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Legal Analysis of the Impeachment Mechanism of Regional Heads Based on Law Number 23 of 2014 Concerning Regional Government

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ABSTRACT

Many people understand impeachment to mean the removal, termination, or dismissal of a president or high-ranking official from office. In fact, the term "impeachment" itself refers to an accusation or charge; thus, the process of impeachment focuses more on the proceedings themselves and does not necessarily result in the removal or termination of a president or other high-ranking state official from office. In the practice of impeachment carried out in various countries, there have been only a few impeachment processes that have resulted in the removal of a head of state. One such case involved the President of Lithuania, Rolandas Paskas, where the impeachment process culminated in Paskas's removal on April 6, 2004. In the United States, there have been several impeachment proceedings against Presidents, such as those involving Andrew Johnson, Richard Nixon, and most recently, William Clinton. However, none of the impeachment charges brought in the United States resulted in the President's removal from office. In the case of Richard Nixon, he resigned while the impeachment process was underway, so a final decision on the impeachment was never reached. There are at least three points of interest in examining the topic of impeachment. First is the subject of impeachment; second, the grounds for impeachment; and finally, the mechanism of impeachment. Each country that has adopted provisions regarding impeachment regulates these matters differently, in accordance with its constitutional provisions. The subject of impeachment charges is not limited to national leaders, such as the President or Prime Minister, but also includes high-ranking state officials.The impeachment of regional heads is a constitutional mechanism aimed at maintaining the integrity, accountability, and morality of local government officials. This study aims to conduct a legal analysis of the mechanism for impeaching regional heads as stipulated in Law No. 23 of 2014 on Regional Government, as well as to assess the effectiveness of its implementation within the Indonesian constitutional framework. The research method used is a normative legal approach by examining legislation, legal doctrine, and court decisions relevant to the impeachment of regional heads.The research results indicate that the mechanism for the impeachment of regional heads in Law No. 23 of 2014 provides for the involvement of the Regional People's Representative Council (DPRD), the Supreme Court, and the President in the process of removing regional heads from office. However, in practice, the implementation of these provisions often faces obstacles in the form of political intervention, procedural ambiguity, and weak oversight

INTRODUCTION

Democracy is one of the main pillars of modern constitutional systems, ensuring public participation in the political decision-making process. In the context of the Unitary State of the Republic of Indonesia, democracy is not merely a system of government, but also the embodiment of popular sovereignty as affirmed in Article 1, paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "Sovereignty resides with the people and is exercised in accordance with the Constitution." One concrete form of the implementation of this principle of popular sovereignty is through the direct election of regional heads.

Direct regional head elections (direct Pilkada) are a significant milestone in the journey of Indonesian democracy. Previously, regional heads were elected by the Regional People's Representative Council (DPRD), a process that often led to various problems, such as the practice of vote-buying, collusion, and a lack of accountability to the people. Through the shift to a mechanism of direct election by the people, it is hoped that a more democratic, transparent, and accountable system of regional government will be established, capable of producing regional leaders who possess strong legitimacy in the eyes of the public.

Direct regional elections were first implemented under Law No. 32 of 2004 on Regional Government, and have continued to evolve through various regulatory changes, including those in Law No. 23 of 2014 on Regional Government. This law stipulates that regional heads and deputy regional heads are democratically elected through direct elections by the people in the respective regions. This mechanism is intended to serve as a means of realizing citizens' political rights, while simultaneously strengthening the regional government system based on the principles of autonomy, participation, and decentralization of power.

However, behind the idealism of democracy, the practice of direct elections also presents various challenges and dilemmas.

One of the negative impacts of direct regional head elections is the election of a regional head who lacks capability and integrity but succeeds in being elected due to high popularity among the public. This, of course, results in the emergence of regional heads who are prone to committing legal violations and corruption or acts of abuse of power.

In Indonesia's constitutional system, regional heads hold a highly strategic position as administrators of government at the regional level and as representatives of the central government in implementing regional autonomy. Therefore, the role of regional heads not only reflects the face of local politics but also serves as a reflection of the implementation of the rule of law (rechtstaat), which upholds the supremacy of the law. However, in the practice of regional governance, complex dynamics and issues often arise, one of which relates to the impeachment of regional heads.

