

The Concept of Impeachment in the Indonesia's Constitutional System from the Perspective of *Fiqh Siyāsa*

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Abstract: *The Concept of Impeachment in the Indonesia's Constitutional System from the Perspective of Fiqh Siyāsa.* This study discusses the Siyasah Fiqh Review of the concept of Impeachment in the Indonesian State Administration. The aim is to find out and understand the mechanism for impeachment/dismissal of the President or Vice President in Indonesia's constitutional system as stipulated in Articles 7 a and 7 b of the 1945 Constitution and the *fiqh siyāsa* perspective on these rules. This research belongs to normative legal research that uses normative, juridical, and historical approaches. Data were collected using literary techniques, then analyzed descriptively and qualitatively. The results of this study indicate that the practice of impeaching the President in the past occurred more often due to political issues, namely the disputes between the legislature and the executive regarding the issue that the President had violated the law. In the past two impeachment proceedings, there has been no precise regulation regarding the impeachment mechanism of the President in the country's Constitution. After the amendment, the issue of impeachment was adopted in Articles 7A and 7B of the 1945 Constitution. Article 7A limits the grounds for impeachment, while Article 7B complicates impeachment by the presence of a judicial institution. From the perspective of *fiqh siyāsa*, the head of State's impeachment can be carried out if it meets the criteria and reasons that *Shara* has determined'.

Keywords: *fiqh siyāsa*, President impeachment, 1945 Constitution

Abstrak: *Konsep Pemakzulan dalam Sistem Tata Negara Indonesia dari Perspektif Fiqh Siyāsah.* Penelitian ini membahas tinjauan *fiqh siyāsah* tentang konsep pemakzulan dalam sistem tata negara Indonesia. Tujuannya untuk mengetahui dan memahami mekanisme pemakzulan/pemberhentian Presiden atau Wakil Presiden dalam sistem ketatanegaraan di Indonesia, sebagaimana diatur dalam Pasal 7 a dan 7 b UUD 1945, serta bagaimana perspektif *fiqh siyāsah* terhadap aturan itu. Penelitian ini tergolong dalam jenis penelitian hukum normatif yang menggunakan pendekatan normatif, yuridis dan historis. Data dikumpulkan dengan menggunakan teknik literaire, yang kemudian dianalisis secara deskriptif kualitatif. Hasil penelitian ini menunjukkan bahwa praktik pemakzulan Presiden di masa lampau terjadi lebih banyak dilatarbelakangi oleh isu politik akibat adanya perselisihan antara pihak legislatif dan eksekutif mengenai isu Presiden telah melanggar undang-undang. Dua proses pemakzulan di masa lampau sesungguhnya belum ada pengaturan yang tegas mengenai mekanisme pemakzulan Presiden dalam konstitusi negara. Setelah amandemen, masalah pemakzulan diadopsi dalam Pasal 7A dan 7B UUD 1945. Pasal 7A membatasi alasan pemakzulan, sedangkan Pasal 7B mempersulit pemakzulan dengan kehadiran lembaga peradilan. Dalam perspektif *fiqh siyāsah*, pemakzulan kepala negara dapat dilakukan sepanjang memenuhi kriteria dan alasan yang telah ditentukan syara'.

Kata kunci: *fiqh siyāsah*, pemakzulan Presiden, UUD 1945

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Introduction

Law and State become one unit. Law is not a decision of individual state leaders but rather a system that provides binding rules or orders and determines the limits of state administrators' activities. The principle of a rule of law in a country is termed the rule of law. In a country, these provisions serve as an implementation to carry out the concept of Rechtsstaat or the rule of law. In Indonesia, the law serves as a blueprint for the life of the nation and State. It also functions as a legal umbrella in ensuring the realization of the five precepts of Pancasila, namely helping to achieve social justice for all Indonesian people.¹

The process of the third amendment to the 1945 Constitution in its development has brought about many changes, especially in the provisions of the 1945 Constitution Articles 7a and 7 b, which explicitly regulate the dismissal of the President and/or Vice President by the People's Consultative Assembly (MPR), at the suggestion of the House of Representatives (DPR) including mentioning several reasons for implementing impeachment.

