

Presidential System-Based Impeachment of Regional Head

La Ode Muhaimin

Department of Law Dayanu Ikhsanuddin University of Baubau, Southeast Sulawesi, Indonesia

Abstract: *Impeachment of the Regional Head in the middle of the term of office in Law no. 23 of 2014 is designed in several models. Each has different reasons and procedures. Differences in reasons and procedures are closely linked to the relation between the Center and the Region in the unitary state system and impeachment models in the presidential government system. This study aims: (1) To describe the system of impeachment of the Regional Head directly elected by the people. (2) Formulate an impeachment model of the Regional Head in the unitary state system in line with the President's impeachment in the presidential government system. This research is a normative law research conducted by examining library materials or secondary data. The material of this research is the primary law material that is the legislation concerning the impeachment of the Regional Head. Impeachment design of Regional Head in Law no. 23 of 2014 contains a weakness in the form of procedural deviations at the level of implementation and the incision of authority between the Central Government and the Regional Government. The reason lies in the removal of reasons for impeachment away from the characteristics of impeachment of President/Vice President in presidential system.*

Keywords: impeachment, unitary state, presidential system

1. Introduction

The amendment of the 1945 constitution resultingsome of fundamental changes in the constitutional system has reinforced the presidential government system in Indonesia. The direct election of President and Vice President and the adoption of impeachment system are two forms of some changes produced by the People's Consultative Assembly (MPR). In presidential systems of Juan J. Linz's (1990) opinion are an executive with considerable constitutional powers-generally including full control of the composition of the cabinet and administration-is directly elected by the people for a fixed term and is independent of parliamentary votes of confidence. Then Juan J. Linz confirms that two things about presidential government stand out. The first is the president's strong claim to democratic, even plebiscitarian, legitimacy; the second is his fixed term in office. Referring to Juan J. Linz's opinion, The Regional Head elected by direct election by the people also has a fixed term.

Based on the characteristics of the fixed term of the President does not mean the President cannot be dismissed in his tenure. There is an entrance to shorten the term of a President even though it has been affirmed that the term of the President is fixed. Saldi Isra (2010) said, the concept of "fixed term" in the presidential government system cannot be broken. According to Saldi, one way to break is that all constitutions embracing a presidential system or model and providing clauses to dismiss the President and Vice President or other officials such as in the United States, if -in the middle of his term- they are proved to commit a violation mentioned in the constitution could lead to the process of impeachment.

Although the Regional Head has been directly elected by the people, his impeachment design does not merely reflect the presidential system. Besides, to be embedded character of the presidential system, the captive impeachment unit is characterized by a unitary state system. Therefore, the

created design of the impeachment is not a single model, such as the model of Presidential impeachment in the presidential system. However, it is designed in several models as a manifestation of two concepts, as the concept of a unitary state and a presidential system. The impeachment model of The Regional Head in Indonesia from the Orde Lama era to the period after the amendment of the 1945 Constitution shows the tendency of the different pattern due to the shift. Today the variant of the impeachment model of the Regional Head in the middle of the term of office in Law no. 23 of 2014 in the 1945 Constitution post amendment eras constructed as below:

- 1) Impeachment in the authority channel of The Regional House of Representative (DPRD) as regulated in Article 78 paragraph (2) letter c, d, e, f, and h juncto Article 80 paragraph (1). The procedure is distinguished from the type:
 - a) Violation of Article 78 paragraph (2) letter c, d, e, and f is done through impeachment such as impeachment of President in presidential government system;
 - b) Violation of Article 78 paragraph (2) letter h juncto Article 82 shall be processed using the right of inquiry;
 - c) Violation of Article 85 will be processed using the right of interpellation and right of inquiry.
- 2) The impeachment in the authority channel of the President arranged in Article 68 and Article 83. The procedure is distinguished from the following types:
 - a) Violation of Article 68 shall be dismissed by the President without going through the verification process at the court;
 - b) Violations of Article 83 will be dismissed by the President after a verdict of law which has been enforced.

Formulation of impeachment reasons in Law no. 23 of 2014 creates an incision between each impeachment variant. As a result, the implementation of presidential impeachment model in touch with unitary impeachment model. To avoid the occurrence of intersection, it is necessary to re-arrange the impeachment reason of the Head of the Region so that

the relationship between the Central Government (President and Minister of Home Affairs) with the Regional House of Representative (DPRD) does not create political chaos.

Research conducted by Cora Elly Novianti et.al (2016) which focusing on the relationship between the system of charging the position of the regional head with the impeachment mechanism in Law no. 32 of 2004. Cora Elly Novianti said, "If it is analyzed further, the impeachment system of district head regulated on Laws 2004 No.32 (revised into Laws 2008 No.12) is not consistent with the principle of legislation regulation which has been mandated on Laws 2004 No. 10 (revised into Laws 2011 No.12)". The idea is the consistency between the impeachment mechanism and the principle of legitimacy formation in Law no. 12 of 2011 on the Establishment of Laws and Regulations.

A similar argument was also made by Abdul Azis Hakim (2016) the judge who concluded, "That the system of regional impeachment heads in the era of direct democracy, in particular in Article 30 and 31 of Law. 32 of 2004 which has been revised to Act no. 12 of 2008 on Regional Government, must be redesigned in a revised form because it is not in line with the concept of regional autonomy". Abdul Azis Hakim offers the concept of redesigning the impeachment of the Regional Head in line with the concept of regional autonomy. According to him, the concept of impeachment in Law no. 32 of 2004 is incompatible with the principle of decentralization in the unitary state. Thus, there is a difference between this research and the two previous research. This study aims to formulate the concept of impeachment that is in line between presidential impeachment system and unitary state impeachment system.

