

## The Dynamics of the Presidential Impeachment: A Comparative Study Between Indonesia and South Korea

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**Abstrak:** Presidential impeachment is a constitutional mechanism that functions as an instrument of supervision against the abuse of executive power in the presidential system. Although it is expressly regulated in the constitution, its application often faces complex legal and political dynamics. This study aims to analyze the concept and dynamics of presidential impeachment in general, as well as compare its regulation and application in Indonesia and South Korea. The formulation of the problem includes: (1) how the concept and dynamics of presidential impeachment in the presidential system in general; and (2) how to compare the implementation of the presidential impeachment mechanism in the two countries, including legal issues in the form of vagueness of norms that affect legal certainty and legitimacy of the constitutional process. The research method used is normative juridical with a legislative, conceptual, and comparative approach, through the study of constitutional documents, laws, decisions of constitutional institutions, and related academic literature. The results show that both countries have an impeachment mechanism as a constitutional control, but South Korea has more judicial procedures and clearer norms, while Indonesia still faces the potential for politicization due to the ambiguity of norms. In conclusion, strengthening constitutional judicial institutions and clarity of legal norms is needed to increase the legitimacy and effectiveness of the impeachment mechanism in Indonesia.

**Keywords:** Presidential impeachment; legal comparison; Indonesia; South Korea

### INTRODUCTION

Impeachment is one of the important instruments in the modern constitutional system, especially in the presidential system of government. In this system, the president holds executive power independently, separate from the legislature. However, the separation of powers does not mean that the president is immune to oversight. In fact, the impeachment mechanism exists as a concrete form of the principle of *checks and balances*, which ensures that every state power administrator, including the president, remains subject to the law and the constitution.<sup>1</sup> This mechanism serves to prevent abuse of authority that has the

potential to damage the joints of democracy and fair governance. Conceptually, impeachment is a form of political and legal accountability for alleged violations of the constitution, laws, or norms of state ethics.<sup>2</sup> In *Philipus M. Hadjon's* view, the main principle in the rule of law is that there is *legal control* over the actions of every public official, including the president, to ensure that power is exercised in accordance with the law and not arbitrarily.<sup>3</sup> Thus, impeachment is not just a political process, but also a manifestation of the principle of the rule of law. In this context, the impeachment mechanism is one of the main pillars for the

<sup>1</sup> Dairani, D., & Fadlail, A. (2025). Desain Ideal Amandemen UUD 1945: Antara Pembatasan Masa Jabatan dan Penguatan Sistem Presidensial. *Jurnal Kajian Konstitusi*, 5(1), 129-154.

<sup>2</sup> Sihombing, D. N. (2025). Pemakzulan Dalam Demokrasi Presidensial Indonesia: Antara

Legalitas Konstitusional dan Legitimasi Politik. *JURNAL NAWALA POLITIKA*, 3(1), 35-56.

<sup>3</sup> Ismoyo, J. D., Apriyanto, A., Harryanti, T., & Judijanto, L. (2025). *Teori Negara Hukum Modern*. PT. Sonpedia Publishing Indonesia, hlm. 23

sustainability of a healthy and accountable presidential system.

Impeachment also reflects a balance between the political legitimacy of a president who is directly elected by the people and the moral and legal obligation to account for his actions. In modern democracies, political legitimacy does not give absolute power to public office holders. As stated by Jimly Asshiddiqie, power in a democratic country must always be limited and supervised so that it does not transform into absolute power.<sup>4</sup> Impeachment, thus, serves as a corrective mechanism that guarantees that the president remains within the corridor of law and the constitution. This mechanism emphasizes that public office is not an inviolable prerogative, but a mandate that must be accounted for to the people and the constitution. In constitutional practice, impeachment is a test for the maturity of a country's political and legal system. A country that adheres to the principles of constitutional democracy will ensure that the impeachment mechanism is not abused for political purposes alone, but is carried out objectively and based on the law. A clear and measurable impeachment procedure is an important indicator of government stability. In this case, the role of the legislative and judicial institutions is very decisive in maintaining the balance of power.

The impeachment of the president in Indonesia is a constitutional mechanism that is expressly regulated in Articles 7A and 7B of the 1945 Constitution of the Republic of Indonesia. The article emphasizes that "the president and/or vice president can be dismissed during his term of office by the People's Consultative Assembly (MPR) if proven to have committed a violation of the law in the form of treason against the state, corruption, bribery, other serious crimes, or reprehensible acts, or if it is

proven that they are no longer qualified as president and/or vice president". This formulation shows that impeachment is not a purely political process, but a legal mechanism that has a strong juridical basis and clear procedures in maintaining the balance of power between state institutions. The impeachment procedure in Indonesia reflects the real implementation of *the principle of checks and balances* between the legislative, judicial, and highest institutions of the state.<sup>5</sup> Based on Article 7B of the 1945 Constitution, the impeachment process begins with the House of Representatives (DPR) which has the authority to submit a proposal for the dismissal of the president to the MPR. However, before the proposal is decided, the House of Representatives must first submit a request to the Constitutional Court (MK) to examine and decide its opinion regarding alleged violations of the law or presidential unworthiness. The Constitutional Court's decision was then used as a basis for the MPR in determining the final decision, whether the president would be dismissed or remain in office. This mechanism shows that there is a proportional division of functions between political power and legal power in order to maintain government stability.

