasons that were turbulent in the MPR with the old impeachment mechanism method before the constitutional amendments. In the post-constitutional amendment impeachment method, charges must be decided in a plenary session attended by 2/3 of members of the DPR as a requirement for a quorum. If the conditions for the trial quorum are met, the indictment must be approved by 2/3 of the DPR members present at the plenary session. After obtaining the approval of 2/3 of the 2/3 DPR members, the indictment is sent to the Constitutional Court to be examined, tried, and decided. The indictment must be examined, tried, and decided by the Court no later than 90 (ninety) days after receipt. There are three (three) possible decisions of the Constitutional Court regarding the DPR indictment, namely (1) the Court declares the application unacceptable because it does not meet the requirements, (2) accepts the request from the DPR because the Court believes that the President/Vice President is proven to have violated the law or a disgraceful act or does not fulfill the requirements. requirements as President/Vice President so that the indictment must proceed to the MPR and (3) The Court rejects the DPR's application because the President/Vice President is not proven to have violated the law or a disgraceful act or does not meet the requirements as President/Vice President as stated in the constitution.

One of the possibilities mentioned above will occur in the trial of the Court. If the second possibility occurs, the DPR will immediately hold a plenary session to forward the decision of the Constitutional Court to the MPR. The MPR session must be attended by (three-fourths) of the MPR members as a requirement for a quorum. If the quorum requirements are met, the decision is taken based on the approval of 2/3 of the members of the MPR present. In the MPR trial, there are 2 (two) possible outcomes of the trial decision. The Constitutional Court confirmed the DPR's accusations. Second, the MPR refused to dismiss the President/Vice President even though the Constitutional Court accepted the DPR's accusations of violating the law, disgraceful acts, or not meeting the requirements as President/Vice President. Of course, the MPR's refusal to dismiss the President/Vice President who has been decided by the Constitutional Court is proven to have violated the law or other reasons under the constitution by the DPR's accusations, based solely on political considerations. MPR If the MPR does not dismiss the President/Vice President even though it is proven in the trial of the Constitutional Court that the DPR is accused, this action shows that the MPR is not bound by the decision of the Constitutional Court.

2.2 Characteristics of the South Korean Model Impeachment

South Korea is one of the democratic countries on the Asian continent that has experienced rapid economic development in recent decades. The economic condition of the population is a condition that describes human life that has economic score (Shah et al,

2020). South Korea can be said to adopt a mixed system of government because there are elements of a presidential system and a parliamentary system. Elements of the Presidential system in the South Korean government system are reflected in the existence of the President as head of government and head of state. As head of government, he is not responsible to Parliament (National Assembly). Elements of the parliamentary system in the South Korean government system can be seen from the aspect of the Prime Minister's accountability to Parliament (National Assembly). In addition to being responsible to the Parliament (National Assembly), the Prime Minister is responsible to the President. Based on the two elements of the government system, the South Korean system is called a semi-presidential system. Several state institutions regulated in the South Korean constitution are the President, Prime Minister, State Council, Constitutional Court (Constitutional Court), National Assembly (Parliament).

One of the state organs whose position and authority is important in the South Korean government system is the President. According to Article 86 of the South Korean Constitution, the President is directly elected in general elections. Then the President elects and appoints the Prime Minister. The Prime Minister is responsible for two-state organs, namely the Parliament (National Assembly). Based on the Prime Minister's accountability system, the executive system in the South Korean government system is called the president parliamentary.