2. Methodology

a) Types of Research and Approach

This research is a normative law research or literature. In accordance with the object of research on impeachment of The Regional Head, it is necessary the availability of secondary data. Collected data derived from primary and secondary law materials, then done through document studies. The using approach to answer the problem is the statute approach and the historical approach.

b) Data Type of Acquisition

The type of data comes from the legal material as follows:

- 1) Primary legal materials, namely binding legal materials in the form of the 1945 Constitution and regulations and documents related to the impeachment of the Regional Head;
- 2) Secondary legal materials, namely the legal material that provides explanation of the primary legal materials in the form of discussion about the impeachment of the Regional Head, and other related research results, and data obtained through the internet.

In addition, it is completed by data of the interview with experts to obtain data to support and answer the problem of this research.

c. Data analysis

Data analysis method used in this research is qualitative method. Data analysis is done by two approaches to the

problem in this research, then arranged systematically and logically. Data processing both primary data and secondary data is systematized to facilitate researchers doing analysis. The obtained data use qualitative analysis.

3. Research Results and Discussion

a) Unitary State and Presidential System

The position of local government in the unitary state system according to Hanif Nurcholis (2007), directly under the Central Government while in the union state, it under the states. In a dependent and subordinate state of dependent on the Central Government ... Local Government is only part or subsystem of the national government system. Because the regional government is part of the national government system, then there are inter-government relationships between the Central Government and Local Governments that form a unity of national government. Thus, the extent of the scope and magnitude of the affairs to be assigned to the autonomous regions in the unitary state system is determined by the Central Government. C.F Strong (1966) presents two essential qualities of a unitary state: "(1) the supremacy of the central parliament, and (2) the absence of subsidiary sovereign bodies".

The integration between the political unions incorporated in the unitary state according to Miriam Budiarto (2007), its integration is stronger than in the federal state. By strong and solid ties between the center and the regions, then the regional government law should always formulate the authority of local government that is protected from the conflict that create between the center and the region. The integration of political units in a solid unity system is the source and guidance in guarding the unity of the unitary state.

The impeachment of Regional Heads in a state that adopting the unitary system differs from the state that adopts the federation system. In a unitary system, the owner of authority is in the hands of the Central Government, included the authority to impeach the Regional Head. The argument is based on the concept by C.F. Strong (1996) that the essence of a unitary state is that the sovereignty is undivided, or, in other words, that the powers of the central government are unrestricted, for the constitution of a unitary state does not admit of any other law-making body than the central one. Therefore, the Regional House of Representatives (DPRD) is not an institution derived from the People's Legislative Assembly (DPR) and has sovereignty such as the People's Legislative Assembly (DPR) in unitary system. Its functions and authorities are defined by and through laws established by the Central Government and the People's Legislative Assembly. Including the authority of the Regional House of Representatives (DPRD) in the case of impeachment of the Regional Head.

While impeachment in federation systems such as in the state of the United States, is determined by the constitution of each state. However, there are also states that formulate impeachment grounds and procedures similar to the grounds and procedures of President impeachment of the United States, such as State of Illinois. "The Illinois impeachment

process is similar to the federal impeachment process, but not all states follow the same model. State impeachment proceedings take place according to each state's constitution and can vary widely ". It is different with the impeachment system of the governor in Nigeria. The Nigerian Constitution includes mechanisms for impeachment of the Governors and Deputy Governors which is different with the impeachment of governors in the United States. Oarhe Osumah (2015) points out, in Nigeria, as in most democracies, the descriptions of impeachable officials and impeachable offenses are embodied in the Constitution. Section 188 of the 1999 Constitution states that an act of gross misconduct constitutes an impeachable offense for a Governor or Deputy Governor of a State. An impeachable offense is defined in Section 188 (11) as "a grave violation of the House of Assembly to misconduct". There is no similar procedure of impeachment of the State Governor in the federal state.

The inequality is parallel to the authority distribution pattern between the federal government and the state as classified by CF. Strong (1996), namely: *first*, as to the manner in which the powers are distributed between the federal and state authorities; *Second*, as to the nature of the authority for preserving the supremacy of the constitution over the federal and state authorities, they should come into conflict with one another; *third*, as to the means of changing the constitution if such change should be desired ". Characteristics show that among federal states, that is always different or there are no two similar federal state. The same tendency includes the impeachment of the state governor in the middle of term design.

In the constitutional law, Denny Indrayana (2008) said, there are two concepts of president's dismissal, namely: impeachment and forum prevelegiatum. In the presidential system according to Aníbal Pérez-Liñán (2007), the term "impeachment" describes a particular trial of the president by which Congress is required to remove the presidents from office. The impeachment process can only be done if the violation committed by the President is a violation of the law. The kind of his accountability is personal such as accountability in criminal law. The impeachment council as a forum of the President and/or Vice President's accountability in front of the parliament member to determine whether or not the President and/or Vice President should be dismissed from his position. Florin T. Hilbay (2012) said that impeachment proceeding is a mechanism of accountability to determine whether or not certain high-ranking public relations should be removed from office.

There are no uniformity in the impeachment of the President and/or Vice President among countries adopting the presidential government system. In the United States Constitution, according to Victor J. Hinojosa and Anibal S. Perez Liñán (2006), the term impeachment refers to a trial initiated by the House of Representatives and conducted by the Senate. Different models applied by each country that adopting a presidential government system rely on the design set out in its constitution. Victor J. Hinojosa and Anibal S. Perez Liñán say, other presidential constitutions have introduced variation on this model depending on whether the legislature is unicameral or bicameral, and

whether Supreme Court is expected to play a key role in the process.

The reason for the impeachment of the President in the United States of America In Article II Section 4 of the United State Constitution says "The President, Vice President and all civil officers of the United State, shall be removed from office on impeachment for, and conviction of Treasures, Bribery, or other high crimes and Misdemeanors ". At the first step, the House of Representatives serves as the public prosecutor is against to the President and next being prosecuted in the Senate led by the Supreme Court chairman, then the charges were discussed and terminated. While the decision-making process is done by voting in Senate which should be attended by 2/3 (two thirds) Senate members, and 2/3 (two thirds) present must approve it.

