

The Legal Force of the Constitutional Court's Decision on the Impeachment Process from the Perspective of the State of Islamic Law and Politics

Darmawan*, Muchlisin, Mohammad Ahsanul Khuluqi

UIN Raden Mas Said Surakarta, UIN Madura, UIN K.H. Abdurrahman Wahid Pekalongan

Email: darmawan@staff.uinsaid.ac.id*, muchlisin@iainmadura.ac.id,
mohammad.ahsanul.khuluqi@uingusdur.ac.id

*Corresponding Author

Abstract

This study highlights the existence of a legal vacuum caused by the lack of clear and explicit regulations governing the legal force of Constitutional Court (MK) decisions in the impeachment process of the President and Vice President. The uncertainty regarding whether MK's ruling is binding or merely advisory creates ambiguity in constitutional practice and opens opportunities for political intervention. This situation weakens the principle of legal certainty and risks turning the impeachment mechanism into a tool of political contestation rather than a constitutional safeguard. The purpose of this study is to examine in depth the legal force of the Constitutional Court's decision within the impeachment process in Indonesia, especially when viewed through the framework of the rule of law. Using normative legal research methods supported by legislative, comparative, and conceptual approaches, this research evaluates the scope of MK's authority and the constitutional principles that should guide impeachment procedures. The findings indicate that MK's decision must be final and binding (*erga omnes*) to reinforce its position as the guardian of the constitution and protector of democratic governance. Strengthening the binding nature of MK's decision is essential to maintain institutional balance among state organs and prevent impeachment from being dominated by political interests. Furthermore, this study draws relevance from the concept of the Mazhalim Court in Islamic law, which prioritizes substantive justice and accountability of leaders. This comparison encourages the refinement of Indonesia's impeachment procedural law to ensure that justice, not politics, remains the primary foundation of constitutional processes.

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INTRODUCTION

The 1945 Amendment to the Constitution of the Republic of Indonesia strengthened the presidential system through the implementation of a *checks and balances mechanism* between state institutions. One of the implementations is the inclusion of provisions regarding the *impeachment process* of the President and/or Vice President into the constitution, which includes substantial and procedural aspects. Article 7A emphasizes the substantial aspect by stating that the President and/or Vice President can be dismissed if proven to have committed treason against the state, corruption, bribery, other serious criminal acts, reprehensible acts, or no longer qualified as state officials. Meanwhile, Article 7B regulates procedural aspects and establishes the role of the legislative institution (MPR/DPR) and the judiciary (MK) in carrying out the process.¹

In Indonesia's presidential system, the President holds broad power as the head of state as well as the head of government, so this position is prone to abuse. As Lord Acton reminded us, "*power tends to corrupt, absolute power corrupts absolutely*".² Therefore, the *impeachment* procedure is a vital instrument to enforce the law and ensure that the President remains accountable. The President is not a figure who is above the law; Its power can be revoked if it violates the constitution or state law.

On the other hand, the President is a power that must be protected by the constitution, so that it is not easily overthrown at any time because it can disrupt the stability of the country. Learn from the practice of constitutional law in the past, where the dismissal of the President was carried out through political reasons without a legal proof process. This is an important precedent for Indonesia which upholds the principles of state law. For this reason, the amendment to the 1945 Constitution of the Republic of Indonesia establishes a procedure that allows the President and/or Vice President to be tried through the judicial process regulated in the constitution if they violate the law and the constitution.

The *impeachment process* in Indonesia is carried out by three different institutions. The first step is the House of Representatives oversight of the president and/or vice president who is accused of committing an act that is considered the basis for dismissal.

¹ Majelis Permusyawaratan Rakyat Republik Indonesia, *Undang - Undang Dasar Negara Republik Indonesia Tahun 1945* (Jakarta: Sekretariat Jenderal MPR RI, 2002), 42-43.

² Christopher Lasarski, *Power Tends to Corrupt: Lord Acton's Study of Liberty* (Northern Illinois University Press, 2012).

The results will be submitted to the Constitutional Court for a decision known as *the privilegiatum forum*, which is the process of legal accountability by the President through the judiciary, after the process of the House of Representatives is completed in the plenary meeting. The authority of the Constitutional Court in *impeachment cases* is regulated in Article 24C paragraph (2) concerning the obligation of the Constitutional Court to give a ruling on an application from the House of Representatives regarding the indictment addressed to the President and/or Vice President.

