

# The House of Representatives Supervision As The Initial Instrument to Impeachment The President and Vice President

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## ABSTRACT

**Objective:** The mechanism for dismissing the President and/or Vice President in Indonesia is regulated by the 1945 Constitution. This process is initiated by the House of Representatives submitting a proposal to the People's Consultative Assembly, stipulating that the President and/or Vice President has violated the provisions in Articles 7A and 7B, and this must be proven first by the Constitutional Court through examination and proof. If it is proven that the President and/or Vice President has violated these provisions, the results of the Constitutional Court trial will be submitted to the People's Consultative Assembly. Subsequently, the People's Consultative Assembly is obliged to hold a trial to decide whether the President and/or Vice President will be impeached. Article 7A of the 1945 Constitution of the Republic of Indonesia regulates the impeachment of the president and the provisions related to the presidential office in Indonesia. **Method:** According Mahmud Marzuki, this normative legal research, as it is defined entails the process of finding, comprehending and solving legal problems embracing the practice rather its theory. This work in particular focuses on the way in which the House of Representatives can investigate and possibly remove the President and Vice President from their offices. **Result:** Some of the author's findings related to the essence of impeachment in the Indonesian constitution are, first, to maintain a system of checks and balances in the presidential office through oversight. Second, the direction of the presidential impeachment regulations needs to be improved by clarifying the reasons and mechanisms for impeachment, aiming to avoid dismissing the president for political rather than legal reasons. **Novelty:** The present study also analyzes the Indonesian Constitution of 1945 about presidential removal from office, stressing the weak legal rationale as well as the appropriate procedure to remove a president to avoid the potential manipulation for political gains. This calls for regulatory improvement to improve checks and balances in order to prop up a better legal framework of fair and constitutional presidential accountability.

## INTRODUCTION

One of the contents of the Constitution in each country is the regulation regarding the mechanism for dismissing a Head of Government (Zanko, 2020). The regulation of the mechanism for dismissing a Head of Government in the Constitution has two reasons (Setiawan et al., 2023). The first is related to the fact that the regulation of the authority of the Head of Government is usually regulated in the Constitution, so the mechanism for dismissing the Head of Government should ideally also be controlled in the 1945 Constitution (Ariyanto & Kafrawi, 2022; Mujiburohman, 2020; Schleiter & Morgan-Jones, 2009). Second, the existence of a mechanism for dismissing the Head of Government is a consequence of the principle of the rule of law (Janderová, 2019; Stack, 2015). One of the objectives of the principle of the rule of law is to achieve legal certainty in the context of the state (Bellamy, 2017; Robaj, 2023). Therefore, regulating the mechanism for dismissing a Head of Government with the Constitution is necessary (Cahillane & Hickey, 2023; Pérez-Liñán, 2020).

The reasons for the dismissal of a Head of Government are also regulated in the Constitution. At least two reasons can be used to dismiss a Head of Government (Zaelani & Mu'in, 2023). The first reason is political, while the second is legal (J. Lee, 2023). The choice of what will be regulated in the Constitution regarding the reasons for the dismissal of a Head of Government will depend significantly on the choice of government system (Ariyanto & Kafrawi, 2022). In a parliamentary system of government, a Head of Government can be dismissed for political reasons through a motion of no confidence (Hazan & Rasch, 2022; Pasquino, 2014; Ruiz Ruiz, 2014). If parliament carries out a vote of no confidence, the Prime Minister and his cabinet will disband (Glaser, 2019; Schleiter & Evans, 2021).

Meanwhile, in a presidential government system, a Head of Government cannot be removed for political reasons (Lento & Hazan, 2022; Tuttnauer & Hazan, 2024). In this case, the head of government, the President, can only be removed for legal reasons (Ross, 2020). In a presidential system, the President cannot be dismissed midway for political reasons because the aim of a presidential system is for the government to run stably (Gasu, 2017). If the President can be dismissed for political reasons, this will also impact national economic stability (McManus & Ozkan, 2022). Therefore, one of the agreements of the Ad Hoc Committee 1 of the MPR RI in making changes to the 1945 Constitution was to strengthen the presidential system. Some experts considered the government system before the changes to the 1945 Constitutions not to have a purely presidential system.

