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Dismissal of The President and/or Vice President During Their Term of Office According to The 1945 Constitution of The Republic of Indonesia

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ABSTRACT

The purpose of this study is to analyze the nature of the dismissal of the president and/or vice president in the rule of law. This research was conducted using doctrinal/normative legal research methods. The results of this study indicate that: (1) The essence of the dismissal of the President and/or Vice President in the rule of law is to realize the rule of law and justice in the administration of government; (2) the mechanism for the dismissal of the president and/or vice president following the principles of the democratic rule of law is the dismissal of the president and/or vice president with the model *Privilegium Forum*; (3) The mechanism for dismissing the President and/or Vice President in Indonesia is not following the principles of a Democratic Law State.

Keywords: Termination; President/Vice President; Length of service

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I. INTRODUCTION

Indonesia is a country that runs the government by embracing or adopting a presidential system in which government positions are held by the President and/or vice president as regulated in Article 4 paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia^[1]. The President in running the government of the Republic of Indonesia must be based on the 1945 Constitution of the Republic of Indonesia so that the President and/or Vice President in acting must be based on the law, as well as the holder of the office of president and/or vice president when carrying out their obligations under the law, while the holder of the office of President and/or the vice president commits an act that violates the law which is quite serious, it must be dismissed based on the law as well as in the principles of the rule of law that uphold justice and legal certainty.

When the author tries to see and observe as regulated in the 1945 Constitution of the Republic of Indonesia regarding the dismissal of the President and/or Vice President when violating a serious law as regulated in Article 7A of the 1945 Constitution of the Republic of Indonesia which states "The President and/or Vice President can be dismissed by the Consultative Assembly. The people at the proposal of the House of Representatives, whether it is proven that they have violated the law in the form of treason against the State, corruption, bribery, other serious crimes, or disgraceful acts or if it is proven that they no longer meet the requirements as President and/or Vice President"^[2]. Therefore, the mechanism for dismissal is not purely legal as regulated in Article 7A of the 1945 Constitution of the Republic of Indonesia, as the word *can be dismissed*, it is necessary to underline that the law has been underestimated, even though before it is brought to the MPR for trial, the request for accountability of the President and/or Vice President is submitted by the DPR first. before the Constitutional Court to decide the opinion of the DPR on the guilt of the President and/or the Vice President.

As stated in Article 7B of the 1945 Constitution of the Republic of Indonesia, that the DPR must first submit a request to the Constitutional Court to examine, try and decide on the opinion of the DPR that the President and/or the Vice President have violated the law in the form of treason against the State, corruption, bribery, and other serious crimes. or a disgraceful act or the opinion of the DPR that the president and/or vice president no longer meet the requirements as president and or vice president^[3].

As explained above, we can see that the decision of the Constitutional Court is only a prerequisite for the dismissal of the President and/or Vice President because the Constitutional Court's decision has absolutely no binding power to determine whether or not the President stops, but the decision to dismiss the President and/or Vice President is entirely in the hands of the MPR, on that basis, therefore it should be said that the MPR decision as a political decision as a determinant of whether or not to stop the President and/or Vice

President in his term of office, so that in this way the dismissal of the President and/or Vice President who is proven to have committed a violation law in the form of treason against the State, Bribery, Corruption and other serious crimes whose dismissal decisions are dominant in political decisions are not following the principles of the rule of law, including the rule of law.

Thus, the decision of the Constitutional Court regarding the Dismissal of the President and/or Vice President is considered unique, because it does not have binding power for the MPR to follow the decision of the Constitutional Court. Constitutional Court law that distinguishes between Authority and Obligation.^[4] The MK's obligations relating to the mechanism for the dismissal of the President and/or Vice President, some view that the MK's participation is only an obligation and not an authority as stated by Abdul Latif, but if the dismissal occurs due to political interests, efforts to create the State of Law that democratic and constitutional in Indonesia will be difficult to materialize.^[5]

According to Maruarar Siahaan that deciding on the DPR's proposal for violations of the law committed by the President and/or Vice President is the MK's obligation, the MK's obligations, in this case, remain binding, in the sense that the MK's decision remains the first and last judicial trial because, In the laws and regulations in Indonesia, there is not a single State institution that is given the authority to review the decisions that have been determined by the Constitutional Court.^[6]

Mechanism of dismissal of the President and/or Vice President In Indonesia, it should be said that the law or judicial decisions have absolutely no binding force to determine whether or not to stop the President and/or Vice President and also specifically the decision of the Constitutional Court as a legal decision at all. does not have binding power to dismiss or not the President and/or the Vice President who is proven to have violated the law in the form of treason against the State, corruption, bribery and other serious crimes, but it is the political decision that becomes final whether or not the President and/or Vice President is dismissed in His term of office is as regulated in article 7A of the 1945 Constitution of the Republic of Indonesia.