The decision of the Constitutional Court (MK) regarding the alleged violations of the President or Vice President, as well as their unworthiness to hold office, must be decided in a plenary session open to the public. The House of Representatives is obliged to follow up on the Constitutional Court's decision, including submitting the case to the MPR if the Constitutional Court declares that the President or Vice President violates the law or no longer meets the requirements. Furthermore, the MPR held a special session to discuss the dismissal of the President and/or Vice President based on the Constitutional Court's decision. In this stage, there are two interpretations of the legal force of the Constitutional Court's decision: first, the MPR is consequentially bound by the final decision of the Constitutional Court which cannot be submitted as a legal remedy, so it is obliged to implement the decision; second, the Constitutional Court's decision is considered not final, so the MPR has the political freedom to comply with or ignore the decision, and the final *impeachment decision* is determined through a political agreement in the MPR.³

This is due to the absence of provisions in the constitution or other laws and regulations that specifically regulate this matter, this condition creates legal ambiguity. If the Constitutional Court decides that the President and/or Vice President are found to be unlawful or no longer qualified, the House of Representatives will convene in plenary to propose to the MPR that they be removed from office. Given that the Constitutional Court's decision is not binding on the MPR, can this be considered unlawful.

In the political system of Islamic law, the Islamic Judiciary plays a fundamental role in the Islamic legal system as an institution that has the authority to enforce the law and protect the rights of individuals and society. The position of the Islamic judiciary is not only a means of resolving disputes, but also as the main instrument for establishing justice (*al-'adl*) and preventing the occurrence of tyranny (*al-zulm*). Islamic justice also emphasizes

³ Abdul Rasyid Thalib, *Wewenang Mahkamah Konstitusi Dan Implikasinya Dalam Sistem Ketatanegaraan Republik Indonesia* (Bandung: PT Citra Aditya Bakti, 2006), 496.

the protection of human rights and social balance. By applying sharia-based law, Islamic courts not only crack down on violations, but also provide legal certainty, regulate social relations, and guide the community to live according to the principles of justice. This directly suppresses the potential for tyranny that arises due to injustice, discrimination, or abuse of power.

Based on this description, this research is very important to examine how the legal force of the Constitutional Court (MK) decision in the *impeachment process* of the President and Vice President in Indonesia is according to the principle of the rule of law. As well as how the mechanism and procedural law of impeachment in Indonesia can ensure justice and prevent the dominance of political interests. At the same time, how the concept of impeachment in Islamic legal politics, especially through the institution of the Mazhalim Court, can provide a comparative perspective on the mechanism for dismissing heads of state in Indonesia. From the formulation of the problem, the research method used is the normative legal research method by combining the statutory *approach*, *comparative approach*, and conceptual *approach*.

RESULTS AND DISCUSSION

A. Concept of *Impeachment*

The understanding of the term *impeachment* is often misinterpreted, some identifying it with *impeachment*, which is the removal of a public official from office, while others equate it with the concept of *bughat* in Islamic law, which refers to rebellion against legitimate power. Despite the conceptual connection, the two terms differ substantively. Epistemologically, *impeachment* comes from the word *impeach* in English, which means to indict or summon officials to be held accountable for abuses or abuses of power, thus emphasizing the principle of legal accountability as the foundation of the presidential system.⁴

Impeachment in *Black's Law Dictionary* is "a criminal proceeding against a public officer, before a quasipolitical court, instituted by a written accusation called 'articles of impeachment'".⁵ *Webster's New Word Dictionary* defines *impeachment* as to bring (a public official) before the

⁴ Jhon M. Echols dan Hassan Shadily, *Kamus Inggris – Indonesia: An English-Indonesian Dictionary* (Jakarta: Gramedia Pustaka Utama, 2000), 312.

⁵ Henry Campbell, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (St. Paul, MN: West Group, 1991), 516.

