LEGAL JUSTICE IN PRESIDENTIAL IMPEACHMENT PRACTICE BETWEEN INDONESIA AND THE UNITED STATES OF AMERICA

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Abstract

The constitution is approved as a law capable of guaranteeing human rights and protection of the constitution and past coordination, as well as being *the corpus* of the administration of the rule of law entity itself. Regarding the state of Indonesia and the United States, if examined by these two countries, they have similarities in the form of republican government or presidential system of government. However, on the contrary, in the impeachment transition, the two countries appear to be dichotomous both formally and materially. Therefore, this scientific article discusses reviewing the impeachment provisions of the Presidents of the two countries who agree to develop agreements and principles in *checks and balances* in trying to actualize the value of the country's legal justice. Therefore, in approving the discourse of research methods, descriptive-comparative methods are used with normative-philosophical and comparative-critical discussions. On that basis, this study discusses the practice of presidential impeachment in Indonesia to consider more legal justice, because it is through a legal process involving the Constitutional Court which implements practices in the United States that only involve *the Senate* and *the House of Representatives* which *incidentally* is a political institution. It considers the constitution in the basic law of the country.

Keywords: **Constitution, President's Impeachment, Legal Justice, Politics.**

I. Introduction

A. Research Background

The actualization of the modern state administration system in countries is necessary that the elementary basis of the administration of the constitutional system is the constitution. That is, the constitution is the highest law with juridical-normative-constitutional legitimacy on the basic pillars of the administration of the state administration system, such as the regulation of state organizations (a form of state, the form of government, and state apparatus), contains provisions on political and legal principles (democracy, rule of law, nomocracy), as well as protection and guarantee of the human rights of every citizen.

Regarding state governance, the governmental systems of modern countries in the world have at least developed dynamically according to the demands of the administration of the country itself. This leads to a typology of government systems, one of which is the presidential system.[1]

It is known that the presidential system contains the principle of concentration of power and responsibility upon the president. This principle implies that the President is the centre of power and the holder of the greatest responsibility to create the country's political stability so that the development agenda can run well. In this case, it is constitutional that the President and/or Vice President cannot be overthrown easily by the parliament as M. Laica Marzuki quoted from Raoul Berger:

> "*Under the Presidential system, the effective head of the national administration is elected for a fixed term. He is practically irremovable. Even if he is proved to be ineffecient, even if becomes unpopular, even if*

[1] In its development, there is a hybrid system, parliamentary system, and a collegial system. Refer to Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar-Pilar Demokrasi* (Jakarta: Konstitusi Press, 2005), p. 109.

> *his policy is unacceptable to his countrymen, he and his methods must be endured until the moment comes for a new election."*[2]

However, it is possible that during the President's term of office, there will be an abuse of power or exit from legal provisions. So for that, an institution with special conditions is needed to overthrow the President and/or Vice President as through impeachment institutions. In this case, the constitution which is considered as the supreme law of a country is full of justice, so that it becomes a guideline that regulates fundamental matters including impeachment institutions in the event of a violation of the limits set by the constitution. This is basically teaching of constitutionalism because the existence of a constitution develops from the idea of a limited government.[3]

Therefore, the impeachment structure for the President is considered as a mechanism of accountability and a form of control over the President's powers within the framework of the principle of *checks and balances* between branches of state power.[4] Also, realizing constitutional democracy, especially because in the presidential system of government which incidentally is that the President has strong legitimacy because he is directly elected by the people.[5] As in the conception of the government of Indonesia and the United States of America in the context of implementing a republican-presidential government in a democratic rule of law state.

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[2] M. Laica Marzuki, "Pemakzulan Presiden/Wakil Presiden Menurut Undang-Undang Dasar 1945," *Jurnal Konstitusi* Vol. VII, No. 1 (2010), p. 16.

[3] C. F. Strong, *Modern Political Constitutions* (London: Sidwick, 1960), p. 61.

[4] Jimly Asshiddiqie, *Gagasan Perubahan UUD 1945 dan Pemilihan Presiden secara Langsung* (Jakarta: Sekretaris Jendral dan Kepaniteraan Mahkamah Konstitusi RI, 2006), p. 47-48.

[5] Ni'matul Huda, *Politik Ketatanegaraan Indonesia: Kajian terhadap Dinamika Perubahan UUD 1945* (Yogyakarta: FH UII Press, 2004), p. 155.

Therefore, the researcher focuses on the study and analysis of the President's impeachment in the government system between Indonesia and the United States. Because it is thematically comparative research, there are differences in the practice of impeaching the President of the two countries in question. Considering that the constitution, as the highest law which is full of legal justice, as well as the regulation of impeachment in each country, is included in the constitution. Therefore, researchers consider it important that the mechanism of impeachment for the President between the two countries is linked with the discourse of justice within the scope of the interdependent *democracy-nomocracy* paradigm as the principle of the rule of law. In this case, the researcher uses the object of the President as a term limitation, as well as for a substantial balance of impeachment practices carried out by state institutions at the supra-structural level of politics, given the practice in several countries that determine objects of impeachment other than the president.

B. Problem Formulation

It is considered important to be studied and examined as a comparative study of the President's impeachment between Indonesia and the United States to assess the implementation of the rule of law based on legal justice. The distinction in this research compares the impeachment mechanism of the President between Indonesia and the United States of America which has implications for legal justice in the interdependent paradigm of democracy-nomocracy as the rule of law. Therefore, relevant issues to be discussed include: (i) How is the mechanism for the President's impeachment between Indonesia and the United States? (ii) How is the review of constitutional law justice on the

mechanism of impeachment for the President so that it contains an interdependent *democracy-nomocracy* paradigm in the rule of law practice?

C. Research Methods

This research focuses on a comparative study of the President's impeachment system between Indonesia and the United States with benchmarks, including: (i) formal aspects: *the object of impeachment*, *reasons for violating impeachment*, *impeachment mechanism*, and (ii) material aspects: actualization of rule of law practices, and understanding the interdependence of *democracy-nomocracy* based on legal justice. Therefore, this research methodologically is normative legal research in *qualitative-library research* taxonomy.[6] Therefore, this research is a *descriptive grounded theory* study,[7] and an integral part of *socio-legal* research is discourse analysis studies[8] in the practice of impeaching the Presidents of the two countries. For this reason, the operational analysis uses descriptive methods to examine the object of research in providing conceptual descriptions.[9] Accompanied by juridical-normative data analysis techniques[10] including content analysis.[11]

The research data is based on primary data, namely constitutional legal norms regarding the impeachment mechanism of the Presidents of the two countries, as well as secondary data, namely referential data that is relevant to the research. Accompanied by using synthetic reasoning

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[6] Suryana, *Metodologi Penelitian: Model Praktis Penelitian Kuantitatif dan Kualitatif* (Bandung: Universitas Pendidikan Indonesia, 2010), p. 40.

[7] Moh. Nazir, *Metode Penelitian* (Bogor: Ghalia Indonesia, 2014), p. 63.

[8] Sulistyowati Irianto, "Memperkenalkan Studi Socio-Legal dan Implikasi Metodologisnya" in Sulistyowati Irianto dan Shidarta, *Metode Penelitian Hukum: Konstelasi dan Refleksi* (Jakarta: Yayasan Pustaka Obor Indonesia, 2013), p. 4.