Historically, Indonesia has experienced one important event related to the impeachment of the president, namely the dismissal of President Abdurrahman Wahid (Gus Dur) in 2001.<sup>6</sup> Although at that time the impeachment mechanism had not been regulated in detail like after the amendment of the 1945 Constitution, the event became an important momentum in the journey of Indonesia's constitution. The impeachment of Gus Dur was carried out by the MPR through a Special Session after a crisis of political trust between the president and the House of Representatives. In the context of constitutional law theory, the impeachment

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<sup>4</sup> Alfauzi, R. I., & Effendi, O. (2020). Pembatasan kekuasaan berdasarkan paham konstitusionalisme di negara demokrasi. *Politica: Jurnal Hukum Tata Negara Dan Politik Islam*, 7(2), 111-133.

<sup>5</sup> Pulungan, R. A. R., & ALW, L. T. (2022). Mekanisme Pelaksanaan Prinsip Checks And Balances Antara Lembaga Legislatif Dan Eksekutif

Dalam Pembentukan Undang-Undang Dalam Sistem Ketatanegaraan Indonesia. *Jurnal Pembangunan Hukum Indonesia*, 4(2), 280-293.

<sup>6</sup> Maulana, M. N. (2023). Membaca Sejarah Membaca Sejarah Konstitusi Indonesia Era Reformasi (studi pemakzulan Presiden Abdurrahman Wahid): Konstitusional Pemakzulan Presiden. *Sanskara Hukum dan HAM*, 1(03), 67-75.

mechanism in Indonesia reflects efforts to maintain a balance between government stability and power accountability. The President as the head of state and head of government has direct legitimacy from the people, so he cannot be dismissed without a strong legal basis. However, when the president violates the law or the constitution, the impeachment mechanism becomes a constitutional avenue to ensure that power is not abused. As Prof. Jimly Asshiddiqie expressed, "impeachment is a concrete form of constitutional accountability that is not only political, but also legal."<sup>7</sup>

Meanwhile, in South Korea, impeachment is regulated in Article 65 of the Constitution of the Republic of Korea, which states that the president can be impeached if he violates the law or the constitution. The impeachment mechanism in the country also shows a balance between the branches of power of the state. The process begins with the National Assembly as the proposer of impeachment, and the final decision is determined by the Constitutional Court of Korea.<sup>8</sup> If two-thirds of the assembly approves impeachment, then the president will be suspended from office pending the Constitutional Court's final decision. This model emphasizes the importance of the rule of law and the independence of the judiciary in maintaining the integrity of the constitutional process. One of the most prominent examples of the application of this mechanism was the impeachment case of President Park Geun-hye in 2017. He was impeached for being involved in a corruption and abuse of power scandal that tarnished the image of the presidential institution. The process is a powerful symbol of the enforcement of *the principle of the rule of*

*law* in South Korea, where even the head of state is not immune from the law.<sup>9</sup>

Although the constitutions of both countries have explicitly regulated the basis and procedure for impeachment, the problem arises at the level of interpretation of the norms that are the basis for the dismissal of the president. In Indonesia, phrases such as "unlawful" and "no longer qualified as president" in Article 7A of the 1945 Constitution create ambiguity because the limits or juridical criteria are not explained in detail, thus opening up space for political interpretation by the legislature. Meanwhile, in South Korea, a debate has arisen over the extent to which the Constitutional Court can judge the president's actions that are political in nature without exceeding the limits of his authority. The ambiguity of this norm causes legal uncertainty, creates the potential for overlap between legal and political aspects, and opens up space for the use of the impeachment mechanism as a political instrument rather than a means of enforcing the principle of constitutional accountability. Therefore, this is an important thing to study more deeply.

## RESEARCH METHOD

This research uses a normative juridical method, which is a method that focuses on the analysis of positive legal norms contained in laws and regulations, court decisions, and doctrines or views of legal experts.<sup>10</sup> This research applies a legislative, conceptual, and comparative approach, with data collection carried out through library research. The focus of the research is directed at the analysis of the constitutional norms that govern the mechanism for presidential impeachment in Indonesia and South Korea. Through a legislative approach, the research examines the

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<sup>7</sup> Wiyanto, A. (2016). Pemakzulan dan Pelaksanaan Mekanisme Checks and Balances dalam Sistem Ketatanegaraan Indonesia. *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 4(1), 125-151.

<sup>8</sup> Andika, E. R. (2025). Tinjauan Yuridis Kewenangan Mahkamah Konstitusi Dalam Pemberhentian Presiden dan Wakil Presiden di Indonesia Dengan Korea Selatan. *Jurnal Fakta Hukum*, 3(2), 74-83.

<sup>9</sup> Ariani, H. L., Khairunnisa, R. A., Faisal, F. A. A., & Kirana, D. K. (2025). Studi Komparatif Pemakzulan Presiden: Kasus Gus Dur dan Park Geun-hye. *INDEPENDEN: Jurnal Politik Indonesia dan Global*, 6(1), 45-58.