The regulation also states that in the impeachment process, the President and/or vice-president of the Constitutional Court must be involved as a judicial institution in exercising judicial power other than the Supreme Court. So that the legislature does not only carry out the impeachment process, the dismissal of the President and/or Vice President must be based on valid legal reasons and not only on political reasons, which have multiple interpretations, as has happened in previous impeachment cases.² Based on these provisions, the People's Consultative Assembly (MPR) can dismiss the President and Vice President from their term of office at the suggestion of the House of Representatives (DPR) when the President and Vice President are proven to have violated the law.

¹ Aziza Aziz Rahmaningsih and Retanisa Rizqi, 'Agama dan Moral dalam Pembentukan Substansi dan Struktur Hukum', *As-Siyasi : Journal of Constitutional Law*, 2.2 (2022): 153–72 <<https://doi.org/10.24042/as-siyasi.v2i2.13884>>.

² Laurensius Arliman S, 'Pemakzulan Presiden dan Wakil Presiden di Indonesia', *Justitia et Pax*, 34.1 (2018). <https://doi.org/10.24002/jep.v34i1.1652>.

In the perspective of Islamic Political Science and State Administration (*fiqh siyâsa*), the practice of impeachment is the right of the Shura Council (deliberation as a form of correction to the head of State in fulfilling his responsibilities as a government. This correction is indeed the right of the Shura Council to address irregularities committed by heads of State who referred to as *mu'aradha* rights.³ Imam al-Mawardi explains, in his book entitled *al-Abkâm al-Sulthâniyya Wal Wilâya al-Dîniyya*, that state leaders who have disabilities, or physically weak, being unfair, or have indications of wrongdoing and disgraceful actions, or are unable to carry out the mandate properly, must be removed from his position.

The topic of impeachment of heads of State has attracted the attention of many scientists and researchers to examine it from various perspectives. As far as what the author has been able to trace, many scientific works that examine the issue of dismissing the President and/or Vice President have been written and published. Among them are the writings of Zainal Arifin⁴ and I Gusti Ngurah Santika,⁵ which discuss the issue of dismissing the President and Vice President as stipulated in the 1945 Constitution of the Republic of Indonesia after the amendment through a juridical study. In addition, some researchers compare the impeachment mechanism of presidents in several world countries, such as Indonesia, Italy, the Philippines, and the United States, as written by Muhammad Zulhidayat,⁶ Hotma P. Sibuea,⁷

³ Abdul Majid, 'Mekanisme Impeachment Menurut Hukum Tata Negara dan Fiqh Siyasah', *Al-Mazahib: Jurnal Perbandingan Hukum*, 1.2 (2012) <<https://doi.org/10.14421/al-mazaahib.v1i2.1359>>.

⁴ Zainal Arifin, 'Analisis Yuridis Mekanisme Pemakzulan Presiden dan Wakil Presiden Menurut UUD Negara Republik Indonesia Tahun 1945 (Setelah Perubahan)', *Jurnal Hukum*, 36.1 (2020): 46–58 <<https://doi.org/10.26532/jh.v36i1.11201>>.

⁵ I. Gusti Ngurah Santika, 'Presidensialisme dan Problematika Mekanisme Impeachment Presiden dan/atau Wakil Presiden Berdasarkan UUD 1945 Pasca Perubahan (Perspektif Pergulatan Hukum dan Politik)', *Jurnal Ilmiah Ilmu Sosial*, 5.1 (2019): 23–34 <<https://doi.org/10.23887/jiis.v5i1.18777>>.

⁶ Muhammad Zulhidayat, 'Perbandingan Konstitusional: Pengaturan Impeachment di Indonesia dan Italia', *JHR (Jurnal Hukum Replik)*, 7.1 (2020): 1–18 <<https://doi.org/10.31000/jhr.v7i1.2543>>. See also Sulistiani, Anggun, 'Impeachment President (Studi Perbandingan Ketatanegaraan Indonesia dan Ketatanegaraan Islam,' *Jurnal al-Dustur*, 1.1 (2019) <<https://jurnal.iain-bone.ac.id/index.php/aldustur/article/view/348>>.