[9] Moh. Nazir, *Metode Penelitian*, p. 43.

[10] Soetandyo Wignjosoebroto, *Hukum: Paradigma, Metode, dan Masalah* (Jakarta: ELSAM & HUMA, 2002), p. 30.

[11] Ishaq, *Metode Penelitian Hukum* (Bandung: Alfabeta, 2017), p. 43.

techniques, namely deductive reasoning from constitutional norms related to the impeachment of the President and the concept of legal justice, and inductive reasoning from specific data directly related to the mechanism of impeachment. The conceptual-critical and philosophical approach to examine the impeachment of the President based on legal justice is accompanied by the linkage of data conceptualization, rationality and analytical reflection to understand and criticize the practice of President impeachment between the two countries.

II. Result and Discussion Research

A. The Discourse of Presidential Impeachment in State Administration

The impeachment of the President has a conceptual attachment to the government system as an integral form of state administration. Because of this, there is a difference in the practice of impeachment by the President in the government system, which is followed by differences in typology and the general election system as between the parliamentary or presidential systems.[12] In fact, differences in the practice of impeachment by the President do not rule out the possibility of the presidential government system. In this case, both parliamentary and presidential impeachment substantially the President aims to actualize the principle of checks and balances and the limitation of state power which is part of constitutionalism.[13] Therefore, no state constitution does not

[12] This linkage is basically related to accountability due to the application of democratic principles in the state government system. Refer to Dody Nur Andriyan, *Hukum Tata Negara dan Sistem Politik: Kombinasi Presidential dengan Multipartai di Indonesia* (Yogyakarta: Deepublish, 2018), p. 77.

[13] Andy Wiyanto, "Pemakzulan dan Pelaksanaan Checks and Balances Dalam Sistem Ketatanegaraan Indonesia," *Jurnal Neara Hukum* Vol. IV, No. 1 (2013), p. 140.

regulate impeachment as a constitutional method in the context of monitoring the implementation of government under the law and the constitution.

As the object of this research is focused on the practice of presidential impeachment between Indonesia and the United States, which *incidentally* is a country with a presidential government system. Thus, the difference between the practice of impeachment is only within the scope of the government of the two countries. In a presidential government system, the President has stronger legitimacy because he is directly elected by the people as a constituent. Thus, the responsibility of the President through the impeachment process is carried out by state institutions that are constitutionally authorized based on popular sovereignty.[14] It is a necessity if there are differences in the practice of impeachment which consists in: (i) formal aspects: *the object of impeachment*, *the reason for the violation of impeachment*, and *the impeachment mechanism*,[15] and (ii) material aspects: actualization of rule of law practices and understanding of the principles of democracy-nomocracy. Therefore, the researchers considered that the impeachment of the President could have implications for legal justice as a benchmark based on two aspects, especially about the practice and principles of the rule of law.

[14] The strength of legitimacy is stronger when compared to the parliamentary system of government because the President is elected through a closed election system by the parliament as a representation of the people. Thus, the legitimacy of the President comes from the parliament and its relation to the responsibility of the President through the process of impeachment by the Parliament by using the right to vote of no confidence. So that, in the parliamentary system of government, between the executive and the legislature each can overthrow each other as a form of *checks and balances* mechanism. Refer to Muliadi Anangkota, "Klasifikasi Sistem Pemerintahan Perspektif Pemerintahan Modern," *Jurnal Ilmu Pemerintahan* Vol. III, No. 2, (t.t.), p. 151.

[15] Abdul Majid, "Mekanisme Impeachment Menurut Hukum Tata Negara dan Fiqh Siyasah," *Jurnal al-Mazahib* Vol. I, No. 2 (2012), p. 294.

In the perspective of constitutional law theory, there are at least three typologies related to the impeachment mechanism for the President or other state officials. *First*, the concept of impeachment. Etymologically, *ma'zul* is an Arabic word in the form of *maf'ul bih* from the word *'azala-ya'zilu-ma'zul* which means 'solitude' or 'isolation.' Meanwhile, in the Big Indonesian Dictionary (KBBI), impeachment is translated as 'resigning from office' or 'abdicating.'[16] In British literature, it is termed *impeachment*, namely the accusation of a formal state position from a public official. So it is lexically relevant if *impeachment* is defined as impeachment as long as the meaning of 'resigning from office' is identified with 'because of being dismissed.' Because dismissal connotes 'dismissed' and 'stopped' in addition to covering the meaning: replacement, impeachment, and *impeachment*.[17]

This results in a practical lack of identification between impeachment or *impeachment* (synonym: *accuse*) and dismissal. Because it can happen if the evidence of the indictment is proven or not, impeachment does not end in termination of office (*removal from office*)[18] because it is determined by legal evidence and political processes. This suggests that an impeachment is a form of 'process' rather than dismissal which has a 'goal' value. Thus, researchers use impeachment nomenclature as a limitation on the meaning of terms.

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[16] *Kamus Besar Bahasa Indonesia* (Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, 1997), p. 620.

[17] M. Ilham Hermawan dan Dian Purwaningrum, "Mekanisme Pemberhentian Presiden (Impeachment) dan Kritik Substansi Pengaturannya di Indonesia," *Jurnal Amanna Gappa* Vol. XX, No. 2, 2012, p. 155-156.

[18] Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara* (Jakarta: Buana Ilmu Populer, 2007), p. 60.

As for the terminology, impeachment means the judicial process against the President before the parliament (*quasi-political court*), which begins with the existence of an indictment or *articles of impeachment* on a judicial justice.[19] As for Jimly Asshiddiqie, interpreting impeachment as a retributive legal action through an accusation based on legal evidence to hold accountable for constitutional violations committed by the President.[20] Within the framework of *fiqh siyasah* perspective, *impeachment* is interpreted as an indictment to hold accountable in the form of a *shura* assembly in the context of implementing *haq al mua'aradhah*, namely the right to submit critical opinions to the deviant ruler's policies.[21]

In historical review, the concept of impeachment originated in Ancient Egypt with the term *iesangelia*, then in the XVII century, the British government adopted the reign of Edward III which occurred in November 1330 against Roger Mortimer, Baron of Wigmore VIII and Earl of March by *The House of Lord* is the governing body and *The House of Common* acts as *the grand jury*.[22] And, also adopted into the constitution of the United States in the XVIII century.[23] In this case, the United States parliament uses *impeachment* powers aimed at state officials who are proven to have violated the articles of impeachment, including state

[19] Winarno Yudho, dkk., *Mekanisme Impeachment dan Hukum Acara Mahkamah Konstitusi* (Jakarta: Pusat Penelitian dan Pengkajian Sekretaris Jendral dan Kepaniteraan Mahkamah Konstitusi, 2005), p. 6.

[20] Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2011), p. 14.

[21] Ridwan, *Fiqh Politik: Gagasan Harapan dan Kenyataan* (Yogyakarta: FH UII Press, 2007), p. 310.

[22] Muhammad Fauzan, *Impeachment Presiden* (Purwokerto: STAIN Press, 2010), p. 58.