*proper tribunal on the charges of wrongdoing.*⁶ Meanwhile, *the encyclopedia Britannica* defines "a criminal proceeding instituted against a public official by a legislative body". Impeachment procedures can be applied to a variety of high-ranking state officials, not limited to supreme leaders such as the President or Prime Minister. Other high-ranking officials, including judges, parliamentarians, as well as leaders and members of state institutions, can be subject to *impeachment*, although the scope varies from country to country.⁷

Impeachment in Indonesia is only intended for the position of President and/or Vice President and is not intended for other high-ranking officials of the country. The delinquency or violation that is the basis for the president to be *impeached* is as stipulated in Article 7A of the 1945 Constitution of the Republic of Indonesia:

"The President and/or Vice President may be dismissed during their term of office by the People's Consultative Assembly on the proposal of the House of Representatives, either if they have committed a violation of the law, in the form of treason against the State, corruption, bribery, other serious criminal acts, or reprehensible acts or if it is proven that they are no longer qualified as President and Vice President".

The provision provides two classifications that are conditions for *impeachment*, namely the President and/or Vice President committing violations of the law, including treason against the state, corruption, bribery, and other serious crimes, and the classification of the president and/or vice president is no longer eligible. Formally, Article 7B paragraph (1) of the 1945 Constitution gives *impeachment authority* to three state institutions, the House of Representatives, the Constitutional Court, and the People's Consultative Assembly. These state institutions carry out their duties and authorities in parallel and are interrelated with each other. The House of Representatives as the representative of the people is authorized to indict, demand, and hold the president accountable, then the Constitutional Court as the judicial institution, give a legal ruling and finally the MPR as the highest institution of the state will make the final decision to determine the fate of the president and/or vice president.⁸

The impeachment mechanism in Indonesia has two main paths, namely the political process and the legal process. The political path was initiated by the House of Representatives (DPR) based on its supervisory function. If in the exercise of these

⁶ Victoria Neufeldt, *Webster's New World Dictionary* (New York: Prentice Hall, 1991), 676.

⁷ Suwoto Mulyosudarmo, *Peralihan Kekuasaan: Kajian Teoritis dan Yuridis Terhadap Pidato Nawaksara* (Jakarta: PT Gramedia Pustaka Utama, 1997), 53.

⁸ Ryan Muthiara Wasti, "Mekanisme Impeachment di Negara dengan Sistem Presidensial: Studi Perbandingan Mekanisme Impeachment di Indonesia dan Korea Selatan", *Mimbar Hukum*, Vol. 31 no. (2019), 249.

functions there is a suspicion that the President and/or Vice President have committed violations as stipulated in Article 7A of the 1945 Constitution, the House of Representatives will exercise its right to conduct an investigation. This process ultimately resulted in an official opinion of the House of Representatives stating that the President and/or Vice President were proven to have committed treason of state, corruption, bribery, other serious criminal acts, or despicable acts.⁹ On the one hand, the involvement of the Constitutional Court (MK) in *the impeachment* process serves as a vital check and balance mechanism to prevent the People's Consultative Assembly (MPR) from becoming a superbody institution with unlimited authority. However, on the other hand, this mechanism is still fundamentally dominated by the political realm, which ultimately weakens the rule of law.

The Rule of Law in the *Impeachment Process*

As a consequence of the principle of the rule of law, the process of dismissing public officials, including the president, must be subject entirely to the principles of legality and constitutionality. This requires a material and clear legal reason (material aspect) and a valid and convincing evidentiary process (formal aspect) before a president can be dismissed. Thus, without going through the correct constitutional procedures, impeachment is invalid, because it is this legal process that guarantees political legitimacy and maintains the rule of law above momentary political interests.¹⁰

The idea of *impeachment* is shown as a form of supervision and restriction on the President's power. In the concept of constitutionalism, H. Hamilton elaborated, "For the purpose of *keeping a government in order* is necessary in such a way that the dynamics of power in the process of government can be limited and controlled as it should be".¹¹ Naturally, the need to address the ever-evolving relative significance of public power in human life gave rise to the concept of regulating and limiting power.

The limitation of power must be regulated in the state constitution as a giver of authority of origin (attribution) to state power as well as an instrument that provides limits on that power. In addition, the constitution also functions as a tool to transfer the original power to the organs of state power, both power that comes from the people in the

⁹ Helmi, "Supremasi Hukum dalam Proses dan Mekanisme *Impeachment* Menurut UUD Tahun 1945", *Jurnal Inovatif*, Vol. 7 no. 3 (September, 2014), 83.

