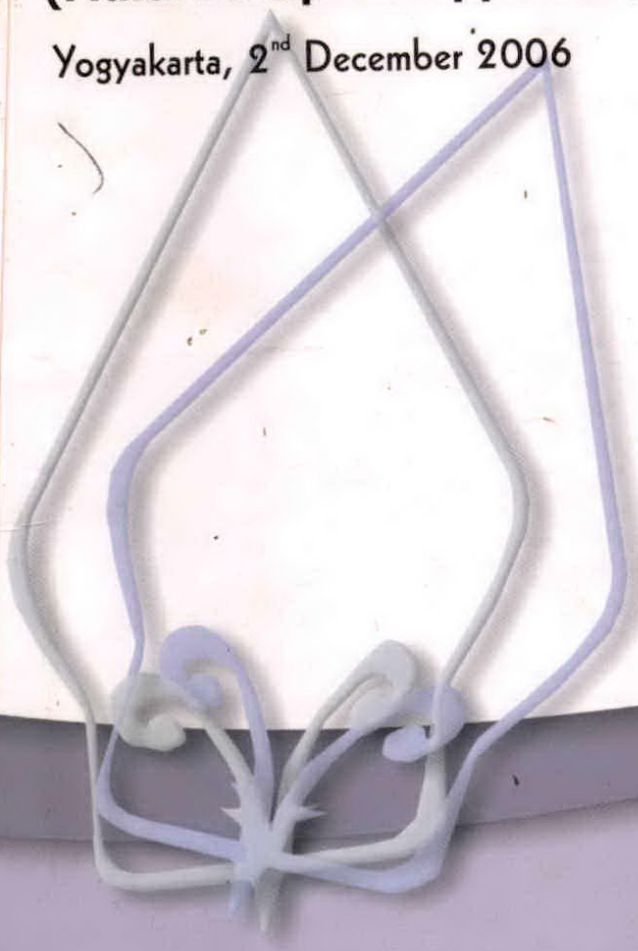
ISBN 979-3700-10-6

Proceeding

International Joint Seminar

Muslim Countries and Development :
Achievements, Constraints and Alternative Solutions
(Multi-Discipline Approach)

Yogyakarta, 2nd December 2006



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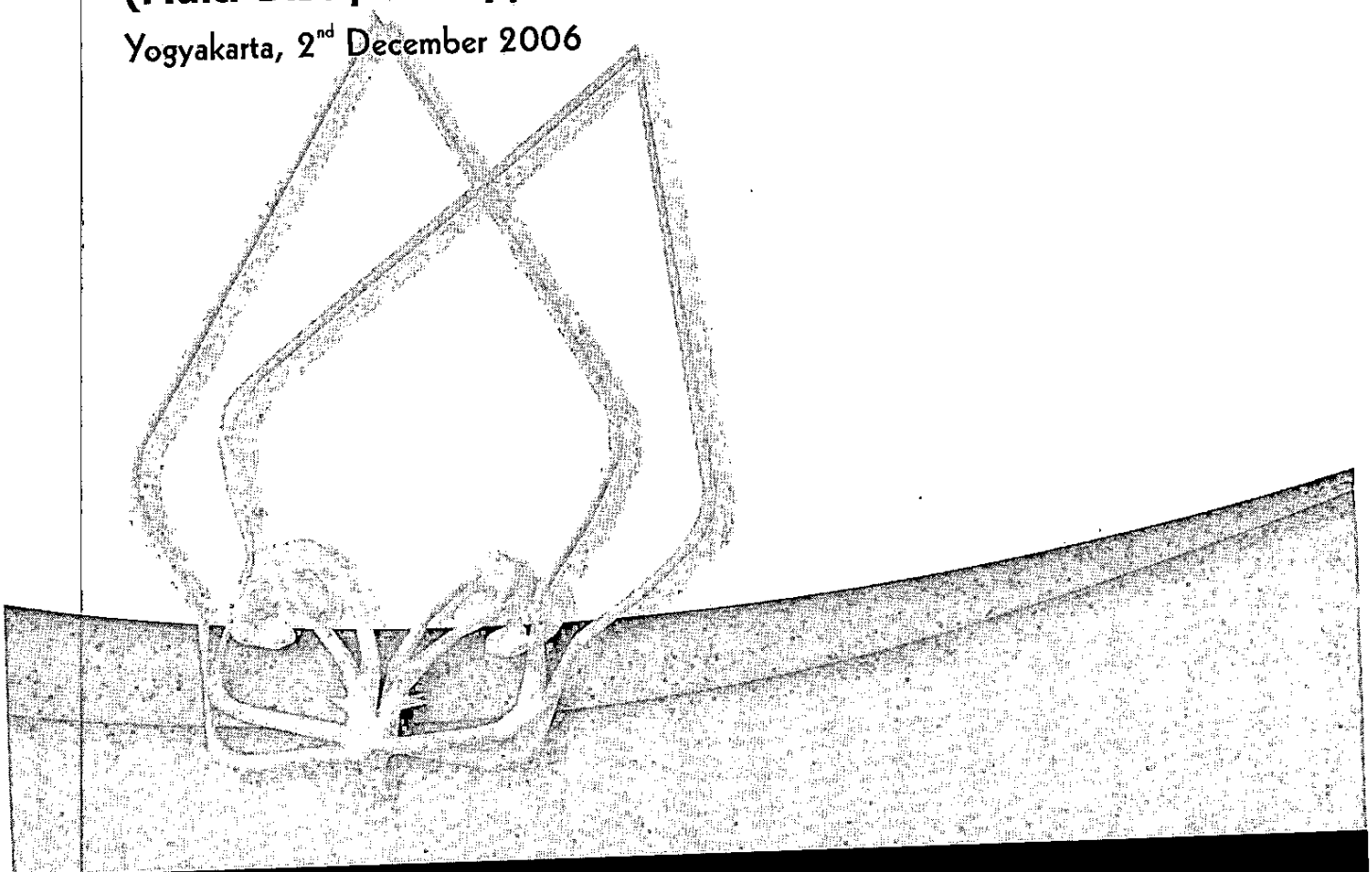

Organized by:

UMY
Universitas Muhammadiyah Yogyakarta

IIUM
International Islamic University Malaysia

Education and Cultural Attache Embassy of The Republic Indonesia in Malaysia

MESSAGE FROM THE RECTOR OF UNIVERSITAS MUHAMMADIYAH YOGYAKARTA (UMY)

Assalamu'alaikum warahmatullahi wabarakatuh

All praise be to Allah SWT, Lord of the world. Peace and blessings on Muhammad SAW, His Servants and Messenger.

First of all, as the rector of Universitas Muhammadivah Yogyakarta (UMY), I would like to welcome to the honourable guests, Rector, Dean of Postgraduate Studies (CPS), Dean of ISTAC, Dean of IRKHS, Deputy Deans and Head Departments from various Kulliyah, lecturers, postgraduate students of International Islamic University Malaysia (IIUM), and all participants in this joint seminar.

Academic cooperation between UMY and IIUM started several years ago. The cooperation between us is based on a solid foundation; both us are Islamic universities having same missions to develop Islamic society, to prepare future generations of Islamic intellectuals, and to cultivate Islamic civilization. In fact, improving academic quality and strengthening our position as the producers of knowledge and wisdom will offer a meaningful contribution to the development of Islamic civilization. This responsibility is particularly significant especially with the emergence of the information and knowledge society where value adding is mainly generated by the production and the dissemination of knowledge.

Today's joint seminar signifies our attempts to shoulder this responsibility. I am confident to say that this joint program will be a giant step for both of us to open other pathways of cooperation. I am also convinced that through strengthening our collaboration we can learn from each other and continue learning, as far as I am concerned, is a valuable ingredient to develop our universities.

I sincerely wish you good luck and success in joining this program

Wassalamu'alaikum Wr, Wb.

Dr. Khoiruddin Bashori
Rector, UMY

MESSAGE FROM THE RECTOR OF INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA (IIUM)

Assalamu'alaikum warahmatullahi wabarakatuh

In the name of Allah, the most Gracious and the most Merciful. Peace and blessings be upon our Prophet Muhammad (S.A.W).

First and foremost, I felt honoured, on behalf of the university to be warmly welcomed and to be given the opportunity to work hand in hand, organizing a respectable conference. Indeed, this is a great achievement towards a warmers bilateral tie between the International Islamic University Malaysia (IIUM) and Universitas Muhammadiyah Yogyakarta (UMY) after the MoU Phase.

I would also like to express my heartfelt thanks to Centre for Postgraduate Studies (CPS), Postgraduate Students Society (PGSS), contributors, paper presenters, participants and our Indonesian counterpart for making this program a prestigious event of the year.
This educational and cultural visit is not only an avenue to foster good relationship between organizations and individuals and to learn as much from one another but a step forward in promoting quality graduates who practices their ability outdoor and master his or her studies through first hand experience. The Islamic platform inculcated throughout the educational system namely the Islamization of knowledge, both theoretical and practical, will add value to our graduates. This comprehensive excellent we strived for must always be encouraged through conferences, seminars and intellectual-based activities in line with our lullaby: The journey of a thousand miles begin by a single step, the vision of centuries ahead must start from now.

My utmost support is with you always. Looking forward to a fruitful meeting.

Ma'assalamah
Wassalamu'alaikum Wr, Wb.

Prof. Dato' Dr. Syed Arabi Idid
Rector, IIUM

MESSAGE FROM EDUCATION AND CULTURAL ATTACHE
EMBASSY OF THE REPUBLIC OF INDONESIA
KUALA LUMPUR

Assalamu'alaikum warahmatullahi wabarakatuh

All praise be to Allah SWT. This is the moment where implementation of MoU between Universitas Muhammadiyah Yogyakarta (UMY) and International Islamic University Malaysia (IIUM) comes in the form of action by organizing this Joint Seminar. The efforts of both sides to implement the MoU are highly appreciated, especially, in the context of which both universities effort to enhance the quality of education.

Substantially, I believe that this Joint Seminar will bring many benefits. In term of the development of knowledge, it is a means for developing academic quality, for exchanging of information on academic development, as well as for constructing intellectual atmosphere at both universities. In term of international relations, both universities have taken part in increasing close relationship between Malaysia and Indonesia. RUM and UNIY as well are using 'soft power' to increase bilateral relations among citizens which brings a lot of benefits for both nations.