The reasons for the impeachment of the United States President differ from South Korea that formulated in general, namely the violation of the Constitution or other Acts in the performance of official duties. While the impeachment procedures and determining decision requirements to perform impeachment is also different from the United States. CHAU Pak-kwan (2005) says, the Korean Constitution requires that the motion for impeachment of the Presidents shall be approved by two-thirds or more of the Members of the National Assembly. The South Korean Constitutional Court is authorized to decide upon the dismissal of the President. It is said by CHAU Pak-kwan, the Constitutional Court of Korea has jurisdiction over impeachment proceedings. When the National Assembly passes the impeachment motion, the President shall be suspended from exercising his power until the impeachment has been adjudicated by the Constitutional Court. The South Korean Constitutional Court is authorized to impeach the President, while in the United States, the House of Representatives filed indictments, the Senate will decide whether the President or Vice President or other public officials will be dismissed or not through voting mechanisms.

The impeachment of President or Vice President in Indonesia is also different although there is a similarity in terms of impeachment with the United States. Article 7A and 7B of the 1945 Constitution after the amendment implies several reasons for the impeachment of the President and/or Vice President, namely violating the law in the form of treason against the state, corruption, bribery, other serious crimes or disgraceful acts or if proven to no longer qualify as President and/or vice President. The process of impeachment to the President created by the amendment of the 1945 Constitution according to Denny Indrayana (2007), is much more detailed than compared to before. The current procedure in Indonesia is almost similar to the United States. In terms of reasons for impeachment, Indonesia has adopted criteria almost entirely the same as America, adding only "corruption" as an additional reason.

Whereas Article 7B related to the impeachment procedure as follows:

- 1) The dismissal proposal of the President and/or Vice President may be submitted by the People's Legislative Assembly to the People's Consultative Assembly only by

submitting a request to the Constitutional Court to examine, adjudicate and decide on the opinion of the House of Representatives.

- 2) Opinion submitted by the House of Representatives in order to execute the implementation of supervisory functions.
- 3) The submission of the People's Legislative Assembly's request to the Constitutional Court can only be made with the support of at least 2/3 of the number of members of the House of Representatives present at the plenary session attended by at least 2/3 of the members of the House of Representatives.
- 4) The Constitutional Court must examine, prosecute, and decide fairly on the opinion of the House of Representatives not more than ninety days.
- 5) If the Constitutional Court decides that the President and / or Vice-President is found to have violated the law, the House of Representatives shall hold a plenary session to forward the dismissal proposal of the President and / or Vice President to the People's Consultative Assembly.
- 6) The People's Consultative Assembly shall be obliged to convene a session to decide on the proposal of the House of Representatives at the latest thirty days since the People's Consultative Assembly receives the proposal.
- 7) The decision of the People's Consultative Assembly on the dismissal proposal of the President and/or Vice-President shall be taken in the plenary session of the People's Consultative Assembly attended by at least 3/4 of the members and approved by at least 2/3 of the number of members present, after the President and / or Vice President was given an opportunity to present an explanation in the plenary session of the People's Consultative Assembly.

Impeachment model in United States and Indonesia according to Jimly Asshiddiqie (2012), is precisely more appropriate. Legal processes are integrated in a balanced way with political processes. The picture of integration between the legal and political characteristic in the impeachment process in the United States Jimly says that lies in:

The legal aspect is reflected in a mechanism involving ad hoc prosecutors or 'special prosecutors' to carry out the task of investigation and prosecution mandated by Parliament. While the panel of judges is transformed from the Senate forum, usually headed by the Vice President, but specifically for 'impeachment', the Senate proceedings are chaired by the Chief Justice as a panel of judges, and members of the Senate act as judges according to the common law practiced in the United States.

The forum *prevelegiatum* by Jimly Asshiddiqie (2012) is the concept of dismissal of highest state officials, including the President through special legal proceedings. That is, unlawful presidents are dismissed through accelerated court mechanisms without going through the conventional level of conventional tribunals. The court decision stating that the President makes a mistake became the basis for the parliament to begin the process of impeachment. The court decision has a binding legal force, so there is no chance of impeachment failure. In contrast to the procedures through impeachment that is not based on court verdicts. Indonesia

has adopted a way of dismissal through the forum *prevelegiatum*. In Article 106 paragraph (1) of the 1950 Constitution states officers being judged by the Supreme Court whose verdict is final and binding. This mechanism can be said as the impeachment mechanism characterized by a forum *privilegium*. Certain persons who are intended are the President or other officials determined by the Constitution or the Act for an officer of the Regional Head. As well as the impeachment of officials in the United States that not only the President but including other state officials.

b) The Occurrence of Procedural Deviation

The design of the Regional Head's impeachment in the middle of the term always develops in every regime of government. Since the transition period until after the amendment of the 1945 Constitution, there have been 3 (three) laws of local government (Law No. 22 of 1999, Law No. 32 of 2004, and Law No. 23 of 2014). Election mechanism of Regional Head in Law no. 22 of 1999 was conducted by the Regional House of Representatives (DPRD), while the two laws established after the constitutional amendment used the direct electoral system by the people. Although the way the district head's occupancy is similar between Law no. 32 of 2004 and Law no. 23 of 2014, but the impeachment model of The Regional Head is not designed similarly. The tendency depends on the formation of the Act between the Central Government and the People's Legislative Assembly, particularly the Central Government as the holder of sovereignty in a unitary state.