The model of the President's accountability to the People's Consultative Assembly strengthens the assumption that Indonesia, before the changes to the 1945 Constitution, did not adhere to a purely presidential system (quasi-presidential) (Humaidi & Rahmadanti, 2023). The President's accountability to the People's Consultative Assembly has the consequence that the People's Consultative Assembly can dismiss the President for political reasons (Situmeang, 2024; Soedijana, 2024). With the purification of the presidential system in the 1945 Constitution, the resulting changes also had consequences for the reasons for dismissing the President. In the amended 1945 Constitution, the President can only be dismissed for three reasons: legal, moral, and administrative (see Article 7 A of the 1945 Constitution of the Republic of Indonesia) (Kuswanto, 2018). Changing the reasons for dismissing the President from political to legal also has consequences for the strictness of the mechanism for dismissing the President (Roisman, 2022; Rothman & Shugart-Schmidt, 2018). The mechanism for dismissing the President for legal reasons is certainly stricter than the mechanism for dismissing the President for political reasons (Antari, 2021; Arifin, 2020). The strict mechanism for dismissing the President for legal reasons also brings problems. Article 7 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states "The opinion of the House of Representatives that the President and/or Vice President has committed a violation of the law or no longer meets the requirements as President and/or Vice President is within the framework of implementation of the supervisory function of the House of Representatives." (Aldrou, 2021; Haris & Salan, 2018). This article emphasizes that the

dismissal of the President must be through the House of Representatives monitoring mechanism for the President. However, this article needs to clarify what model of the House of Representatives' oversight function is used by the House of Representatives (Dolan & Garvey, 2013; Kennedy, 2023; Marshall, 2004).

However, even though these provisions throw some light on the strength and powers of the House of Representatives regarding the impeaching process, confusion persists as to its supervisory powers of the process (Baron, 2021). As already noted, a two-thirds majority vote of the House of Representatives is predictable under paragraph (2) of Article 7B to decide whether the President and Vice President have been guilty of a violation of the law under its oversight function, but it is silent on the appropriate model of oversight the House of Representatives is to adopt (Alduros, 2023; Vile, 2023). This uncertainty leads to questions on the efficiency and coherence of the monitoring systems, hence necessitating consideration of the role of the House of Representatives in this lit part of governance (Hofer & Lopes da Fonseca, 2024).

Moreover, a brief cross-sectional comparison with other presidential systems worldwide could reveal how the Indonesian impeachment mechanism fits or does not fit other presidential systems' mechanisms (Arif & Prayogo, 2018; Satriya, 2022; Sugianto, 2020). For instance, in the United States, impeachment is a precise legal offense under both houses of Congress (Thompson, 2018). Such comparisons give an understanding, thus making the reader aware that Indonesia, though it has adopted pictures of other democratic countries, also has problems balancing stability and accountability in the Presidential system (Said et al., 2021).

## RESEARCH METHOD

This study uses Legal research, which is normative in nature and entails legal reasoning and an examination and interpretation of legal authorities to answer legal problems. In the view of Peter Mahmud Marzuki, 'Legal research is a know-how activity in legal science, not just know about. Having determined that it is a know-how activity, legal research is done to solve the legal problems encountered (Manullang et al., 2024). This approach is particularly appropriate for application in this study because the study aims to compare the House of Representatives' supervisory role in the process of impeachment of the President and Vice President (Flora et al., 2023).

As for the methodological approach and the rules of legal elaboration of sources, this research is equipped with clear criteria for including statutes, court decisions, and other legal literature (Flora et al., 2023; Mitchell, 2023; Vogenauer, 2006). Sources were selected depending on the aspect of the legislative oversight that they cover and their importance to the meaning of the constitution (Fatile & Adejuwon, 2023; Stapenhurst et al., 2014; Tobi et al., 2021). Every source is analyzed and interpreted to ensure that credible findings and conclusions have been made using an analytical framework.