Therefore, I hope that both RUM and UMY can make use of this program as a 'kick-off' for other programs in the future, especially in using UMY's vast networks with other Muhammadivah Universities in various cities in Indonesia as well as IIUM's network. The support of IIUM for UMY also means a progress for IIUM and UMY. I hope such joint program will continue in future for betterment of both Indonesia and Malaysia. Embassy of the Republic of Indonesia in Kuala Lumpur will always support these efforts.
To our honorable guests, Rector, Dean of Postgraduate Studies (CPS), Dean of ISTAC, Dean of IRKHS, Deputy Deans and Head Departments from various Kulliyah, lecturers and students of IIUM, I warmly welcome you to Yogyakarta. I hope you enjoy your stay in the cultural city of Yogyakarta.
Finally, as the Attache of Education and Cultural, Embassy of the Republic of Indonesia, Kuala Lumpur, I sincerely wish you good luck *and a* successful program with unforgettable memories.

Wabillahit Taufiq Wal Hidayah
Wassalamu'alaikum warahmatullahi wabarakatuh.

M.Imran Hanafi

Education and Cultural Attache Embassy of the Republic of Indonesia

MESSAGE FROM DEAN CENTRE FOR POSTGRADUATE STUDIES

Assalamu'alaikum warahmatullahi wabarakatuh

Praise be to Allah. May the peace and blessings of Allah be on the last prophet and messenger, our master Muhammad and on his household and companions. It is a great privilege for me to foreword this message to this wonderful event that is jointly organized by the Universitas Muhammadiyah Yogyakarta (UMY) and International Islamic University (IIUM).

First and foremost I would like to record my special gratitude to management of Universitas Muhammadiyah Yogyakarta for their co-operation.

In order to obtain comprehensive excellence, the Centre for Postgraduate studies has always facilitates postgraduate students of the university to achieve the highest quality in their academic work. This seminar is one of the many programs that Centre for postgraduate studies has to ensure quality graduates.

I would therefore like to thank all the participants and programme coordinators who have worked hard to realize this event.

May Allah SWT shower His blessing upon us.

Wassalamu'alaikum Wr, Wb.

Prof. Dato' Dr.Wan Rafaei Abdul Rahman
Dean, Centre For Postgraduate Studies

MESSAGE FROM THE ACTI
PRESIDENT OF POSTGRADUATE STUDE

Assalamu'alaikum warahmatullahi wabarakatuh

On behalf of Postgraduate Students' Society (PGSS), my gratitude and appreciation to our beloved Dean of Studies, the Embassy of Indonesia in Kuala Muhammadiyah Yogyakarta and the organizing com IIUM and the Universitas Muhammadiyah Yogyakarta huge success. Postgraduate Students' Society (PGSS) u supervision of the Center for Postgraduate Studies (CP this event.

As I strongly believe that the initial stages of unity a and building the new generation, who will represent t more, such programs, not only achieve the missio universities but to achieve the global mission and Therefore, I believe today, we have to have understa and then only we can appreciate our diverse cult acknowledge the different strengths posses in us an weaknesses through knowledge in this age of informa sure this joint seminar will initiate unity among the fut along with integrating them.

Thank you,

Mohd Nabi Habibi

Acting President Postgraduate Students' Society (PGSS

MESSAGE FROM PROGRAM DIRECTOR

Assalamu'alaikum warahmatullahi wabarakatuh.

Praise be to Allah. May the peace and blessings of Allah be on the last Prophet and Messenger, our master Muhammad and on his household and companions.

Honestly speaking, we are pleased to be trusted by Postgraduate Students' Society (PGSS) and Centre for Postgraduate Studies (CPS) to organize the programme named Educational and Cultural Visit to Yogyakarta, Indonesia. For this, We express our gratitude to the management of both PGSS and CPS. This programme is of immense value. It has the potentials to promote intellectual endeavor, develop leadership capabilities and enrich cross-cultural understandings. We sincerely believe and hope that program of this kind will be organized in a regular fashion in future.

It is a great privilege for us to play twofold role in organizing this event: *as a host* and as *guest*. In fact, this is a fascinating experience to manage this event. Since our inception here, we have found meaningful interaction of students in an interweaving of cultures into complicated, yet beautiful, embroidery of social fabric. We are proud to say that this dearly loved university has produced graduates of high quality, who are distinct from those of the local universities.

Finally, we wish to express our special thanks to Bapak M.Imran Hanafi, Education and Cultural Attache of Indonesian Embassy, Bapak Herdaus, S.H., Assistant of Immigration Attache of Indonesian Embassy, Bapak Tharian Taharuddin for their immensely valuable assistance and co-operation in making this program a success. I sincerely appreciate all local committees at Yogyakarta, the colleagues and program coordinators and committee members who worked diligently to materialize this event. We wish to pass on good wishes to the PGSS for their valuable efforts it expended for this event.

May Allah s.w.t shower His blessing upon us.

Wassalam,

Nasrullah
Programme Director

Todi Kurniawan
Co-Programme Director

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Legal Analysis on The Concept and The Practice of Impeachment: A Comparative Study Between Abdurrahman Wahid Case and William Jefferson Clinton Case

Iwan Satriawan
Faculty of Law, Muhammadiyah University of Yogyakarta

Abstract

The impeachment process is both crucial and controversial as it may lead to the removal of the head of executive branch of the country. In Indonesia, this problem rooted in the vagueness of the 1945 Constitution on ruling the impeachment issue. This weakness has prompted political turbulence in the impeachment process of Ab durrahman Wahid in 2002. Meanwhile in the United States, even though the Constitution provides provisions on impeachment, debates still arise since the term "misdemeanors" did not have a precise meaning. Hence, politicians tend to interpret it in line with their own political interests. The debate on a precise meaning of the term "misdemeanors" happened in the process of Clinton's impeachment in 1998. This research aims to explore and analyze the above constitutional problems based on the popular cases that occurred in both Indonesia and the United States i.e. President Abdurrrahman Wahid dan William Jefferson Clinton. The research also attempts to analyze the problems with comparative approach and find the similarities and differences between the two countries, particularly in the experiences of both presidents. In conclusion, the research attepmts to offer some important notes for a better impeachment process in the future.

Keywords: impeachment, constitutional problems, head of executive

Introduction

The impeachment of President Abdurrahman Wahid (Gus Dur)[1] has become the most popular constitutional issue in Indonesia in the last few years. The issue has raised some constitutional debates on the rules of presidential impeachment in the Constitution since the Constitution does not provide clear provisions for impeachment.

[1] Gus Dur is the nickname of Abdurrahman Wahid. Gus means a prince, a popular title for a son of an *ulama* in a Pondok Pesantren (Islamic Boarding School) in the traditional Muslim society of East Java. Gus Dur is the first president of Indonesia who comes from a Muslim (*santri*) background.

The impeachment process began in concomitant when 500 members of Parliament accused Gus Dur of embezzling $4.1 million in state funds from Yanatera Foundation and his inconsistency in giving an explanation before the members of Parliament (DPR) pertaining to $2 million from the Sultan of Brunei.[2] Some analysts believe that another reason for Gus Dur's impeachment was due to his acts of replacing members of his cabinet, many of whom were parts of the coalition which brought him to power.

The impeachment of Gus Dur had become a constitutional issue since the Indonesian Constitution does not provide provisions regarding impeachment. The members of Dewan Pewakilan Rakyat[3] (DPR), and Majelis Permusyawaratan Rakyat (MPR)[4] only referred to the Decree of MPR as the grounds for the impeachment process. This unrelenting debate prompted political riots in some regions of Indonesia, particularly in East Java, Gus Dur's strongest political base.

This paper deals with the issue of impeachment in Indonesia and the United States, especially on the rules of impeachment in the Constitution as well as the practice in both countries. This is a very important issue for Indonesia since there were no clear provisions in the Constitution about impeachment before the MPR amended the 1945 Constitution by incorporating some provisions pertaining to the impeachment issue. In the debate on Gus Dur's impeachment, the controversy lies in the weakness of the Constitution in ruling the impeachment process and debate on the position of the Decree of MPR in governing the issue.

In order to enrich the perspective of the issue, this paper will also describe the United States' concept and experience regarding impeachment. As we know, the United States has comprehensive rules as well as experiences pertaining to the impeachment trial of a president, having had a number of cases such as Andrew Johnson, Richard Nixon and William Jefferson Clinton. But, for focus, the writer only analyzed the Bill Clinton case. Here, a comparative study will analyze the issue of presidential impeachment in both countries.

Impeachment in Modern Constitution

The presidency is a prime symbol of national unity. The election of the president is (with his alternate, the vice president) the only political act that citizens perform together as a nation. Thus, voting in the presidential election

[2] See Paridah Abdul Samad, *Gus Dur A Peculiar Leader in Indonesia's Political Agony*, Selangor, Penerbit Salafi, pp.340-344.

[3] Dewan Perwakilan Rakyat (DPR) stands for People's Representative Body, or Parliament.

[4] Majelis Permusyawaratan Rakyat (MPR) stands for People's Consultative Assembly, a highest body in the Indonesian Structure of Government.

is certainly the political choice most significant to the American people, and most closely attended by them.[5]

Once he gains power, a president can abuse his power or undo his credibility by conducting any improper measures which disturb his acceptability as a leader. In other words, a president has to be controlled by another organ. Moreover he can be impeached due to his misconduct. The historical experience has shown that a president will find it difficult to stay in the presidency if he loss his political support from the majority members of parliament. Hence, he would be easily impeached.

In relation to that, modern constitutions provide certain provisions which state that the president and other federal officials may be removed from office due to their improper conduct.[6] To ensure the quality of democracy in respect to the issue, the impeachment process has to be based on procedural laws and rational reasons.[7] Nowadays, this concept has developed substantially in many countries including Indonesia.

The Scope of Impeachable Offenses

Numerous commentators have taken issue with this statement which candidly concedes that impeachments may be motivated or resolved by political concerns. As observed by Ford, the practical reality of impeachment and subsequent attempts to circumscribe the scope of impeachable offenses have not succeeded in eliminating any role of political factors.[8] It is worth noting that the impeachment trials of Andrew Johnson and Clinton as well as Sukarno and Abdurrahman Wahid, have shown that political motives cannot be excluded. Therefore, a constitution has to provide certain limitations regarding the scope of impeachment in order to eliminate those political motives.

