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Human Rights and Democracy: Can the President's Constitutional Disobedience Be Used as Grounds for Impeachment?

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ABSTRACT

Keywords

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Protection of human rights is crucial in a democratic state. This article examines the potential impeachment of a president based on human rights violations. The research explores the legal framework regulating such acts, including the President's denial of a constitutional court decision. Such as the denial of Constitutional Court Decision Number 91/PUU-XVIII/2020 which decided that as long as the Job Creation Law is declared conditionally unconstitutional it is not allowed to issue implementing regulations from the law, however, the President still issued Presidential Regulation Number 113 of 2021. President's actions have violated the UDHR, and the 1945 Constitution of Republic of Indonesia. The study uses normative research methods, including statutory and comparative approaches, and analyses legal materials using constitutional and historical interpretations. The findings suggest that Indonesia, the United States of America, South Korea, and the Philippines have incomplete arrangements for impeaching presidents based on human rights violations. Second, there is still a void in the regulation in the event of constitutional defiance of the Constitutional Court decision by the President of Indonesia. Therefore, researcher suggests limiting the meaning of violations in impeachment which is only limited to the President of Indonesia oaths in Article 9 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Thus, if the President does not comply with Constitutional court decision, he can be held accountable with impeachment mechanism. Therefore, it is necessary to add the qualifications of President of Indonesia misconduct through amendments to Article 10 paragraph (3) letter d of Constitutional Court Law.

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1. Introduction

The consequences of Indonesia as a state of law, as stipulated in the 1945 Constitution of the Republic of Indonesia uphold the implementation of human rights in government activities and in the lives of every citizen ([Putra & Anshari, 2019](#); [Ishak, 2022](#)). This implementation is characterised by the existence of state institutions that guarantee the implementation of the human rights of every citizen, one of which is the Constitutional Court. The Constitutional Court is a state institution with the authority to implement the Constitution and uphold the principle of legal constitutionality Field ([Marwiyah et.al, 2023](#)). Therefore, the Constitutional Court decision should be obeyed by all parties (*erga omnes*) ([Setiawan et.al, 2024](#)). The principle of *erga omnes* makes the Constitutional Court's decision have implications to be obeyed by the vertical government (government and other state institutions) to the horizontal level (DPR, Supreme Court, etc.) ([Sihombing et.al, 2021](#)). However, there is often defiance of the Constitution against the Constitutional court decision by other state institutions, such as the President, the Supreme Court, and the Attorney General's Office. This act of constitutional disobedience often occurs in the Constitutional Court's fundamental authority, namely judicial review cases ([Lailam & Chakim, 2023](#)). Judicial review is one of the authorities of the Constitutional Court, as stated in Article 24C of the 1945 Constitution of the Republic of Indonesia, to examine the content material and procedures for the formation of a law against the 1945 Constitution of the Republic of Indonesia ([Harvelian et.al., 2020](#); [Ramadhan, 2021](#)).

Data which is the result of cooperation between the Constitutional Court and the Faculty of Law, Trisakti University, regarding the level of compliance with the Constitutional Court decision in the Law Review case shows that there are still around 22.01% of the Constitutional Court decisions that are not fully complied with and as many as 5.5% of decisions that are not partially adhered to ([Tohadi, 2022](#)). In the end, the act of constitutional defiance of the Constitutional Court decision will have a fatal impact on both the Constitutional Court, the relevant applicant and the wider community, which can result in the potential reduction of institutional functions because the obligation of each party to comply with the Constitutional court decision is already contained in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, as well as potentially causing a situation of delay in constitutional justice, this happens if the respondent does not obey the decision. Automatically, the object of the applicant's request will also not be implemented even though the Constitutional Court has decided ([Rasyid & Wantu, 2020](#)).

The existence of a form of constitutional disobedience to the Constitutional Court decision has ultimately led to the implication of legal uncertainty for the relevant applicants and for the wider community affected. Compliance with the Constitutional Court decision cannot only rely on the legal awareness of law enforcers and the public alone but also requires a legal instrument that is binding and coercive, such as the rules of sanctions for constitutional disobedience to the Constitutional Court decision, which until now has not been regulated in the existing legal provisions.