⁷ Hotma P. Sibuea, Asmak Ul Hosnah, and Dwi Seno Wijanarko, 'Jurnal Internasional Bereputasi Terindex Scopus Q2 Dengan Judul "The Comparisons of Indonesian and Philippine Impeachment Models in the Presidential Government System"', *Journal of Legal, Ethical and Regulatory*, 25.2 (2022): 1–10.

Hanif Fuddin,⁸ and Catur Alfath Satriya.⁹ Moreover, there are papers discussing the impeachment of regional-level government heads, such as those written by Yoga Partamayasa and Satrio Alif Febriyanto, which explain the mechanisms and regulations used to dismiss the Regent/Mayor by presenting one example, namely the dismissal of the Jember Regent. Apart from that, there is also research on the role of the Constitutional Court in the impeachment mechanism of the President, as written by Hezron Sabar Rotua Tinambunan¹⁰ and Muhammad Rezky Pahlawan MP.¹¹ This research explains that submitting a Judicial Review of the impeachment decisions of regional heads to the Supreme Court (MA) will strengthen the legality of impeachment by the DPR as mandated in the Local Government Law.

Unlike the studies above, this study focuses on the issue of dismissing the President and/or Vice President in the Indonesian context through the perspective of Islamic political law and constitutionalism. The main objective is to find the actual relevance of political and constitutional dynamics with the existing concepts in the study of Islamic constitutional law.

Research Methods

This type of research is normative legal research or doctrinal legal research.¹² The approach applied in this study is a combination of normative, juridical, and historical approaches. The normative approach was used to analyze the legitimacy aspect of Islamic law; the material was taken from several reference books, including the books *al-Ahkâm*

⁸ Hanif Fudin, 'Legal Justice in Presidential Impeachment Practice between Indonesia and the United States of America', *Jurnal Hukum dan Peradilan*, 9.3 (2021): 465–504 <<https://doi.org/10.25216/jhp.9.3.2020.465-504>>.

⁹ Catur Alfath Satriya, 'Karakteristik Pemakzulan Presiden di Indonesia', *Jurnal Konstitusi*, 19.3 (2022): 528–53 <<https://doi.org/10.31078/jk1932>>.

¹⁰ Hezron Sabar Rotua Tinambunan, 'Reconstruction the Authority of Constitutional Court on Impeachment Process of President and/or Vice President In Indonesian Constitutional System', *Jurnal Dinamika Hukum*, 16.1 (2016): 71–78 <<https://doi.org/10.20884/1.jdh.2016.16.1.519>>.

¹¹ H. Muhamad Rezky Pahlawan MP. "The Constitutional Court Function of the Indonesian State Concerning System for the Implementation Impeachment of the President and/or Vice President." *Jurnal Hukum Volkgeist*, 4.2 (2020): 118-127.

¹² Efendi Jonaedi., Johny Ibrahim. *Metode Penelitian Hukum Normatif dan Empiris*. (Depok: Kencana, 2018), p. 56.

al-Sulthâniya and *al-Siyâsa al-Shar'iyâ*. Meanwhile, the juridical approach was used to find out regulations or other provisions relevant to the President's dismissal both according to the Indonesian constitutional system and in the *siyasa fiqh* review. Then the historical approach is to examine the background/history of the development of procedures for dismissing heads of State.

The data sources used in this study are secondary data sources which are divided into three parts, namely primary legal materials (1945 Constitution, Law No. 8 of 2011, PMK No. 21 of 2009, Law No. 20 of 2001, Law No. 42 of 2008, Law No. 27 of 2009), then secondary legal materials which provide a more detailed explanation of the primary legal materials such as Bills, Theses, dissertations, *fiqh siyasa* books, scientific journals, including legal dictionaries and encyclopedias which are legal materials tertiary. The data is then processed and analyzed using a descriptive qualitative analysis technique to interpret the data through a review of *fiqh siyâsa*.