The text and history of the impeachment clauses provide some useful insights into the scope of impeachable offenses. *First*, the constitution provides that " all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.[9]
Second, in the British experience prior to the drafting and ratification of the Constitution, impeachment was considered as a political proceeding, and impeachable offenses were political crimes. For instance, Raoul Berger found

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[5] See Black, Jr, *Impeachment, A Handbook*, United States, Yale University Press, 1998, p.1.

[6] See U.S. Constitution, art.II, s 4.

[7] Kompas, 14-7-2001. Unfortunately, the amendment only covered the impeachment of president, not covered the impeachment of other public officials like in American concept of impeachment.

[8] See Michael J.Gerhardt, *The Federal Impeachment Process*, p. 103.

[9] *Ibid.*

that the British practice treated "high crimes and misdemeanors" as a category of political crimes against the state.[10]

Third, the framers and ratifiers seemed to have shared a common understanding of impeachment as a political proceeding and impeachable offenses are political crimes. The delegates at the constitutional convention were intimately familiar with impeachment in colonial America, which, like impeachment in England, had basically been a political proceeding. Although those delegates primarily focused on the offenses for which the president could be impeached and removed, they generally agreed that the president could be impeached only for so called "great offenses".[11] Based on the previous discussion, it can be inferred that an impeachment trial is a political proceeding which is defined by some constitutional safeguards.

Moreover, the ratification debates support the conclusion that despite the apparent goals of narrowing the *conditions* for the removal of impeachable officials, other high crimes and misdemeanors were not limited to indictable offenses, but rather included great offenses against the federal government. For example, delegates to state ratification conventions often referred, and they frequently spoke of how impeachment should apply if the official "deviates from his duty" or if he "dares to abuse the powers vested in him by the people".[12]

Alexander Hamilton argued that the subject of the Senate's jurisdiction in an impeachment trial were those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. Hamilton commented further that the impeachment court could not be tied down by strict rules, either in the delineation of the offense by the House of Representatives or in the construction of it by the Senate.[13]

In much the same manner as Hamilton, Justice Story believed that the framers crafted the federal impeachment process as if there would be a federal common law on crime from which future Congresses could draw the specific or particular offenses for which certain federal officials could be impeached. The implicit understanding by Hamilton and Justice Story was that subsequent generations would have to define on a case by case basis the political crimes comprising impeachable offenses to replace the federal common law of crimes that never developed.[14]

[10] *Ibid.*

[11] *Ibid*, p.104.

[12] *Ibid*, pp.104-105.

[13] *Ibid.* p.105.

[14] *Ibid*, p.106.

The kinds of factors Congress might consider in determining the existence of an impeachable offense are the seriousness of the misconduct, its timing, the relevance of the offense to the election or confirmation, the link between a misdeed and an office and proximity of the next relevant election.[15]

In any event, constitutional safeguards apply to the impeachment process and should circumscribe congressional efforts to define political crimes. The constitution includes several guarantees to ensure that congress will deliberate carefully prior to making any judgments in an impeachment proceeding: (1) when the Senate sits as a court of impeachment," they shall be on Oath or Affirmation"; (2) at least two-thirds of the Senators present must favor conviction in order for the impeachment to be successful; and (3) in the special case of presidential removal, the chief justice must preside so that the vice-president who otherwise normally presides, is spared from having to oversee the impeachment trial of the one person who stands between him and the presidency.[16]

Three other safeguards derive from the nature or structure of the federal political process. *First*, members of Congress seeking reelection have a political incentive to avoid any abuse of the impeachment power. *Second*, the cumbersome nature of the impeachment process makes it difficult for an action guided by base personal and partisan motives to impeach and remove someone from office. *Third*, as with any other decision it must make in an impeachment, Congress must be sure that its judgments are acceptable to, or will be respected by, key leaders or decision makers in the other branches or face the prospect or the onset of a constitutional crisis. Thus, these structural and political safeguards help to ensure that congressional calculations of the impeachability of certain misconduct will be based not on "mere policy difference but rather careful balancing of personal and short and long term institutional interests at stake.[17] In other words, some constitutional safeguards are provided to eliminate the intention of an impeachment trial as a mere political action.

Procedures

An impeachment proceeding consists of two stages, namely the procedures of the House of Representatives and of the Senate. In the paragraph below, both stages of procedure will be briefly discussed.

a. The Role of House Representatives

The procedures of the House of Representatives and of the Senate are highly technical. The House of Representative has, under the Constitution, the Sole Power of impeachment-that is to say, the power to bring charges of the commission of one or more impeachable offenses. These charges are

[15] *Ibid*, p.110.

[16] *Ibid.*

[17] *Ibid*, p.110-111.

conventionally called "Article of impeachment". The House impeaches by a simple majority vote of those present.[18]

In other words, the constitutional provision giving the role of accuser and prosecutor—the "sole Power of Impeachment"—to the House of Representatives was patterned after the English practice. Since the 14th Century, the House of Commons had taken it upon itself to present to the House of Lords charges against "high officers of the Crown, who might avoid, through their influence, punishment unless Parliament was in a position to inflict punishment. This had proven an effective tool in the struggle for a more responsible government and quite naturally the architects of the new American nation saw fit to adapt the process to their infant republic. Although the Constitution is clear in granting the impeachment power to the House, it leaves to that body the development of mechanism for exercising the power. As in the Constitution itself, the early legislators went to English parliamentary law and for the most part duplicated the English procedure.[19]

A variety of methods have been employed to institute impeachment proceedings: Charges may be made orally on the floor by a Member of the House; a Member may submit a written statement of charges; one or more Members of the House may offer a resolution and place it in the legislative hopper; a presidential message to the House may initiate proceedings. The House has also received charges from a state legislature, from a territory, and from a grand jury. Finally, there may be a report of a committee of the House which may submit facts or charges that will lead to impeachment. Under the rules governing the order of business in the House a direct proposition to impeach is a matter of highest privilege and supersedes other business. Similar privileged treatment is given to propositions relating to appending impeachment.[20]

Before voting to impeach, the House has always had a committee examine the charges. When an impeachment charge has been initiated, the House either calls for the appointment of a select committee to investigate the charge or refers the charge to one of its standing committees. Once the matter is referred to a committee, the rules of the particular committee come into play. In some cases where the matter has been referred to a standing committee, it has been assigned to a subcommittee for study. Some inquires have been made *ex-parte*, but the usual practice has favored permitting the accused to explain, present witnesses, cross-examine and be represented by counsel.[21]

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[18] See Charles L.Black Jr, *Impeachment A Handbook*, p.5.

[19] See Boris Bekovitch and Thomas J. Schwarz, The Law of Presidential Impeachment, A Report from The Committee on Federal Legislation, 21 January 1974.

[20] *Ibid.*

[21] *Ibid.*

Committee hearings may be open or closed and, after the committee investigation is completed, the committee may recommend dismissal of the charges or recommend impeachment. In the latter case, the usual practice is for Articles of Impeachment setting forth the grounds for impeachment to be adopted by the committee and included in its report to the House, which becomes the basis for the formal resolution upon which the House votes.[22]

The committee resolution recommending impeachment, being a matter of privilege, is then promptly placed before the House for debate and vote. It is subject to the usual parliamentary procedures during the House debate. After adoption by a majority vote, Articles of Impeachment are signed by the Speaker and the House selects one or more Members to act as "managers" to conduct and prosecute the impeachment in the Senate. The managers may be elected by the House or appointed by the Speaker.[23]

If a resolution recommending impeachment is adopted by the House, the Senate is immediately informed. When the Senate notifies the House that it is ready to receive the Articles of Impeachment, the House managers go to the bar of the Senate and orally present the impeachment, and demand that the senate issue process to require the attendance of the respondent in the Senate. The managers return and report to the House while the Senate issues a writ of summons fixing the return date on which the respondent is to appear in the Senate. After the Articles of impeachment are presented to the Senate, the managers act as prosecutors in the subsequent proceedings conducted in the Senate.[24]

b. The Role of the Senate

The Senate tries all impeachments—it determines, on evidence presented, whether the charge in each Articles of Impeachment is true, and whether, if the charge is true, the acts that are proven constitute an impeachable offense. Such an affirmative finding is called "conviction on the Articles of Impeachment" being voted upon. A two-thirds majority of the Senators present is necessary for conviction.[25]

As noted earlier, preliminary drafts of the Constitution in the Constitutional Convention provided a judicial forum for the trial of impeachment. It was not until near the end of the Convention that the trial of the entire process of impeachment was placed in the Senate, with the Chief Justice named to preside at the trial of a president.[26]

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[22] *Ibid.*

[23] *Ibid.*

[24] *Ibid.*

[25] See Charles L.Black Jr, *Impeachment A Handbook*, p.5.

[26] See Boris Berkovitch and Thomas J. Schwarz, *The Law of Presidential Impeachment*, A Report from the Committee Report on Federal Legislation, January 21, 1974.

The person impeached, referred to in the proceedings as the respondent, is not required to be present. President Johnson did not attend, but was represented by counsel. On the other hand, the entire House of Representatives is privileged to attend and take seats in the Senate chamber and in some cases has done so. The managers from the House of Representatives, who prosecute the impeachment, are seated at tables and chairs prepared for them between the rostrum and the first row of Senators' desks, on one side of the centre aisle. Counsel for the Respondent is seated similarly on the other side of the aisle.[27]

If less than two-thirds of those present and voting (assuming the presence of a quorum, now 51 Senators) find the respondent not guilty, he is acquitted of the charge and a judgment of acquittal is automatically entered. A final adjournment of the Senate as a court of impeachment without voting on an Article of Impeachment acts as an acquittal. If two-thirds or more find the respondent guilty, he is removed from office. Thereafter, by majority vote, the Senate decides whether to disqualify the respondent from ever holding any office of trust or profit under the United States.[28] In this stage, it seems that the constitution provides quite strong restraints by determining that two-thirds of those present vote for impeaching a president. Therefore, in American history, it rarely occurs that a president was finally impeached after the trial, as in the Clinton who was acquitted less than two-thirds of those present voted for impeachment.

The power of impeachment and removal is a drastic one and as such not to be lightly undertaken in any case. It is particularly sensitive with reference to the President of the United States, the only official in the system of government who is chosen by the vote of the entire nation.[29]

Impeachment in Indonesia

The History of the Concept

In Indonesia, the history of impeachment of a president could be traced back to 1967 when the first Indonesian president, Sukarno, had to be removed from his office after the MPRS[30] rejected his supplementary account in a special session.[31] This historical event has become an important note in Indonesian constitutional law as well as in politics.