One of the parties that has disobeyed the Constitutional Court's decision is the President, namely in Constitutional Court Decision Number 91/PUU-XVIII/2020. The President did not comply with one of the panel of judges' decisions in the verdict, namely in the section not allowed to issue derivative regulations of the Job Creation Law that could have broad impacts ([Efendi, 2022](#)). Based on this form of non-compliance, in the end, the President can automatically be said to have disrespected several constitutional rights of citizens who were the petitioners in the decision. Based on these arguments, the researcher sees that the problem of the President's non-compliance with the Constitutional Court's decision has caused violations of human rights. Therefore, it is necessary to resolve the law regarding how



to regulate the sanctions that can be applied to the President if there is non-compliance with the Constitutional Court's decision.

Focusing on non-compliance with the President's Constitutional court decision can be linked to the impeachment mechanism. Impeachment is a mechanism for dismissing the President and Vice President who are in the middle of their term of office if they have violated the law. The Indonesian legal system regulates impeachment in Articles 7A and 7B of the 1945 Constitution. Article 7A of the 1945 Constitution of the Republic of Indonesia stipulates that one of the grounds for impeachment of the President is if the President is proven to have committed a disgraceful act. The meaning of disgraceful acts is further defined in Article 10, paragraph (3) letter d of the Constitutional Court Law as actions that lower the President's and Vice President's dignity.

However, the definition, according to the researcher's view, still causes norm ambiguity because the meaning of "degrading the dignity" of the President and Vice President has a broad sense that is difficult to limit; plus, the question is whether the meaning is only limited to legal norms or includes religious norms, decency and morality prevailing in society because until now the definition of disgraceful acts has not been limited and clarified in the Indonesian legal system. So, to find solutions to these problems, researchers will analyse the discussion first from the perspective of the UDHR as an international human rights regulation that contains the most basic human rights that guarantee citizens are protected from abuse of power and other acts of human rights violations ([Nabeel, 2023](#)). Second, from the case analysis and third, use the study of Jan Michiel Otto's legal certainty theory, which argues that at least legal certainty can only be realised if, in a country's legal system, there are legal rules that are clear, clear, consistent, easy to access by the public that the government has promulgated and these rules in their implementation can be adequately obeyed ([Bowo & Maryono, 2023](#)). There are also independent judges whose decisions are concretely implemented ([Irianto et al., 2012](#)).

There are several previous studies that discuss compliance with the Constitutional Court Decision. A study discusses how to determine the right concept to build constitutional awareness for law enforcement institutions to comply with the Constitutional Court's decision ([Triningsih et.al, 2021](#)). The other finds that all forms of actions that are not in line with the arrangements in the Criminal Code, when committed by the President and Vice President, can be classified as reprehensible acts, even including conflicting actions ([Irham & Mulyanti, 2021](#)). The two studies have differences with the legal issues that researchers raise in this journal. This writing will focus more on seeing how the President's non-compliance with the Constitutional Court's decision has implications for human rights violations. In order to support the argument, this journal will discuss the historical background of the Indonesian Constitutional Court, followed by a discussion of the disgraceful acts by the President as potential human rights violations and a comparison of the regulations of the disgraceful act in some other countries (the United States of America (US), the Philippines and South Korea). The US and the Philippines were chosen due to the similarity of the government system with Indonesia, namely, the presidential system. South Korea was chosen because of its uniqueness in implementing the semi-presidential system.

2. Research Methods

The research method in this paper will use doctrinal legal research, which combines analysis, interpretation, and problematic norms that are happening in a country's legal system ([Nur, 2022](#)). The system of norms in question refers to legal norms contained in laws and regulations ([Husen, 2019](#)). Therefore, this research focuses on examining the emptiness



of norms in the regulation of constitutional disobedience to the Constitutional court decision, which will later be linked to the misconduct in impeachment, which until now still experiences norms in determining the limits of its meaning ([Ishaq, 2017](#)). To support the focus of the research, researchers will use several approaches. First, a statutory approach and a related case approach are used. Researchers use both approaches to examine legal regulations that are incomplete or vacant at the technical and practical levels by looking at cases that have occurred ([Maheswara, 2023](#)).