[23] After a century of colonialism by the British in the XVII century, the concept of impeachment was first used in the constitution of the United States around 1787. Refer to Nur Habibi, "Politeike Beslissing Dalam Pemakzulan Presiden Republik Indonesia," *Jurnal Cita Hukum* Vol. III, No. 2, 2015, p. 331.

officials.[24] It is known that during two centuries in the United States only 13 state officials were prosecuted for impeachment: 9 judges, a Supreme Court judge, a Secretary of Defense, a Senator, and President Andrew Johnson. From the 13 officials, only 4 judges were found guilty and proven until they were fired from their positions.[25]

In Islamic *history*, impeachment is identical to the coup that tends to be directed to the system or power as the Abassiyah coup that made Damascus *chaotic*, as well as Sayyidina Husain's coup against Yazid which triggered the Karbala incident. Whereas in the era of Uthman Ibn Affan as a caliph who was often plagued by various conflicts, marked the dismissal of officials at the level of the governor to the coup against the power of the caliph that lay behind ethical, legal and political conflicts.[26]

Second, the concept of *the previlegiatum forum.* Interpreted as the concept of impeachment of high-ranking state officials, including the President, in a special court hearing quickly without going through conventional trial levels from the lower levels to create a sense of justice between the people and high officials.[27] So that it can contain the balance of *equality before the law* and *equal treatment for people* which has implications for government practices by state officials without violating equal

[24] The mechanism of impeachment of the United States of America between the determination of the prosecutor and the breaker is determined by the parliamentary system, namely *the house of representative* as the prosecutor while *the senate* as the breaker institution in order to prevent *powerful* actions in the judicial process against public officials. Refer to Winarno Yudho, dkk., *Mekanisme Impeachment dan Hukum Acara Mahkamah Konstitusi*, p. 32.

[25] Nadir, "Dilematika Putusan Mahkamah Konstitusi vis a vis Kekuatan Politik dalam Impeachment Presiden," *Jurnal Konstitusi* Vol. IX, No. 2, 2012, p. 339.

[26] Dhiauddin Rais, *Teori Politik Islam* (Jakarta: Gema Insani Press, 2001), p. 26.

[27] Saharuddin Daming, "Legitimasi Pemakzulan Dalam Perspektif Hukum dan Politik," *Jurnal Yustisi* Vol. II, No. 2, 2105, p. 32.

position before the law and the independence of the judiciary.[28] This concept was adopted in the constitutions of France, Thailand, and Indonesia in the Constitution of the Republic of Indonesia (RIS) of 1949 and the Provisional Basic Law (UUDS) of 1950, that state officials can be prosecuted for dismissal in the Supreme Court forum if proven to have committed treason against the state, criminal acts, and other illegal acts.[29]

Third, *the hybrid mechanism*. This concept is defined as the process of impeachment of state officials, including the President, which was initiated by parliament through an impeachment process that resulted in an indictment. Henceforth, the results of the indictment are processed through verification in *the previlegiatum forum* by a special judicial court which results in judicial decisions as legal legitimacy to be forwarded to parliament in political decision. Therefore related to the political system used by the country concerned.[30] This concept is applied in Indonesia which involves the House of Representatives (DPR), the Constitutional Court (MK) and the People's Consultative Assembly (MPR).

According to the researcher, the typology of the practice of impeachment of state officials including the President leads to the determination between politics and law accompanied by implications for the contestation between a democracy with a *rule by the majority* and nomocracy with a *rule of law*. Therefore, it can contain an imbalance between the principle values of people's sovereignty and the rule of law in

[28] Putusan Mahkamah Konstitusi Nomor 76/PUU-XII/2014, p. 28.

[29] Budi Sastra Panjaitan, "Forum Previlegiatum sebagai Wujud Peradilan yang Adil Bagi Masyarakat," *Jurnal Media Hukum* Vol. XXV, No. 1, 2018, p. 49.

[30] Moh. Mahfud MD., *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi* (Jakarta: Rajawali Press, 2010), p. 143.

the implementation of state administration. Even though the country in question declared as *democraticshe rechtstaat*.[31]

1. The Content of *the Democracy-Nomocracy* Paradigm

In modern state administration, a presidential government system which *incidentally* a President is directly elected by the people, accompanied by restrictions on term of office (*fixed-term*). As a result, the President can't be imposed by Parliament unless there are constitutional legal reasons. Therefore, the President's impeachment is significantly a special procedure that addresses the stabilization of the President's position. That it is relevant, if the principle of accountability is prioritized for the power obtained from the popular trust which is the sovereignty of the people (democracy) as the legitimacy of the power of the President and parliament.[32] And

[31] This is caused reflectively by several problems from each typology of the President's impeachment mechanism, including (i) *Impeachment*: Is it relevant to use parliamentary *politieke beslissing* on constitutional basis for the impeachment of the President can reflect the *supremacy of law* and the essence of democracy? Does the impeachment process by the parliament either involve or not the element of judicial power (*quasi*) can reflect the principles of *rule of law* without acting *legislative heavy* in the constitution? (ii) *Previlegiatum Forum*: Is the judicial court able to accommodate reasons for violating criminal law by the President so that it is related to the value of constitutional law? Is the relevant *forum previlegiatum* which emphasizes *the rule of law* deciding on the case of the President's impeachment which *incidentally* departs from *the rule by the majority* which is the value of democratic political practice? (iii) *Hybrid System*: Is it a constitutional and logical action if the verdict of the *previlegiatum forum* such as the Constitutional Court is annulled by the MPR as *a joint session forum* between the DPR and DPD which *incidentally* impeachment is carried out by the DPR? Does the *hybrid system* of the President's impeachment reflect an interdependent form between politics and law, or at least includes a balance of *rule by the majority* (democracy) and *rule of law* (nomocracy) in the framework of a democratic rule of law state?

[32] The doctrine referred to is aimed at power in the sense of the President's *real power* as chief executive. Refer to Mirza Nasution, *Beberapa Masalah tentang*

understand the rule of law (nomocracy) as a form of legitimacy in the administration of the state, including the practice of impeachment of the President.

Therefore, this implies a contestation between the political sub-system and the legal sub-system in the state administration system. It is judged that the contestation is due to the constitution itself which is a *resultant* form (*mu'aḥadah waṭaniyah*: noble agreement of the nation) in the basis of constitutional practice. So it is substantively relevant that a constitution is a form of the causal relationship between politics and law in its *resultant* as dictum: *politics without the law will be wrong, law without politics is paralyzed*.[33] In this case, as Peter Merkl, politics is defined as an effort to achieve a good and just social order.[34] Also, as Satjipto Rahardjo stated that law is the norm that encourages people to achieve certain ideals and circumstances without annulling the reality in integrating and coordinating interests that intersect with each other so that it can be minimized.[35]

In fact, according to K.C. Where, the constitution of the foundation of state practice containing moral and legal aspects. That is, the constitution is considered as an elementary foundation that does not conflict with universal values and ethical-moral principles as a moral aspect. As William H. Hewet that morals are the highest law

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Pemberhentian Presiden dalam Sistem Pemerintah Kuasi Presidensial di Indonesia (Medan: FH USU, t.t.), p. 1.

[33] Moh. Mahfud MD., *Politik Hukum di Indonesia* (Jakarta: Rajawali Pers, 2017), p. 5.