The Case of Presidential Impeachment in the Indonesian Constitutional System

1. Impeachment of President Soekarno

The G30S/PKI incident, followed by political upheaval in 1965, prompted the people to dismiss Sukarno from his post as President for life. Accusations against Soekarno as the leading actor in the bloody G30S/PKI tragedy gave rise to various kinds of people's demands known as the Three Demands of the People (*Tritura*), which consisted of: Disband the PKI, Sterilize the Dwikora Cabinet, and lower food prices. The people's protest movement, which became more widespread, coupled with the increasingly laborious economic situation, weakened the regime's position. Finally, to maintain the stability of the government, Soekarno issued a March 11 Order (*SUPERSEMAR*) to Lieutenant General Suharto to restore conditions and state security.¹³

¹³ Saharuddin Daming, 'Legitimasi Pemakzulan dalam Perspektif Hukum dan Politik', *Jurnal Yustisi*, 2.2 (2015): 33.

Armed with the warrant, General Suharto made steps to meet all the people's demands. His various decisions and steps received a lot of support from various groups, such as students, ABRI, and political leaders.¹⁴ To obtain clarity on several issues concerning the community at that time, the MPRS then asked the President to deliver his political speech before the Assembly as a form of explanation and accountability for many issues that developed in society. The President then fulfilled this request by delivering a speech entitled *Nawaaksara* at the 4th session of the MPRS on June 22, 1965.

Unfortunately, the speech did not meet the people's expectations because it did not explain why the economic situation was worsening, including an explanation of the role of the PKI in the kidnapping incident. And the killing of 7 Generals on September 30, 1965. These two things were the main points of explanation that all Indonesian people wanted to hear. Therefore, the MPRS then asked Sukarno to include the answers to these two issues in the epilogue as the completeness of his accountability speech.¹⁵ To fulfill this request, Sukarno made a *Nawaksara Completion Letter*, which he read on January 10, 1967. The letter contained a general account of the report's progress in implementing the Outline of State Policy. Apart from that, through this letter, Soekarno refused to carry out branch accountability because the 1945 Constitution did not contain related provisions.

This rejection eventually led to a DPR-GR Resolution and Memorandum containing a proposal to hold an MPRS Special Session issued on February 9, 1967. In the middle of the Special Session, Soekarno made a controversial decision by handing over government power to Suharto. His actions only added to the reasons for Soekarno's impeachment as President. So officially at the MPRS session, Soekarno was dismissed from his position on March 12, 1967, and at the same time, Suharto was appointed as a substitute President with a term of

¹⁴ Hamdan Zoelva, *Pemakzulan Presiden di Indonesia* (Jakarta: Sinar Grafika, 2018), p. 87.

¹⁵ Article 1 of MPRS' Decree No. V/MPRS/1996 Concerning the Response of the Indonesian MPRS to the Speech of the President/Mandatarist of the MPRS in front of the IV General Session of the MPRS on June 22, 1996 entitled *Nawaksara*.

office until carried out at the same time Suharto was appointed as a substitute President with a term of office until the holding of the next presidential election. So, the Special Session became the moment to impeach President Soeharto as the MPRS mandate and, simultaneously, the basis for carrying out general elections following Article 3. MPRS' Decree No. XV/MPRS/1996.

2. Impeachment of President Abdurrahman Wahid

The case of misuse of the finances of the Bulog Employee Welfare Foundation or (Bullogate) and aid funds from the Sultan of Brunei (Bruneigate), as well as the case of the appointment of the Head of the National Police, have caused polemics in the mass media and quickly undermined Abdurrahman Wahid's position as President at that time. This polemic prompted a total of 236 members of the DPR to suggest that the DPR form a Special Committee to examine the case.¹⁶ This suggestion was subsequently agreed upon at a Plenary Meeting on August 28, 2000, which gave birth to a Special Committee on December 5, 2000. The investigation results showed that President Abdurrahman Wahid was involved in the transfer process to the use of funds at Bullogate and Bruneigate, as well as providing information/information to the public that was not followed with facts.¹⁷