<sup>10</sup> Masidin, S. H. (2023). *Penelitian Hukum Normatif: Analisis Putusan Hakim*. Prenada Media. halaman. 35

legal basis and structure of impeachment norms; through a conceptual approach, exploring theories about *the rule of law*, accountability, and the ambiguity of norms; and through a comparative approach, analyzing differences and similarities in the application of impeachment mechanisms in both countries. Data collection in this study was carried out through literature studies, which included analysis of primary legal materials such as the constitution, laws and regulations, and decisions of the Constitutional Court, secondary legal materials in the form of literature, books, and scientific journals, and tertiary legal materials such as legal dictionaries and encyclopedias, in order to gain a comprehensive understanding of the ambiguity of norms and their implications for legal certainty and the balance of power in the constitutional system.

## RESULT AND DISCUSSION

### *The Concept and Dynamics of Presidential Impeachment in the Presidential System of Government is Reviewed from the Perspective of Constitutional Law and the Principles of Constitutionalism*

Impeachment is one of the fundamental mechanisms in the modern constitutional legal system that functions as a means of control over executive power.<sup>11</sup> In the context of a constitutional democratic country, such a large power of the president must be limited so as not to exceed the limits set by the constitution. Impeachment plays a role in ensuring that the president exercises his authority in accordance with the principle of constitutionalism, which is that government power is limited by the country's basic law. This mechanism is also a tangible manifestation of supervision of the president as the head of state and the head of government who is responsible for all his actions in carrying out government functions.

The etymology of the term *impeachment* comes from the Anglo-Saxon legal tradition, particularly in the British and United States constitutional systems.<sup>12</sup> Historically, the term means "accusing" or "indicting" a public official who is considered to have committed a violation of the law or ethics of office. In the UK, this mechanism was initially used by parliament to prosecute royal officials who abuse power. In its development, modern presidential systems such as those in the United States adopted the concept of impeachment as a legal and political instrument to enforce the accountability of high-ranking state officials, including the president.<sup>13</sup> Thus, impeachment is not just a political process, but also contains legal and moral meaning in maintaining the integrity of the government.

The conceptual meaning of impeachment reflects the principle of *constitutional accountability*, which is the accountability of the president as the head of state to the constitution and the law.<sup>14</sup> The head of state is not only required to have political legitimacy sourced from the people, but also to be constitutionally accountable for his policies. In the event that the president is proven to have violated the law, abused power, or committed a despicable act, then the impeachment mechanism becomes a constitutional way to uphold justice and ensure the rule of law. Impeachment thus has a double dimension: as a tool of law enforcement and as a moral instrument for public officials to uphold the ethics of state administration. Impeachment also serves to keep executive power in the legal corridor and not transform into absolute power. In the presidential system, the president does have a strong position because he is directly elected by the people, but this power is not unlimited. The principle of *checks and balances* is an important basis for the existence of

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<sup>11</sup> Kurniawan, A. (2023). Kedudukan Mahkamah Konstitusi dalam Mekanisme Impeachment: Studi Komparasi Negara Republik Indonesia dan Republik Federal Jerman. *Staatsrecht: Jurnal Hukum Kenegaraan dan Politik Islam*, 3(2), 313-336.

<sup>12</sup> *Ibid*

<sup>13</sup> Sulistiani, A. (2018). Impeachment President (Studi Perbandingan Ketatanegaraan

Indonesia dan Ketatanegaraan Islam. *Jurnal Al-Dustur*, 1(1).

<sup>14</sup> Hakiki, Y. R. (2022). Kontekstualisasi Prinsip Kekuasaan Sebagai Amanah Dalam Pertanggungjawaban Presiden Dan Wakil Presiden Republik Indonesia. *As-Siyasi: Journal of Constitutional Law*, 2(1), 1-20.

impeachment, in which the legislative and judicial institutions act as supervisors of executive actions.<sup>15</sup> The existence of this mechanism shows that the modern legal system rejects the existence of uncontrollable power, and guarantees that any abuse of authority can be legally and politically accountable.

The theoretical basis of impeachment stems from the principle of *supremacy of the constitution*, which affirms that the constitution is the supreme law in a country.<sup>16</sup> In this context, the president as the organizer of executive power is obliged to submit and obey the provisions of the constitution. Impeachment is an instrument of constitutional law to ensure that all actions of public officials, especially heads of state, are in accordance with the spirit and provisions of the constitution. The function of impeachment in the constitutional system is not only limited to the procedure for dismissing the president, but also as a means of maintaining the balance of power between state institutions. Impeachment reflects the interaction between the legislative, judicial, and executive branches of power within the framework of *checks and balances*. The legislative institution has the function of supervision and proposal, the judiciary plays a legal assessment role, while the highest institution of the state determines the final decision.