The concept of impeachment began to be adopted in Law no. 32 of 2004 after the position of Regional Head is filled through the direct electoral system by the people. This concept is maintained in Law no. 23 of 2014 with different modifications to Law no. 32 of 2004. Impeachment to the Regional Head shall be conducted by the Regional House of Representatives (DPRD) if the Regional House of Representatives (DPRD) suspects a violation of the law in the form of: 1. violating the pledge of office; 2. not performing obligations; 3. violating the prohibition of the regional head; and 4. committing a disgraceful act. The procedure as follows:

- 1) The dismissal of the regional head shall be proposed to the President for the governor and / or deputy governor and to the Minister for the regent and/or vice regent or mayor and / or deputy mayor based on the Supreme Court decision on the opinion of the Regional House of Representatives (DPRD);
- 2) the Regional House of Representatives (DPRD)'s opinion is decided through a plenary session of the Regional House of Representatives (DPRD) attended by at least 3/4 (three quarters) of the total of Regional House of Representatives (DPRD) members and a decision is made by the agreement of at least 2/3 (two thirds) of the number of the Regional House of Representatives (DPRD) members present;
- 3) The Supreme Court shall examine, hear, and decide upon the opinion of the Regional House of Representatives (DPRD) no later than 30 (thirty) days after the request of the Regional House of Representatives (DPRD) is received by the Supreme Court and the decision is final;
- 4) If the Supreme Court decides that the regional head is proven to be in violation, the Head of the Regional

House of Representatives (DPRD) should propose to the President to dismiss the governor and/or the deputy governor and to the Minister for the dismissal of the regent and/or vice regent or mayor and / or deputy mayor;

- 5) The President must lay off the governor and / or vice-governor no later than 30 (thirty) days after the President receives the proposed dismissal from the head of the Regional House of Representatives (DPRD); and
- 6) The Minister must lay off the regent and / or deputy regent or mayor and / or deputy mayor no later than 30 (thirty) days after the Minister receives the proposal of dismissal from the head of the Regional House of Representatives (DPRD).

Meanwhile, forum prevelegiatum was not adopted as one of the mechanisms to dismiss the Regional Head in Indonesia. the Regional House of Representatives (DPRD) will initiate impeachment after obtaining evidence of violation committed by the regional head which subsequently submitted to the court for being examined and proven. The type of violation in the law is not due to the policy issued by the Regional Head. The limitation of these types of violations is same with Jenedri M. Gaffar's (2010) view that impeachment is a formal mechanism in which a selected public official is charged with unlawful acts, which are usually limited to violations of offenses.

Article 78 paragraph (1) of Law no. 23 of 2014 classifies the dismissal of Regional Head in two categories, namely stop and dismissed. The Regional Head stopped because of death, self-demand or dismissed. The Regional Head who passed away or resigned from his/her position is different from the Regional Head who stopped because he/she was dismissed. In paragraph (2) tells the reason for the dismissed Regional Head for: (a) end of his/her term of office; (b) unable to carry out the duties continuously or continuously for six months; (c) is declared to have violated the pledge of office; (d) not performing obligations; (e) violating the prohibition; (f) committing a disgraceful act; (g) to be assigned in certain positions by the President that was prohibited in dual positions; (h) using fake documents or information at the time of nomination of the regional head nomination; and/or (i) getting a sanction of dismissal.

From number of dismissal reasons told in paragraph (2), each has different dismissal procedures. The dismissal mechanism for violating the provisions in letters a, b and letters does not require the provision of a court institution or through the use of the rights of the Regional House of Representatives (DPRD). While the dismissal of the Regional Head allegedly violates the c, d, e, f, and h, shall be examined and verified in court before the Regional House of Representatives (DPRD) gives the Regional Head. In addition to the dismissals provided for in Article 78, there is also a breaking variant in Article 68 governing the dismissal of Regional Heads who do not implement the national strategic policy as well as Article 83 regarding the dismissal of the Regional Head who commits a criminal offense. Thus, there are several variations of impeachment of the Regional Head in the middle of the term of office spread in several articles, but in practice deviate from the stipulated provisions. The reason, between each impeachment variant,

the formulation of impeachment reason elements takes offence each other.

The dismissal of the Regent of Ogan Ilir Ahmad Wazir Nofiandi as proven to consume drugs and the Regent of Mimika Elitinus Omaleng proven to use fake diploma during the nomination are two examples of the impeachment practices of the Regional Head deviating from the provisions determined in Law no. 23 of 2014. The cause lies in the Act itself because each impeachment variant is not arranged in an orderly manner. Consequently, the potential for inconsistent and overlapping impeachment implements is likely to be done by the Regional House of Representatives (DPRD) or by the Minister of Home Affairs or the President.

When the Minister of Home Affairs dismissed the Regent of Ogan Ilir used the legal basis of Article 83 of Law no. 23 of 2014. While The Regional Head proven to use drugs has been unequivocally set its mechanism of dismissal through Article 80 of Law no. 23 of 2014. Article 83 of Law No.23 / 2014 regulates the dismissal of Regional Heads proven to commit criminal acts of corruption, terrorism, treason, criminal acts against state security, and/or other acts which may divide the unitary state of Republic of Indonesia, but not including narcotics crimes. However, the Minister of Home Affairs dismissed Regent Ahmad Wazir Nofiandi used the provisions of Article 83 of Act No.23 / 2014. The basic dismissal used by the Minister of Home Affairs is contradictory to Article 78 paragraph (2) letter f juncto Article 80 of Law no. 23 / 2014. In the explanation of Article 78 paragraph (2) letter f states, what is meant by disgraceful acts namely gambling, drunk, drug user/drug traffickers, and other immoral acts. Thus, the acts of the Regent of Ogan Ilir are classified as disgraceful acts, not criminal acts intended in Article 83. Regional head suspected of committing disgraceful acts shall be dismissed by the Regional House of Representatives (DPRD) . Therefore, The Regional Head violating the provisions of Article 78 paragraph (2) letter c, d, e, and/or letter f becomes the domain of the Regional House of Representatives (DPRD), not the Minister of Home Affairs. The process of dismissing the Regent of Ogan Ilir according to Irman Putra Sidin (2016), is valid to be sued in the Civil Court of Justice (PTUN). Any rule of caught hands can be automatically dismissed but the provision of drug caught is set up specifically as a disgraceful act. So that the construction of disgraceful acts must go through the Regional House of Representatives (DPRD) and the Supreme Court (MA). Because the criminal process does not automatically subversive the process of state administration. Although narcotics belong to crime, yet Law no. 23 of 2014 qualifies the drug trafficker or drug user as a disgraceful act.