Based on the explanation above that specifically for the dismissal of the president and/or vice president, the **rule of law** as referred to in the is no longer applied and it is set aside based on sovereignty. n the people who are represented to the People's Consultative Assembly (MPR) through the General Election Results. Supposedly, if we refer to the Negara Law to note is the Rule of Law and Justice that any action in a state that is basically as the State Law moreover is a crime committed by the head of the Government in this regard the President and/or Vice President must submit to and obey the law, which of course includes law enforcement whose decisions must be accommodated by the MPR to be dismissed as President and/or Vice President without any more meeting to agree or not to be dismissed from office. because basically, Parliament is only an institution that is engaged in state politics, not as law enforcement, so for the reasons mentioned above, the dismissal of the president and/or vice president should be dismissed for alleged violations as crimes including corruption, bribery, and other serious crimes, so they must be dismissed. when proven guilty in a judicial examination in this case the Constitutional Court.

When we observe the principles of the rule of law, that a legal judicial decision as to the last decision in legal matters, what else is related to the benefit of the people, must lead to the value of justice whose scope is a legal decision, it should be when the president and/or vice president are proven guilty of committing a crime. By the Constitutional Court, the MPR must immediately hold a Special Session of the People's Consultative Assembly (SI MPR) for the dismissal of the President and/or Vice President.

According to Suwoto Mulyosudarmo point about the dismissal of the President and/or Vice President before and the passing of the third amendment to the Constitution NRI of 1945 states:

Dismissal Process president and/or vice president based on the decision of the Supreme Court with the alleged criminal offence Conduct.^[7]

Indonesia as the State of Law is clearly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that: "The *State of Indonesia is the State of Law*", then the position of the legal process ideally lies at the end of a series of processes for dismissing the President and/or vice president for the realization of a rule of law that upholds the supremacy of law and justice

Research Methods

This research was conducted using doctrinal, normative legal research methods or library law research, namely legal research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. These materials are arranged systematically, studied and analyzed, then a conclusion is drawn about the problem under study.

II. RESEARCH RESULTS & DISCUSSION

The nature of the dismissal of the President and/or Vice President In the state of law, the

The state of Indonesia is a large country that has a large population and a large area in which there are thousands of islands. Indonesia is a country that adheres to a presidential government system that is guided by the concept of the *distribution of power, which is carried out based on the law as stated explicitly in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states*^[8]: "The State of Indonesia is the State of Law" so that all government actions must be based on applicable law, the government violates the law, it is necessary to conduct a trial to prove violations in the judiciary, as an institution that is given the function and authority to adjudicate all violations of the law and provide a decision as an objective appraiser to state a truth.

Dismissal of the President in the State of Law is a matter that is required as a form of legal responsibility of the President, which is essential that the State of Law is the law as the supreme commander (Supreme of Law) in a State so that anyone including the President must submit and obey the applicable laws and remain to respect the principles of a rule of law.

2. Basic Concepts on Impeachment, *Impeachment and Privilegium forum*

a. Impeachment

Before we deep to talk about *impeachment* and *Privilegium*, we must understand first the notion of impeachment itself, as Prof. Rukmana quoted in Saharudin Daming, stated that the impeachment of the President comes from the word *Makzul* which means "abdicate the Throne", while the meaning of impeachment can be interpreted as "decreasing in his term of office" while the definition of impeachment is "decrease in his term of office" therefore Impeachment as a simple sentence with a fairly long meaning^[9], therefore Prof. Mahfud MD^[10] states that using the term is just to make things easier.

The term impeachment as a legal and academic term represents the desired meaning more than the term dismissal, impeachment itself comes from the word "Makzul" which comes from Arabic, from the root word 'Azalah' which contains two meanings it, namely: 1). *to isolate, set apart, separate, include, and* 2). *dismiss, discharge, recall, remove(From the office), removing* so impeachment is a process of dismissing ora President from office.^[11]

b. *Impeachment The*

word *impeachment* comes from the English language, namely "to impeach" while in English dictionaries and legal dictionaries "to impeach" means to summon or indict by asking for accountability as a holder of a public office in a country,^[12] so that it can be explained that an *Impeachment* is a form of summons or indictment against the head of state and/or the Government when it is suspected that he has committed a violation of law committed during his term of office.