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[27] *Ibid.*

[28] *Ibid.*

[29] *Ibid.*

[30] MPRS is a Provisional People's Consultative Assembly of Indonesia. It was the highest body in Indonesian structure of state. The MPRS considered Sukarno involving of the 30 September Movement that killed six army generals on 1 October 1966. The 30 September Movement had been considered as the attempted coup that involved the PKI's leaders and cadres.

[31] See Suwoto Mulyosudarmo, Pertimbangan Penghentian Presiden dalam Sidang Istimewa MPR, *Kompas*, 14 – 7 -2001.

Another case that is relevant to the impeachment issue is the impeachment of President Abdurrahman Wahid in 2001. This is the second case of impeachment of a president in Indonesian history so far. President Wahid was impeached in a special session of the MPR of Indonesia since he was accused by the DPR of having been involved in corrupt activities which were popularly known as Bullogate and Bruneigate.[32]

The impeachment of President Wahid has raised questions about the reasons of the impeachment of a president since the 1945 Constitution did not provide certain provision on the existence of impeachment trial and the definition of impeachable actions. The Decree of MPR[33] also does not explain clearly or define impeachable offenses. It explains only that if a president breaks the state guidelines, he can be impeached. The meaning of state guidelines is quite general and has created debates among politicians and political experts. In other words, there is a constitutional problem on the impeachment of President Wahid because of unclear provision in the 1945 Constitution and the Decree of the MPR.

In short, it can be concluded that in both cases, the impeachment trials of these two presidents have shown the weakness of the 1945 Constitution and the Decree of the MPR that caused unrelenting debates among politicians as well as political experts and created political turbulence.

Impeachment in Constitution

Before discussing further the impeachment concept in the Indonesian Constitution, it is relevant to allude briefly to the structure of the Indonesian government in order to understand better the position of the president among other bodies i.e. DPR and MPR in the frame of impeachment issues.

Unlike in the United States, the Indonesian constitution provides no provisions for impeachment. Based on both experiences in the impeachment of presidents, Sukarno and Abdurrahman Wahid, the members of MPR have drawn an important lesson that the impeachment has to be ruled more specifically and clearly to avoid unnecessary debates in the future. Thus, in November 2001, the MPR amended the Constitution and included some provisions on impeachment.

The Scope of Impeachable Offenses

There are quite different concepts of impeachable offenses in the 1945 Constitution before the Third Amendment and after the amendment. The paragraph below will discuss further the differences of the impeachable offenses.

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[32] See M Djadijono, The Impeachment of President Wahid and the Emergence of Mega-Hamzah Leadership, *The Indonesian Quarterly*, Vol.XXIX/2001, No.2, pp.120.

[33] The Decree of MPR is the second highest regulation of the Legislative Regulation Order of the Republic of Indonesia. For this, see further article 2 of the Decree of MPR No.III/MPR/2000.

a. Rule before the Third Amendment

Before the Third Amendment of the 1945 Constitution, the grounds for impeachment could be found only in the explanation of the constitution and the Decree of MPR. In the explanation of the 1945 Constitution, it is stated that:

(a) in conducting his power, concentration of power and responsibility upon the President;
(b) MPR has the highest authority of state-power, whereas the president has to perform the state guidelines set up by the MPR;
(c) the president is appointed by MPR, subject to and responsible to the MPR.[34]

In addition, in article 5 of the MPR Decree No.III/MPR/1978, it is stated that:

(1) The president is subjected to and responsible for the MPR and at the end of his power he has to give an account regarding the mandates given before by the MPR;
(2) While handling the presidency, he can be ordered to give an account before a special session which is specifically conducted for the request of president's accountability pertaining to the implementation of the state's guidelines as determined by the Constitution as well as the Decree of MPR.[35]

In relation to this, Soewoto Mulyosudarmo, one of the constitutional law experts, opined that Indonesia has an unique presidential system. He argued that although it is stated that the governmental system is a presidential system, according to article 6 paragraph 2, the Constitution gives the power to the MPR to appoint the President and Vice-President. He further argued that in presidential system, a president has to be directly elected by the people. Appointment by the MPR is not a feature of the presidential system. It seems to be more of a parliamentary system. However, the Third Amendment of the 1945 Constitution in 2001 has asserted the presidential system of the presidency since the president will be elected directly by the people through election.[36]

Based on the earlier description, it is noteworthy as well that before the Third Amendment, the 1945 Constitution did not provide clear and specific provisions on impeachment. Provisions on impeachment, generally, could be found only in the explanation of the constitution and Decree of MPR No. III/MPR/1978.[37] Since the provisions were general, they did not define the

[34] Suwoto Mulyosudarmo, *Kompas*, 14-7-2001.

[35] *Ibid.*

[36] Soewoto Mulyosudarmo, Kekuasaan Eksekutif dalam Sistem Pemerintahan Presidensiil, *Peradaban Magazine*, Vol. I No. 03, November 2001.

[37] There is serious contention between some constitutional law experts regarding to the position of MPR decree in the hierarchy of the rules in Indonesia. For this, see article of Harun

precise meaning of impeachable offenses as well, and the procedures were quite lenient. Thus, the impeachment of President Abdurrahman Wahid has prompted necessary debates on the issues.

b. Rule after the Third Amendment.

As discussed in the previous paragraph, before the Third Amendment, the 1945 Constitution did not provide any provisions that clearly explain the impeachable offenses. The impeachable offenses were found in the explanations of the 1945 Constitution. However, the provisions in the explanation only briefly describe the category of impeachable offenses i.e. what the breaking of the state guidelines means. The precise meaning of the breaking of the state guidelines was not clearly mentioned. This had led people and politicians to debate on it, particularly on the Abdurrahman Wahid case.

After their experience with the Abdurrahman Wahid case, the members of MPR, in November 2001 amended the 1945 Constitution by including some provisions that clearly and specifically mention the scope of impeachable offenses as well as the procedures of impeachment. In addition, the Third Amendment also asserted the Indonesian model of presidency. By the Third Amendment, the presidency now has a fixed term. Thus, a president cannot be impeached during the period of presidency, unless he conducts one of the impeachable offenses as mentioned further in the paragraph below.

In the article 7A of the 1945 Constitution, it is stated that the President and Vice-President can be impeached by the MPR based on the proposal of the DPR if it is proven that he has broken the laws i.e. treason, corruption, bribery, high crimes and misdemeanors, or if it is proven that he has not fulfilled the requirements of being President or Vice-President.

This article explains more clearly the scope of impeachable offenses compared to the rule in the Decree of MPR No. III/MPR/1978 as stated above. By having more specific and clear provisions, it is hoped that it will prevent abuse of power in demanding the accountability or even impeachment of a president or vice-president in the future.[38] In other words, the article specifically limits the grounds for impeachment of a president.

Procedures.

The procedures as laid down before and after the Third Amendment also have differences. The following paragraph will describe and analyze the differences of the procedure in both periods.

A;l Rasyid on Panji Masyarakat, 6 June 2001, Bagir Manan on Panji Masyarakat, 11 July 2001, and Ismail Sunny on Panji Masyarakat, 1 August 2001. They are three of prominent scholars on constitutional law in Indonesia.

[38] See futher Abdul Hakim Garuda Nusantara, *Pemberhentian President dan/atau Wakil President Menurut Amendment III UUD 1945*, in Bambang Widjayanto et el (edit), *Konstitusi Baru Melalui Komisi Konstitusi Independen*, Jakarta, Pustaka Sinar Harapan, 2002, p.132.

a. Before the Third Amendment

Before the Third Amendment of the 1945 Constitution, there were two bodies involved in the impeachment procedure i.e. DPR and MPR. The following paragraph will briefly describe the role of both DPR and MPR in the impeachment procedures.

The Role of Dewan Perwakilan Rakyat

As stated above that the DPR has power to control the executive power. If they feel that the President has ignored the state's guidelines, the DPR can warn the president by giving a memorandum. The DPR, then, can send a second memorandum if they do not feel satisfied with the response of the president. Two months after the second memorandum, if majority of the members of DPR agree that the president has ignored their warning, the DPR can ask the MPR to have a trial for the President in a special session.

The Role of Majelis Permusyawaratan Rakyat

Then, the MPR sets up the schedule for a special session and asks the president to give his accountability speech in the session. After hearing all defenses by the President, the members of MPR will finally vote for acquittal or impeachment. The President will be impeached if the majority of the members of the MPR vote for impeachment.

b. After the Third Amendment

After the Third Amendment of the 1945 Constitution, there are some important changes regarding the procedures of impeachment. In the Third Amendment, a Constitutional Court emerges in the midst of procedures and the requirement for a vote arises. The following paragraph will discuss briefly the emergence of the Constitutional Court and the reason of a heavier requirement for voting.

The Role of Dewan Perwakilan Rakyat

The procedure of the presidential impeachment is started if two-thirds of the present members of the DPR agree to bring the case before the Constitutional Court.[39] The DPR has the authority politically to request the Constitutional Court to investigate and decide whether the president has broken the law or not.[40] In this respect, the DPR has a role as prosecutor to indict a president who has been accused of doing some impeachable offenses as stated in the third amendment of the constitution.

The request of the DPR to the Constitutional Court has to fulfill a two-thirds vote of those present. This meant that at least two-thirds of the members of the DPR have to attend the session.[41] In relation to this, it can be highlighted that even though the process is based on the indictment of breaking the law, it is still purely a political process. Therefore, the guilt or

[39] See article 7B verse 3 of the Constitution.

[40] See article 7A of the Constitution.

[41] See article 7B verse 3 of the Constitution.

acquittal of a president is really dependent on the political constellation in DPR.[42] Compared to the requirement in the Decree of the MPR before the Third Amendment as well as in the United States, the requirement seems to be higher. In the United States, voting in the House of Representatives only requires a simple majority, whereas in Indonesia, it requires an absolute majority. Having the experience of impeaching two presidents, the members of MPR might draw a lesson that to guarantee the quality of their decision in the impeachment process, the requirement for voting to bring the indictment to the Constitutional Court needs to be heavier.