The results of the Special Committee's investigation became the basis for the issuance of Memorandum I, which was approved by the DPR on February 1, 2001, and addressed to President Abdurrahman Wahid. The President, however, did not respond well to this Memorandum because he saw that the procedure for issuing the Memorandum was not following the Constitution. Because of this, at the Plenary Meeting on April 30, 2001, the DPR issued Memorandum II, which was sent directly to the President the following day, May 1, 2001. This Memorandum II was issued because the DPR did not see any goodwill/improvement in behavior

¹⁶ Hamdan Zoelva, *Impeachment Presiden: Alasan Tindak Pidana Pemberhentian Presiden Menurut UUD 1945* (Jakarta: Konstitusi Pers, 2014), p. 89.

¹⁷ Report of the Special Committee for the DPR of Republic of Indonesia to Schedule an Investigation into the *Bullogate* and *Bruneigate* Cases to President Abdurrahman Wahid.

from the President for his actions which were seen as having violated the oath of office and deviating from the implementation of the State Policy. Unfortunately, this Memorandum II was also not accepted by President Abdurrahman Wahid. Because of this, the DPR then scheduled a Special Session on 1-7 August 2001. Sometime before the Special Session, President Abdurrahman Wahid made a policy that violated the Constitution, namely appointing the National Police Chief without the knowledge of the DPR and the approval of the MPR. This policy encouraged the legislature to accelerate the holding of the MPR Special Session, initially scheduled for August to July 2001, to be precise, on 21-23. This Special Session then became the momentum for the dismissal of President Abdurrahman Wahid from his duties as President, which was carried out by the MPR through a voting mechanism and gained the support of as many as 291 MPR members.

Procedures for Impeachment of the President and/or Vice President in Indonesian Laws and Regulations

The MPR is the institution whose job is to actualize people's sovereignty and be the final institution in deciding cases of impeachment of the President and/or Vice President from their positions in the event of an unlawful act.¹⁸ Following the provisions of Article 7 of the post-amendment 1945 Constitution, impeachment of the President can be processed for two reasons: impeachment for unlawful acts and impeachment for conditions the President and/or Vice President have not fulfilled. According to these provisions, the President and/or Vice President can be impeached if they are proven to have committed unlawful acts such as treason against the State, committed corruption, or committed other serious crimes or acts that demean or are proven to no longer meet the requirements to serve as President or Vice President.

The MPR can dismiss the President and/or Vice President from office on the recommendation of the DPR.¹⁹ The DPR has the right to

¹⁸ Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia before the amendment.

¹⁹ *Ibid*

submit recommendations to the MPR as a realization of one of the DPR's duties in the field of supervision.²⁰ Several DPR rights are related to this oversight function, including the right of interpellation and the right of inquiry. This procedure allows this institution to investigate government policies suspected of contradicting existing laws and regulations and harming the nation, State, and people.²¹

The recommendations, as stated above, include the views/opinions of the DPR that the President and/or Vice President have committed treason or been involved in acts of corruption, bribery, criminal acts, serious acts, or other disgraceful acts that violate the law, or that the President and/or Vice President no longer comply with the demands of the President and/or Vice President.²² The recommendation must be decided at a plenary session of the DPR, with the support of at least 2/3 of the total number of DPR members present at a plenary session attended by at least 2/3 of the total number of DPR members.²³

Recommendations that have obtained the approval of the members are then submitted to the Constitutional Court (MK) for examination and trial to decide whether the President/Vice President committed the allegation of a violation of the law or that the President and/or Vice President no longer fulfill the requirements as President and/or The Vice President is based on valid and convincing facts.²⁴ The written request submitted by the DPR describes the alleged violation of law committed by the President and/or Vice President, accompanied by decisions, decision-making processes, and minutes of DPR meetings with evidence of allegations related to violations.²⁵ If the submitted application meets the requirements, the proposal will be recorded in the BRPK, and a copy will be sent to the President within 7 days. The opinion of the DPR must be determined within 14 days of registration for the

²⁰ Article 7 b paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

²¹ Article 20 a paragraph of the 1945 Constitution of the Republic of Indonesia.