The position of impeachment in constitutional law also reflects that the position of president is not a position that is immune from the law. All state officials, including the president, have constitutional responsibility for their actions. This principle is in line with the view of Jimly Asshiddiqie who affirms that in a state of law, there is no absolute power and all actions of public officials must be legally accountable.<sup>17</sup> The legal dimension in impeachment emphasizes that this mechanism is not solely politically nuanced, but also an application of the *principle of the rule of law* in the context of the state. Impeachment is carried

out based on valid legal evidence, strict constitutional procedures, and objective principles of justice. The existence of constitutional judicial institutions such as the Constitutional Court in Indonesia or the Constitutional Court in South Korea is a guarantee so that the impeachment process does not turn into a political tool, but remains in the legal corridor. This separation is important so that the principle of substantive justice can be upheld without the intervention of political power.

Impeachment in the presidential system is a legal and political mechanism designed to ensure that the president as head of state and head of government does not abuse his power. In its implementation, impeachment has a number of elements that must be met in order for the process to be constitutionally valid, including:

1. Alleged violation of law or constitution

This allegation is usually related to acts that are classified as treason against the state, corruption, bribery, other serious criminal acts, or despicable acts. This element emphasizes that impeachment should not be based on political dislike or policy differences, but rather on a violation of the law that can be objectively proven.

2. The process of legal examination or verification by the competent authority

In the Indonesian context, the institution authorized to check the legal correctness of the accusations against the president is the Constitutional Court (MK). The presence of the Constitutional Court in this process ensures that the accusations against the president are tested based on the principles of justice and legitimate legal evidence, not on political pressure. Examination by this judicial institution is an important part of the system of *checks and balances* so that impeachment does not become a political instrument to bring down opponents.

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<sup>15</sup> Sunarto, S. (2016). Prinsip checks and balances dalam sistem ketatanegaraan indonesia. *Masalah-Masalah Hukum*, 45(2), 157-163.

<sup>16</sup> Syailendra, M. R., Natanael, J., & Kurniawan, M. H. (2024). Peran Konstitusi Dalam

Menjaga Prinsip Demokrasi Dan Supremasi Hukum Di Indonesia. *Multilingual: Journal of Universal Studies*, 4(4), 250-264.

<sup>17</sup> Astomo, P. (2018). Prinsip-Prinsip Negara Hukum Indonesiadalam Uud Nri Tahun 1945. *Jurnal Hukum Unsulbar*, 1(1), 1-12.

3. The decision of the highest political institution or state institution as the final determinant

In Indonesia, the People's Consultative Assembly (MPR) holds the final role in deciding whether or not the president is dismissed based on the results of the Constitutional Court's investigation. This layered mechanism shows the constitutional prudence in regulating impeachment so that the decision has political legitimacy as well as a strong legal basis.<sup>18</sup>

The main purpose of the impeachment mechanism is to maintain the integrity of the presidency. The presidency is the highest symbol of executive power as well as an honorary representation of the country. Therefore, if the president commits a violation that injures the integrity of office, an impeachment mechanism must be carried out to protect the dignity of the presidential institution. This process is not merely a form of punishment, but also a form of protection of constitutional values and public trust in the system of government. Impeachment also aims to protect the constitution from abuse of power. The constitution as a basic law must be guarded from all forms of violations, including by the president who should be the main executor of the constitution. Within the framework of constitutionalism, impeachment serves as a last bastion so that power is not used for purposes contrary to law and public morality.

In the presidential system, the character of impeachment is different from the parliamentary system. In the presidential system, the president can only be dismissed if proven to have committed serious legal violations, while in the parliamentary system, the prime minister can be dismissed through a motion of no confidence mechanism, which is more political in nature.<sup>19</sup> This shows that in the presidential system, the president's position is

stronger because it has the direct legitimacy of the people, while in the parliamentary system, executive power is highly dependent on the support of the parliamentary majority. This difference shows that impeachment in the presidential system has a more dominant legal character than politics. The comparison between these two systems also illustrates that the purpose of impeachment in the presidential system is more oriented towards the enforcement of constitutional principles and the rule of law, while in the parliamentary system, the orientation is more on political dynamics and government stability.

The difference in character between the presidential and parliamentary systems confirms that impeachment cannot be understood singularly as a purely legal or political process. In modern constitutional practice, impeachment actually displays a complex interaction between law and politics. Impeachment has a dual character, namely legal and political.<sup>20</sup> As a legal process, impeachment is subject to constitutional rules that govern the conditions, procedures, and proof of violations. As a political process, impeachment involves the legislature that plays a role in assessing and proposing the dismissal of the president based on political considerations. This duality is what makes impeachment a complex phenomenon in constitutional law, where normative aspects and political interests often interact and even influence each other.

The legal aspects of impeachment can be seen from the constitutional basis and the procedures that govern its implementation. The constitution specifies the criteria for violations that can be used as grounds for impeachment, such as gross violations of the law, treason against the state, or abuse of power. The legal process also includes a mechanism of proof and examination by judicial institutions, such as the Constitutional Court, which is tasked with

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<sup>18</sup> Ayuningtyas, F., Khusnah, A., & Wahyuningtyas, A. (2023). Efektivitas Undang-Undang Dasar Tahun 1945 terhadap mekanisme checks and balances dan pemakzulan presiden atau wakil presiden dalam perspektif hukum tata negara. *Jurnal Penegakan Hukum dan Keadilan*, 4(2), 99-111.