The Emergence of Constitutional Court

Based on the request of the DPR, the Constitutional Court has to investigate and decide whether the president has definitely been proven to have broken the law or not in 90 days.[43] At this stage, it is clear enough that it is a legal process which attempts to arrive at a conclusion whether the president is legally wrong or not.[44]

If the Constitutional Court decides that the President is legally wrong, the DPR will have a session to proceed with their indictment to impeach the president by proposing to the MPR to have a special session for the trial.[45]

The emergence of the Constitutional Court in the midst of the impeachment procedure shows an awareness by the members of MPR to the need to avoid their subjective interest in the process. By giving the responsibility to the Constitutional Court, it is hoped that they will have stronger reasons from a legal perspective for impeachment trial of the president.

The Role of Majelis Permusyawaratan Rakyat.

The MPR sets up a special session for the impeachment trial. At this stage, the DPR will be a prosecutor that indicts the president while the MPR will be a grand jury to decide whether the indictment is proven or not before the session. In this model of impeachment, which combines the legal process and political process, the MPR, of course, will easily proceed with the trial since the Constitutional Court has decided whether the President has broken the law or not. Otherwise, the MPR has different decision from the Constitutional Court. This will lead to another serious constitutional problem, of course.

The special session for an impeachment trial has to fulfill requirements that three-fourths of members of the MPR have to attend the session. The president will be impeached if two-thirds of those present finally agree with the indictments of the DPR.[46] In this regard, the president has the right to

[42] See Refliani, Harian Sinar Harapan, 4 Maret 2002.

[43] See article 7B verse 4 of the Constitution.

[44] *See* Refliani, *Harian Sinar Harapan*, 4 Maret 2002.

[45] See article 7B verse 5 of the Constitution.

[46] See article 7B verse 7 of the constitution.

deliver his pleading before the session. However, at this stage, it is more of a political process. Accordingly, the position of president is very much dependent on the political constellation in the MPR.

Compared to the Decree of MPR before the Amendment, the requirement for final voting to determine whether the president should be acquitted or impeached seems heavier. The former rule required only a simple majority, whereas in the Third Amendment the requirement is an absolute majority. In the United States, the requirement for an absolute majority had successfully saved President Andrew Johnson from impeachment.

Finally, it can be concluded that the impeachment trial in Indonesia is started with a political process in the DPR. Then, it is continued with a legal process in the Constitutional Court and lastly, it will close with a political process again in the MPR.

By combining both political and legal processes, the makers of the Constitution may be have reduced the possibility of using the impeachment instrument for the political interest of members of the DPR and MPR. The role of the Constitutional Court in the process of impeachment has an important role in that sense. In addition, the requirement of two-thirds of members presents in the DPR to indict and three-fourths of members present in the MPR to impeach a president is a way to guarantee the quality of the impeachment process.[47]

Although the procedures have been clearly set up, there are still some questions. The emergence of the Constitutional Court in the procedure of impeachment is debated by some scholars. One said that the existence of the Constitutional Court can be a safeguard for a better impeachment process. However, another opined that the position of the Constitutional Court is not clear yet. Does the decision of the Constitutional Court automatically have legal implication? The amendment does not mention it clearly. It seems that the decision of the Constitutional Court, then, depends on the political will of the members of DPR. So, what if they make different decisions? Who will have responsibility to give an ultimate judgment on the dispute?

The legal efficacy of the Constitutional Court's decisions seems to go deeper since the MPR has to have a special session for allowing the president to deliver his defense. Is that process only a symbolic procedure or is it also evidence session? In addition, the effectiveness of the Constitutional Court is still determined by a two-thirds decision of the MPR. Again, if there are different decisions made by two bodies, where is the process going then?[48]

In relation to the number of questions that emerge above, unfortunately, the answers cannot be found the in the Third Amendment of the 1945 Constitution. Meanwhile, the 2004 election will becoming soon and all questions have to be settled before then.. For this, we have to wait for the acts that will define the Amendment in detail in order to continue the discussion.

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[47] See Risalah Rapat Panitia Ad Hoc I Badan Pekerja MPR RI ke 11 s/d ke 15, 20 Maret s/d 15 Mei 2001. Buku Kedua, Jilid 3A.

[48] See further Fajrul Falaakh, *Kritik atas Mahkamah Konstitusi,* in Bambang Widjayanto et el (edit), *Konstitusi Baru Melalui Komisi Konstitusi Independen,* Jakarta, Pustaka Sinar Harapan, 2002, p. 151.

Comparing the procedure with the Unites States, it seems that the United States has a simpler procedure than Indonesia. At the beginning, the framers of the Constitution had asserted that the impeachment is a political process since it only deals with the political accountability of a president. Accordingly, although they appoint the chairman of the Supreme Court as chairperson of the session in the Congress, but substantively and procedurally, he is not involved.

From the previous discussion, the facts show that history has influenced the action taken by the framers of the Constitutions or the members of Parliament in both countries. Needless to say, the Constitution is not mere a legal document defining powers as well constructing the government, but also a reflection of the history or culture of a nation.

Abdurrahman Wahid Case

The paragraph below will describe briefly the events leading to impeachment of President Abdurrahman Wahid. Political and legal analysis will be the main focus of this below paragraph.

Events Leading to Impeachment

Abdurrahman Wahid was accused by the members of the DPR on the grounds of his involvement in the Bullogate and Bruneigate scandals. However, the Attorney General then declared that he did not have enough evidence for proceeding with the prosecution of both cases. The DPR, then, stressed their accusation on the incompetence of Gus Dur in handling the administration of the state. It could not be denied that the improper responses of the President on the warning of the members of DPR and his "wrong decision" on reshuffling many members of the cabinet led him to the end of his political career as President. But, it must be admitted as well that the grounds of the impeachment of Gus Dur seemed more political rather than legal issues since Abdurrahman Wahid had fired some ministers from dominant parties in the DPR and MPR without having strong reasons. Accordingly, Abdurrahman Wahid then lost his political support from the members of the DPR and MPR.

June 2000 was a bad month for President Abdurrahman Wahid. The ring of scandals surrounded by controversies had put President Abdurrahman Wahid in a difficult position. The appointment of his younger brother Hasyim Wahid, a 47 year-old businessman as an adviser to the Indonesian Bank Restructuring Agency had been criticized as nepotism. Two other scandals were financial, Bullogate and Bruneigate. Bullogate had got the president directly or indirectly involved in withdrawing an irregular disbursement of Rp.35 billion from Yanatera Foundation, a National Logistics Agency (Bulog).[49]

Abdurrahman Wahid was also associated with the Bruneigate scandal which related to the non-transparency in the cash flow of financial aid from the Sultan of Brunei to the Indonesian government. The financial aid was designed to fund efforts to resolve the conflict in Aceh. In relation to this,

[49] See Paridah Abdul Samad, *Gus Dur, A Peculiar Leader in Indonesia's Political Agony*, Selangor, Penerbit Salafi, 2001, p.340.

Indonesians were stunned to learn not only that the President had secretly received the money but also handled it as if it were his own.[50] Regarding these issues, the House of Representatives (DPR) set up a special committee to investigate both cases and give a report to all the members of DPR.

A Legal Analysis

From a legal perspective, Abdurrahman Wahid's impeachment process started from the emergence of the Bullogate and Bruneigate scandals. In these cases, Abdurrahman Wahid was accused of involving of withdrawing an irregular disbursement of Rp.35 billion from Yanatera Foundation and of inconsistency in giving an explanation to the members of DPR related to the non transparency in cash flow of financial aid from the Sultan of Brunei to the Indonesian government. These cases weighed heavily upon Abdurrahman Wahid's reputation[51] before the people and be an effective target for his opponents to attack.

Fajrul Falaakh, a young NU intellectual, argued in his article that the first memorandum that warned Abdurrahman Wahid began with the judicial concept of a memorandum whereby Abdurrahman Wahid was accused of being involved in withdrawing an irregular disbursement of Rp. 35 billion from Yanatera Foundation and of inconsistency in giving information to the members of DPR related to the non-transparency in cash flow of financial aid from the Sultan of Brunei. Based on this accusation, therefore, Abdurrahman Wahid was considered to have broken the Decree of the MPR which forbids government officers to be involved in any corruption, collusion and nepotism. In addition, he was considered to have disobeyed article 9 of the 1945 Constitution regarding the presidential oath.[52] In short, the result of the special committee's investigation on the scandals had concluded that Abdurrahman Wahid had considerably abused of his authority, told a lie to the public, and created a new practice of corruption, collusion and nepotism.[53]

However, Abdurrahman Wahid's followers in the DPR had contended the result of the special committee since it was considered as matter of treason for the opponents of Abdurrahman Wahid to attempt to topple him down from the presidency. They further maintained that Bullogate and Bruneigate were mere tools of the opponents to weaken Abdurrahman Wahid's political position.

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[50] *Ibid*, p.344.

[51] *Ibid*, p.305.

[52] Kompas, 7-6-2001.

[53] See Mad Ridwan and Guntoro Soewarno(ed), *Bullogate:Abdurrahmangate, Akbargate, Megaskandal,* Jakarta, Global Mahardika Publishing, 2002, pp.55-56. See also Andi Muawiyah Ramly et el (edit), *Konspirasi Mengoyak Demokrasi,* Jakarta, Pustaka Ciganjur, 2001, p.168. In this book, it is explained that Megawati confirmed to General Rusdiharjo of Abdurrahman Wahid's involvement in Bullogate. General Rusdiharjo who investigated Abdurrahman Wahid said that he admitted that he gave Rp.5 billion to his close friend, Siti Farikha. He asked General Rusdiharjo to keep the information secret.

Unfortunately, the contention of the members of FKB in the DPR was only a minority opinion and could not save Abdurrahman Wahid from getting the first memorandum. In the session, most of the factions in the DPR including TNI-POLRI accepted the result and conclusion made by the special committee since there were many witnesses who testified against Abdurrahman Wahid. In relation to the first memorandum, it should be noted that there was an ambiguity in the text of the memorandum since it was stated that, regarding the accusation of the involvement of Abdurrahman Wahid in the Bullogate scandal, the DPR ordered the Attorney General to proceed legally with the case through criminal process. This was an ambivalent statement since the DPR had the authority to judge by themselves pertaining to the involvement of Abdurrahman Wahid in the scandal.