The impeachment of a regional head is a very serious legal action because it is directly related to the legitimacy of political leadership and public trust in government administrators. The impeachment process has implications not only for the continuity of local government but also for political and legal stability and regional development. Therefore, the implementation of the impeachment mechanism must be based on a strong legal foundation, clear procedures, and principles of justice that are legally and constitutionally accountable.

Law No. 23 of 2014 on Regional Government provides clear guidelines regarding the mechanism for removing regional heads from office, whether due to legal violations, dereliction of duty, or breach of the oath of office. However, in its implementation, there are still various debates and issues, especially when impeachment is accompanied by political interests or differences in perception between the central government, local governments, and regional legislative bodies (DPRD). It is within this context that this study aims to conduct a legal analysis of the extent to which the mechanism for the impeachment of regional heads aligns with legal principles, the

principles of good governance, and the principle of legal certainty.

A study on the impeachment of regional heads is part of constitutional law research that possesses its own unique complexities. The impeachment process is not only related to the normative aspects of legislation but is also closely tied to legal-political aspects, governance ethics, and the implementation of regional autonomy. Therefore, this study is expected to provide a comprehensive understanding of how the law should play a role in maintaining a balance between political power and the supremacy of law at the regional level.

This study also stems from concerns regarding the frequent occurrence of impeachments of regional heads that do not fully adhere to applicable legal procedures. In some cases, impeachment is more politically motivated than legally grounded, thereby creating legal uncertainty and potentially undermining local democracy. This is clearly at odds with the spirit of reform, which places the law at the forefront of every aspect of governance. Therefore, this study seeks to re-examine the legal foundations of impeachment, analyze its application in practice, and identify the obstacles that arise in its implementation.

Some cases involving regional heads that have led to their removal include the dismissal of Garut Regent Aceng HM Fikri, who was implicated in a controversial case involving a secret marriage and divorce. Then there is the case of Ogan Ilir Regent Jesis, who was caught red-handed using methamphetamine just a few months after being sworn in as regent. Additionally, there was the case of an extramarital affair between Katingan Regent Ahmad Yantenglie and a woman named Farida Yeni, who was still the lawful wife of a police officer with the Central Kalimantan Regional Police. And the case of Pati Regent Sadewo regarding several policies, including a 250% increase in property tax (PBB) deemed detrimental to the public and allegations of corruption that sparked large-scale demonstrations, which could potentially lead to his removal.

Black's Law Dictionary defines impeachment as "A criminal proceeding against a public officer, before a quasi-political court, instituted by a written accusation called 'articles of impeachment'." Impeachment is defined as a criminal proceeding against a public official conducted before the Senate, referred to as a quasi-political court. An impeachment process begins with the filing of articles of impeachment, which serve the same function as an indictment in a criminal trial. Thus, articles of impeachment are an official document containing the charges that trigger the initiation of an impeachment process. In the United States, the provisions regarding impeachment are found in Article 2, Section 4, which states, "The President, Vice President, and 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." It is this provision that has subsequently inspired the constitutions of other nations in their regulations regarding impeachment.

In Law No. 23 of 2014 on Regional Government, this is the section regarding impeachment—when a regional head is removed from office before the end of their term due to legal grounds or specific violations. Requirements (Article 78, Paragraph 2 of Law No. 23 of 2014) A Regional Head may be removed from office due to death, voluntary resignation, or dismissal. Grounds for the Removal of a Regional Head (Article 83(1)) A Regional Head and/or Deputy Regional Head may be temporarily removed if they are charged with a criminal offense punishable by a minimum prison sentence of 5 years, charged with corruption, terrorism, treason, or offenses against national security, or charged with a criminal offense punishable by the death penalty.

Based on the above description, the author is interested in further analyzing these acts of misconduct, which are presented in a research paper titled "Legal Analysis of the Mechanism for the Impeachment of Regional Heads Based on Law No. 23 of 2014 on Regional Government."

METHODS

1. Type of Research

This study is a normative legal study (juridical-normative), which focuses on the examination of applicable positive legal norms. The juridical-normative approach is used to examine the laws and regulations governing the impeachment of regional heads, as well as to analyze the legal principles, theories, and doctrines related to this mechanism.

2. Research Methods

Additionally, this study employs a conceptual approach and a statutory approach to understand the legal concepts and the regulatory framework for the impeachment of regional heads within the context of local government in Indonesia.