<sup>19</sup> Widya, U. (2022). Pemberhentian Presiden Dan/Atau Wakil Presiden Dalam Undang-Undang Dasar Negara Republik Indonesia 1945 Pasca Perubahan. *Lex Renaissance*, 7(1), 194-208.

<sup>20</sup> Irham, M., & Soplanit, M. (2022). Politik Hukum Pemakzulan Presiden Di Indonesia. *Jurnal Saniri*, 3 (1), 1-10.

ensuring the legal correctness of the allegations against the president. Meanwhile, the political aspect in impeachment arises because of the central role of the legislative institution and the support of political parties in the process of proposing and making decisions. Parliament as a political institution has the authority to judge whether the president's actions are worthy of legal and constitutional questioning. This process is often influenced by political configurations in parliament, factional support, and pressure from public opinion.<sup>21</sup>

The link between legal and political aspects of impeachment often creates a tension between legal objectivity and political interests. When impeachment is too dominated by political interests, the legitimacy of the process can be questioned because it seems to be used as a tool to bring down political opponents. On the other hand, if the legal aspects are too rigid without considering the political context, the impeachment process can lose relevance to the dynamics of the state that are taking place. A firm separation between judicial review and political decision is needed so that the principle of constitutionalism is maintained. Judicial institutions must play a role in assessing aspects of legality and constitutionality, while political institutions only make final decisions based on the results of the legal examination. This separation is important to avoid the politicization of the law or conversely, the formalization of politics. In a modern democratic system, a balance between these two functions is a requirement for impeachment to be carried out in a fair, transparent, and constitutional manner.

Constitutionalism is a basic principle that emphasizes that state power must be exercised based on the highest law, namely the constitution. In the view of constitutionalism, there is no absolute or unlimited power, including the power of the president as the chief

executive. This principle means that every act of government must be subject to constitutional norms and can be controlled through legal mechanisms. Impeachment is a tangible manifestation of this principle, because through this process, the constitution enforces the limits of power so that it does not turn into a form of tyranny that threatens the rights of citizens. As a constitutional instrument, impeachment serves to enforce constitutional accountability.<sup>22</sup> The President is not only the holder of the highest power in the executive field, but also a legal subject who is obliged to account for his actions against the constitution. If the president violates the law or deviates from the principles of the constitution, then the impeachment mechanism becomes a means to restore the rule of law and affirm that no power is immune from legal supervision.

Impeachment is also a means of avoiding the absolutism of executive power. In the presidential system, the president has great authority in regulating state policies, but that power must still have limits. Without control mechanisms such as impeachment, the president's power can develop into authoritarian, even placing himself above the law. Therefore, constitutionalism places impeachment as a balancing instrument so that presidential power remains within the control of law and the constitution. This mechanism proves that a democratic state does not give unlimited power to anyone, including the head of state. The principle of the rule of law is also maintained through the impeachment mechanism. The impeachment asserts that every public official, without exception, must be subject to the law and can be held accountable if it violates constitutional provisions. In this context, the rule of law is not just a normative idea, but is concretely realized through a juridical process involving constitutional institutions. Impeachment is clear evidence that the law is the main

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<sup>21</sup> Simanjuntak, Z. L. D., & Collins, J. S. (2025). SENTRALISASI KEKUASAAN DI PARLEMEN: IMPLIKASI DOMINASI SUARA FRAKSI TERHADAP DEMOKRASI PERWAKILAN DI INDONESIA: CENTRALIZATION OF POWER IN PARLIAMENT: IMPLICATIONS OF

FACTIONAL VOTE DOMINANCE FOR REPRESENTATIVE DEMOCRACY IN INDONESIA. *Jurnal Nomokrasi*, 3(1), 163-177.

<sup>22</sup> Sihombing, D. N. (2025). Pemakzulan Dalam Demokrasi Presidensial Indonesia: Antara Legalitas Konstitusional dan Legitimasi Politik. *JURNAL NAWALA POLITIKA*, 3(1), 35-56.

controller in the state system, not just a means of justification for political power.

In the modern constitutional system, the protection of citizens' rights is also one of the aspects that is maintained through the impeachment mechanism. When the president violates the law or acts arbitrarily, the rights of citizens are indirectly threatened. Through impeachment, the state ensures that violations of the constitution by the president do not continue with violations of the basic rights of the people. This process demonstrates the close relationship between the constitutional accountability of the president and the protection of human rights within the framework of the rule of law. The role of constitutional institutions such as the Constitutional Court and parliament is very important in maintaining the principle of constitutionalism in the impeachment process. The Constitutional Court is tasked with assessing the juridical aspect, whether it is true that the president has committed violations as stipulated in the constitution. Parliament, on the other hand, performs a political function by assessing the implications of presidential actions on government stability and public trust.<sup>23</sup>

The practice of impeachment in various countries shows that this mechanism has become an integral part of the modern presidential system. Countries like the United States are classic examples of how impeachment is carried out based on the principle of constitutionalism.<sup>24</sup> The impeachment cases of Presidents Andrew Johnson (1868), Richard Nixon (1974), Bill Clinton (1998), and Donald Trump (2019 and 2021) show that the process is a legal instrument to ensure that the president remains subject to the constitution, even though the end

result is often heavily influenced by political dynamics in Congress. In Brazil, the impeachment of President Dilma Rousseff shows the other side of the political dynamics in the presidential system.<sup>25</sup> Although the impeachment procedure is carried out in accordance with the constitution, many consider the process to be driven more by political interests than by actual violations of the law. Meanwhile in the Philippines, the impeachment of President Joseph Estrada underscores how public pressure and public opinion can affect the legitimacy of impeachment, even though legal procedures have not yet been fully completed.<sup>26</sup> These examples show that impeachment in presidential states is often at the crossroads of law and politics.