It is worth noting that the ambiguity of the text of memorandum might be caused by the unclear provision in the 1945 Constitution which did not provide provisions regarding to the impeachment process in detail. Accordingly, the unclear provisions in the 1945 Constitution created unrelenting debate among the politicians and scholars since they have different interpretations of the issue.

Fajrul Falaakh explained that the memorandum process in the DPR was a legislative investigation process and trial. Accordingly, he further maintained that the DPR and MPR had their own right to present their evidence in the special session before the members of both DPR and MPR.[54] Consequently, the constitutional process in DPR and MPR should not depend on the criminal process. The impeachment process was a political process since the sanction only removed the president from the office. There was no criminal sanction in respect to this issue. Criminal process could be continued if the president was removed from the office and be an ordinary citizen. In relation to this, it was not relevant to the debate when suddenly the Attorney General concluded that Abdurrahman Wahid had not been involved in the Bullogate scandal since there was not enough evidence.[55] In comparison, the United States Constitution provides that the Senate has the authority to impeach a president through a political court. Therefore the sanction is only the impeachment decision of the president without any criminal sanctions.[56] In other words, it is well known that impeachment is a political process. James Wilson described the essential character of impeachment as a proceeding of a political nature, confined to political character, to political crimes and misdemeanors, and to political punishment.[57]

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[54] Kompas, 7-6-2001.

[55] Moreover, the Attorney General had never investigated Abdurrahman Wahid's case properly. Therefore the members of DPR and MPR ignored his statement. In addition, as the members of the loyal cabinet of Abdurrahman Wahid, it was difficult for the people to believe on his statement. Accordingly, in a modern country like the United States, to investigate a scandal that involved a president, the constitution allows the Congress to choose an independent prosecutor. This is an important point since the process of investigation should be independent and objective.

[56] Kompas, 20-2-1999.

[57] See the explanation of Michael J.Gerhadt in his testimony before the House judiciary Committee Subcommittee on the Constitution Hearing on the Background and History of Impeachment, November 9, 1998. Available at http://jurist.law.pitt.edu/gerhardt.htm.

Another contention was the debate on the validity of the impeachment trial of Abdurrahman Wahid. The contention came from his legal adviser, Harun Al Rasyid. He argued that Abdurrahman Wahid had been elected for a 5 year period. Therefore he could continue the presidency until 2004. In other words, the president could not be impeached within his period of presidency. He further maintained that the Decree of MPR No.III/MPR/1978, that had become the legal reason for impeaching president, was a baseless reason since the Decree was illegal thing from a constitutional law perspective.[58] This opinion became a fresh reason for the Abdurrahman Wahid and his followers to reject the impeachment trial through a Special Session in the Assembly.
On the other hand, Bagir Manan, the chairman of Supreme Court contended that the impeachment process through first memorandum and second memorandum was constitutional. He maintained that the Decree of MPR No.III/ MPR/1978 provides the rule of an impeachment trial if a president was considered to have broken the state guidelines. He further warned that, constitutionally, the Decree of the MPR is part of the rules in Indonesia. If a person rejects the existence of the Decree of MPR, it would only be respected from academic perspective.[59]

Another constitutional law expert, Ismail Sunny, also declared that the impeachment process in the DPR and MPR was constitutional. He maintained that if a president had broken the state guidelines, the MPR has the right to ask his accountability without waiting for the end of his period of presidency. He further maintained that the impeachment trial was a political process, not a criminal process. The criminal process could be continued after the president was removed from the office.[60]

Based on the above discussion, it can be concluded that the reason for the impeachment trial of President Abdurrahman Wahid had strong arguments since it was clearly stated in the 1945 Constitution and the Decree of MPR No.III/MPR/1978. The opinion of Harun Al Rasyid who rejected the existence of the Decree of MPR in the hierarchy of the rule, in fact, was a minority opinion among other constitutional law experts who argued strongly for the existence of impeachment rules in both the 1945 Constitution and the Decree of MPR No.III/MPR/1978.[61]

Lastly, there was also a contention on the expediting of the Special Session of MPR. Didit Hariadi Estiko, a researcher from the secretariat of DPR, opined that the expediting of the Special Session was not recognized in the rule of MPR's session. Accordingly, he further argued that the expediting

[58] Panji Masyarakat, 6 June 2001.

[59] Panji Masyarakat, 11 July 2001. See further article 2 of the Decree of MPR No.IIIMPR/2000.

[60] Panji Masyarakat, 1 August 2001. See also, the explanation of Suwoto Mulyosudarmo, a constitutional law expert who wrote his Ph.D thesis on the Accountability of President Sukarno, Kompas, 14 October 1999.

[61] See also Suwoto Mulyosudarmo, Kompas, 13-6-2001.

of the Special session was not legal.[62] In fact, the MPR's Board Meeting on 31 May 2001 decided its intention to hold the special session on 1 August 2001. However, on 9 June 2001 the plenary session of the MPR's Ad Hoc Committee suggested to the MPR's Board if there was an unprecedented development threatening the safety and the integrity of the nation and the state caused directly or indirectly by the conduct and or policies of President Wahid, the MPR Board should immediately call all members of the Assembly to hold the MPR's plenary session for the purpose of the Assembly Special Session.[63]

The Assembly finally decided to expedite the Special Session. In the following days, Abdurrahman Wahid sacked the Chief of the National Police Force, General Suroyo Bimantoro and appointed General Chaeruddin Ismail as the care taker of the position. This decision created high political tension between the DPR/MPR and President Wahid. Soon after President Wahid's decision, the MPR decided that it was necessary to call all members of the Assembly to hold an MPR plenary session for the purpose of the Assembly Special Session. On 21 July 2001, one day after President Wahid decided about the Chief of National Police Force, the Assembly's plenary session was held and no factions attending the session were against the expediting of the special session of the MPR. The vote taken afterwards saw that 592 out of 601 members of the Assembly, including the 38 members of the faction of TNI-POLRI, agreed to expedite the Special session of the MPR to ask for the accountability of President Abdurrahman Wahid.[64] Based on the fact, it can be noted that the reason behind the expediting of the MPR Special Session was to save the safety and the integrity of the nation which was threatened by the conduct of President Wahid who desperately ignored the law. In addition, almost all factions, including the TNI-POLRI, in the MPR agreed to expedite the Assembly's Special Session in order to save the national integrity.

To sum up, based on the previous discussion, it can be concluded that from a legal perspective the grounds for the impeachment trial of President Abdurrahman Wahid was the accusation by the members of DPR against President that he withdrew an irregular disbursement of Rp.35 billion from the Yanatera Foundation, as well as his inconsistency in giving information to the public related to non-transparency in the cash flow of financial aid from the Sultan of Brunei. The president was considered to have broken the presidential oath as stated in the article 9 of the 1945 Constitution and the Decree of MPR No.IX/MPR/1998 which states that government officers are forbidden to be involved in any corruption, collusion and nepotism.

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[62] Didit Hariadi Estiko, *Dasar Konstitutional Penyelenggaraan Pemerintahan Negara (Suatu Tinjauan Hukum dan Politik Terhadap Memorandum DPR RI, SI-MPR and Maklumat Presiden)*, in Didit Hariadi Estiko dan Prayudi (ed), *Berbagai Perspektif tentang Memorandum Kepada president, Suatu Tinjauan terhadap Pemberian Memorndum DPR RI kepada Presiden Abdurrahman Wahid*, Jakarta, DPR RI and Konrad Adenauer Stiftung, 2002, p.70.

[63] M.Djadijono, The Impeachment of President Wahid and the Emergence of Mega-Hamzah Leadership, p.120.

[64] *Ibid*, p.122.

It can be noted as well that after the first memorandum, the members of the DPR decided that President Abdurrahman Wahid had ignored the memorandum and always reacted negatively by giving provocative statements and engaging in misconduct which broke the laws. Accordingly, the members of the DPR finally gave him the second memorandum. Since Abdurrahman Wahid continued his stubborn conduct and ignored the second memorandum, the members of the DPR eventually asked the Assembly to hold a special session to ask for the accountability of President Wahid. Abdurrahman Wahid was finally impeached by the Assembly. He did not attend the session, but declared a decree of emergency.

Another point that has to be highlighted was that the unrelenting debate on the existence of Special Session to impeach the President within his period of presidency was caused by the unclear provisions in the 1945 Constitution and its explanation and the Decree of MPR No. III/MPR/1978. Therefore, it was proposed by many scholars that the 1945 Constitution had to be amended by incorporating particular provisions regarding the impeachment of a president.

However, some political observers also argued that the reason behind the impeachment of Abdurrahman Wahid was political motives. The political problems started when Abdurrahman Wahid fired two of his ministers in cabinet, Yusuf Kalla from Golkar[65] and Laksamana Sukardi from PDI-P[66]. The firing of these ministers had created tension between Abdurrahman Wahid and Megawati on one side and between Abdurrahman Wahid with the Golkar on the other side.

Conclusion

From the previous discussion of the Abdurrahman Wahid cases, it can be concluded that the fall of Abdurrahman Wahid was due to their misconduct in performing the presidency. In their trials, the members arrived at the conclusion that they had violated the constitution as well as the laws.

The vagueness of the constitution in governing the rule of impeachment, in fact, has created constitutional problems. Accordingly, it needs to be noted that there should be clearer provisions in the constitution that properly rule the process of impeachment. It is hoped that having clear and specific provisions, the constitution will guarantee the quality of democracy in the impeachment process. In a broader sense, the constitution will be the safeguard of a political system that guarantees public interest and national safety.

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[65] Golkar was a ruling party in Suharto's regime. After the fall of Suharto and the 1999 election, Golkar became the second largest party in the DPR. For the time being, the leaders and cadres are dominantly from the alumni of the Indonesian Moslem Student Association. The Indonesian Moslem Student Association is one of the strongest student movements in Indonesia.

[66] PDI-P or Indonesian Democratic Party of Struggle is the largest party in the DPR with Megawati as the leader. This party is a nationalist party which has strong political support

Impeachment in the United States

Impeachment Trials in the United States

The Senate has sat a court of impeachment on sixteen cases so far.[67] Two of the courts had sat for President Andrew Johnson in 1868 and William J. Clinton in 1999. Richard Nixon in 1974 was tried to be impeached by the House of Representatives. However, he resigned from office before the Senate set a court for his trial.[68] The paragraph below will be discussed a relevant cases, William J. Clinton. The cases will be analyzed from political and legal perspective.