The normative legal approach draws a clear distinction between legal and non-legal norms, making it especially valuable for this study because it lets us comprehensively analyze legal regulation of legislative activities and tasks (Berteau & Pavlakos, 2011; Hamzani et al., 2024). This approach also identifies the processes in which the House of

Representatives acts in its impeachment powers in detail. Through the use of normative analysis, the research also uncovers the legal rationality of legislative supervision as well as translates the meaning of legal implication with the constitution for judicial and political officers, consequently understanding legislative and executive power. Nevertheless, a purely normative approach seems sufficient here, because the present research aims at the legal interpretation rather than at examining the stance or behaviors of legislative institutions (Calnan, 2023). When keeping strictly to the normative approach, this research can clearly understand the legal foundations of legislative oversight and its constitutional relevance without any quantitative data or surveys (Dolan & Garvey, 2013; Selin & Milazzo, 2021).

## RESULTS AND DISCUSSION

### Results

#### *House of Representatives Oversight as an Initial Mechanism for the Impeachment of the President and Vice President*

The theory of the rule of law is a central concept in shaping the governance system of a country (Le Clercq et al., 2019; Li, 2022). It establishes three main principles: the application of legality in governance, the separation of state powers, and the protection of human rights (Coxon, 2014; Grebnev, 2016; Mesonis, 2020). The principle of legality ensures that all governmental actions are based on law, thereby limiting the government's authority (De Souza Dias, 2019; French, 2019; Nicholson, 2017). The “Trias Politica” theory divides state power into three branches—legislative, executive, and judicial—and is widely adopted (Hamad et al., 2022; Siswoyo, 2020). In a rule-of-law system, this separation of powers is essential to prevent the concentration of energy, and it must be followed by a system of checks and balances (Pozsár-Szentmiklós, 2024).

In Indonesia's constitutional system, the principle of \*Trias Politica\* asserts that state power must not rest in a single institution but should be distributed across three branches: the legislature (to make laws), the executive (to enforce rules), and the judiciary (to adjudicate legal violations) (Grebnev, 2016; Siswoyo, 2020). John Locke's theory expands this idea by adding a federative power that regulates relations with other nations (Kelly, 2015; Rachel, 2010; Ward, 2006). According to Montesquieu and Locke, each of these powers is equal in scope and authority, but each must monitor and balance the others (Shelley, 2021). This principle is mirrored in Indonesia's governance structure, where state institutions represent each branch of power (Hamad et al., 2022; Šinkūnas & Pūraitė-Andrikienė, 2023).

#### *State Institutions and Oversight*

State institutions are vital in executing the functions of the state and representing the people in governance (Kordić et al., 2019; Lester & Lombard, 2018; Marques & Morgan, 2021). Jimly Asshiddiqie outlines critical characteristics of state institutions (Asshiddiqie, 2023), including: 1) The organ is chosen or appointed to hold a specific position or function; 2) The function is carried out as a primary profession or is legally exclusive; 3) The organ is entitled to compensation from the state for performing its function. These institutions are classified based on their legal foundation as follows: 1) Institutions created by the Constitution or regulated by laws, Government Regulations (PP),

Presidential Regulations (Perpres), or Presidential Decrees (Kepres); 2) Institutions are formed by laws and further regulated by PP; 3) Institutions formed by PP or Perpres, with further regulation through Kepres; 4) Institutions are created by ministerial regulations, defined by ministerial decrees or decisions from lower-ranking officials.

Sri Soemantri identifies the leading state institutions under the 1945 Constitution of Indonesia as the Financial Audit Agency (BPK), the House of Representative, the Regional Representative Council, the People's Consultative Assembly, the President and Vice President, the Supreme Court, the Constitutional Court, and the Judicial Commission (Soemantri, 1989). These institutions perform three main functions: legislation, oversight, and judicial review.