Impeachment in a constitutional democratic country does not solely function as an instrument of political punishment, but as a mechanism to maintain the legitimacy of the government. In the context of democracy, the legitimacy of power comes from compliance with the constitution and the law. When the president breaks the law or deviates from the mandate of the constitution, impeachment becomes a constitutional measure to restore the legitimacy of the state and ensure that the government remains based on public trust. The impeachment mechanism affirms that the ultimate power rests with the constitution, not with the individual president. The President is only the executor of the people's mandate given through the constitution. Therefore, its power should not be used for the benefit of a particular individual or group. Impeachment is a symbol that the constitution is the highest law that all state administrators must obey, including the president as the chief executive.

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<sup>23</sup> Kurniawan, A. (2023). Kedudukan Mahkamah Konstitusi dalam Mekanisme Impeachment: Studi Komparasi Negara Republik Indonesia dan Republik Federal Jerman. *Staatsrecht: Jurnal Hukum Kenegaraan dan Politik Islam*, 3(2), 313-336.

<sup>24</sup> Jimly Asshiddiqie, S. H. (2021). *Konstitusi dan konstitusionalisme Indonesia*. Sinar Grafika. hlm. 174

<sup>25</sup> Prabowo, E. (2020). Mekanisme Pemakzulan (Impeachment) Presiden (Studi Perbandingan Negara Indonesia dan Brasil). *JIL: Journal of Indonesian Law*, 1(2), 119-144.

<sup>26</sup> Efendi, S. (2024). Menakar Kekuatan Mengikat Putusan Mahkamah Konstitusi Dalam Pemberhentian Presiden Dan/Atau Wakil Presiden Di Indonesia. *Jurnal Konstitusi & Demokrasi*, 4 (2), 1.

### ***Comparison of the Implementation of the Presidential Impeachment Mechanism in Indonesia and South Korea***

The institutional structures involved in presidential impeachment mechanisms in Indonesia and South Korea show fundamental differences in the pattern of relations between state institutions. In Indonesia, the impeachment process involves three main institutions, namely the House of Representatives (DPR) as the proposer, the Constitutional Court (MK) as the examining and decision-making institution, and the People's Consultative Assembly (MPR) as the final decision-maker on the dismissal of the president. This structure features a tripartite model, in which political, legal, and final decision functions are shared proportionally between the legislative, judicial, and supreme representative institutions of the people.<sup>27</sup> On the other hand, the impeachment system in South Korea involves two main institutions, namely the *National Assembly* and the *Constitutional Court*. The *National Assembly* serves as the first proposer and decision-maker with a voting mechanism, while the *Constitutional Court* acts as the final breaker that determines whether the president has actually broken the law or the constitution.<sup>28</sup> This structure is known as the bipartite model, which emphasizes the balance between political legitimacy in parliament and juridical legitimacy in constitutional institutions. These differences in institutional structure have implications for the effectiveness and speed of the impeachment process. In Indonesia, the involvement of three institutions causes the impeachment process to be longer and more layered, because each stage has to go through strict legal and political mechanisms. Although it provides a strong guarantee of *checks and balances*, this system also has the potential to

cause delays and tug-of-war between institutions. In contrast, South Korea's bipartite system is more concise because it involves only two agencies, so the process can take place faster and more efficiently, without compromising the legal validity of the final decision.

In terms of political stability, Indonesia's tripartite model provides a greater guarantee of government stability, because impeachment decisions cannot be taken unilaterally by political institutions.<sup>29</sup> The mechanism of involvement of the Constitutional Court and the People's Consultative Assembly (MPR) is a safeguard so that impeachment is not used as a political instrument to bring down the president. Meanwhile, in South Korea, because the process is faster and involves parliamentary voting, the potential for politicization remains, but it can be suppressed through the strong constitutional role of the Constitutional Court that is the final determinant. In terms of procedures and stages of impeachment, Indonesia regulates a fairly long mechanism. The process begins when the House of Representatives submits an opinion that the president has violated the law or is no longer qualified to be president. This opinion was then forwarded to the Constitutional Court for judicial examination and decision. If the Constitutional Court declares that violations are proven, the House of Representatives will submit the results to the MPR, which then decides on the dismissal of the president in a plenary session. This process shows a clear division between the legal and political stages.