The term of office of the President is 5 (five) years only for one term as stipulated in Article 70 of the South Korean Constitution. The term of office of the President which is set for 5 (five) years means that the South Korean government system adheres to a fixed executive system. With the fixed executive system model, the position of the President is very strong and cannot be overthrown, so there must be a mechanism for limiting the President's power. One of the methods and systems for limiting power developed in the South Korean government system is the impeachment method and system. To balance the strong position of the President with the fixed-term executive system for 5 (five) years as stated above, the South Korean constitution regulates the impeachment of the President. However, by the South Korean constitution, public officials who can be subject to impeachment are not only the President. The object of impeachment in the South Korean system is very broad, much like the American impeachment system. What public officials are subject to impeachment under the South Korean constitution? According to Article 63 of the South Korean Constitution, the object of impeachment includes public officials of the President, Prime Minister, Members of the State Council, Heads of Executive Ministries, Constitutional Justices, Members of the Election Commission, Chairman, and Members of the Audit and Inspection Council as well as other public officials appointed by law. However, in this paper, the discussion is focused on the impeachment of the President by the aims and objectives.

As stated above, the President of South Korea is directly elected by the people and holds office for 5 (five) years. The two elements of direct elections regulated in the South Korean Constitution prove the President in the South Korean system has a very strong position. The very strong position of the President opens up the possibility of corruption committed by the President during his term of office, such as allegations of corruption by South Korean President Park Geun Hye in 2016. The President of South Korea cannot be dismissed for political reasons but only for purely juridical reasons such as corruption allegations. In the context of the impeachment of the President of South Korea, the role of state organs is very limited and simple. The state institutions involved in the impeachment process of the President of South Korea are the National Assembly (Parliament) and the Constitutional Court (Constitutional Court). The state organ authorized to apply for

impeachment against the President of South Korea is the Parliament (National Assembly). The mechanism for submitting the impeachment of the President of South Korea is not easy to implement because the President of South Korea is not responsible to the Parliament (National Assembly).

Impeachment is proposed by Parliament (National Assembly) to the Constitutional Court (Constitutional Court). The Constitutional Court has the authority to examine, hear and decide on accusations addressed by the Parliament (National Assembly) against the President. The role of the Constitutional Court (Constitutional Court) in the impeachment process of the President of South Korea is very important. The final decision regarding the fate of the South Korean President rests with the Constitutional Court.

III. Research Method

The research method used in this study is a juridical-normative research method with a comparative *suydi* approach by comparing the constitutions of Indonesia and South Korea. The comparison of the constitution is limited because it deals only with the institution of impeachment as a method and system of limited power in the context of the check and balance system.

IV. Results and Discussion

The presence of impeachment institutions in the presidential government systems of Indonesia and South Korea is part of the mechanism for monitoring and limiting the powers of public officials to prevent abuse of power and arbitrary actions. In the Indonesian model of impeachment, public officials who are the object of impeachment are very limited, namely the President and Vice President. Other public officials such as public officials within the judicial and legislative powers such as Supreme Court Justices, Constitutional Court Judges, Attorney General, National Police Chief, DPR Members, Ombudsman Commissioners, KPK Commissioners, KPU Commissioners, and others cannot be subject to impeachment. From the aspect of public officials as objects of impeachment, Indonesia's impeachment model is very narrow when compared to the Philippines and the United States, and South Korea.

State institutions that play an important role in Indonesia's impeachment process are the DPR, the Constitutional Court, and the MPR. Based on the involvement of the three-state organs in the impeachment process of the President/Vice President, Indonesia's impeachment mechanism can be called implementing the three-step impeachment model. The involvement of the DPR as a political institution that functions as a prosecutor shows a political element in the Indonesian impeachment mechanism and process (first step). The indictment was brought against the Constitutional Court. The existence and involvement of the Constitutional Court as a legal institution in the impeachment process shows that the Indonesian impeachment mechanism and process have a juridical element (second step). However, if the Constitutional Court considers the DPR's indictment proven, the President of Indonesia does not necessarily have to be dismissed during his term of office. The Constitutional Court submits its decision to the MPR. The MPR then convenes to determine the final stance on dismissing or not dismissing the President during his term of office. The existence and involvement of the MPR as an institution in the mechanism and process of impeachment of the Indonesian President proves the political elements in the system of dismissing the Indonesian President during his term of office (third step).