[34] Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: PT. Gramedia Pustaka Utama, 2014), p. 15.

[35] Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT. Citra Aditya Bakti, 2014), p. 27.

above the constitution.[36] Also, the constitution is considered as the highest law that legitimizes juridical-normative legislation underneath which is formed by a state institution authorized as a legal aspect.[37]

Based on these definitions, at least close to the understanding relevant to the form of the causal relationship between law and politics. However, in this case, to understand the causal relationship between politics and law, the researcher consider it important to provide an understanding of the political and legal attachment of two streams of related and dichotomous perspectives.

First, the idealist school as Nathan Roscoe Pound through his view stated that "*law as a tool of social engineering*." So the law must be able to control and manipulate the development of society including the lives of its people.[38] In addition, John Austin in the theory of a closed legal system has given an indication that the law does not rule out being bound to other systems. This *incidentally* is a *contradictio in terminis* of his statement that "*law as a command of lawgivers*."[39] So, in *das sollen* law is a *dependent variable* on the situation outside, including politics. *Secondly*, realist schools such as Friedrich Karl von Savigny with the idea that intense law develops in accordance with the development of society.[40] Also, as for Jean Jacques Rousseau in his social contract theory considers that the law comes from the

[36] Dahlan Thaib, dkk., *Teori dan Hukum Konstitusi* (Jakarta: Rajawali Press, 2005), p. 81.

[37] *Ibid.*, p. 61-62.

[38] Roscoe Pound, *Pengantar Filsafat Hukum*, trans. oleh Muhammad Radjab (Jakarta: Bhratara, 1972), p. 7.

[39] Theo Huijbers, *Filsafat Hukum dalam Lintasan Sejarah* (Yogyakarta: Kanisius, 1993), p. 85.

[40] Moh. Mahfud MD., *Pergulatan Politik dan Hukum Indonesia* (Yogyakarta: Gama Media, 1999), p. 71.

sovereignty of the people themselves.[41] This means that in *das sein*, the law is considered as an *independent variable* on the outside, including the political situation.

The dichotomous engagement between politics and law can be concluded through the approach of cybernetics theory from Talcott Parson that in the circle of social life there are four sub-systems: political, economic, social (legal scope), and culture.[42] In this case, if examined from a *power* perspective, the economic sub-system has a form of superiority, systematically followed by the political, social and cultural sub-system. However, if examined from the perspective of *values*, the cultural sub-system has a form of superiority, followed systematically by the social, political, and economic sub-systems. Therefore, law is not only interpreted as a political product, but can be assessed as a cultural significance. Even politics and culture can simultaneously be defined as law based on universal values and ethical-moral principles.

On this basis, the researcher considers that the form of the causal relationship between politics and law can lead to an interdeterminant paradigm and has implications for an interdependent form of democracy with *rule by the majority* and nomocracy with *rule of law* value. As for democracy, which is understood as the sovereignty of the people, it is considered as a form of legitimacy systematically accompanied by implications for the instincts of power that are justified socially in the social order and as a form of good and just

[41] Darji Darmodiharjo dan Shidarta, *Pokok-Pokok Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum Indonesia* (Jakarta: PT. Gramedia Pustaka Utama, 2006), p. 212.

[42] Satjipto Rahardjo, *Beberapa Pemikiran tentang Rancangan antar Disiplin Dalam Pembinaan Hukum Nasional* (Bandung: Sinar Baru, 1985), p. 71.

business based on law. Thus, democracy is a political sub-system as the basis for the exercise of governmental power. Besides, nomocracy is considered as the rule of law as a form of legitimacy for state administration based on the law that is justified juridically-constitutionally in guaranteeing legal certainty, justice and usefulness. Thus, nomocracy is considered as a legal sub-system to ensure law enforcement in the state administration.[43]

Therefore, democracy as a political sub-system and nomocracy as a legal sub-system have significantly interdeterminant relations. As the researcher stated in the *maxim* of the interdependent *democracy-nomocracy* paradigm: "*democracy without nomocracy will be a tempest, nomocracy without democracy will be empty*." However, this matter is questioned: is the interdependent *democracy-nomocracy* paradigm capable of realizing legal justice with *common sense*, especially in the constitutional impeachment practice of the President which in fact is related to political influence (democracy) and legal legitimacy (nomocracy)? Therefore, researchers consider it necessary to examine this in the discourse of legal justice.

2. The Description of Legal Justice

The research study aims to actualize substantive justice based on the *nomocracy-democracy* interdependent paradigm in the impeachment of the President between Indonesia and the United States. However, examining justice in legal discussions is a matter that

[43] The form of correlation between the concept of law and democracy in Indonesia is based on a mono-dualistic concept, namely the rule of law (*nomocracy*) and people's sovereignty (*democracy*) as constitutional pillars. This is actually a form of maintaining the existence and entity of the state itself in the development of human civilization. Thus, at least it must be reviewed the spirit of statehood in the 1945 Constitution. *Vide* Pasal 1 ayat (2) and ayat (3) UUD 1945.

is *debatable* and dynamic. As it is known, the constitution as the highest law in the state administration is the result of political configuration and legal integration as a *resultant* form as well as *rechtsidee* of the nations concerned. This indicates that justice is more synonymous with legal discourse as a review of constitutional law justice related to the impeachment of the President.

In the reality of human life, justice has a value of urgency as the main goal of the law. The urgency value is implied in the message of the Prophet Muhammad saw.[44]: "*justice in one hour is more important than worship in decades, and injustice in one hour is more painful and greater than immorality in sixty years."* Besides that, justice is also a form of the mandate of 'God's knowledge' as al-Quran Surat an-Nisa: 135 which implicitly states that justice is the main value of law enforcement, and therefore is a form of obedience to God Almighty.

In the etymological approach, justice is an Indonesian nomenclature which *incidentally* comes from the word 'just' which is the absorption of Arabic literature that is '*adl*' is a form of the *noun augentie* (*ism fa'il*) the word *'adala* which means middle, straight, equal, balanced.[45] As for justice in the nomenclature of the Greek term *dikaios* which means just or righteous. Thus, in Latin, it is termed *Justitia*, whereas in English literature it is justice.[46] This understanding implies that justice as a result of the interaction between expectations and reality in life. Therefore, justice is a relative concept, because of

[44] Bismar Siregar, *Hukum, Hakim, dan Keadilan Tuhan* (Jakarta: Gema Insani Press, 1995), p. 19.

[45] Mahmuharom H.R., *Rekonstruksi Konsep Keadilan* (Semarang: Badan Penerbit UNDIP, 2009), p. 89.

[46] Telly Sumbu, dkk., *Filsafat Hukum* (Manado: FH Universitas Sam Ratulangi, 2016), p. 43.

the possibility of a dichotomy between of expectations and reality that is influenced by various aspects including personal subjectivity in achieving justice.[47] In case, to annul dichotomy and accommodate objectivity, justice needs to be linked to the law as an instrument in realizing peace and prosperity in social life.

In this case, the researcher considers it necessary that the discourse of justice involves *shifting paradigms* like Karl Raimund Popper and Thomas Samuel Kuhn in the theory of the scientific revolution to find a definition of justice that approaches theoretically and practically.[48] The justice discourse is part of the science of law that comes from the thoughts of philosophers. In this case, the researcher provides an 'introduction' to the understanding of the concept of justice relating to social life, including in the state. That it can fit as a conceptual optic by examining the impeachment of the President which is regulated in the state constitution.