The Process *impeachment* was initially used to process high-ranking officials and individuals in power in the UK and the United States, which was quite possible because of their position to abuse their power, in addition to being able to properly implement the system of *checks and balances*, it was used as an indicator to limit the actions of the State authorities which are considered to have violated the law and can eliminate public trust.^[13] although in practice the *Impeachment* is aimed not only at the power of the President as Head of State or government, but at every level of office in the government structure, both in the form of presidential and parliamentary systems.^[14]

Impeachment is a form of (extraordinary Legislative oversight and extraordinary Legislative Checks) whether carried out for the executive or the Judiciary, *Impeachment* is a form of political action with a sentence of dismissal and not given the right to return to holding a position in the State, not as a form of criminal punishment (*criminal conviction*) or sentenced to compensation as stipulated in civil law.^[15]

In the general, political and legal dictionary, by Telly Sumbu et al, publisher of nets jewels, Jakarta, 2010 on page 252, *Impeachment* is defined as "to sue a state official before the court or council because he is considered to have abused his position".^[16] In general, the object of prosecution of state officials (*impeachment objects*) in various countries in the world that adheres to a presidential system is that all state officials, including the President and/or vice president, can be *impeached* against him.^[17]

Impeachment is a formal mechanism when an elected public official is charged with a violation of the law, which is usually limited to criminal law violations. *Impeachment* is a term that is known only in constitutional law which calls it an indictment process which is certainly comparable to the term indictment in criminal law, but even though the charges in the process are *impeachment* related to a criminal offence, the process of *impeachment* is not carried out through criminal justice, but *impeachment* the is done through the state judiciary will decide that the defendant was dismissed from his post, as well as a likelihood of other sanctions that officials can no longer be dismissed or prohibited from occupying a public office in a particular country.^[18]

c. Forum Privilegiatum

Forum *Privilegiatum* means a form of the court that is specifically owned by high state officials to be tried by a special/high court and not by a general or district court.^[19] while Saldi Isra defines "Dismissal of high-ranking State officials, including the President through a special judicial process (*special legal proceedings*).^[20] High-ranking state officials, including the president, are dismissed during their term of office with a special mechanism and special judiciary.

We can see the theory of constitutional law which recognizes two ways in the dismissal of the president and or vice president, namely *first*, by *impeachment* and *second*, utilizing the forum *Privilegiatum*. namely through the judicial process (*special legal proceedings*).^[21] The process utilizing *Impeachment* means that the President and/or the Vice President are removed during their term of office which is carried out by a political institution which is a representation of the entire people to take a political decision to dismiss the president or not, while the Dismissal of the President and/or the Deputy President with the forum model *Privilegiatum* it is intended that the President be dismissed during his term of office through a special administrative judicial process, the emphasis of which is of course on the legal decision itself.

In essence, the dismissal of the President and/or Vice President is a tool or instrument used to prevent and overcome the abuse of power from the holder. when the United States Constitution was drafted in 1787 in Philadelphia, Pennsylvania, the Fathers of the United States had predicted the possibility of a tendency for leaders to become corrupt leaders when they were in power, besides the possibility of being corrupt there was another possibility, namely an attempt to continue in power indefinitely, So that *Impeachment* is basically designed as an instrument to carry out an affirmation and even punishment in deviant acts, abuse of power and violations of public trust from people who have public positions.^[22]

Dismissal of the president and/or vice president during their term of office is an instrument of constitutional law that is presented as a form of prevention and action against the possibility and suspicion of a violation of criminal law and also abuse of power to be dismissed as a consequence of the violation and also there is the possibility of punishment, for example being prohibited from holding public office again in a certain country.

Article 7A of the 1945 Constitution of the Republic of Indonesia states that:^[23] "*the president and/or the Vice President may be dismissed during their term of office by the People's Consultative Assembly at the proposal of the People's Representative Council, either if they are proven to have violated the law in the form of treason against State, Corruption, Bribery, other serious crimes, or disgraceful acts or if it is proven that they no longer meet the requirements as President and/or Vice President.* and Article 7B paragraph (1) states that:^[24] "*The Proposal to dismiss the President and/or vice president may be submitted by the House of Representatives to the People's Consultative Assembly only by first submitting a request to the Constitutional Court, to examine, hear and decide on the opinion of the House of Representatives. that the President and/or vice president have violated the law in the form of treason against the country, corruption, bribery, other serious crimes, or disgraceful acts; and or the opinion that the President and/or vice president no longer fulfils the requirements as President and/or vice president*",

In the Indonesian Constitution, it is not clearly stated between the system *Impeachment* And the Forum *Privilegiatum* used but can be seen in articles 7A and 7B, but not yet ideal and consistent with the dismissal system used in Indonesia.

III. CONCLUSION

7
The Dismissal of the President and/or Vice President in the rule of law to realize the supremacy of law and justice in the administration of government, especially in realizing the arbitrariness of the president and/or vice president.

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