²² *Ibid*

²³ Article 7 b paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

²⁴ Article 7 b paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

²⁵ Article 80 of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the MK.

first session, and this must have been informed to the applicant, the respondent, and the public.

Furthermore, the Constitutional Court (MK) reviews, hears and makes the fairest possible decision on the opinion of the DPR within ninety days after the MK receives the DPR's request.²⁶ In giving a decision on the impeachment case, the Constitutional Court is guided by Law No. 7 of 2020 concerning the third amendment to Law No. 24 of 2004 concerning the Constitutional Court and MK Regulation No. 21 of 2009 concerning proceedings in deciding the DPR's opinion regarding alleged violations by the President and/or Vice President.

Based on Article 84 of Law no. 24 of 2003, the latest amendment to Law no. 7 of 2020, the Constitutional Court has 90 days to determine the alleged violation starting from the date the application was recorded in the BRPK.²⁷ As long as the Constitutional Court conducts a review at the request of the DPR, the party suspected of committing a crime, namely the President, must appear before the Constitutional Court and provide oral or written statements. The President can be accompanied or represented by his attorney.²⁸

Articles 37 and 38 mandate the MK to evaluate the evidence submitted and bring expert witnesses to the MK to present additional relevant information. This authority gives freedom to the Constitutional Court to stipulate additional procedural law to refine the rules for the smooth implementation of its duties and authorities related to reviewing the DPR's impeachment proposal. The review process carried out by the Constitutional Court in examining, adjudicating, and deciding on the opinion of the DPR is a judicial process that is not only limited to examining documents but can also carry out judicial reviews in criminal cases at the Criminal Court.²⁹ The position of the President at this stage

²⁶ Article 7 b paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

²⁷ Arliman S, 'Pemakzulan Presiden dan/atau Wakil Presiden di Indonesia', *Justitia Et Pax*, 34.1 (2018): 10.

²⁸ Articles 41, 43. Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (MK).

²⁹ Articles 37, 38 of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the MK.

is not as a defendant but as a party with the same status as the DPR as a full-fledged party. Thus, the Constitutional Court can try these cases objectively and in-depth to protect the Constitutional Court from various political interests and opinions.³⁰

The Constitutional Court can reject a case if it does not meet the formal requirements of Article 80 of the Constitutional Court Law. The Constitutional Court's decision can also determine that the President and/or Vice President have not been proven to have violated the law and simultaneously show that the President and/or Vice President are innocent.

If the Constitutional Court decides that the President and/or Vice President are proven to have committed treason, corruption, bribery, or other serious crimes or acts that are not commendable and/or do not meet the requirements as President and/or Vice President, the DPR will hold a plenary session to continue the opinion/ the allegation that the Constitutional Court has confirmed to the MPR through a motion to dismiss the President and/or Vice President.³¹ Furthermore, the MPR meets within 30 days to decide on the DPR's proposal starting from the acceptance of the proposal.³² The recommendation to impeach the President from the DPR must be made a decision by the MPR through a plenary session attended by at least 2/3 of the members and approved by at least 2/3 of the members present after the President or Vice President has had the opportunity to explain it at the MPR plenary meeting.³³

The MPR's decision, in this case, is *Res Judicata* (cannot be canceled by the court and cannot be appealed) because the MPR, as a people's representative institution, has the position as the highest policy maker in the final stages of an impeachment case. This position illustrates a legal adage of *salus populi suprema lex* that the highest law is the people's voice.

³⁰ Hamdan Zoelva, *Impeachment Presiden Alasan Tindak Pidana dalam Memberhentikan Presiden Menurut UUD 1945*.

³¹ Article 7 b paragraph (5) of the 1945 Constitution of the Republic of Indonesia.

³² Article 7 b paragraph (6) of the 1945 Constitution of the Republic of Indonesia.

³³ Article 7 b paragraph (7) of the 1945 Constitution of the Republic of Indonesia.