The decision of the Minister of Home Affairs permanently dismissed the Regent of Ogan Ilir if viewed in the view of discretion is also not appropriate. Muchsan (2008) argues that the use of the discretionary principle is limited and can only be used if: (1) there is a legal vacuum; (2) if there is a interpretation; (3) there is a delegation of legislation; and (4) used in the public interest. Since the mechanism of dismissal of the Regional Head has been determined the division of authority between the Central Government (President and Minister of Home Affairs) with the Regional House of

Representatives (DPRD), the Central Government's discretion space on the dismissal of The Regional Head becomes exclusive. Article 22 paragraph (2) of law no. 30 of 2014 about Government Administration provides both emphasis and limitations on government officials in using discretion only for the purposes of which criteria have been determined. The intended purpose is: a. launching the administration; b. filling the legal void; c. providing legal certainty; and d. overcoming the stagnation of government in certain circumstances for the benefit and the public interest.

The scope of the discretion of government officials in Article 23 of Law no. 30 of 2014, has also been determined its use so it will not create arbitrariness or deeds that exceed their authority. Article 23 tells "The Discretion of Government Officials includes: a. decision-making and/or action based on legislation providing a choice of Decisions and / or Measures; b. decision-making and/or action as the laws and regulations are not regulated; c. decision-making and /or action due to incomplete or unclear legislation; and d. decision-making and / or action due to government stagnation for broader interests". The scope of the discretion of government officials will be applied if a situation or event that occurs in the administration of government functions is considered to cause uncertainty. The use of discretion must also meet the requirements determined in Article 24. Government officials who use discretion must be eligible: a. in accordance with the objectives of discretion as referred to in Article 22 paragraph (2); b. not contrary to laws and regulations; c. in accordance with AAUPB; d. based on objective reasons; e. does not create a conflict of interest; and e. done in good faith.

The Minister of Home Affairs Tjahyo Kumolo has not met the criteria for withdrawing or taking over the authority of the Regional House of Representatives (DPRD) on the impeachment of Ogan Ilir Regent. The succession may be justified if the Regional House of Representatives (DPRD) does not implement the provisions as stated in Article 80. However, Tjahyo Kumolo immediately dismissed the Regent of Ogan Ilir from his position without waiting for or giving an opportunity to the Ogan Ilir District Legislative Council as the institution authorized to impeach the Regent of Nofianti.

While the impeachment of the Regent of Mimika is actually done through the impeachment mechanism in the Regional House of Representatives (DPRD) based on Article 80 of Law no. 23/2014. In fact, the alleged crime is a forgery of a diploma at the time of nomination as Regional Head, whose procedure has been regulated in Article 82 of Law no. 23 / 2014, but the Regional House of Representatives (DPRD) of Mimika Regency chose to use the procedure in Article 80 to impeach Mimika Regent, which alleged violation is fake diploma. The verification procedure of the fake diploma as a document at the time of nomination as in Article 82, preceded by approval of using the right of inquiry. If the Regional House of Representatives (DPRD) approves it, the Committee will clarify the certificate of Mimika regent to the school in charge of issuing it. Clarification result will be the basis of the Committee Questionnaire taking a decision. If the clarification is proven, it will proceed to the Plenary

Session of the Regional House of Representatives (DPRD) to decide the impeachment of the Regional Head.

Based on the Plenary Meeting of the Regional House of Representatives (DPRD) of Mimika Regency stated that the Respondent / Mimika Regent has been proven to have violated the provisions of Law no 23 of 2014, namely:

- (1) Article 78 paragraph (2) letter h;
- (2) Article 76 paragraph (1) letter i and j Juncto Article 78 paragraph (2) letter e; and
- (3) Article 61 paragraph (2).

Sanctions to The Regional Head that violate Article 76 paragraph (1) letter i according to Article 77 paragraph (2) shall be a temporary discharge for three months. While sanction against violation of Article 76 paragraph (1) j is suitable with Article 77 paragraph (3) written warning. If the Regional Head has been sanctioned with the written warning, then he/she repeats its act leaving the task and working area for more than 7 (seven) days in row or not within 1 (one) month without the consent of the Minister for the Governor and Deputy Governor and without the Governor's permission for the Regent and Deputy Regent or Mayor and Deputy Mayor, he/she will be sanctioned to take part in a special program of deepening of government field implemented by the Ministry.

Therefore, the Mimika Regent who allegedly violating Article 76 paragraph (1) letter i and letter j can not be dismissed by the Regional House of Representatives (DPRD) through a mechanism of submission to the Supreme Court. The impeachment procedure used by the Regional House of Representatives (DPRD) of Mimika is contrary to the provisions contained in Article 77 paragraph (2), (3), and (4) of the Law. 23 of 2014. Because the sanction of enforcing sanctions against the violation of Article 76 paragraph (1) letter i and letter j shall be performed by the President for the Governor and / or Deputy Governor and by the Minister for the Regent and/or Deputy Regent or Mayor and/or Deputy Mayor.

The next error procedure by the Mimika Parliament is to argue that the Regent of Mimika violated Article 61 paragraph (2) of Law no. 23 of 2014 on the promise of the Regional Head position. The Regional House of Representatives (DPRD) of Mimika has a certain view that the Mimika Regent has allowed the regional legislative to be empty for approximately one year, at least from November 2014 until December 2015, so that the implementation of local government goes without control from the legislation. All important decision and policy in the area are centralized to the regent. This action has violated the provisions of Article 149 through Article 153 of Law no. 23 of 2014, in view of the Regent Mimika has made an promise of office to carry out all laws and regulations correctly.