The three state organs of the DPR, the Constitutional Court, and the MPR carry out very important roles and functions in the process and mechanism of impeachment of the President of Indonesia with different characteristics in terms of their respective authorities, elements, and dimensions. The involvement of the three state organs with different dimensions in the process and mechanism of the impeachment of the President of Indonesia proves that the issue of impeachment of the President in the Indonesian constitution is considered a problem with political and legal dimensions. When compared with the dimensions of the impeachment process of President Soekarno and Abdurrahman Wachid based on the Indonesian constitution before the 1999-2002 highly political amendments, the mechanisms and procedures for impeachment of the President according to the Indonesian constitution after the amendments have changed greatly. The procedures and mechanisms for the impeachment of the President according to the Indonesian constitution after the amendments are more "thick" contain a juridical dimension.

In the South Korean impeachment model, the object of impeachment covers a wider range of public officials than Indonesia. Public officials who are the object of impeachment in South Korea are much wider because they include the President, Prime Minister, Members of the State Council, Head of the Executive Ministry, Constitutional Justices, Members of the General Election Commission, Chair and Members of the Audit and Inspection Board as well as other public officials appointed by law. However, when compared to America, the object of the United States model of impeachment is wider because it includes the President, Vice President, Supreme Court Justices, and all public officials each country (nation) regarding sectors of public office that have the potential for abuse of power and arbitrary actions that may occur in the practice of state administration.

In the South Korean constitutional model, the state organs that play a role in the process and mechanism for the impeachment of the President are the Parliament and the Constitutional Court. The involvement of the two-state institutions involved in the South Korean impeachment model makes the South Korean impeachment mechanism called implementing the two-step impeachment model. The process of filing charges by the Parliament (National Assembly) as a political institution shows political elements in the process and mechanism of the impeachment of the President of South Korea (first step). The indictment was submitted to the Constitutional Court as a legal institution. The Constitutional Court (Constitutional Court) has the authority to decide whether the President of South Korea is proven or not guilty, such as the case of Park Geun Hye who was impeached in 2016. The full authority of the Constitutional Court to make decisions regarding accusations against the President shows a juridical element in the process and mechanism of impeachment of the President of South Korea.

V. Conclusion

The insights expressed regarding the impeachment process against the President/Vice President of Indonesia and South Korea as stated above resulted in the following conclusions. First, the impeachment process of the Indonesian model with a three-step impeachment process is a more complicated process than the South Korean impeachment model with a two-step impeachment process. Second, the impeachment model of Indonesia and South Korea both have political and juridical aspects with different qualities. The juridical aspect in South Korea is more prominent in the impeachment system of the Indonesian President, while the political aspect is more prominent in the Indonesian impeachment system.