Third, a comparative approach will be carried out by comparing the regulations in the impeachment system in the US, the Philippines and South Korea. The reason for comparing the US and the Philippines with Indonesia is due to the similarities in the use of government systems, namely the presidential system. Apart from that, the concept of impeachment in the US is often used as a reference for the implementation of impeachment in other countries. Moreover, the Philippines is Indonesia's neighbouring country in the Southeast Asia region, which potentially has similarities in the ASEAN way culture ([Miru, 2017](#)). Then, South Korea was also chosen due to its distinguished semi-presidential system.

The characteristics of normative legal research are research based on formal law; therefore, the sources to be used in this research can consist of primary and secondary legal materials and will be processed by legal material search techniques through literature studies by collecting legal materials from various sources ([Benuf, 2020](#)) traced by identifying, inventorying, citing, analyzing legal sources obtained in accordance with the formulation of problems and research objectives. Primary legal materials consist of relevant laws and regulations; secondary materials come from books and journals ([Singh, 2023](#)). Meanwhile, the legal material analysis techniques used in this research are, first, the constitutional interpretation method, which is used to find the meaning of an article's formulation. Second, the historical interpretation method to find out the history of the formation of a rule of law and third, argumentative techniques, namely researchers based on the process of preparing their research, will later determine the attitude in providing solutions to legal problems raised in their research.

3. Discussion

3.1. The Historical Background of the Indonesian Constitutional Court

The provisions in Article 1, paragraph (2), (3) of the 1945 Constitution of the Republic of Indonesia actually emphasise that Indonesia is a democracy governed by law ([Siboy et.al, 2023](#)) and a constitutional democracy, both of which cannot be separated from one another ([Sulistiyowati, 2023](#)). This implies that the implementation of the Indonesian government system must be guided by the Constitution ([Ulum, 2022](#)), with sovereignty or the source of law in the hands of the people ([Singh, 2023](#)). One of the main characteristics of the rule of law is the existence of a system of separation of powers expressly in the exercise of state power ([Isrok, 2012](#)). Montesquieu, in one of his books, entitled "*L'Esprit des Lois*" which in the English version is known as "*The Spirit of The Laws*" in 1748 ([Yani, 2018](#)), classified state power into 3 branches of power, namely the legislative branch run by parliament as a lawmaker ([Savitri, 2019](#)), the executive as the one who implements and the judiciary as the one who judges if there is a violation of the implementation of a provision in the law ([Mochtar, 2022](#)).

Focusing on one of these powers, namely, the judicial power, is usually given to judicial institutions, one of which is the constitutional court. The existence and operation of constitutional courts began to spread widely since the beginning of the 21st century ([Sampe & Ristawati, 2023](#)), including the history of the formation of the Constitutional Court at the international level. This was initiated by Kelsen, who believed that a special extra-judicial



organ was needed. The Kelsenian model eventually established a centralised body outside the conventional judicial structure as the guarantor of a country's constitutional order ([Hastuti, 2019](#)).

While the constitutional court in Indonesia was only established based on the Third Amendment to the 1945 Constitution passed on November 9, 2001 ([Abra, 2020](#)), this is as stated in the provisions of Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. With Law Number 24 of 2003 on the Constitutional Court, which has now been amended by Law Number 7 of 2020 on the Third Amendment to Law Number 24 of 2003 on the Constitutional Court, a Constitutional Court located in the capital city has been established with 9 judges who were first sworn in on August 16, 2003. Indonesia is the 78th country in the world to adopt the Constitutional Court in its constitutional system ([Ahmad & Wantu, 2020](#)). Article 1 point 1 of the Constitutional Court Law states that the constitutional court is one part of the judicial power in Indonesia

In carrying out its authority and functions, the Constitutional Court is obliged to have judicial independence ([Ristawati, 2020](#)) because this is actually one of the important elements that must be implemented in a state of law ([Wicaksono, 2022](#)). Judicial independence means that the Constitutional Court is bound by the principle of impartial judicial power that is independent and free from the influence of the power of other institutions in upholding law and justice in society ([Suparto, 2019](#)). The Constitutional Court has an important role in Indonesia because it is often described as implementing the principle of constitutionalism ([Buana, 2020](#)). The importance of the position of the Constitutional Court is also in line with the thoughts of Robert A. Carp, Ronald Stidham, and Kenneth L. Manning, who said that the judiciary has a very decisive role in revamping the political system because, basically, confidence in the ability of a judicial institution serves to protect democracy ([Tohadi, 2022](#)).