¹⁰ Hamdan Zoelva, *Pemakzulan Presiden di Indonesia* (Jakarta: Sinar Grafika, 2011), 163.

¹¹ Walton H. Hamilton, *Constitutionalism*, in *Encyclopedia of the Social Sciences*, Ed. Edwin R. A. Seligman and Alvin Johnson (New York: Macmillan, 1931), 255.

democratic system of power is in the hands of the people which is run according to the Constitution, and the power of the king in the monarchy system.¹²

The state of law is a basic concept that is not only interpreted that a law applies in a country. More than that, philosophically the state of law positions the law as the supreme power that is the basis for state power, so every organ of the state must be subject to legal supervision. This legitimacy is to maintain the stability of power so that it is carried out as it should. If legal supervision of state power is inadequate, the substantive meaning of the state of law will be mired in the mud puddle of the ruling state.¹³

According to Juan Linz, the state of constitutional law binds the government to the procedure regulated by the constitution (*self-binding procedure*). This principle, known as constitutionalism, serves to limit state power and protect human rights, turning political power into authority determined by law. To uphold this principle, every state authority needs to be tested for constitutionality by an independent institution. Therefore, the Constitutional Court was established in Indonesia through the amendment of the 1945 Constitution as the guardian of the constitution and the resolution of constitutional disputes.¹⁴

The presence of the Constitutional Court (MK) in Indonesia is a manifestation of *the judicialization of politics*, a paradigm in which political issues are resolved through judicial institutions to balance the power of the majority in the House of Representatives, rather than through traditional political negotiations. The existence of the Constitutional Court is inseparable from the constitutional reconstruction after the 1945 Constitutional Amendment, which shifted the system from political supremacy under the People's Consultative Assembly (MPR) to the rule of law through the application of *separation of powers*. This fundamental change places the Constitutional Court as the main pillar in limiting political power that is too dominant and upholding the constitution as the supreme law.¹⁵

The involvement of the Constitutional Court (MK) in the impeachment process is a direct response to the dark history of Indonesia's constitution, where political power often

¹² Jimly Asshiddiqie, *Konstitusi dan Konstitutionalisme di Indonesia* (Jakarta: Sinar Grafika, 2009), 26.

¹³ Ahmad Syahrizal, *Peradilan Konstitusi: Suatu Studi Tentang Adjudikasi Konstitutional Sebagai Mekanisme Penyelesaian Sengketa Normatif* (Jakarta: Pradnya Paramita, 2006), 55.

¹⁴ Daniel S. Lev, *Hukum dan Politik Di Indonesia: Keseimbangan dan Perubahan* (Jakarta: LP3ES, 1990), 514.

¹⁵ Dian Aries Mujiburrahman, *Impeachment Presiden: Mekanisme dan Alasan Pemberhentian Presiden Menurut UUD 1945* (Yogyakarta: Kotak Buku, 2013), 34.

ignores constitutionality. Events such as the dismissal of President Abdurrahman Wahid by the MPR, which are more based on political reasons, confirm that an action can be politically *valid* but *not necessarily constitutionally legitimate*. A similar pattern can be seen in the transfer of power from Suharto to Habibie and the reduction of Habibie's term of office in violation of the articles of the 1945 Constitution, as well as the March 11 Decree which was only *de facto* valid but not *de jure*. The involvement of the Constitutional Court is currently intended as a constitutional fortress to stop the dominance of political facts over the rule of law.¹⁶

This event shows that the dominance of the constitution in political battles can be nullified or not implemented appropriately.¹⁷ This is a dark record of the Indonesian nation falling into the state of power (*machtstaat*). This condition will give a weak position to the president and/or vice president, because at any time they can be impeached even if they do not violate the law and the constitution. Especially if the government does not have a majority vote in the legislature, besides that there is a potential for political transactions between political elites, to secure power. Of course, the constitution is present in addition to limiting the president's power but also to provide legal protection and certainty to the president in carrying out his duties and functions as a public official.¹⁸

Therefore, in theory, the Constitutional Court was established to uphold justice in order to maintain the law and the constitution. When it comes to possible violations of the most fundamental rights of all members of society, the Constitutional Court stands at the forefront.¹⁹ In addition, to maintain the stability of the implementation of state government, the existence of the Constitutional Court is also to correct the historical experience of constitutional life caused by various interpretations of the constitution.²⁰

The involvement of the Constitutional Court in *the impeachment* process of the president and vice president shows its commitment to upholding Indonesian law as stated in the constitution. Thus, it is now easier to determine whether *the impeachment procedure* of the president and/or vice president is legal and constitutional. The guarantee of

¹⁶ Hendra Budiman, *Skenario Pemakzulan Presiden Jokowi* (Yogyakarta: Pustaka Yustisia, 2015), 45.