First. According to Aristotle (384-322 S.M.), justice is defined as a form of giving equal rights, not equality. Thus, justice is classified into two typologies[49]: (i) universal justice, namely the state of personal individuals generally by law and truth, and (ii) particular justice is justice related to the aspects of distribution: (a) distributive justice (balance) namely justice that is adjusted to the level of individual achievement, and (b) cumulative justice (equality) that is justice that is not adjusted based on the level of individual achievement. This was

[47] Majjid Khadduri, *The Islamic Conception of Justice* (London: The Johns Hopinks University Press, 1984), p. 145.

[48] Marilang, "Menimbang Paradigma Keadilan Hukum Progresif," *Jurnal Konstitusi* Vol. XIV, No. 2, 2017, p. 325-326.

[49] Yoyon M. Darusman dan Bambang Wiyono, *Teori dan Sejarah Perkembangan Hukum* (Banten: UNPAM Press, 2019), p. 138.

translated in the *Corpus Iuris Civilis* by the Romans: "*Justitia est Constans et perpetua voluntas ius sum cuique tribunes*" that justice is a permanent will to give to every one according to their rights.[50]

Second. According to Hans Kelsen (1881-1930), justice is an irrational ideal in law as a rational social order. Justice is defined as the content of the law that can be outside the law, resulting in the law can be unfair or otherwise, because the law issued by the authorities. The concept of Hans Kelsen's justice (juridical positivism paradigm) is relevant to John Austin's justice concept (the sociological positivism paradigm) which *incidentally* is both grouped in the empirical-positivistic paradigm of law.[51]

Third. According to Friedrich Karl von Savigny (1779-1861), justice is valued as an embodiment of the *volksgeist* or soul of a nation. So, justice itself is in the law, because according to him volksgeist is a law that *incidentally* is the life of humanity itself. As stated in the *maxim*: "*das Recht wird nicht gemacht, es ist und wird mit dem volke*" or in other words that the law is not made, but exists and grows with the nation.[52]

Fourth. According to Nathan Roscoe Pound (1870-1964), justice is a concrete result that can be given to the community, namely the satisfaction of human needs with more quantity and without risk to get it.[53] Even though Roscoe Pound is a *sociological jurisprudence* legal thinker, namely a harmonious reciprocal between law and society to

[50] Telly Sumbu, dkk., *Filsafat Hukum*, p. 45.

[51] I Ketut Wirawan, dkk., *Pengantar Filsafat Hukum* (Denpasar: FH Universitas Udayana, 2016), p. 31-33.

[52] Lili Rasjidi, *Dasar-Dasar Filsafat Hukum* (Bandung: Penerbit Alumni, 1982), p. 85.

[53] *Ibid.*, p. 139.

protect the public, community and personal interests.[54] However, the concept of justice is in the paradigm of utilitarianism, as thought by Jeremy Bentham (1748-1832), John Stuart Mill (1806-1873), and Rudolf von Jhering (1818-1892).[55]

Fifth. According to Gustav Radbruch (1878-1949), justice as a value in normative law. Therefore, in his idea (teleology of law) states that the legal objectives include aspects of certainty, justice and the use of law in a harmonious-synergistic manner with consistent enforcement based on the principle of *similia-similibus*.[56] In this case, justice is valued as the 'material' that fills the law, so the law as a 'form' in protecting the value of justice. And, the law itself is the culture of the scissor to realize values so that the essence of law is not in the formal-normative order as Kelsen's *stufenbau*. Thus, the territorial law is valued at the level of 'practical reason' which *incidentally* is culture as human values, so it is not at the level of 'pure reason' Kant.[57]

Sixth. According to Jurgen Habermas (1929) and John Borden Rawls (1921-2002). As for Jurgen Habermas, justice is the main principle that underlies social order along with the same respect for individuals and empathic and moral attitudes in the continuity of

[54] Telly Sumbu, dkk., *Filsafat Hukum*, p. 31.

[55] Otje Salman, *Filsafat Hukum: Perkembangan dan Dinamika Masalah* (Bandung: Refika Aditama, 2010), p. 44.

[56] Interpreted: the same case must be administered and applied the same law. Refer to I Dewa Gede Atmadja, *Filsafat Hukum: Dimensi Tematis dan Historis* (Jakarta: Prenada Media Group, 2015), p. 39.

[57] Genealogically-constructive, the idea is based on the ambiguity of Hans Kelsen's grundnorm which is open to the subjective 'desire' of the authorities to determine the law as the *Holocaust* event carried out by the Nazis under Hitler's leadership by mobilizing positive legal arrangements for the legal legitimacy of the Jewish 'genocide'. Also, it is based on the concepts of *sollen* and *sein* as 'forms' and 'matter' which are neo-Kantian paradigms. Refer to Zainudin Ali, *Filsafat Hukum* (Jakarta: Sinar Grafika, 2003), p. 17.

human life.[58] While John Borden Rawls, justice is considered as *fairness*, namely the principle of rational policy to realize the welfare of the entire group in society.[59] This concept of justice is based on equal rights for everyone to obtain basic freedoms, social and economic differences that benefit minority groups, as well as positions that are open to all people based on appropriate opportunities.[60]

According to researcher, the dialectical argumentation about the concept of justice implies that definitively understanding justice does not have a difficulty level because philosophers and experts have formulated it regarding the concept of justice. However, understanding the meaning of justice actually has a level that is not as easy as reading the formulation of the concept of justice which is formulated in a narrative, therefore it is considered necessary to move towards a philosophical level.[61] Besides suggesting that justice is an initial idea to be translated into law as: '*ius quia justum*'; '*aequum et bonum est lex legum*'; '*ius est ars boni et aequi*'; '*fiat justitia ruat caelum et mundus*'; and '*sumum ius summa in iuira*.'

On that basis, the researcher defines justice as an actual-universal value that is fundamental, reflective, and constructive by including moral-ethical, rationality, legitimate-institutional aspects in human life. This means that justice is not just a written language, but

[58] That is because justice is the realization of individual freedom (Kantian) and is related interdependently to social solidarity which is the realization of freedom of social order (Hegelian). Thus, justice is the *rechtsidee* that underlies human effort in creating an ethical co-existence in its social order. Refer to Jurgen Habermas, *Moral Consciousness dan Communicative Action* (Cambridge: MIT Press, 1990), p. 200.

[59] John Rawl, *A Theory of Justice* (London: Oxford University Press, 1973), p. 103.

[60] *Ibid.*, p. 10.

[61] Angkasa, *Filsafat Hukum* (Purwokerto: Universitas Jenderal Soedirman, 2010), p. 105.

is a language of mysticism that can be accepted and felt with an approach of intention and good faith in the framework of rights and obligations through the legitimacy of related institutions. Therefore, if the understanding of justice is only about equality and balance of rights, then justice is only defined in the aspect of rationality which tends to be subjective and leads to injustice.