In addition to regulating the impeachment mechanism for heads of State, the Indonesian government system also regulates the impeachment of regional heads. In the impeachment of regional heads, the competent judicial institution is the Supreme Court, as stipulated in Article 80 of Law No. 23 of 2014.³⁴ According to this provision, the legal requirements for impeaching a regional head, apart from fulfilling the AUPB (general principles of good governance), must also comply with the applicable laws and regulations. In the impeachment of regional heads, the legal basis that serves as a guideline is Law No. 17 of 2014 concerning the MPR, DPR, and DPRD at the district/city level. The mechanism for proposing the impeachment of regional heads is through the right of inquiry, namely the right to conduct investigations into district/city government policies suspected of contravening statutory provisions.

PP No. 12 of 2018 concerning Guidelines for the Preparation of Provincial, Regional, and City DPRD Rules regulates the procedural mechanism for the right of DPRD members to express their opinion. After the DPRD expresses its opinion regarding the impeachment of the regent/mayor, to obtain legal force, this opinion must involve the Supreme Court as a judicial institution that will make a decision. This procedure is as stipulated in Article 80 Paragraph 1 Letter c of Law Number 23 of 2014 concerning Regional Government which states that the Supreme Court examines, tries, and decides on the DPRD's opinion no later than 30 days after receiving the DPRD's request by the Supreme Court with a final decision. Suppose impeachment has received a final decision from the Supreme Court. In that case, the proposal for impeachment is continued to the Minister of Home Affairs, who will then issue a decree dismissing the Regent/Mayor.³⁵ The existence of a regulation regarding the impeachment of regional heads in the Indonesian government system indicates that impeachment is not only limited to the President and Vice President but can also apply to leaders at the regional level.

³⁴ Satrio Febriyanto, 'Menguji Legalitas Pemakzulan Bupati Jember', *Al-'Adalah Jurnal Syariah Dan Hukum Islam*, 7 (2022): 1–29 <<https://doi.org/10.35673/al-bayyinah.v4i2.1830>>.

³⁵ Satrio Febriyanto, 'Menguji Legalitas Pemakzulan Bupati Jember', *Al-'Adalah Jurnal Syariah Dan Hukum Islam*, 7 (2022): 1–29

The Practice of Impeachment in the Indonesian State Administration System in Fiqh the Siyasa's Perspective

The practice of dismissing government officials before the end of their term of office has occurred in Islamic history, especially during the Khulafa Rashidun era. Although the practice of impeachment of the Head of State (Caliph) has never occurred throughout Islamic history,³⁶ the practice of impeachment of officials did occur during the Khulafa Rasyidun period, as happened to Rashid Billah, Sa'ad bin Abi Waqas ra, and al-Walid bin Uqbah. Unfortunately, even though history has recorded the practice of impeachment, the classical jurists did not examine the event in depth to produce a conceptual structure. Even though the discussion is meaningful, it can be used as a reference to explain how the practice of impeachment was carried out and the conditions, including who has the authority to do so.³⁷

Al-Mawardi, in his book *al-Ahkâm al-Sulthâniya*, mentions two things that can be used as reasons to remove the President/head of State from his post. Those two things are: first, deliberately deviating from the provisions of the Qur'anic texts. Second, acting in an untrustworthy manner and neglecting their obligations as state leaders.³⁸ According to Abdul Rashid Moten, the institutions that have the authority to carry out the impeachment are the highest state institutions, such as the *Diwân al-Madhâlim* or *Diwân Imâmah*, or the Shura Council/*Ahlul Halli Wal Aqdi*. The role and function of this institution are more or less the same as the MPR in the Indonesian context.

Furthermore, by referring to the opinions of the Mu'tazilah, Khawârij, and Murji'ah scholars, al-Mawardi presented three ways to dismiss disobedient rulers: taking up arms, carrying out civil disobedience, and setting the term of office for the head of State.³⁹ This last method is

³⁶ Except for what happened to the last Ottoman Caliph, Abdul Mejid II, who was overthrown by Mustafa Kemal, which marked the end of the caliphate era in Islam.

³⁷ Djazuli, *Fiqh Siyasa Implementasi Kemaslahatan Umat dalam Rambu-Rambu Syariah*, 7th edn (Jakarta: Prenada Media Group, 2018), p. 55.