References

- Alder, John. *General Principles of Constitutional and Administrative Law*. New York: Palgrave MacMillan, 2002.
- Azhary. *Negara Hukum Indonesia Analisis Yuridis tentang Unsur-unsurnya*. Jakarta: Universitas Indonesia, 1995.
- Barendt, Eric. *An Introduction to Constitutional Law*. London: Clarendon Law Series, Oxford University Press, 2008.
- Black, Henry Campbell. *Black's Law Dictionary: Definition of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*, St. Paul, Minn: West Group, 1991
- Bresnan, John. (editor), *Krisis Filipina Zaman Marcos dan Keruntuhannya* (Gramedia, Jakarta, 1988.
- Cappelletti, Mauro. *Judicial Review in the Contemporary World*. USA: The Bobbs-Merrill Company Inc. 1971.
- Hall, Daniel E. *American Constitutional Law, Cases, and Commentary*. USA: Delmar Publisher, 1997.
- Hamdan Zoelva. *Impeachment Presiden, Alasan Tindak Pidana Pemberhentian Presiden Menurut UUD 1945*. Jakarta, Konpress, 2005.
- Hamdan Zoelva. *Pemakzulan Presiden di Indonesia*. Jakarta: Sinar Grafika, 2011.
- Hufron. *Pemberhentian Presiden di Indonesia Antara Teori dan Praktik*. Yogyakarta: Laksbang Pressindo, 2018.
- J.H. Rapar. *Filsafat Politik Plato, Aristoteles, Augustinus, Machiavelli*. Jakarta: RajaGrafindo Perkasa, 2010.
- Jimly Asshiddiqie. *Peradilan Etik dan Etika Konstitusi Perspektif Baru tentang 'Rule of Law dan Rule of Ethics & Constitutional Law and Constitutional Ethics.'* Jakarta: Sinar Grafika, 2015.
- Johnson, David T dan Fernquest, Jon. *Governing through Killing: The War on Drugs in the Philippine*, Asian Journal of Law and Society, Cambridge University Press and KoGuan La School, Shanghai, Jiaong Tong University, 2 Mei 2018.
- Lijphart, Arend. (ed.). *Parliamentary Versus Presidential Government*. New York: Oxford University, 2004.
- M. Laiza Marzuki, *Pemakzulan Presiden/Wakil Presiden Menurut Undang-undang Dasar 1945*. Jakarta: Jurnal Mahkamah Konstitusi Nomor 7 Volume Tahun 2010.
- Nadir, Dilematika Putusan Mahkamah Konstitusi vs Kekuatan Politik Dalam Impeachment Presiden (Jurnal Konstitusi, Volume 9 Nomor 2 Juni, 2012
- Ratner, Steven R dan. Abrams, Jason S. *Accountabilty for Human Rights Atrocities In International Law Beyond The Nuremberg Legacy atau Melampaui Warisan Nuremberg, Pertanggungjawaban Untuk Kejahatan Terhadap Hak Asasi Manusia Dalam Hukum Internasional* (Alih Bahasa: B.E. Wibodo, Elsam Jakarta Oxford dan New York: Oxford University Press, 1997.
- Reni Dwi Purnomowati. *Implementasi Sistem Bikameral Dalam Parlemen Indonesia*. Jakarta: RajaGrafindo Perkasa, 2005.
- Ryan Muthiara Wasti. *Mekanisme Impeachment di Negara Dengan Sistem Presidensial: Studi Banding Mekanisme Impleachment di Indonesia dan Korea Selatan*. Jurnal Ilmu Hukum, Fakultas Hukum Unversitas Indonesia.
- Satya Arinanto, *Hak Asasi Manusia Dalam Transisi Politik di Indonesia*. Jakarta: Fakultas Hukum Universitas Indonesia, 2005.

- Shah, M. M., et al. (2020). The Development Impact of PT. Medco E & P Malaka on Economic Aspects in East Aceh Regency. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*. Volume 3, No 1, Page: 276-286
- Sofyan Hadi, *Impeachment Presiden dan/atau Wakil Presiden (Studi Perbandingan Antara Indonesia, Amerika Serikat dan Philippina)*, Jurnal Ilmu Hukum: Februari 2016, Volume 12 Nomor 23.
- Soimin. *Impeachment Presiden & Wakil Presiden di Indonesia*. Yogyakarta: UII-Press, 2009.
- Strong, C.F. *Modern Political Constitution*. London: The English Language Book Society and Sidgwick & Jackson Limited, 1966.
- Valina Singka Subekti. *Menyusun Konstitusi Transisi Pergulatan Kepentingan dan Pemikiran Dalam Proses Perubahan UUD 1945*. Jakarta: Rajawali Pers, 2008.
- Wheare, K.C. *Modern Constitution*. London: Oxford University Press, 1966.
- Winarno Yudho dkk, *Mekanisme Impeachment dan Hukum Acara Mahkamah Konstitusi* (Jakarta, Konrad Adenauer Stiftung dan Konpress, 2005