Article 149 up to Article 153 regulates the implementation of The Regional House of Representatives (DPRD)'s functions, both the function of legislation, supervisory function, and budget function. The implementation of The Regional House of Representatives (DPRD)'s functions is not caused by the Bupati who often abandon his duties and obligations. When the Regent is absent, the Vice Regent

runs the daily bases of the regent. Regent and Vice Regent of Mimika is absent, the government duties are controlled by the Regional Secretary. Therefore, the reason of unattainable functions of The Regional House of Representatives (DPRD) due to the regent is rarely in place can not be the basis that the Mimika Regent violates the pledge of office. The Regional Head leaving his duties and obligations does not include the domain of pledge of office but it is clasified in Article 76 paragraph (1) on the prohibition of the Regional Head. Especially regarding The Regional Head leaving the unauthorized duty will be rewarded with a temporary punishment, not a permanent dismissal.

c) The Incision of Authority Between Central Government and The Regional House of Representatives (DPRD)

The variation in the impeachment model of The Regional Head has not been followed by a right design on the formulation of every element of each impeachment reason. The possibility of authority conflict or incision between the reasons for impeachment in one model is very vulnerable. The implication will lead to The Regional House of Representatives (DPRD) and the President or The Regional House of Representatives (DPRD) itself when the Regional Head is suspected of committing acts contrary to the laws and regulations. Design of impeachment of Regional Head in Law no. 23 of 2014 still contains an oversight in preventing the occurrence of an authority conflict between The Regional House of Representatives (DPRD) and the Central Government (President and Minister of Home Affairs), because the element formulations of the impeachment reasons of regional heads are related to each other.

Based on Article 78 paragraph (2) letter e Act no. 23 of 2014 which authorizes the regional house of representatives (DPRD) to dismiss The Regional Head violating Article 76 paragraph (1) letter a, b, d, f, g, h regarding the prohibition for the Regional Head and Deputy Regional Head. The prohibitions contained in letters c, i, and j their sanctioning mechanisms are stipulated in Article 77. The types of prohibitions are:

- 1) Making decisions specifically giving personal, family, crony, group, or political advantage that are contrary to the provisions of statutory regulations;
- 2) Creating policies that harm the public interest and disturb a group of people or discriminate against citizens and/or other segments of society as opposed to the provisions of legislation;
- 3) Being a manager of a company, whether private or state-owned or a foundation of any field;
- 4) Misappropriating powers that are self-profitable and/or harmful to the led area;
- 5) Engaging in corruption, collusion and nepotism and receiving money, goods and/or services from others that influence decisions or actions to be taken;
- 6) Becoming an advocate or attorney in a case in court as intended in article 65 paragraph (1) letter e;
- 7) Misusing authority and violating the pledge of office;
- 8) Concurrently as other state official as stipulated in the provisions of legislation;
- 9) Travelling abroad without minister's permission; and

- 10) Leaving the duty and working area of more than 7 (seven) days in row or not within 1 (one) month without the minister's permission to the governor and deputy governor and without the governor's permission to the regent and vice regent or mayor and the deputy mayor.

The impeachment procedure of the Regional Head violating the prohibition is regulated in Article 80 of Law no. 23 of 2014. The mechanism is as same as the impeachment of the Regional Head who violates the pledge of office, violates the obligations of the Regional Head, and commits a disgraceful act. The impeachment procedure created in Article 80 is a procedure that combines the character of a unitary state system and a presidential government system. The unitary state system is visible from The Regional House of Representatives (DPRD)'s proposal to the Central Government (President/Minister of Home Affairs) after the Supreme Court declares the regional head/deputy of regional headis proven guilty. While the characteristic of the presidential system is legible from the procedural aspect that resembles the presidential/vice presidential impeachment system.

Prohibition for The Regional Head mentioned in letter e above, opens the possibility of authority conflict between The Regional House of Representatives (DPRD) and Central Government. Regional Head declared suspects for corruption by the Corruption Eradication Commission (KPK) or by the Police or Attorney may open the way for The Regional House of Representatives (DPRD) to initiate the impeachment process. Article 76 paragraph (1) subparagraph e of Law no. 23 of 2014 will be a basis of The Regional House of Representatives (DPRD) to impeach Regional Head with suspect status for committing a criminal act of corruption. The Regional House of Representatives (DPRD)'s argument is that the Regional Head breaks prohibition of the Regional Head, so there is sufficient reason for the Regional House of Representatives to submit an opinion to the Supreme Court to be tested whether the Regional Head is found to violate the prohibition as set in Article 76 paragraph (1) letter e.

However, it is not easy for The Regional House of Representatives (DPRD) to process the dismissal as part of its authority. The Regional House of Representatives (DPRD) will be confronted with the Central Government, because at the same time it is also authorized to impeach the Regional Head convicted of corruption following the decision of a court that has a permanent legal force. The authority of the Central Government is contained in Article 83 paragraph (1) and paragraph (4) of Law no. 23 of 2014 which says "Regional Head and/or Deputy of Regional Head shall be temporarily suspended without going through The Regional House of Representatives (DPRD)'s proposal for being charged with a criminal offense punishable by imprisonment of at least 5 (five) years, corruption, terrorism, criminal offenses against state security, and / or other acts which may breakthe unitary state of Republic of Indonesia ". Paragraph (4) states "The Regional Head and/or Deputy of Regional Head shall be dismissed without passing The Regional House of Representatives (DPRD)'s proposal if it is proven to have committed a crime as referred to in paragraph (1) based on a court decision which has obtained

permanent legal force". Article 83 requires a judicial ruling by the Central Government as a basis for dismissing the Regional Head. The court degree takes a considerable long time, starting from the first level (District Court), the second / appellate level (High Court), and the final/cassation level in the Supreme Court, when The Regional Head takes the procedure to prosecute justice. The case process is unlimited by time, so it can not be predicted that a permanent court decision will be issued.

Conversely, The Regional House of Representatives (DPRD) needs sufficient proof in the Supreme Court as the main requirement of impeachment. The Supreme Court's verdict is final which means the chances of The Regional Head making other legal efforts have been closed. The examination and verification process in the Supreme Court is limited to 30 (thirty) days as stipulated in Article 80 paragraph (1) sub-paragraph c of Law no. 23 of 2014. The certain legal is more secure than the procedure in Article 83 which does not regulate the duration of court proceedings. The absence of time limitation in Article 83 is caused by the impeachment design not adopting the mechanism of the privileged forum.