In South Korea, the impeachment procedure is simpler but carries a high juridical weight. The process begins with the submission of an impeachment proposal by members of the *National Assembly*. If the proposal receives majority support, the president will be

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<sup>27</sup> Fatkhurohman, S. H. (2019). MENGUJI KEWENANGAN MPR RI PADA SIDANG PARIPURNA ATAS PUTUSAN MAHKAMAH KONSTITUSI MENGENAI PEMAKZULAN PRESIDEN DAN/ATAU WAKIL PRESIDEN DI INDONESIA (SEBUAH UJI KEKUATAN ANTARA KEPUTUSAN. *Jurnal Majelis*, 87.

<sup>28</sup> Silalahi, W. (2023). TENGGANG WAKTU PENYELESAIAN SENGKETA

PERSELISIHAN HASILPEMILIHAN UMUM PRESIDEN DAN WAKIL PRESIDEN DI MAHKAMAH KONSTITUSI. *Proceeding APHTN-HAN*, 1(1), 55-80.

<sup>29</sup> Wiyanto, A. (2016). Pemakzulan dan Pelaksanaan Mekanisme Checks and Balances dalam Sistem Ketatanegaraan Indonesia. *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 4(1), 125-151.

temporarily removed from office pending a final decision from the *Constitutional Court*. Furthermore, the Constitutional Court has a certain period of time to examine, assess, and give a final verdict on whether the president is really guilty of violating the constitution or the law. If proven, then the impeachment becomes legal and the president is permanently dismissed.<sup>30</sup>

A comparison between the two countries shows that the impeachment procedure in South Korea is more judicial, while Indonesia still balances political and legal elements at the same time. The involvement of the Constitutional Court in Indonesia does affirm the legal aspect, but the final decision remains in the hands of the MPR, which is political. In contrast, in South Korea, *the role of the Constitutional Court* is more dominant and independent, thus providing a guarantee of greater objectivity to the final outcome of impeachment.

In terms of the basis and criteria for violations, Indonesia uses the formula in Article 7A of the 1945 Constitution, namely "the president and/or vice president can be dismissed if proven to have committed a violation of the law in the form of treason against the state, corruption, bribery, other serious criminal acts, or reprehensible acts, and no longer qualifies as president." However, the phrases "unlawful" and "no longer qualified as president" contain the vagueness of norms, as they do not explicitly describe the limits and forms of violations in question. As a result, interpretations of this article are often mixed between legal dimensions and political considerations. In contrast, in South Korea, Article 65 of the Constitution of the Republic of Korea clearly states that the president, prime minister, and other high-ranking officials can be impeached if they violate the law or the constitution, and such violations must be serious to the point of breach of *public trust*. These more concrete criteria make the impeachment process in South Korea more

measurable and have a strong juridical basis, as seen in the 2017 impeachment case of President Park Geun-hye, which was based on evidence of involvement in corruption and abuse of power scandals.

This comparison shows that Indonesia still gives a broader political interpretation space in the impeachment process, while South Korea emphasizes the legality and clear legal evidence aspects. Indonesia's main weakness lies in its multi-interpretation norms, which open up opportunities for impeachment to become a political arena of power. Instead, the strength of South Korea's system lies in the clarity of legal norms and the dominance of judicial institutions that ensure the impeachment process remains within the corridors of the constitution.

In the context of presidential impeachment, the role of constitutional institutions is central because this mechanism concerns the balance between executive, legislative, and judicial powers. In Indonesia and South Korea, constitutional institutions are designed to ensure that the impeachment process runs according to the principles of constitutionalism, not dominated by momentary political interests. However, the level of independence and standing of constitutional institutions in the two countries show quite significant differences. In Indonesia, the Constitutional Court (MK) plays a role in assessing the legal aspects of alleged violations committed by the president. This function is judicial and objective, because the Constitutional Court must ensure whether the alleged violations submitted by the House of Representatives meet the element of "unlawful".<sup>31</sup> The mechanism shows that Indonesia adheres to a tripartite model, in which three institutions are involved in the impeachment process in order, namely the House of Representatives as the proposer, the Constitutional Court as the examiner of legal aspects, and the MPR as the political decision-maker. Consequently, even though the

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<sup>30</sup> Andika, E. R. (2025). Tinjauan Yuridis Kewenangan Mahkamah Konstitusi Dalam Pemberhentian Presiden dan Wakil Presiden di Indonesia Dengan Korea Selatan. *Jurnal Fakta Hukum*, 3(2), 74-83.

<sup>31</sup> Thalib, A. R., & Sh, M. (2018). *Wewenang Mahkamah Konstitusi dan implikasinya dalam sistem ketatanegaraan Republik Indonesia*. PT Citra Aditya Bakti. hlm. 184

Constitutional Court plays the role of guardian of the constitution, the final decision still has the potential to be influenced by political considerations in the MPR. This often creates a dilemma between the rule of law and political power.