Therefore, it is deemed necessary to have the law as part of the institutional aspect of justice that is considered objective and able to be the *resultant* of the legal framework, namely justice, certainty, and benefits which *incidentally* is a form of paradigm shift about law as the dialectics on justice is. The legal framework in question is inevitably a trichotomy-dilemmatic form, however, one can't be eliminated because it is an integrative framework that provides existence for the law itself.[62]

In this case, legal certainty is manifested as a form of relationship in common life in the context of social order as the value of *bonum commune*. Therefore, guaranteeing social order in life together starts from legal certainty based on the function of law as a common foothold in society as an entity for conflict resolution through the compromise of interests based on familial principles and limitation of power to make each person understand their position, role, rights and obligations.[63]

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[62] As implied in the statement of the Scottish Judge, The Rt. Hon quote by Herman Bakir. Refer to Herman Bakir, *Filsafat Hukum: Tema-tema Fundamental Keadilan dari Sisi Ajaran Fiat Justitia Ruat Caelum* (Yogykarta: Pustaka Pelajar, 2015), p. 31.

[63] Al. Andang L. Binawan, "Mengasah Trisula Hukum," in Imran dan Festy Rahma Hidayati (ed.), *Memperkuat Peradaban Hukum dan Ketatanegaraan Indonesia* (Jakarta: Sekretariat Komisi Yudisial RI, 2019), p. 199-201.

Like the legal framework, justice is valued as the ideal ideals of human identity. The tendency at the subjective point is the inevitability of justice because of differences in historical backgrounds, social contexts, and even biological aspects, and to some extent, these differences are guaranteed by others in society. The law is considered as an objective point that can be accepted by the general public so that law is an instrument of justice. At least this is directed normatively in guaranteeing the existence of the law. Then it is considered as the basis for reducing justice in law, including in the form of normative legislation. Therefore, to maximize the value of legal justice enshrined in legislation requires an applicative-integral action for procedural and substantial justice to guarantee human values, especially in the society.[64]

Also, the value of legal usefulness needs to be positioned in the form of community development towards civilization and dynamic as an integrative actualization between the static dimensions of law, namely positivation of compromising interests in legislation, as well as the dynamic dimension of the law, namely the form of 'maturity' as education in annulling psycho-tendencies anthropological human beings who tend to be ego-centric.[65]

On that basis, the legal framework can form integration, namely *conditio sine quanon* between its elements to realize laws that are oriented towards realizing a *good society*. This was assessed because of the existence of justice that has a *common sense* value.[66] Therefore, justice is

[64] Al. Andang L. Binawan "Mengasah Trisula Hukum" *Ibid*., p. 207-208.
[65] *Ibid*., p. 209.
[66] This is contrary to the legal system and social conditions of the people in a particular country. If in the United States, the idea of justice in its achievement is determined by the *Supreme Court*, then in Indonesia the criteria for its achievement

valued as a substantive goal of the law, in addition to the elaboration of legal certainty and usefulness.[67] In this case, substantive justice can be realized if it uses at least a *legal pluralism* approach, namely the elaboration of *living law*, *natural law*, and *state law* simultaneously.[68]

It means that legal justice does not have to annul normative articles from *state law* which have provided procedural justice and legal certainty, and without annulling the *common sense* values of *natural law* and *living law*. Therefore, it does not rule out procedural law that is judged right but is substantially wrong, or otherwise, depending on the values of humanity, especially aspects of mysticism that are accepted by the general public. The *legal pluralism* approach is considered capable of providing substantive justice based on objectivity, rationality, morality, and impartiality.[69] Therefore, substantive justice is a form of legal justice for the elaboration between *natural law*, *living law*, and *state law* in an integrative-inclusive manner so that the social atmosphere is legitimized by legal formalities while still being influenced by other values and norms in society or *common sense*.[70]

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are determined by the formation of a law (legal political legislation) between the legislative and executive. Refer to I Dewa Gede Atmadja dan I Nyoman Putu Budiartha, *Teori-Teori Hukum* (Malang: Setara Press, 2018), p. 208-210.

[67] Achmad Ali, *Menguak Tabir Hukum: Suatu Kajian Filosofis dan Sosiologis* (Jakarta: PT. Toko Gunung Agung, 2002), p. 72-85.

[68] Werner Menski, *Comparative Law in A Global Context: The Legal System of Asia and Africa* (Britania: Cambridge University Press, 2006), p. 187.

[69] M. Syamsudin, "Keadilan Prosedural dan Substantif dalam Putusan Sengketa Tanah Magersari: Kajian Putusan Nomor 74/Pdt.G/2009/PN Yk," *Jurnal Yudisial* Vol. VII, No. 1, 2014, p. 22-24.

[70] Mahrus Ali, "Mahkamah Konstitusi dan Penafsiran Hukum yang Progresif," *Jurnal Konstitusi* Vol. VII, No. 1, 2010, p. 85.

B. President's Impeachment in The Framework of Legal Justice: A Comparative Analysis of Indonesia and the United States

As for **the State of Indonesia**, that the regulation concerning impeachment contained in the UUD 1945 is Pasal 7A as follows:

> "The President and/or Vice President may be dismissed during their term of office by the People's Consultative Assembly at the suggestion of the House of Representatives, both if proven to have violated the law in the form of treason against the state, corruption, bribery, other serious crimes, or blameworthy acts or if it is proven to no longer meet conditions as President and/or Vice President"[71]

Related to the *mechanism*, if the President is suspected of violating the reasons for impeachment in Article 7A of the 1945 Constitution, the House of Representatives (DPR) will begin by proposing the use of questionnaire rights by at least 25 members and more than 1 faction, accompanied by the approval of proposals by the presence of more than 1/2 the number of members and decision making by more of 1/2 the number of members of the plenary session to make it a questionnaire right.[72] If the proposal for the questionnaire right is accepted, then legitimize the formation of the Questionnaire Committee consisting of all elements of the faction.[73] After the investigation, the questionnaire committee submits an investigation report of a maximum of 60 days from the establishment of the questionnaire committee to the plenary meeting for approval of the conclusion of the investigation provided that

[71] Related explanations of the reasons for impeachment referred to are contained in Pasal 10 ayat (3) Undang-Undang Nomor 8 Tahun 2011 tentang Mahkamah Konstitusi.

[72] Pasal 199 Undang-Undang Nomor 17 Tahun 2014 tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah.

[73] Pasal 201 ayat (2) Undang-Undang *a quo*.

more than 1/2 the number of members is approved and approved by more than 1/2 the number of members, and the results of the decision are submitted to the President a maximum of 7 days after the decision is taken.[74]

The next process, the DPR used the right to express opinions proposed by at least 25 members as a follow-up to the inquiry right. The use of the right to express an opinion is determined by the presence of at least 2/3 the number of members with the approval of at least 2/3 the number of members in a plenary meeting.[75] If the proposed right to express an opinion is accepted, then legitimize the formation of a Special Committee consisting of all elements of the faction. Reporting of the Special Committee shall be submitted a maximum of 60 days since the formation of the special committee in the DPR plenary meeting.[76] In this case, if a special committee report is received that assesses the President violates the impeachment article, then the decision making is determined by the presence of at least 2/3 the number of members with approval by a minimum of 2/3 the number of members to follow up as a proposed impeachment to the Constitutional Court.[77] In this case, the functionalization of DPR's rights is a form of the oversight function.[78]

In the next process, the Constitutional Court (MK) held a hearing to try the DPR's proposal to limit the possibility of a deviation from *the rule by majority* principle. In this case, the involvement of the MK is a form

[74] Pasal 206 ayat (1), serta Pasal 208 ayat (3) dan ayat (4) Undang-Undang *a quo*.