Pulling the authority between The Regional House of Representatives (DPRD) and the Central Government is very possible to appear in the midst of many Regional Heads who have assumed the status of suspects and even defendants. Within the long process of litigation process, the regional government duties are run by the Chief Executive Officer. Weaknesses, Task Force is not allowed to make or take decisions or strategic policy unless first approved by the Central Government. Even if it does not has a significant impact on the running of government and service to the community, but the demands of the community needs that continues to increase, the presence of the Regional Head is more optimal than the Executive Officer, because his actions or policies are not waiting approval from the Central Government. Therefore , The Regional House of Representatives (DPRD) may involve to initiate an impeachment process against the Regional Head who has been declared a suspect for committing a criminal act of corruption. The Regional House of Representatives (DPRD)'s opinion contains the violation of the Regional Head in Article 76 paragraph (1) letter e and letter g Law no. 23 of 2014. The Regional House of Representatives (DPRD)'s opinion is subsequently submitted to the Supreme Court for examination, trial, and termination. The Supreme Court did not examine and did not adjudicate its corruption but investigated and prosecuted whether the Regional Head had violated the prohibition of the regional head or not.

The Central Government has an opposite view that if the Regional Head has been designated as a suspect of corruption crime, then the Central Government is authorized to impeach the Regional Head, which begins with the sanction of temporary dismissal. In the process, the Central Government does not require the involvement of the Regional House of Representatives (DPRD) because the penitentiary law is used as a permanent legal court ruling. Which evidenced by the court is the act of criminal acts of corruption committed by the regional head, is not the fault of the regional head violates Article 83 of Law no. 23 of 2014.

The provisions of Article 83 shall be applied after a verdict of law which has a permanent legal force. Sanctions imposed on the Regional Head are legal sanctions and political sanctions. Legal sanctions are given by the Court namely imprisonment, while the political sanction is given by the Central Government, namely dismissal from the position of regional head permanently. In contrast to the impeachment procedure through the submission of opinion of The Regional House of Representatives (DPRD) to Supreme Court(MA). If the Supreme Court decides to be found guilty of violating the prohibition of the Regional Head, then political sanctions are imposed prior to legal sanctions. Legal sanctions will be granted when a court decision decides guilty. Therefore, there is a difference in the procedure of imposing sanctions to the Regional Head from the design of the impeachment formulation of the regional head in Law no. 23 of 2014.

The weakness of the impeachment process in The Regional House of Representatives (DPRD) for the Regional Head who violates the Regional Head's prohibition lies in the aspect of impeachment of prioritized political sanctions than legal sanctions. As the impeachment of the President stated by Denny Indrayana (in Nandang Alamsah Deliarnoor:2011) that the fundamental weakness of impeachment is when the trial is finished, and the dismissal of the President is done, but one day proved that the President is innocent then the political reality after the replacement of the President with the new President has been difficult to change again. The weakness of the impeachment system according to Nandang Alamsah Deliarnoor (2011) could be caused by its characteristic that emphasizes the process, while forum prevelegiatum emphasizes more on results. In contrast to the impeachment mechanisms created in Article 83 which emphasize the outcome of court decisions as a basis for initiating the impeachment process. However, due to the design is packed in stages that are not exactly as same as the mechanism of privilegatum forums, so the impeachment procedures in Article 83 also contain the weaknesses. The weakness of the impeachment design of regional heads and the intersection of authority lies in Article 76 paragraph (1) letter e and Article 83 Law. 23 of 2014, can be entrance of the authority conflict between The Regional House of Representatives (DPRD) and the Central Government.

Out of the attention of laww formers no. 23 of 2014, efforts to avoid negative frictions that arise becomes important to be done through improving the impeachment design of the Regional Head. Imposing impeachment design is important to be done, because the reason for impeachment of Regional Head is not only cause inconsistency in the implementation and conflict of authority but also trigger the emergence of distortion to the principle of fixed- term in the position of Regional Head elected by direct election by the people. The filling of the Regional Head position directly brings consequences to the mechanism of dismissal in the middle of his/her term of office. The change follows the impeachment procedure of the President after the amendment of the 1945 Constitution. The change in the impeachment procedure is same as the opinion of Soewoto Mulyosudarmo (2004) stating that the change of the regional government system should follow the change of state administration which has been done through the amendment

of the Constitution. For the first time in the history of local governance in Indonesia, the election of regional heads and deputy of regional heads was conducted directly and the impeachment system was introduced in Law no. 32 of 2004.

Therefore, the fixed-term characteristic is not only embedded in the president's office in the presidential system but is also attached to the position of the Regional Head as a consequence of the direct democratic system. The president in the presidential system of government according to Giovanni Sartori (1997) is (i) results from popular election, (ii) during his or her pre-established tenure cannot be discharged by a parliamentary vote, and (iii) heads of otherwise directs the government that he or she appoints. When these three conditions are jointly met, then we doubtlessly have a pure presidential system - or so says my definition. During his term of office, the President cannot be imposed or dismissed by Parliament unless the Parliament can prove the mistake of the President committing the act as defined in detail Constitution through the impeachment session under certain conditions. The reason for his impeachment does not contain a multi-interpretation formula so it is avoided of multiple interpretations.

When discussing the formulation of impeachment on the President and/or Vice President in the 1945 Constitution, I Dewa Gede Palguna (2010) reminded that the consequence in adopting the system is the existence of stability in understanding of fixed executive system. Impeachment is only one exception when the President made a mistake, but not in order interfere with fixed executive system. Therefore, the impeachment provisions set in the 1945 Constitution after the amendment and its terms, are not an instrument that is easily adopted by the People's Legislative Assembly as well as the right to inquire or the right of the province to submit a draft law. The amendment of Presidential impeachment procedures in Article 7B of the 1945 Constitution, according to Yakob Tobing cannot be separated from the history of the birth of the impeachment institution. Then Yakob Tobing (in Margarito Kamis, 2014) elaborates that the impeachment is intended:

To "complicate the way President to be dismissed". This assumption is manifested into five conditions: *First*, the reason for dismissal must be "definite" law, not political. *Second*, only The House of Representatives (DPR) is the only institution given the right to accuse. *Third*, there should be a meeting quorum and decision-making quorum to accuse to be taken in a plenary session of The House of Representatives (DPR). *Fourth*, the validity of the allegations must be tested by the Constitutional Court. *Fifth*, if the Constitution Court justifies the allegations of the House of Representatives, then the House of Representatives requests the People's Consultative Assembly (MPR) to hold a presidential dismissal session. After that, the People's Consultative Assembly (MPR) holds a political session, whether it dismiss or otherwise.