In contrast, in South Korea, *the Constitutional Court* has the final authority to determine the fate of the president after an impeachment proposal is submitted by the National Assembly. In this case, the role of political institutions is limited only to the proposed and temporary dismissal stages, while the final decision is purely in the hands of the judiciary. This model shows a higher level of independence of constitutional institutions, thereby strengthening legal legitimacy and public trust in the outcome of the impeachment process. The independence of *South Korea's Constitutional Court* is reflected in a procedure that emphasizes transparency, strict legal proof, and the public reading of judgments. There was no intervention from political institutions after the case entered the realm of the constitutional judiciary. This distinguishes South Korea from Indonesia, where legal decisions still require political legitimacy from the MPR.<sup>32</sup>

In practice, the impeachment cases in both countries provide a real picture of how the system works. In Indonesia, the impeachment of President Abdurrahman Wahid (Gus Dur) in 2001 is an example of the strong political influence in the process of dismissing the president. At that time, there was no Constitutional Court, so all mechanisms were determined through political interaction between the House of Representatives and the MPR without objective legal testing. The process of impeachment of Gus Dur shows that without an independent judicial filter, the impeachment mechanism can shift into a political instrument to overthrow the president. Although procedurally constitutional, the moral

legitimacy and law of impeachment are often questioned because of the strong political factors behind it.<sup>33</sup> This experience is one of the important reasons for the establishment of the Constitutional Court in 2003 to strengthen constitutional supervision.

In contrast to South Korea, the impeachment of President Park Geun-hye in 2017 is clear evidence of the substantive application of the principle of constitutionalism. The process began with an impeachment filing by the National Assembly based on Park's alleged involvement in corruption and abuse of power scandals.<sup>34</sup> Afterwards, *the Constitutional Court* conducted an in-depth legal examination and issued a collective ruling confirming serious violations of public trust and the constitution. The South Korean *Constitutional Court's* ruling in Park Geun-hye's case became a symbol of the rule of law because the entire process was conducted openly, broadcast live to the public, and based on clear legal arguments. No political institution can overturn or reject the verdict. As a result, the impeachment decision was widely accepted by the public as a form of constitutional justice, not as the result of political intrigue.

A comparative analysis between the two countries shows that Indonesia is still struggling to balance the legal and political aspects of the impeachment mechanism, while South Korea has put the law as commander-in-chief. In Indonesia, political power in the MPR can be the final deciding factor, while in South Korea, the final decision is left entirely to an independent judicial body. In terms of institutional structure, South Korea's bipartite model is simpler and more efficient because it involves only two institutions, thus speeding up the process and minimizing political intervention. In contrast, Indonesia's tripartite model does provide more complex *checks and*

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<sup>32</sup> Marpaung, L. A. (2015). Analisis Yuridis Normatif Perbandingan Prosedur Pemberhentian Presiden Dalam Masa Jabatannya Antara Indonesia Dengan Amerika Serikat Dan Korea Selatan. *Pranata Hukum*, 10(2), 160-195.

<sup>33</sup> Maulana, M. N. (2023). Membaca Sejarah Membaca Sejarah Konstitusi Indonesia Era Reformasi (studi pemakzulan Presiden

Abdurrahman Wahid): Konstitusional Pemakzulan Presiden. *Sanskara Hukum dan HAM*, 1(03), 67-75.

<sup>34</sup> Ariani, H. L., Khairunnisa, R. A., Faisal, F. A. A., & Kirana, D. K. (2025). Studi Komparatif Pemakzulan Presiden: Kasus Gus Dur dan Park Geun-hye. *INDEPENDEN: Jurnal Politik Indonesia dan Global*, 6(1), 45-58.

balances, but risks slowing down the process and opening up opportunities for political compromise. Both models have advantages and disadvantages depending on the political maturity and the prevailing legal system.

The comparison of the two countries reaffirms the importance of constitutionalism and *the rule of law* as the main foundation in the impeachment of the president. Impeachment should not be understood as an instrument of power politics, but as a mechanism of constitutional accountability to maintain the integrity of the presidential institution. South Korea is an example of the application of substantive constitutionalism, while Indonesia still needs to strengthen the juridical aspects and independence of constitutional institutions so that the impeachment process better guarantees legal certainty, accountability, and public trust.

## CONCLUSION

The impeachment of the president in the presidential system of government is a constitutional mechanism that functions to maintain the balance of power and uphold the principles of constitutionalism and the rule of law. From the perspective of Constitutional Law, impeachment is not only a means of dismissing the head of state, but also an instrument of constitutional accountability to ensure that executive power runs within the limits of the country's basic law. The principle of constitutionalism demands that impeachment be carried out based on clear legal norms, fair procedures, and the role of independent constitutional institutions. In this context, impeachment reflects a *check and balance mechanism* that is important for the preservation of constitutional supremacy and people's sovereignty in the presidential system.

The comparison between Indonesia and South Korea shows fundamental differences in the institutional structure and level of judiciability of the impeachment mechanism. Indonesia with a tripartite model (DPR-MK-MPR) displays a balance between legal and political aspects, but still leaves room for political intervention in the final decision of the MPR. Meanwhile, South Korea with a bipartite model (National Assembly–Constitutional

Court) affirms the rule of law through the independence of the judicial institution that decides finally. The lessons that can be taken for Indonesia are the need to clarify the norms in the 1945 Constitution, strengthen the position of the Constitutional Court so that its verdicts are binding, and minimize the politicization of the impeachment process.

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