¹⁷ Ibid., 46.

¹⁸ Lilik Eka Aprilia, *Berakhirnya Pemerintahan Presiden Soeharto Tahun 1998* (Skripsi, Universitas Jember, 2014), 2-5.

¹⁹ Ahmad Syahrizal, *Peradilan Konstitusi: Suatu Studi tentang Adjudikasi Konstitusional sebagai Mekanisme Penyelesaian Sengketa Normatif..*, 263-264.

²⁰ Bambang Sutiyoso, "Kewenangan Mahkamah Konstitusi dalam Pemakzulan Presiden dan/atau Wakil Presiden di Indonesia", *Jurnal Konstitusi*, Vol. 7 no. 1 (Februari 2010), 95.

constitutionality is fulfilled through the participation of the Constitutional Court in this process as its bodyguard.

Final and Binding Power of the Constitutional Court's Decision in *Impeachment* in Indonesia

The judge's decision in court is the end of a case that is examined in court, which is usually known as a court decision. A court decision has a meaning as a tool to resolve a problem or dispute between the parties, thus the decision is the last resort (*ultimum remedium*) to resolve a legal conflict. It is hoped that through his decision, the judge can provide certainty, usefulness and justice for the parties to the case.²¹ Therefore, in giving a verdict, judges are required to always be guided by laws and regulations as well as the principles of law and justice.

Judges as the perpetrators of judicial power exercised by the Supreme Court and the Constitutional Court, have the authority to receive, examine and adjudicate cases in accordance with the competence of each judicial institution. The Constitutional Court as an actor of judicial power in Indonesia is authorized to "adjudicate and decide cases of legal testing of the Constitution (*judicial review*), disputes over the authority of state institutions whose authority is granted by the Constitution, dissolution of political parties, disputes over the results of general elections, and give rulings at the request of the DPR opinion regarding *the impeachment* of the President and/or Vice President".

The Constitutional Court's decision in this case is different from other ordinary court decisions because it is final, binding, and applicable to the public (*erga omnes*). Since the Constitutional Court's decision was made in a plenary session open to the public and was the first and last legal remedy, the decision had permanent legal force (*inkracht van gewijsde*). Furthermore, the decision cannot be challenged. Mahfud MD emphasized that the Constitutional Court's final and binding decision cannot be challenged even though there are shortcomings and errors. In accordance with the principle of prompt and straightforward justice, the final decision of the Constitutional Court that is immediately binding and does not leave room for additional legal remedies is intended so that the court can resolve issues quickly and create legal certainty. In addition, the Constitutional

²¹ Moh. Taufik Makarao, *Pokok-Pokok Hukum Acara Perdata* (Jakarta: PT Rineka Cipta, 2004), 124.

Court is a court that decides constitutional disputes that require legal clarity and is bound by deadlines related to the continuity of the constitutional agenda in the long term.²²

In addition to being final, the decision of the Constitutional Court is also binding *erga omnes* which means that the decision of the Constitutional Court is valid and has legal consequences in general/for anyone, not only binding on the principal in dispute. *Erga omnes* can also mean that the Court's decision is binding on all legal subjects in a country, including binding and must be complied with by all state organs at both the central and regional levels, as well as other authorities.²³ Bagir Manan emphasized that the *erga omnes ruling* provides legal certainty on the legal status, regulations, and administrative activities of the state that are considered illegal.²⁴

In addition, Bagir Manan emphasized that the *erga omnes* decision can also be seen as taking the role of legislative *function*. In the event that the court renders a legal judgment, for future events (abstract), which contains new legal norms (jurisprudence), will also be included, in addition to the law for concrete events. Basically, the formation of laws for abstract events is the function of legislation as *a positive legislature*, not a judicial function (*negative legislature*). However, the binding nature (*erga omnes*) of the Constitutional Court's decision above applies automatically without waiting for the decision of other institutions.