3. Sources and Types of Legal Materials

In normative legal research, the data used consists of legal materials classified as follows:

a. Primary Legal Materials, namely legal materials that have binding force, including:

1) The 1945 Constitution of the Republic of Indonesia.
2) Law No. 23 of 2014 on Regional Government.
3) Government Regulation No. 12 of 2018 on Guidelines for the Rules of Procedure of Regional People's Representative Councils.
4) Other relevant regulations and relevant Supreme Court decisions.

b. Secondary Legal Materials, which are materials that provide explanations regarding primary legal materials, including:

1) Textbooks, literature, and scholarly works by experts in constitutional law and public administration.
2) Legal journals, research articles, and relevant academic studies.
3) Expert opinions, seminar proceedings, and legal publications discussing the impeachment of regional heads.

c. Tertiary Legal Materials, namely materials that provide guidance and explanations regarding primary and secondary legal materials, such as legal dictionaries, legal encyclopedias, and official government electronic documents.

1. Techniques for Collecting Legal Materials

Legal materials are collected through library research by:

a. Searching for laws and regulations relevant to the research subject.
b. Reviewing books, scientific journals, and academic documents related to the mechanism for the impeachment of regional heads.
c. Collecting court decisions and expert opinions to strengthen the legal analysis conducted.

2. Legal Material Analysis Techniques

The collected legal materials are then analyzed using qualitative analysis with a descriptive-analytical approach. Descriptive analysis is used to describe and explain applicable legal provisions, while analytical analysis is used to assess the consistency between legal theory, legal principles, and the practice of implementing the mechanism for the impeachment of regional heads.

Furthermore, the results of the analysis are presented in the form of legal arguments that are logical, systematic, and supported by the principles of constitutional law and the principles of good governance.

1. Research Location and Time

Since this research is normative in nature, it was not conducted at a specific location. However, data collection and literature review were conducted at the law faculty library, the university library, and through official online legal sources such as the Supreme Court website, the Ministry of Home Affairs, and JDIH (Indonesian Legal Documentation and Information Network).

The research was conducted over a period adjusted to the needs of the faculty member's research preparation.

2. Analytical Framework

This research is based on the framework that the impeachment of regional heads is a crucial instrument in maintaining the integrity and accountability of local government. Through a legal analysis of Law No. 23 of 2014, it is hoped that normative weaknesses can be identified and solutions proposed to improve the impeachment mechanism so that it better aligns with the principles of the rule of law and democratic regional autonomy.

RESULTS AND DISCUSSION

Analysis of The Impeachment Mechanism for Regional Heads Under Law No. 23 Of 2014

A. The Terminology of Impeachment from the Perspective of the Regional Government Law

Law No. 23 of 2014 on Regional Government does not explicitly use the term "impeachment" as it is known in classical constitutional law, but rather uses the term "dismissal of regional heads and/or deputy regional heads." Nevertheless, from an academic constitutional law perspective, the removal of a regional head before the end of their term due to legal violations, breach of the oath of office, or misconduct can be classified as a form of impeachment.

Impeachment in the context of regional government has specific characteristics because it operates within the framework of a unitary state, unlike the impeachment of the President, which is constitutionally regulated in the 1945 Constitution of the Republic of Indonesia. Therefore, the mechanism for the impeachment of a regional head is a combination of political oversight by the Regional People's Representative Council (DPRD) and legal review by the judiciary.

B. Normative Analysis of Article 78 of Law No. 23 of 2014 (Grounds for Dismissal)

Article 78 of Law No. 23 of 2014 is a key provision that defines the valid grounds for the removal of regional heads. This article divides the grounds for removal into three broad categories: removal due to objective circumstances (death or permanent incapacity), removal at the official's own request, and removal due to misconduct.

In the context of impeachment, the relevant category is removal due to misconduct, which includes violating the oath of office, failing to fulfill duties, violating prohibitions as a regional head, committing reprehensible acts, and being proven to have committed certain criminal offenses. This provision reflects the principle of legality, as only acts explicitly defined by law may serve as grounds for removal.

However, certain phrases in Article 78, such as "dishonorable conduct" and "failure to fulfill duties," are abstract and prone to multiple interpretations. This situation allows for subjectivity in the Regional People's Representative Council's assessment, thereby requiring the judicial branch to provide an objective legal interpretation.

C. Analysis of Article 79 of Law No. 23 of 2014 (Authority to Remove from Office)

Article 79 stipulates that the removal of regional heads is carried out by the President for governors and/or deputy governors, and by the Minister of Home Affairs for regents and mayors. This provision affirms that the ultimate authority to remove regional heads rests with the central government.