The fixed-term principle in the Regional Head position will be difficult to realize because it is not equilibrated by the formulation of detailed and not multiple interpretation impeachment reason. The reasons for violations of office oath, violation of Regional Head's authority, and violations of Regional Head restrictions, are very flexible to be

interpreted because elements of the Regional Head and district head bans are substantially difficult to separate the context from the pledge of the Regional Head. Office pledge of Regional Head in Article 61 section (2) of Law No. 23 of 2014: "In the name of God/Lord, I swear/promise to fulfill my duty as the regional head with the best and fairest, to hold the Constitution of the unitary state of Republic of Indonesia in 1945, and to carry out all its laws and regulations with long-suffering and devotion to society and nation ". The essence of the first of the office pledges contains the obligation of the Regional Head to be fulfilled and executed best and fairly. The second essence of the office pledge is the obligation to hold the 1945 Constitution and to carry out all other laws and regulations. Therefore, All essence of the pledge of the Regional Head shall include the obligation of the regional head, namely the obligation to carry out the duties and functions of the regional head and the obligation to carry out all the laws and regulations. As the obligation of the Regional Head is included in Article 67 of Law No. 23 of 2014 which consists of 7 (seven) types of obligations. However, among 7 items of obligation, only 1 (one) type of obligation, if it is violated or not executed, can imply the birth of impeachment initiated by The Regional House of Representatives (DPRD). The obligation is the obligation to obey with all laws and regulations. In addition, there is another obligation for The Regional Head mentioned in Article 68 and Article 69 of Law No. 23 of 2014 which also has sanctions when it is not implemented. The enforcement of sanction for The Regional Head that does not implement it is done by the Central Government.

The meaning of job pledge law according to Bagir Manan (2004) is a pledge or promise as a moment indicating that the person has the authority to run the office. Not at the time of his birth as a minister. Since a person is designated as elected President or elected Vice President, that is when his birth is as a holder of the office. To begin practicing the authority of office, they must swear. After the pledge/promise is pronounced in front of an official who takes oath of office, then the regional head is obeys and adheres to the two obligations under the office pledge of the regional head. It is very extensive as it encompasses all the laws and regulations that are almost the same with the contents of the office pledge of the President in the 1945 Constitution. The phrase "its laws and regulations" in the oath/pledge of the Regional Head is equal to the phrase contained in the office pledge of the President in Article of the 1945 Constitution after the amendment. According to Hamdan Zoelva (2011), the "rule" in the office pledge of the President is unlimited, could be the Constitution, Law, Government Regulation, Presidential Regulation, Regional Regulation, and even other regulations. Therefore, the reasons for violations of office oath extends the the president impeachment reason to be unlimited. It can be understood that the phrase "rule" in the oath/pledge of the Regional Head has the same degree of flexibility as the oath/pledge of the President. Therefore, the reasons for the violation of the oath / pledge of the regional head also extend the impeachment of the regional head to be unlimited. However the violation of the oath/pledge of the President is not one of the reasons for the president impeachment reason in Indonesia.

The reasons for impeachment are lawful, but the impeachment process shows the workings of political mechanisms as required by the presence and conditions of the agreement of the parliament members. The chances of failure and success of the impeachment depend heavily on the members of parliament itself. Therefore, Paturangi Parawansa (2010) mentions impeachment is an emergency exit. We should use it, if it is necessary and we do not need to use, if it is not needed and we should not try it. Therefore, the reason for the impeachment is deliberately formulated so that the President and/or Vice President are not threatened with impeachment at all times.

Reflecting on the reasons for the impeachment of the President, the reasons for the impeachment of the Regional Head were created widely and mutually related each other. As a result, an act committed by The Regional Head simplifies the Regional House of Representative (DPRD) giving type of violation of the Regional Head. Any acts committed by the Regional Head, will not be separated from the laws and regulations even if the act is classified as a crime. That is meant, there is a violation of the oath/pledge of office, and at the same time there is a violation of the obligations of the Regional Head, as well as the violation of the prohibition of the Regional Head. The consequence is, is an act committed by the Regional Head a violation of the oath/pledge of office or violation of obligations or violation of the prohibition of The Regional Head? The formulation of impeachment reasons is not suitable by reason of president impeachment in the presidential government system due to the lack of detail that has the potential to create multiple interpretations.

4. Conclusion

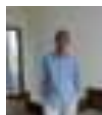
Impeachment model of the Regional Head in Law no. 23 of 2014 designed as a presidential impeachment system in the presidential government system contains problems in terms of the formulation of the impeachment reason. Based on the findings, the reason for the impeachment of the Regional Head is the possibility of abusing the power by the Regional House of Representative (DPRD) and creating conflict of authority between the Regional House of Representative (DPRD) and the Central Government (President and Minister of Home Affairs). Therefore, the step of rearranging the reason for impeachment of The Regional Head in a model of impeachment system is important to be compatible with the reasons of president impeachment in the presidential system and preventing the abuse of authority by the Regional House of Representative (DPRD) and the authority conflict between the Regional House of Representative (DPRD) and the Central Government.

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Author Profile



La Ode Muhaimin, SH., LL.M born in Talaga I, January 27, 1973. Rank and position: Penata tingkat I/ Lektor III/C. Educational background: Bachelor degree: Islamic Malang University (1995-1999). S2: Gadjah Mada University (2008-2010). S3: Gadjah Mada University (2014-present)