The Constitutional Court's decision is final and binding, so it must be implemented without any other legal remedy. However, according to Article 7B, the political decision of the MPR can override the decision, namely:

1. If the plenary session of the MPR does not reach a quorum, at least three-quarters of the members (519 out of 692 members).
2. If the MPR session, based on the indictment of the House of Representatives and the Constitutional Court's decision, rejects the dismissal of the President/Vice President through a vote, because the approval of two-thirds of the members is not fulfilled.

This is contrary to the concept of the rule of law, which states that one of the principles of the rule of law is the rule of law. This idea aims to enforce the law and give it

²² Fajar Laksono Soeroso, "Aspek Keadilan Dalam Sifat Final Putusan Mahkamah Konstitusi", *Jurnal Konstitusi*, Vol. 11 no. 1 (2014), 78.

²³ M. Agus Maulidi, "Menyoal Kekuatan Eksekutorial Putusan Final Dan Mengikat Mahkamah Konstitusi", *Jurnal Konstitusi*, Vol. 16 No. 2 (2019), 353.

²⁴ Machmud Aziz, "Pengujian Peraturan Perundang - Undangan dalam Sistem Peraturan Perundang - Undangan Indonesia", *Jurnal Konstitusi*, Vol. 7 no. 5 (2010), 133.

the highest priority. This idea is intended to encourage the creation of a harmonious life system, provide a sense of justice for the people, and help maintain the stability of the country. Nonetheless, the "political process" can still override the "legal process" in *the impeachment* of the president and/or vice president.²⁵

Further, if this happens, the country may be led by a president or vice president who has violated the law or is no longer qualified to serve in that capacity. This may happen if, after the Constitutional Court's review and consideration of the available evidence, it is determined that the President and/or Vice President have violated the law and/or are no longer qualified to hold office, but they are not dismissed in the plenary session of the MPR. If this happens, lawbreakers (traitors to the state, dishonest officials, serious criminals, or bad behavior) and/or people who are no longer qualified to serve as president or vice president will lead the country.

Van Apeldoorn said that "the form of the law is not only limited to the laws and regulations that apply to be binding, but it is also manifested in the decisions of judges that are also regulating and enforced" within the framework of the state of law, which places the law as supreme commander-in-chief.²⁶ The final and binding decision of the Constitutional Court, which states that the Court strengthens the position of the House of Representatives in *this impeachment* case, must thus be followed by the People's Consultative Assembly, which has the authority to dismiss the President and/or Vice President from office.

This alludes to Suwoto Mulyosudarmo's record on Indonesian constitutionality, which includes discussions on *impeachment* both before and after the third amendment to the 1945 Constitution was passed. According to Suwono, the presidential government must have the ability to elect the president directly and dismiss the president through the legal system if it is proven to violate the law to maintain *checks and balances*.²⁷ Sri Soemantri added that the final decision of the Constitutional Court must be final and binding for it cannot be canceled by any institution. The concept of final and binding judgment has always been incorporated in English literature; If something is final, it must be followed

²⁵ Sunarto Efendi, "Menakar Kekuatan Mengikat Putusan Mahkamah Konstitusi dalam Pemberhentian Presiden dan/atau Wakil Presiden di Indonesia", *Jurnal Konstitusi & Demokrasi*, Vol. 4 no. 2 (2024), 13.

²⁶ Van Apeldoorn, *Pengantar Ilmu Hukum* (Jakarta: Pradnya Paramita, 1990), 23.

²⁷ Suwoto Mulyosudarmo, *Pembaharuan Ketatanegaraan Melalui Perubahan Konstitusi* (Malang: Asosiasi Pengajar HTN dan HAN Jawa Timur dan Intrans, 2004), 33.

by a binding nature in order to have legal certainty. The final word is implicitly binding and cannot be annulled so there is no need to add binding words.²⁸

In South Korea, in comparison, the Constitutional Court's decision to dismiss the President and/or high-ranking state officials is final and binding, meaning that no more legal or political action can be taken.²⁹ This is closely related to the application of the idea of constitutional supremacy, which states that the Constitutional Court as *the guardian of the constitution* has the authority to decide cases involving actions that violate the country's constitution. So the reason for the dismissal of high-ranking officials in South Korea is only because it violates the constitution and not for political reasons alone.