Legally, this norm is a logical consequence of the principle of the Unitary State of the Republic of Indonesia, in which the central government has the function of guiding and supervising the administration of regional governments. However, from the perspective of regional autonomy, this provision also raises debate regarding the limits of central government intervention in regions that possess democratic legitimacy through direct elections.

D. Analysis of Article 80 of Law No. 23 of 2014 (Role of the Regional People's Representative Council)

Article 80 grants the Regional People's Representative Council (DPRD) the authority to propose the removal of a regional head. Such a proposal must be decided upon through a plenary session of the DPRD, subject to specific attendance and voting requirements.

In theory, this authority embodies the supervisory function of the Regional People's Representative Council (DPRD) as a representative body of the people at the regional level. However, because the DPRD is a political institution, the exercise of this authority cannot be separated from the configuration of political power in the region. Therefore, the potential for politicization in the impeachment proposal process poses a major challenge to the implementation of Article 80.

E. Analysis of Article 81 of Law No. 23 of 2014 (The Role of the Supreme Court)

Article 81 stipulates that the Supreme Court has the authority to examine, adjudicate, and rule on the Regional People's Representative Council's (DPRD) opinion regarding alleged violations by regional heads. The Supreme Court's decision is issued within a specified timeframe to ensure legal certainty.

The involvement of the Supreme Court is a crucial element in ensuring the principle of due process of law. In this context, the Supreme Court serves as a counterbalance to the political authority of the Regional People's Representative Council (DPRD), while also acting as the guardian of the supremacy of law within the mechanism for the impeachment of regional heads.

F. Analysis of Article 82 of Law No. 23 of 2014 (Legal Consequences of the Supreme Court's Ruling)

Article 82 affirms that Supreme Court decisions are final and binding. If the Supreme Court finds that a regional head has committed a violation, the President or the Minister of Home Affairs is obligated to follow through with dismissal.

This provision indicates that legal considerations take precedence in the mechanism for the impeachment of regional heads. Political decisions cannot override legally binding court rulings.

G. Analysis of Articles 83–86 of Law No. 23 of 2014 (Temporary Suspension and Continuation of Government)

Articles 83 through 86 address the temporary suspension of regional heads undergoing legal proceedings, the appointment of acting officials, and the mechanism for filling vacant positions.

These provisions are crucial to prevent a vacuum of power and ensure the continuity of regional government administration. From the perspective of administrative law, these provisions reflect the principle of governmental continuity.

H. Critical Analysis of the Normative Provisions on Impeachment

Normatively, the provisions on the impeachment of regional heads in Law No. 23 of 2014 reflect the principles of the rule of law, checks and balances, and legal certainty. However, there are still weaknesses, particularly regarding the potential for multiple interpretations of the norms and the dominance of political considerations in the early stages of the impeachment process.

Therefore, consistent legal interpretation and the integrity of the institutions involved are necessary to ensure that the impeachment mechanism truly functions as an instrument of law enforcement and not as a tool for political interests.

Critical Analysis and Legal Implications of the Mechanism for Impeaching Regional Heads

A. The Mechanism for Impeaching Regional Heads from the Perspective of the Rule of Law

The mechanism for impeaching regional heads, as stipulated in Law No. 23 of 2014 on Regional Government, is a concrete manifestation of the principle of the rule of law. In a rule-of-law state, every government official must be subject to the law and can be held accountable for any violations. Therefore, the impeachment of regional heads cannot be understood merely as a political process, but rather as a legal instrument to uphold the supremacy of the law.

However, in practice, the impeachment mechanism often exists in a gray area between law and politics. The initial stage of impeachment, which involves the Regional People's Representative Council (DPRD) as a political institution, has the potential to introduce non-legal interests. This situation demands consistent enforcement of the principle of due process of law to ensure that the impeachment mechanism remains within the framework of the rule of law.

B. The Politicization of the Regional People's Representative Council (DPRD) in the Impeachment Process of Regional Heads

The Regional People's Representative Council (DPRD) plays a central role in the impeachment process of regional heads, particularly in proposing their removal from office. Normatively, this authority is part of the DPRD's oversight function

over regional heads. However, since the DPRD is a political institution whose members come from political parties, it cannot be denied that the DPRD's decisions are often influenced by the configuration of political power in the region.