[75] Pasal 210 Undang-Undang *a quo*.

[76] Pasal 212 ayat (2), serta Pasal 213 ayat (1) Undang-Undang *a quo*.

[77] Pasal 7B ayat (3) UUD 1945 Undang-Undang Dasar 1945.

[78] Pasal 20A ayat 1 Undang-Undang *a quo juncto* Pasal 7B ayat 2 Undang-Undang Dasar 1945.

of constitutional obligation[79] to give a decision within a maximum grace period of 90 days for the DPR's proposal regarding impeachment.[80] In this case, the proceedings at the MK begin with the registration of the case by fulfilling the application requirements, namely: formal requirements and evidence; preliminary examination; trial examination; proof; verdict hearing: if the MK's decision justifies the opinion of the DPR then, in this case, it is strongly judged constitutionally that the President violated the impeachment article.[81] The MK's decision was judged as constitutionally juridical legitimacy by the DPR to follow up the impeachment process to the People's Consultative Assembly (MPR).

In the next process, the DPR conducted a plenary meeting with the provisions of attendance by 2/3 the number of members and agreed by 2/3 the number of members[82] as a follow-up to the impeachment process which has been legally-constitutionally legitimate from the MK to be processed by the MPR. After receiving the proposed impeachment from the DPR, the MPR held a plenary session to decide upon the DPR's proposal *in casu* within 30 days of receiving the *a quo* proposal. In determining the dismissal of the President, the MPR plenary session uses a *quorum* mechanism, namely the decision on the DPR's proposal *in casu* is determined by the presence of at least 2/3 the number of members and

[79] Pasal 24C ayat (2) Undang-Undang Dasar 1945.

[80] Pasal 7B ayat (4) Undang-Undang Dasar 1945 *juncto* Pasal 84 Undang-Undang Nomor 8 Tahun 2011 tentang Mahkamah Konstitusi.

[81] Pasal 83 ayat (2) Undang-Undang Nomor 8 Tahun 2011 tentang Mahkamah Konstitusi.

[82] Pasal 7B ayat (4) UUD 1945 *juncto* Pasal 215 ayat (1) Undang-Undang *a quo*. Refer to juga Syofyan Hadi, "Impeachment Presiden dan/atau Wakil Presiden: Studi Perbandingan antara Indonesia, Amerika Serikat, dan Filipina," *Jurnal Ilmu Hukum* Vol. XII, No. 23, 2016, p. 10.

approved by a minimum of 3/4 the number of MPR members after the President gives information.[83]

As for **the United States**, impeachment arrangements are contained in *The Constitution of the United State*. Regarding the *mechanism*, impeachment begins with the submission of indictments by the *House of Representatives*[84] as in *Article I Section 2 of the Constitution of the United States*: "*The House of Representatives shall choose their speakers and other officers, and shall have the sole power of impeachment*." The indictment is based on *articles of impeachment* which include reasons for violations committed by the President as referred to in *Article II Section 4 of the Constitution of the State:*

> "*President, Vice President, and all the United State civil servants will be dismissed from office if sued liability for, and found guilty of, in treason, bribery, or other high crimes and misdemeanors*."

The impeachment discussion was carried out in the plenary session of the *House of Representatives* to decide on the members' agreement by voting. If the proposed impeachment is received by more than 50% of the votes of the members then the President is suspected of violating the impeachment article, and the next process is carried out in a plenary session by the *Senate*[85] to evaluate the proposed impeachment from the House of Representatives as desired by *Article I Section 3 of the Constitution of the United States*: "*The Senate shall have the sole power to try all impeachments*."

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[83] Pasal 7B ayat (6) dan ayat (7) Undang-Undang Dasar 1945.

[84] Institutionally, the House of Representatives has the authority to indict a president who is allegedly violating the impeachment article in the United States Constitution. Refer to *Article I Section 2 The Constitution of United State*: "*The House of Representatives shall be composed of member chosen every second year by the people of the several state...*"

[85] Institutionally, the Senate has the authority to prosecute charges against the President who allegedly violated the article of impeachment in the United States Constitution. Refer to *Article I Section 3 The Constitution of United State*: "*The Senate of the United State shall be composed of two senators from each state...*"

However, if the President is impeachment, the *Senate* hearing will be chaired by the Chief Justice of the Supreme Court.[86]

Determination of impeachment decisions in the Senate plenary session is based on voting. If more than 2/3 or in a percentage of 67% of the number of members of the hearing[87] declared the President violated the impeachment article as indicted by the *House of Representatives*, the President was dismissed and replaced by the Vice President. The *Senate* decision was only a form of justification for the President to be dismissed or not. Therefore, the decision does not cover criminal or civil sanctions, and does not cause other liabilities to be released, such as criminal law charges, judicial proceedings, etc., as regulated in *Article I Section 3 of the Constitution of the United States*:

> "*Judgement in Case of Impeachment shall not extend further to removal from office, or disqualify cation to hold and enjoy any office of honor, trust or profit under the United State... but the Party convicted shall nevertheless be liable and subject to indictment, trial, judgement and punishment according to law*"

Based on the explanation in the impeachment of the Presidents of the two countries, the results of the comparative analysis are as follows.

	The State of Indonesia	**The United State of America**
Legal Basis	UUD 1945: Pasal 7A, Pasal 7B	*The Constitution of United States*: *Article I Section 2*, *Article I Section 3*, *Article II Section 4*
The Object of	President and/or Vice	President, Vice President or

[86] Refer to *Article I Section 3 The Constitution of United State*: "*When The President of the United State is tried, the Chief Justice of Supreme Court shall preside...*"

[87] Refer to *Article I Section 3 The Constitution of United State*: "*And no person shall be convicted without the concurrence of two thirds of the members present.*"

Impeachment	President	other state officials
Reasons for Impeachment	**I.** Violating the law: betrayal of the state, corruption, bribery, other serious criminal offences, misconduct; **II.** Proven not to qualify as President and/or Vice President	*treason*, *bribery*, *other high crimes*, and *misdemeanours*
Mechanisms of Impeachment	**The hybrid system**: initiated by the **DPR** as a prosecuting body in the initial impeachment process (political factors), continued by the **MK** as an appraisal institution in the *previlegiatum forum* (legal factor), and ended at the plenary session of the **MPR** as the institution for the final impeachment (political factor).	**The impeachment system**: initiated by the **House of Representatives** as a prosecuting agency in the initial impeachment process (political factors), then processed by the **Senate** as the decision-making body to produce a final impeachment decision (political factor) in a plenary session.

Based on a study in a comparative study of the impeachment of the President between Indonesia and the United States. The researcher considers that the impeachment of the President between the two countries is capable of implicating legal justice in the interdependent *democracy-nomocracy* paradigm as the actualization of the rule of law's principles. In this case, the impeachment of the President can reflect legal justice both procedural and/or substantial justice, depending on the possibility that occurs in the impeachment of the President himself.