According to Hans Kelsen, the Constitutional Court has the authority to make final decisions regarding violations of the constitution because it is a *representation of the constitution* and its position is higher than other institutions. In Indonesia, the third amendment to the 1945 Constitution, Article 24C paragraph (1), initially regulates the character of the final decision of the Constitutional Court. In the process of amending the 1945 Constitution, the Constitutional Court's decision is rarely mentioned, let alone debated, and its significance and nature are not fully considered.

The mandate of the 1945 Constitution was then derived into Law Number 24 of 2003 concerning the Constitutional Court Article 10 paragraph (1) states that "the Constitutional Court has the authority to adjudicate at the first and last level whose decision is final". It is explained that the term "final" in this law means that the decision of the Constitutional Court has direct and permanent legal force from the time it is pronounced and there is no legal remedy available. Regarding the above legal basis, the 1945 Constitution, Law No. 24 of 2003, and Law No. 48 of 2009, all affirm that the Constitutional Court's decision is final and does not contain the word "binding" as part of its final nature. Therefore, Syahrizal considers that the ambiguity of the law is caused by *the address* of forming a law that does not provide clarity on the norms regulated in the regulation.

According to Syahrizal, a final decision must be normatively binding. This is because in the decision it is stated that the decision cannot be taken by other legal remedies. In simple terms, the final decision must also be followed by the word binding, normative

²⁸ Abdul Rasyid Thalib, *Wewenang Mahkamah Konstitusi dan Implikasinya dalam Sistem Ketatanegaraan Republik Indonesia..*, 8.

²⁹ Ryan Muthiara Wasti, "Mekanisme *Impeachment* di Negara dengan Sistem Presidensial: Studi Perbandingan Mekanisme *Impeachment* di Indonesia dan Korea Selatan.., 249.

articulation of the final and binding decision. In its development, the word binding then appeared in Law Number 8 of 2011 which changed the explanation of Article 10 paragraph (1) so that it reads "The decision of the Constitutional Court is final, that is, the decision of the Constitutional Court immediately acquires permanent legal force from the moment it is pronounced and no legal remedy can be taken. The final nature of the Constitutional Court's decision in this Law also includes the force of final *and binding*".

Thus, the judgment directly has binding legal force to be executed and has permanent legal force.³⁰ This shows that the decision of this institution is final and can be implemented in accordance with *the ratio legis* of the establishment of the Constitutional Court in Indonesia. The term "binding" indicates that the verdict is enforceable and has legal consequences, while "final" indicates that the Constitutional Court's decision is the first and last option for justice seekers. According to Satjipto Rahardjo, legal certainty does not occur automatically; legal certainty requires the use of force and effort, and does not occur at the same time as the formation of laws and articles in regulations.

The purpose of the involvement of the legal system in *the impeachment* trial of the Constitutional Court is to ensure that *the impeachment process* of the president and/or vice president is carried out fairly and not arbitrarily. However, the Constitutional Court's decision declaring the President and/or Vice President guilty is not necessarily supported by the People's Consultative Assembly. As a result, this strategy can cause problems because the political process of the People's Consultative Assembly relies more on the support of the people than on the existing facts, which can overturn the Constitutional Court's decision. For this reason, the final decision of the constitutional court as a judicial institution has permanent legal force, it cannot be revoked by any institution. In court decisions, the words final and binding are always united, namely *final and binding*. If it is final, it must be followed by binding so that it has legal certainty.

Impeachment Verdict in the Politics of Islamic Law

The use of the term *impeachment* has the potential to cause confusion if interpreted as a decline from the throne, power, or position. This is because in the Islamic constitutional system the term *makzul* is not known, but more commonly the terms *nuzul*, *manzul*, and *tanazul* are used, all of which come from the verb *nazala* with the meaning of descending or

³⁰ Ahmad Syahrizal, *Peradilan Konstitusi Suatu Studi Tentang Adjudikasi Konstitusional Sebagai Mekanisme Penyelesaian Sengketa Normatif..*, 115.

falling.³¹ In this case, Islam does not determine which institution has the authority to impeach the President. However, in the opinion of Abdul Rashid Moten, the institution authorized to impeach *the President* is *the Mazhalim Court*. *The Mazhalim Court* is a judicial institution intended to realize justice in the midst of people's lives, whose function is to enforce the law in the territory of the state, or as a medium to implement Islamic teachings in the field of law enforcement and protection. *The Mazhalim Court* is an institution that is tasked with providing information and legal guidance, enforcing the law, and deciding cases.