The politicization of impeachment can occur when the removal mechanism is used as a tool of political pressure against a regional head who has conflicting interests with the majority of the DPRD. This has the potential to undermine the principles of justice and objectivity, as well as shift the purpose of impeachment from the enforcement of the law to a political instrument of power.

C. The Role of the Supreme Court as the Guardian of Due Process of Law

The Supreme Court's involvement in the mechanism for the impeachment of regional heads holds strategic significance in maintaining the balance between law and politics. The Supreme Court functions as a judicial institution that objectively assesses whether the Regional People's Representative Council's (DPRD) decision has a strong legal basis.

Theoretically, the role of the Supreme Court is a manifestation of the principle of checks and balances in local government. The Supreme Court's final and binding rulings are intended to prevent further political intervention and ensure legal certainty. However, the effectiveness of this role depends heavily on the independence and integrity of the judiciary.

D. Implications of the Impeachment Mechanism on the Principle of Local Democracy

The impeachment of a regional head has direct implications for local democracy, given that regional heads are directly elected by the people. The removal of a regional head before the end of their term has the potential to delegitimize the results of the regional head election if it is not based on strong legal grounds and a transparent process.

On the other hand, the impeachment mechanism can also be viewed as a corrective instrument in constitutional democracy. Democracy is not only about the will of the majority but also about the limitation of power through the law. Thus, an impeachment conducted objectively actually strengthens the quality of local democracy.

E. Implications for Regional Autonomy and Central-Regional Relations

The fact that the final authority to remove regional heads lies with the President or the Minister of Home Affairs underscores the central government's strong role in the impeachment mechanism. From the perspective of regional autonomy, this raises questions about the extent to which regions possess autonomy in managing their own governmental affairs.

Nevertheless, within the framework of the Unitary State of the Republic of Indonesia, central government intervention can be justified as a form of oversight to maintain uniformity in the application of the law and national stability. The challenge is ensuring that this authority is not exercised excessively, thereby undermining the essence of regional autonomy.

F. Evaluation of Normative Weaknesses and Implementation Challenges

Normatively, the mechanism for the impeachment of regional heads has been regulated quite comprehensively in Law No. 23 of 2014. However, several weaknesses remain, including the use of general and open-to-interpretation norms, as well as a high degree of dependence on political actors.

In practice, the main challenges lie in the consistency of law enforcement and the integrity of the institutions involved. Without a strong commitment to the rule of law, the impeachment mechanism risks losing its legitimacy and may instead lead to instability in local government.

G. Directions for Reform and Strengthening the Impeachment Mechanism

As a corrective measure, it is necessary to establish more detailed legal norms regarding the grounds for the removal of regional heads, particularly concerning the categories of misconduct and breaches of duty. Additionally, enhancing the capacity and understanding of the Regional People's Representative Council (DPRD) regarding the limits of its oversight authority is also crucial.

Strengthening the role of judicial institutions and increasing the transparency of the impeachment process are expected to make this mechanism an instrument of law enforcement that is fair, objective, and in line with the principles of democracy and regional autonomy.

CONCLUSION

The mechanism for the impeachment of regional heads within Indonesia's system of government is a vital instrument for ensuring the accountability of power and the enforcement of the rule of law. Based on a legal analysis of the regulations and their implications, it can be concluded that the impeachment of regional heads cannot be understood merely as a political process, but rather as a legal mechanism designed to correct the abuse of authority by regional heads.

The provisions on the impeachment of regional heads in Law No. 23 of 2014 on Regional Government reflect the lawmakers' efforts to strike a balance between the democratic legitimacy of regional heads—who are directly elected by the people—and the need for oversight and legal accountability. The involvement of the Regional People's Representative Council (DPRD), the Supreme Court, and the central government reflects the application of the principle of checks and balances within the framework of a unitary state.

However, in practice, the impeachment mechanism still faces various challenges, particularly the potential for politicization during the proposal stage by the Regional People's Representative Council (DPRD) and the existence of legal norms that are general and open to multiple interpretations. These conditions have the potential to create legal uncertainty and may undermine the principles of local democracy if not balanced by the consistent enforcement of due process of law.

Thus, the success of the mechanism for impeaching regional heads is highly dependent on the integrity of the institutions involved and a shared commitment to placing the law at the forefront of regional governance.

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