William Jefferson Clinton Case

The paragraph below will describe briefly about William Jefferson Clinton as well as the events leading to impeachment. Analysis from a legal perspective will be the focus of the paragraph below.

2.1. Events Leading to Impeachment

The controversial issue in Clinton's Presidency emerged when, in February 1994, Paula C. Jones appeared at a Washington gathering of conservative activists and alleged that, in 1991, Arkansas Governor Bill Clinton had committed sexual harassment by dropping his trousers in a Little Rock hotel room and asking her to perform a sex act. Jones, who was an Arkansas state clerical worker at the time of the alleged incident, claimed Clinton's state police bodyguard had summoned her to the hotel room.

The White House responded aggressively to Jones' charges and attempted to undermine her credibility through repeated denials on behalf of the President along with off-handed remarks from Clinton loyalists deriding her as "trailer park trash", all of which served to infuriate Ms. Jones. On May 6, 1994, she filed a civil lawsuit against the President in federal district court in Arkansas, seeking $700,000 in damages along with a personal apology from Clinton.

Incredibly, it was at the time, in the midst of Jones controversy, that President Clinton began an illicit sexual affair with a 22-year-old White House intern named Monica Lewinsky. The affair started on November 15, 1995. On that day, President Clinton strolled into the office for an informal birthday gathering at which Lewinsky openly flirted with him. Clinton invited Lewinsky back to his private study, located adjacent to the Oval Office. They kissed, and later that evening, they met again and had their first sexual encounter.

The affair continued after Lewinsky became a paid White House employee and would last a total of 18 months. During their affair, the President and Ms. Lewinsky had ten sexual encounters in the Oval Office suite. For Bill Clinton, the unyielding momentum of the Starr investigation, the Paula Jones lawsuit, and the love-struck young Lewinsky, would all soon meld together and spell catastrophe for his presidency. Furthermore, Linda

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[67] See Impeachment Federal Officials at http://www. time.com/impeachment Cases in US.htm.

[68] See David M. O'Brien, *Constitutional Law and Politics*, Vol I, New York, W.W. Norton & Company Publisher, 2000, p.500.

Tripp provided Starr's investigators with more than 20 hours of tape recordings of her telephone conversation with Lewinsky.

On January 17, 1998, President Clinton, in compliance with the U.S. Supreme Court ruling, arrived at his lawyer's office two blocks from the White House to give a pretrial deposition in the Jones case, with the procedure also videotaped. Sitting across the table from Paula Jones, the President was questioned for six hours by her lawyers and was quite surprised when they asked whether he ever had "sexual relations" with Monica Lewinsky along with other detailed questions. Clinton denied under oath having sexual relations with Lewinsky, according to the definition provided by Jones' lawyers.

In July 1, 1998, Starr granted full immunity to Monica Lewinsky in exchange for her cooperation. She then turned over a blue dress to Starr that contained a stain from a sexual encounter with the President. The FBI obtained a blood sample from the President and was able to match his DNA with the stain on the dress. Evidence of a sexual encounter was now undeniable. But, Clinton consistently denied his relationship with Lewinsky.

Making matters worse for Clinton, the Republican-controlled House Judiciary Committee announced it would consider a resolution calling for a formal impeachment inquiry, the first step in the long process toward possible removal of Clinton from office. The super-charged partisan political atmosphere in Washington, combined with lingering anger over the President's deceit, and the allegations contained in the Starr report, all lent the necessary momentum. Thus the process moved forward and Clinton became only the third U.S. President to be seriously faced with the threat of impeachment.

Witnesses appearing before the committee included Kenneth Starr himself, who accused Clinton of repeatedly engaging in conduct under oath that was deliberately deceptive in order to hide his affair with Lewinsky. The Democrats, in defense of Clinton, produced an array of scholars asserting that the charges against Clinton did not rise to level of "high crimes and misdemeanors" mentioned, but not specifically defined, in the U.S. Constitution as grounds for impeachment, and therefore did not warrant removal of the President from office. The President's own lawyers described Clinton's conduct as "morally reprehensible" but not impeachable.

Republicans on the Judiciary Committee drafted a total of four articles of impeachment based on 60,000 pages of evidence provided by Kenneth Starr. The evidence included sworn testimony, grand jury transcripts, depositions, statement, affidavits, along with video and audio tapes, all concerning Clinton's attempt to conceal his extramarital affair with Lewinsky during the Paula Jones lawsuit and subsequent criminal investigation by Starr's office.[69]

[69] *Ibid.*

2.2. A Legal Analysis

William Jefferson Clinton was impeached for high crimes and misdemeanors. Here below are the articles of impeachment that was exhibited to the United States Senate.

Article 1 accused the President of perjury before Independent Counsel Kenneth Starr's Grand Jury. The prosecutors alleged that on August 17, 1998, William Jefferson Clinton swore to tell the truth. Contrary to that oath, he willfully provided perjury, false and misleading testimony to the grand jury. Article 2 accused the President of unwitting perjury in the Paula Jones civil case. Obstruction of justice related to Paula Jones was put in the article 3. Lastly, in the article 4, President was accused of abuse of power by making false statements to Congress in his answers to the 81 questions posed by the Judiciary Committee.[70]

Sunstein argued that a false statement under oath is an appropriate basis for impeachment if and only if the false statement involved conduct that by itself raises serious questions about abuse of office. In other words, perjury can only be an aggravating factor.[71] He further maintained that the charges made by Judge Kenneth Starr and Mr. David Schippers did not make an appropriate or legitimate case for impeachment under the Constitution. He reversely argued that the impeachment of the president, on the basis of those charges, would greatly unsettle the system of separation of powers.

He added that the text, history and longstanding practice suggest that the notion of "high crimes and misdemeanors" should generally be understood to refer to large-scale abuses that involved the authority that comes from occupying a particular public office. In other words, he asserted that the allegations against President Clinton did not justify a departure from our traditional practice. Accordingly, he suggested that Congress not impeach the President based on charges outside of that category.[72]

In line with Sunstein, Posner also added that Clinton's misconduct did not involve any misuse of the powers of his office. Therefore, it was not impeachable.[73] He further argued that a president's felony must reach some level of gravity or consequence or maybe both, before it can justify impeachment. However, the Constitution does not specify this level.[74]

Bloch, another constitutional law expert, explained that the term misdemeanor as used in the Constitution does not mean what we think of as a misdemeanor today. It is an old English term that means serious offenses against the state. In other words, he asserted that simple crimes that ordinary people can commit should not be grounds for impeachment. In relation to that

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[70] See Presidential Impeachment Proceedings at http://www.historyplace.com/unitedstates/impeachment/clinton.htm.

[71] See Richard A. Posner, p.171.

[72] See Cass Sunstein, The Background and History of Impeachment, A Testimony before the House Judiciary Committee Subcommittee on the Constitution, November 9, 1998, at http://jurist.law.pitt.edu/sunstein.htm.

[73] *Ibid*, p.101.

[74] *Ibid*, p.104.

he opined that what Clinton did, did not undermine the Constitutional system. Therefore, it should not be grounds for removing him from office.[75]

Impeaching and convicting President Clinton for his obstruction of justice would have demonstrated an impressive commitment. As Kant asserted, this would have sounded a clarion call for the reinvigoration of a traditional morality that condemns adultery, lying and breaking the law and insists that public officials be role models in the moral as well as the political realm.[76]

However, although moralistic conservatives got most of the media attention, probably a majority of American conservatives are libertarian rather than moralistic. They are closer to John Stuart Mill who supports free markets and limited government. They want government to concentrate on national defense and the repression of serious crimes and to go easy on redistributing income and wealth. They don't worry a lot about the "moral tone" of society and hence about homosexuality, abortion, pornography, and recreational drug use.[77] In this sense, Clinton had an advantage since people did not care too much about questions of morality.[78]

In addition, in the fall of 1998, the New York Times published a full page advertisement signed by Ronald Dworkin and others legal scholars urging that President Clinton not be impeached. They further argued that impeachment of the President was a "constitutional nuclear weapon" that should not be used unless it is absolutely necessary to save the Constitution from even graver injury. They maintained that Clinton lied in order to hide private consensual acts.[79]

In line with that, the academic legal profession also signed a letter urging Congress not to impeach the President. They argued that if the President committed perjury regarding his sexual conduct, this perjury involved no exercise of presidential power as such. If he had concealed evidence, this misdeed, too, involved no exercise of executive authority.[80]

Meanwhile, more than 430 law professors sent letters to Congress opposing impeachment. They argued that the allegations made against the President by the Independent Counsel, Kenneth Starr fall short of the legal standard set for impeachment. They maintained that impeachment demands

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[75] See Susan Low Bloch, The Background and History of Impeachment, A Testimony before the House Judiciary Committee Subcommittee on the Constitution, November 9, 1998, at http://jurist.law.pitt.edu/bloch.htm.

[76] See Richard A. Posner, *An Affair of State*, p.184.

[77] *Ibid*, p.202.

[78] Even though to some extent, people still thought that Clinton had acted disgracefully, they opined that it was a private matter that did not relate to his public position as a President. Moreover, they argued that Clinton did not abuse his power in office.

[79] *Ibid*, p.233.

[80] *Ibid*, p.241.

incing evidence of grossly derelict exercise of official authority. ever, Starr's report contained no such evidence.[81]

In short, mostly the legal scholars opined that Clinton misconduct did ulfill the legal standards that might lead him to be removed from his e. They argued that the impeachment of a president on such baseless nds would threaten the system of separation of powers in the American ture of politics. Accordingly, they urged Congress not to impeach the dent.

The final process of impeachment finally came to an end after the gers and defense counsels completed their closing arguments. On Friday 999, the senators gathered in an open session for the final roll call. With hole world watching, senators stood up one by one to vote "guilty or not y". On article 1, the charges of perjury, 55 senators, including 10 blicans and all 45 Democrats voted not guilty. On the article 3, uction of justice, the senate split evenly, 50 for and 50 against the dent.[82]

Based on the final votes among the senators, with the necessary two- s majority not having been achieved, the President was thus acquitted on charges and would serve out the remainder of his term of office lasting gh January 20, 2001.[83]

Finally, from the previous discussion, it can be highlighted that the bility of the term "high crimes and misdemeanors" has been used by the cians to attack the president since political motives have driven the cians to do so. The absence of a precise meaning of high crimes and emeanors has to be traced back to the history of the emergence of the itself.