³⁸ Djazuli, *Fiqh Siyasa Implementasi Kemaslahatan Umat...*, p. 55.

³⁹ Imam al-Mawardi, *al-Ahkâm al-Sulthâniyah (Sistem Pemerintahan Khilafah Islam)* (Jakarta: Qisthi Press, 2014), p. 34.

effective for terminating the position of Head of State without causing political turmoil and being the basis for electing a new leader. The policy of limiting the tenure of leaders, as stated by al-Mawardi, is in line with what is regulated in the Indonesian state administration system. The difference lies only in the number of years, which al-Mawardi did not state explicitly and in detail. Al-Mawardi only explained what aspects could be used as reasons to dismiss the Head of State from his position as state leader.

As quoted by Diauddin Rais, Ibn Khaldun defines the word bai'at as a bond of agreement between a person who has pledged allegiance (the people) and the party who has been sworn in (the head of State). According to al-Baqillani, the bai'at between the people and the leader cannot be decided by the people because the bai'at spoken is binding on both parties. This opinion about bai'at received support from later jurists such as Sa'id bin Jubair, al-Sya'ibi, and Ibn Abi Laila. They believe that the contract arising from the bai'at between the head of State and the people cannot be quickly terminated unless there is a solid and valid reason, following the principles of Shara'.

Some of the points of thought put forward by the classical scholars above can be related to the impeachment practice that occurred with President Soekarno and President Abdurrahman Wahid. The MPR's decision to dismiss Soekarno and Abdurrahman Wahid from their positions as President was a decision that was in line with the opinions of the jurists because they had violated the oath of office as stipulated in the 1945 constitution. This reason has relevance to several reasons that al-Mawardi has put forward. In *Siyâsa's* view, Soekarno and Abdurrahman Wahid had not fulfilled their duties and responsibilities as state leaders. Soekarno released his responsibility for the G30S/PKI tragedy, while Abdurrahman Wahid avoided responsibility by not attending the MPR Special Session. Abdurrahman Wahid's actions at that time violated the provisions of the Constitution because his position was only as MPR Mandatarist.

Still, in *Siyâsa's* perspective, the MPR has the same position and function as the Shuro Council or *Ahlul Halli Wal Aqdi*. This institution

functions and has a position as a representative of all community members who have pledged allegiance to their leaders to comply with their policies as long as they do not leave the Shara' corridor. Soekarno's impeachment, which the MPRS determined on March 12, 1967, and Abdurrahman Wahid on July 2001, in *Siyâsa's* perspective, has relevance to al-Mawardi's thought that the Head of State who has committed wickedness can be dismissed from office. In the previous special sessions held to impeach the President, the main reason was that the President did not show an excellent effort to evaluate himself for his actions that violated his promise/oath of office and the State Policy Guidelines (GBHN).

Conclusion

In the history of Indonesian state administration, the practice of impeaching the President has occurred twice, namely the impeachment of President Soekarno and President Abdurrahman Wahid. The impeachment process took place without the support of explicit constitutional provisions because the incident occurred before the amendment. After the amendment, Indonesia has detailed and clear rules regarding this impeachment mechanism, starting from what things can be used as reasons for requesting impeachment, what legal procedures must be followed, how to test the recommendations submitted by the DPR so that they are valid and free from political elements, including which state institutions must be involved in the impeachment process, as a realization of checks and balances principle, and which institution has the authority to make the final decision in the impeachment process.

The impeachment mechanism, as stated above, generally does not differ in principle from the points of view of the classical scholars, as can be found in the *fiqh siyâsa* literature. Whereas even though *fiqh siyâsa* does not contain a detailed description of the impeachment mechanism, the main principles that must be used as the primary basis for carrying out the impeachment of leaders are the principles of justice and deliberation.

Author Contributions

The first author is tasked with collecting literature, designing research, collecting and presenting, and analyzing data. The second author designed the research design, coordinated library data collection, and provided solutions to problems. The third author edits the research results of scientific articles and concludes.

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