### ***Checks and Balances***

In Indonesia, each branch of power exercises oversight over the others. For instance, the President (executive branch) oversees the House of Representatives (legislative) in law-making and implementation (Agus & Irvan A., 2022; Apriliyanti & Kristiansen, 2019; Wardani, 2019). The Constitutional Court, as part of the judiciary, supervises the House of Representative's actions through judicial review, while the House of Representatives oversees the selection of Constitutional Court judges (Best, 2015; Sinani, 2024). This inter-branch supervision is an essential feature of the checks and balances system, ensuring that no single branch accumulates too much power (de Chantal, 2015).

The House of Representatives plays a significant role in oversight, mainly through its legislative, budgetary, and supervisory functions (Fatile & Adejuwon, 2023; Fernandes et al., 2022; Griglio, 2020). The Constitution grants the House of Representatives three main rights: 1) The Right of Interpellation - The House of Representatives may ask the government for clarification on important policies that affect the nation (El-Wafa et al., 2024); 2) The Right of Inquiry - The House of Representatives can investigate the implementation of laws and government policies that may violate existing regulations (Brudnick, 2014); 3) The Right to Express an Opinion - The House of Representatives can offer opinions on government policies or on extraordinary matters, including allegations of legal violations by the President or Vice President (Aldrou, 2021).

The Right of Interpellation allows the House of Representatives to request an explanation from the government. If the explanation is unsatisfactory, the House of Representatives may exercise the "Right of Inquiry", which allows for further investigation. Should these rights reveal violations by the President or Vice President, the House of Representatives can express its opinion on the matter, triggering an impeachment process (Apriliyanti & Kristiansen, 2019; Brudnick, 2014; Glassman, 2014; Meinel, 2018; Muslimin & Putri, 2021; Resende, 2022).

### ***Implications of House of Representatives Oversight in the Impeachment of the President and Vice President***

The Constitutional Court (MK) plays a crucial role in impeaching the President and Vice President by ensuring that the grounds for dismissal align with the provisions of the 1945 Constitution (Arifin, 2020). This involvement ensures that impeachment is based on legal principles rather than political motives (Kim, 2018; Sani et al., 2019).

Moreover, the Constitutional Court authority serves to balance and oversee the political process of impeachment carried out by the House of Representatives and the People's Consultative Assembly (Buana, 2020; Thohir & Sukriono, 2023). The Constitutional Court ruling provides a strong legal foundation for removing the President or Vice President if constitutional violations are found. This involvement of The Constitutional Court helps prevent the politicization of the impeachment process and ensures that decisions are based on law (Y. Lee, 2005, 2024).

### ***Judicial Oversight in the Impeachment Process***

The Constitutional Court involvement does not represent a shift from a political impeachment model to a judicial one (such as the \*forum privilegiatum\* model). Abdul Latif argues that the The Constitutional Court role does not politicize the process, as its decisions can still be annulled by the People's Consultative Assembly (BUTT, 2019; Castillo-Ortiz, 2020). Ni'matul Huda emphasizes that the The Constitutional Court ruling is not final, as the final decision to remove the President or Vice President remains within the political domain of the People's Consultative Assembly (Huda, 2013).

However, the Constitutional Court role remains critical in ensuring that impeachment is grounded in legal, not political, considerations (Edyson et al., 2024). The Constitutional Court helps prevent the politicization of the process and ensures that any actions taken against the President or Vice President are legally justified (Tatawu & Tawai, 2023).

### ***Legal Accountability vs. Criminal Accountability***

The Constitutional Court's involvement focuses not on criminal accountability but on constitutional responsibility. The Constitutional Court role is to determine whether the President or Vice President has violated constitutional provisions that would warrant their removal. Unlike criminal trials, this process is concerned with whether the President or Vice President has violated their constitutional duties (Syah Rezah & Sapada, 2023).

Thus, the Constitutional Court's ruling provides a foundation for removing the President or Vice President during their term in office (Ibrahim et al., 2024). This ruling ensures that impeachment follows constitutional law, mitigating the risk of political manipulation and holding the highest officeholders accountable under legal, rather than partisan, standards (MP, 2022). Ultimately, the impeachment process concludes with the People's Consultative Assembly 's decision, ensuring the process stays within the boundaries of constitutional law and democratic principles (Ridwan, 2024).