President Clinton was eventually acquitted since most politicians and scholars argued that the misconduct of the President is a private matter did not abuse the power of executive.

It is relevant to note that the impeachment process cannot purely avoid lement of politics. The impeachment has to be based on legal requirement letermined by the Constitution. In other words, the grounds for achment have to achieve the impeachable offenses set up the titution. In relation to the Clinton case, Posner argued that Clinton's onduct did not involve any misuse of the powers of his office. Therefore, s not impeachable. It was different from of the misconduct of Nixon.[84] urther maintained that a President's felony must reach some level of ty or consequence or maybe both, before it can justify impeachment and

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See Bennard J.Hibbits, at http://jurist.law.pitt.edu/petit1.thm.

See The Presidential Impeachment Proceedings, at /www.historyplace/unitedstates/impeachment/clinton.htm.

Ibid.

the Constitution does not specify the level.[85] In other words, impeachment needs stronger reasons that might not threaten the constitutional system.

In addition to Posner, Holden Jr asserted that the basic core of the impeachment process was composed of those who intensely disliked Bill Clinton, that there was nothing he could do that would satisfy them, except remove himself from American politics. His argument was supported by his observation that at least, there are a few persons who are urging impeachment since 1994 or at various points since then.[86]

Sunstein argued that the principal goal of the impeachment clause is to allow impeachment for a narrow category of large-scale abuses of authority that come from the exercise of distinctly presidential powers. Outside of that category of cases, impeachment is generally foreign to our traditions and prohibited by the Constitution. Based on the argument, he opined that the charges made by Judge Kenneth Starr and David Schippers did not make an appropriate or legitimate case for impeachment under the Constitution. In addition, impeachment of a president, on the basis of these sorts of charges, would greatly unsettle the system of separation of powers.[87] It would also threaten to convert impeachment into a legislative weapon to be used on any occasion in which a future President is involved, in unlawful or scandalous conducts.[88]

Posner added that nothing in the back of the Constitution's provision on impeachment suggest that private conduct was a concern of the framers or ratifiers when they made "high crimes and misdemeanors the criterion for impeachment.[89] He believed that originally, it seemed that the Republican congressional leaders had fanned the scandal flames purely for political advantage.[90]

In a nutshell, the above constitutional law experts as well as the politicians in the Congress asserted that Clinton's misconduct did not achieve the legal standard for removing him from office since his acts of misconduct

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[85] *Ibid*, p.104.

[86] Mathew Holden, Jr, The Background and History of Impeachment, A Testimony before the House Judiciary Committee on the Constitution, November 9, 1998, at http://jurist.law.pitt.edu/holden.htm.

[87] Chief Justice William H. Rehnquist has referred to the impeachment power as a "wild card" in the Constitution. If it had been used more, it would have reduced both the independence of the President from Legislative control and the independence of the judiciary. For this see also Mathew Holden Jr, at http://jurist.law.pitt/edu/holden.htm.

[88] see Cass R. Sunstein, The Background and History of Impeachment, A Testimony before the House Judiciary Committee Subcommittee on the Constitution, November 9, 1998, at http://jurist.law.pitt.edu/sunstein.htm.

[89] See Richard A. Posner, p.105.

[90] *Ibid*, p. 177. Posner also noted that Democrats may have been strongly moved by political considerations in voting against impeachment as Republicans were voting for it. The may have been more political than the Republicans in 1974, who joined Democrats in alleger numbers in calling for Nixon's removal form office. *Ibid*, p.112.

were considered to be simple crimes which did not abuse of his powers and did not threaten the constitutional system. It is relevant to note in this sense that they agreed that the impeachment trial of President Clinton was activated by the political interest of the opponents in the House as well as in the Senate.

Conclusion

From the above discussion it can finally be concluded that, *firstly*, the impeachment of both Presidents, William Jefferson Clinton, in the United States finally decided to acquit both presidents since the members of the Senate considered that the misconduct of both presidents did not achieve the level of impeachable offenses as they understood in the Constitution.

Secondly, although the U.S. Constitution has provided clear and specific provisions that rule the impeachment issue, in fact, it still leaves a problem. The absence of the precise meaning of high crimes and misdemeanors had created debates among politicians in judging whether a President has committed one of the impeachable offenses or not. This unclear meaning had been used as constitutional weapon by the politician in attacking or even in trying to remove the president as happened in the Andrew Johnson as well as the Clinton case.

Thirdly, it should be highlighted as well that most of the legal scholars argued that the meaning of misdemeanor was a serious offense of misconduct of the president containing the element *of* abuse of power of the office. In addition, the high requirement of voting for impeachment in the Senate had saved both presidents from impeachment.

A Comparison between Indonesia and the United States

Similarities

Based on the previous discussion, one may now analyze similarities between the two countries. *Firstly*, it can be concluded that by having experienced the impeachment trials of presidents each, *Abdurrahman* Wahid and William Jefferson Clinton, there was the same awareness among the politicians in Indonesia and the United States that on one hand, it is true that impeachment is a tool to control the executive power. On the other hand, it is admitted as well that the grounds for and procedures of impeachment have to be written clearly and specifically in the constitution. Clear and specific provisions on impeachment will guarantee the quality of democracy in the process of impeachment.

Secondly, from the above cases, Abdurrahman Wahid and William Jefferson Clinton, a similarity can be drawn that the impeachment process was always suffused by political rivalry or political dispute among politicians. In that sense, legal issues have become weapons to remove the President.

Differences

Besides having some similarities, there are also some differences between the two countries pertaining to the impeachment issue. *Firstly*, the 1945 Constitution was set up by the founding fathers only 20 days before the declaration of Indonesian independence from the Dutch colonialists. It was made in a emergency situation. Accordingly, the 1945 Constitution is the shortest and the most flexible constitution in the world. Sukarno admitted that the 1945 Constitution was a temporary constitution. On the other hand, the U.S. Constitution is apparently known as the most complete constitution in the world and was set up by the framers over a 14 year period.. The process involved a number of prominent scholars, judges, and political experts as well as politicians.

Secondly, since the 1945 Constitution was set up in a short time due to an emergency situation as such, it has many loopholes or weaknesses in governing the political system. One of the weaknesses is the absence of clear and specific concept of impeachment issue; whereas the U.S. Constitution provides relatively a clear and specific concept of impeachment issue.

Thirdly, in line with the above weaknesses, the impeachment trials of both presidents in Indonesia, *Abdurrahman* Wahid, prompted long debates regarding the nature or the meaning as well as the procedures of impeachment. However, the U.S. Constitution has relatively a clear and specific concept of impeachment on such issues. Thus, the impeachment trial of both presidents in United States was procedurally smooth, although there was still debate on the questions of the meaning of the term "high crimes and misdemeanors".

Fourthly, the unclear concept of impeachment in the 1945 Constitution has made it easily interpreted or even manipulated by the politicians based on their own interest; whereas the U.S. Constitution has relatively clear and specific concept of the impeachment issue. Therefore, it reduces the possibility for the politicians to manipulate it for their own interest as happened in Indonesia.

Fifthly, before the Third Amendment of the 1945 Constitution, only a simple majority is required for voting for impeachment in the DPR and MPR to decide whether a president was guilty or not guilty.[91] In the U.S. Constitution, in the Senate, two-thirds of the senators present have to vote guilty.

Besides having differences in the concept of impeachment, they are also differences in practice. *Firstly*, the impeachment trials of the president in the United States, particularly the Clinton case, had invited much concern from the legal professionals who strongly voiced their opinion by sending petitions to the Congress not to impeach the President since they considered that the misconduct of the President was a simple crime or private matter that did not threaten the American constitutional system. In Indonesia, in the impeachment trials of both presidents, particularly the Abdurrahman Wahid

[91] After the third amendment of the 1945 Constitution, the

case, on the contrary, many constitutional law experts supported the removal of the President since they considered that President's misconduct had threatened the national integrity and public safety.

Secondly, as a consequence of different levels of education, people in both countries had different responses to the impeachment trials. In Indonesia, the first requirement of democratic system is not fully fulfilled yet, namely well-educated people. The experience showed that the impeachment trials of both presidents had created political tension among the society, particularly the Abdurrahman Wahid case. On the other hand, the people in the United States, who are relatively more educated compared to Indonesian, had more rational responses to the impeachment trials.

In short, it can be concluded that both in theory and practice, both countries have differences in the background and history as well as in the concept that leads them to be different in practice. In other words, a constitution is not merely a written document; to some extent, it is a reflection of the history and culture of a nation.

CLOSING REMARK

The long politico-legal struggle that can be seen from the previous cases, i.e, Abdurrahman Wahid and William Jefferson Clinton are potentially rich source of insights about the present and lessons for the future.

From the experience of Indonesia, some lessons can be drawn for the future. *Firstly,* the vagueness of the 1945 Constitution and its explanation as well as the Decree of the PCA had prompted debates among the politicians. It created, as well, political tension or even political turbulence in the society since the people considered that the reasons behind the impeachment trial were mere political motives of the politicians. In other words, if the Constitution provides clear and specific explanation on the impeachment issue, it may reduce the political tension or political turbulence in the society.

Secondly, the impeachment process, in fact, requires political maturity or political accountability of politicians as well as the society. Political turbulence, to some extent, is triggered by irresponsible politicians. This type of politician would use people as a martyr of their agenda or in defense of their position. Meanwhile, people—unfortunately-- are blindly trapped into the maneuvers of the politicians.

Based on the past experience, the legislators realized that there should be an amendment to the 1945 Constitution, incorporating some clear and specific provision regarding the impeachment issue. Therefore, in 2001, the legislators successfully amended the 1945 Constitution and now, the 1945 Constitution has a better concept of impeachment, accordingly.

The future of the impeachment process in Indonesia, thus, is determined by the existence of clear and specific provisions in the constitution as well as the political morality and political accountability of the politicians. The politicians in the DPR and MPR must attempt to learn to be a statesman—where they put the public interest or national integrity as their main platform—rather than being partisan in all actions.

In a broader sense, it is relevant to be noted, that as quoted by Levin, the Constitution is far more than a legal document defining the powers and limits of a particular system of political institutions. At the same time, the Constitution itself is less important than all other values which are associated with it. In other words, it only makes sense in the context of the larger culture in which it endures.[92] Therefore, talking about the constitution we have to discuss both systems set up by the written document as well as the culture of the society.

[92] [illegible]

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