As is well known, **Indonesia** is a democratic rule of law state. Therefore, the impeachment process for the President involved the MK, unlike the impeachment practice of Soekarno as the 1st President and Abdurrahman Wahid as the 4th President who were considered to have political nuances. However, despite involving the MK as a judicial institution which incidentally is a form of rule of law principles. It is possible if the MPR as a political institution overturns the MK's decision which states that the President violates the impeachment article on the DPR's proposal. According to researcher, this is influenced by two factors: (i) law enforcement in Indonesia which tends to be positive,[88] namely the application of constitutional norms procedurally without regard to the holistic impeachment implications in state life, and (ii) the political configuration influence in the plenary session of the MPR, both in the *voting* mechanism of decision making or the form of political party majority support for the presidential coalition in the general election.

[88] As research shows that law enforcement in Indonesia tends to follow more than 80% of the current concept of positivism so that law enforcement is mechanical. Refer to Agus Budi Susilo, "Penegakan Hukum yang Berkeadilan dalam Perspektif Filsafat Hermeneutika Hukum: Suatu Alternatif Solusi terhadap Problematika Penegakan Hukum di Indonesia," *Jurnal Perspektif* Vol. XVI, No. 4, 2011, p. 222.

If the possibility of impeachment occurs then, the practice only reflects procedural justice. Moreover, the constitution legitimizes political institutions such as the MPR and the DPR to play a role in the impeachment process, and in addition to the constitution also does not want the MK's decision to be *final and binding* and *inkracht van gewijsde*. Because the MK's decision is only a form of constitutional obligation so that it can be annulled by the *politieke beslissing* MPR in the name of democracy. Therefore, in addition to not reflecting legal justice, especially substantive justice, it also causes ambiguity in the community, and even strengthens the form of *lips service* for the enforcement of the UUD 1945 itself which wants Indonesia as a state of law, and is considered as a *contradictio terminis* on the statement of Artidjo Alkostar[89]:

> "There is no civilized nation without an independent and dignified court. The function of the court, the upright pole of a sovereign state. One factor in the judicial element is an independent court."

It is considered less implicated in the interdependence of *democracy-nomocracy* as a democratic rule of law principle as the conception of the administration of the Indonesian state.[90]

As for **the United States**, the impeachment of the President is constitutionally considered a form of democracy. This is because the constitution requires dominant political institutions, namely the *House of Representatives* and the *Senate*, which in fact are the result of democratic

[89] Artidjo Alkostar, "Membangun Pengadilan Berarti Membangun Peradaban Bangsa" in Majalah Hukum *Varia Peradilan*, Vol. XX, No. 238, Jakarta.

[90] According to Prof. Ramlan Surbakti that the relationship between nomocracy and democracy departs from the principle of constitutionalism, the principle of equality before the law, the principle of due process of law, and the principle of power based on the law. Refer to Ramlan Surbakti, "Demokrasi dan Nomokrasi," in Hermansyah, dkk. (ed.), *Problematika Hukum dan Peradilan* (Jakarta: Sekretariat Komisi Yudisial RI, 2014), p. 13-15.

politics through the general election system. Moreover, the United States constitution in the impeachment of the President does not want legal aspects to be involved, such as the *Supreme Court* as a legal institution. However, the related involvement was only a personal representative, namely the involvement of the *Chief Justice* in the *Senate* plenary session as the head of the trial. It can be considered that this does not reflect the legal aspects such as juridical considerations as supreme judge, because in the trial only the *voting* mechanism for the approval of the President's impeachment was emphasized so that the decision was more to *politieke beslissing*. In this case, the legal aspect was merely a constitutional norm to legitimize the impeachment of the President.

If this is the case, then, in fact, it is a form of co-optation of pragmatic political interests from political parties. Moreover, if the majority political party of the President's coalition controls the *Senate*, the impeachment can be cancelled and the President remains in office. So it is no different from the possibility of impeachment by the President in Indonesia if the President is judged not to have violated the impeachment article by the MPR. This is due to the speculative-pragmatic nature of politics that can influence formal law enforcement, thus implicating procedural justice. Therefore the *nomocracy-democracy* interdependence is not reflected in the impeachment of the country's president. As the practice of impeachment for the President: Andrew Johnson as the 17th President, Richard Nixon as the 37th President, William Jefferson Clinton as the 42nd President, and Donald Trump as the 45th President.

III. Conclusion

The research conclusions suggest that the impeachment of the President between Indonesia and the United States contains differences. In particular, in the context of the *mechanism*, **Indonesia** is considered to be

using a ***quasi* system**, starting with the **DPR** as a prosecuting agency in the initial impeachment process (political factors), followed by the **MK** as an assessment body in the *previlegiatum forum* (legal factors), and ending at the **MPR** plenary session as a decision body. final impeachment (political factors). Meanwhile, in the context of the *object of impeachment*, **Indonesian** impeachment is focused on the President and/or Vice President. Besides, in the context of the *mechanism*, **the United States** tends to use the ***impeachment* system**, which is initiated by the ***House of Representatives*** as the prosecuting agency in the initial impeachment process (political factors), then processed by the ***Senate*** as the decision body to produce a final impeachment decision (political factors) in the trial plenary. In this case, the *object of impeachment* in **the United States** is the President and/or Vice President, as well as other state officials.

Based on that and the possibilities that can occur and lead to the impeachment of the President, and if it is examined from the perspective of legal justice which has implications for the paradigm of *democracy-nomocracy* interdependence in the practice of the rule of law. It is considered that **Indonesia** characterizes the practice of a rule of law because it involves the **MK** as a judicial institution. Therefore, legal justice is at least more secure, even though it is limited to **procedural justice**, than **the United States** with democratic principles to legitimize **parliamentary political support**. In terms of *democracy-nomocratic* interdependene, **Indonesia** is considered to *lack strengthening* the *democracy-nomocratic* interdependence because it allows the **MPR** as a political institution to annul the **MK** decision as a judicial institution, while **the United States** is considered *not to reflect* the *democracy-nomocratic* interdependence due to the tendency of political principles in the name of democracy in parliament. The implication is that the domination of

rule by majority results in a *politieke beslissing* rather than *rule of law* which produces *judicieele vonnis*.

IV. Research Recommendation

On that basis, starting from the aspects of the impeachment of the President and its relevance to the paradigm of *democracy-nomocracy* interdependence in the principles of a democratic rule of law state. It is considered that legal justice resulting from the impeachment process of the two state tends to procedural justice. Therefore, the researcher recommends revitalizing constitutional norms related to the impeachment of the President through constitutional amendments to strengthen construction based on the principles of a democratic rule of law state. As in **Indonesia**, it is deemed necessary to affirm the MK decision for *final and binding* as a constitutionally-legal basis for the MPR, and supported by an impartial *quorum* with commitment to the principles of the rule of law state. As for **the United States**, in this case, the starting point is the *Chief Justice* which is sought to have special legal considerations constitutionally supported by a *quorum* as additional consideration. This researcher's study is basically oriented to form a *contradictio terminis* to the researcher's statement: "*surplus politicians, deficit statesmen*." Therefore, the state administration is based on constitutional enforcement, political-ethical practices and the application of constitutional democracy.

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