### **Discussion**

The Constitutional Court's ruling serves as the legal basis for removing the President and/or Vice President during their term in office. This decision is a crucial part of the impeachment process by the People's Consultative Assembly (Faiz et al., 2023). In terms of the Constitutional Court's role in examining and deciding on the opinions presented by the People's Representative Council regarding potential legal violations by the President and Vice President, it is argued that, from a philosophical perspective, the President and Vice President must be individuals of high integrity from the moment they are nominated through the duration of their term (Eddyono, 2017).

These integrity requirements are outlined in the qualifications for Presidential and/or Vice Presidential candidates, as stipulated in Article 6 of the 1945 Constitution of the Republic of Indonesia. Once in office, the constitutional standard for being "good" is defined as refraining from acts that violate the law and serve as grounds for dismissal, as outlined in Article 7A of the Constitution (Sabrina & Sukardi, 2024; Wutoy et al., 2022). Therefore, anyone who does not meet these criteria cannot be considered fit to run for or hold the office of President and/or Vice President. The involvement of the Constitutional Court in the impeachment process is essential to ensure that any legal violations committed by the President and/or Vice President are properly examined and proven, in accordance with the 1945 Constitution, free from political influences (Passiatas, 2014; Vile, 2023).

Jimly Asshiddiqie explains that the supervisory roles of the House of Representatives as a representative institution can be categorized into several areas: supervision over policy-making, policy execution, budgeting, and state expenditure, the implementation of the state budget, government performance, and the political appointments of public officials. This supervisory role is an intrinsic aspect of the concept of parliament as the people's representative body (Asshiddiqie, 2023).

Historically, the establishment of parliament is linked to the term "le parle," meaning "to speak," indicating that representatives of the people exist to voice the people's aspirations, interests, and opinions (Almoatasm, 2024; Beckett, 2014). Parliament serves as a forum where the people's concerns are expressed and transformed into policy decisions, ensuring that these policies are correctly implemented for the public good (Makulilo, 2023; Pelizzo & Stapenhurst, 2013). Thus, according to Jimly, the function of supervision is even more significant than the legislative function itself (Haris & Salan, 2018; McKie & Van De Walle, 2010). The supervisory function is not only concerned with the government's performance in executing established policies but also with the determination and implementation of the national budget. This makes fiscal oversight integral to the overall supervisory role (Borge & Hopland, 2020; Ríos et al., 2018).

The oversight function of the House of Representatives, as described by Jimly Asshiddiqie, is a crucial component of the overall accountability of the government (Asshiddiqie, 2023). However, the following is a list of legal and procedural recommendations by this study to improve the impeachment process to afford the presidency and other senior branches of government necessary checks and balances. Such reforms should provide for impeachment criteria and procedure so as not to leave much room, debate, or political influence. By correcting the current deficits, such alterations would enhance the GoI's governance structure, support Indonesian democratic consolidation, enhance the implementation of the rule of law, and improve societal confidence in authorities (Dick-Sagoe, 2020).

## CONCLUSION

**Fundamental Finding:** The impeachment process begins with submitting a case by the House of Representatives to the People's Consultative Assembly, which will be accompanied by the validation of the allegations by the Constitutional Court by Articles 7A and 7B of the 1945 Constitution. If the Constitutional Court deems the allegations

valid, the MPR must proceed by holding a trial to decide on the impeachment.

**Implication:** The study offers guidelines to the House of Representatives and the President in developing regulations for operations in the presidential office and offers modification of legal and procedural changes in the impeachment system. Strengthening this mechanism would lead to democratization, enhance the rule of laws, and foster public confidence in government. **Limitation:** This research is limited to discussing favorable laws that contain regulations on the oversight by the House of Representatives (House of Representatives) regarding the dismissal of the President and Vice President in Indonesia. **Future Research:** Subsequent research may recommend a more effective architecture for legislative involvement to fully realize legal basis on which impeachment in Indonesia can be effected in ways that enforce accountability without political exploitation.

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The House of Representatives Supervision As The Initial Instrument to Impeachment The President and Vice President

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