Judges who are in charge of providing legal information and guidance, resolving disputes, disputes and waqf issues. *Muhtasib*, namely the executor of *hisbah* or who is in charge of carrying out *amar ma'ruf nahi y munkar*, upholds order, prevents violations of the rights of neighbors, and punishes those who play with Islamic law. *Qadhi Mazhalim* who is in charge of resolving matters that cannot be decided by *Qadhi* and *Muhtasib* or resolving appeal cases.³² The authority of *the qadli mazhalim* to dismiss the caliph is the authority to impose sentences to eliminate tyranny. The *Mazhalim Court's* decision to dismiss the caliph is a verdict to remove the tyranny. Therefore, *the Mazhalim Court* has the authority to decide whatever form of tyranny it is.³³

In taking a decision, *the Mazhalim Court* has the following authority:

1. Supervise the behavior of the ruler and his family, and prevent the possibility of violations and dishonesty.
2. Checking and controlling the fraud of officials and employees responsible for the collection of state money.
3. Restore the rights of the people that were taken illegally, both by state officials and other people who always impose their will.
4. Carefully inspect the handling and distribution of waqf assets, zakat infak and alms, as well as other public interests.
5. Examining and executing (ordinary) judges' decisions that they cannot execute, due to their weak position.

With such authority, *the Mazhalim Court* to maintain its integrity decides a case regarding violations committed by anyone, there should be no interference from other

³¹ Muchlisin, "Pandemi Covid-19 Sebagai Alasan Impeachment Presiden Prespektif Hukum Tata Negara", *Tafáqquh: Jurnal Penelitian dan Kajian Keislaman*, Vol. 8 no. 2 (2020), 171.

³² Ibid.

³³ Taqqiyuddin An-Nabhani, *Sistem Pemerintahan Islam* (Bangil: Al-Izzah, 2002), 269.

parties, therefore *the Mazhalim Court* is an independent institution, that is, it cannot be intervened by the head of state or other officials. In order for the trial of this case to run smoothly and objectively, because it is equipped with 5 (five) judicial apparatus, namely (a) judges and judicial apparatus, (b) legal experts or *fuqaha*, (c) clerks, (d) security guards or judicial police, and (e) witnesses. Therefore, if the caliph is proven to have violated the laws of Allah intentionally or is no longer qualified as a leader, then the institution that has the right to dismiss him is *the Mazhalim Court*.

CONCLUSION

The legal force of the Constitutional Court's decision in the impeachment process has a very important and strategic position in the Indonesian constitutional system. The Constitutional Court's decision is final and binding (*erga omnes*) so that it functions as an instrument to enforce the supremacy of the constitution and the principles of the rule of law. Thus, the Constitutional Court acts as *the guardian of the constitution* that ensures that every indictment of the House of Representatives against the President and/or Vice President is decided based on the principles of justice and legal certainty, not on the basis of political considerations alone. The mechanism and procedural law of impeachment in Indonesia need to be strengthened so as not to get caught up in the tug-of-war for political interests.

To prevent the process of dismissing the head of state from being dragged down by mere political dynamics, *the impeachment process* must be based on objective and accountable legal norms. Therefore, the improvement of the procedural law in the Constitutional Court (MK) and comprehensive arrangements in the law are inevitable to balance the supervisory function of the House of Representatives and the judicial function of the Constitutional Court. This principle is in line with the concept *of the Mazhalim Court* in the politics of Islamic law, an independent judicial institution that has the authority to try anyone, including the head of state, in order to uphold substantive justice and eliminate tyranny. Overall, the study concludes that in both the Indonesian and Islamic systems, the main basis for the dismissal of the head of state is justice and the rule of law, where the highest power rests with the law itself, not with individuals or political institutions.

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