One of the purposes of establishing the Constitutional Court is actually one of Indonesia's consistencies in ensuring certainty of the constitutional rights of citizens and strengthening the concept of recognition of human rights by the government. This is actually as stipulated in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a state of law. The essence of a state of law is the guarantee of legal certainty ([Disemadi, 2019](#)) and recognition of human rights for all people without exception ([Simatupang, 2021](#)) so that no one has the right to deprive others of their human rights ([Ishak, 2022](#)).

Constitutional Court, which is often dubbed as the guardian of the constitution, guardian of democracy, and protector of people's constitutional rights ([Lailam, 2023](#)), is one of the human rights enforcement institutions in the Indonesian legal system. The Constitutional Court has a strategic and important role; therefore, in exercising its authority and obligations, it is limited by procedural law ([Susylawati, 2019](#)). Article 24C paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia states that the Constitutional Court can hear judicial reviews of laws against the Constitution to keep the substance of the law from contradicting the Constitution ([Palguna et.al., 2023](#)), decide disputes over institutional authority, decide disputes over the dissolution of political parties, and disputes over general election results. In addition, the Constitutional Court is also obliged to give a decision as a recommendation on the opinion of the House of Representatives relating to alleged violations committed by the President and/or Vice President ([Baidhowah, 2021](#)). The Constitutional Court, in exercising its authority, must be carried out based on integrative and proportional interests; this has the aim of maintaining a balance between state rights, community rights and individual rights ([Lailam & Anggia, 2023](#)).



3.2. Disgraceful Acts as a Potential of Human Rights Violation

It is feared that acts of constitutional disobedience or disobedience to the Constitutional court decisions, especially those carried out by the President immediately, will potentially reduce the function of the Constitutional Court as an enforcer of the principles of constitutionality ([Marwiyah et.al, 2023](#)) to the point of creating legal uncertainty both for the public in general and for the applicant parties in particular.

The President's disobedience to the Constitutional Court Decision can also potentially violate human rights. The potential for human rights violations in this case will be exemplified by the case of the President's non-compliance with the Constitutional Court Decision that occurred in the case of judicial review of laws against the 1945 Constitution of the Republic of Indonesia. The decision is the Constitutional Court Decision Number 91/PUU-XVIII/2020. The decision discusses the review of Law Number 11 of 2020 concerning Job Creation (hereinafter abbreviated as the Job Creation Law). In essence, in the verdict the judge stated that the Job Creation Law is conditionally unconstitutional for the next 2 years from the pronouncement of the verdict. In addition, as long as it is declared conditionally unconstitutional, the judge also ordered the government not to issue new implementing regulations related to the Job Creation Law. But in reality, the government issued Presidential Regulation of the Republic of Indonesia Number 113 of 2021 on the Structure and Implementation of the Land Bank Agency (hereinafter abbreviated as *Perpres* No. 113 of 2021) 32 days after the reading of the Constitutional Court Decision No. 91/PUU-XVIII/2020, which was made based on the provisions of Article 134 of the Job Creation Law. Although currently the Job Creation Law has been revised by the government into Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, at that time, there was no revocation of the issuance of *Perpres* No. 113 of 2021, so that this fact can still be classified as a form of non-compliance by the President with the Constitutional Court Decision. The applicant's rights as a citizen that feel violated in the constitutional loss section are Article 28C paragraph (1), Article 28D paragraph (1), (2), and Article 31 paragraph (1) of the 1945 Constitution. Thus, based on this, it can be concluded that if the President does not comply with Constitutional Court Decision No. 91/PUU-XVIII/2020, then the President has automatically violated the constitutional rights of the petitioners.

When viewed from the perspective of international human rights, the consequences of the constitutional defiance of the Constitutional court decision have also been inconsistent with the provisions contained in Article 8 UDHR 1948. UDHR is a formulation containing human rights provisions that must be guaranteed to everyone. The validity of UDHR as a Common Standard of Achievement means that UDHR can apply to the international community as a whole ([Busrizalti, 2021](#)). Therefore, every country is obliged to comply with this provision. Article 8 of the UDHR stipulates that everyone has the right to an effective remedy from the national judiciary if the person is indicated to have violated fundamental rights based on the constitution or applicable law in the country where he lives. The word "effective" contained in the Article actually, if examined in more depth based on the perspective of national law, has actually been regulated in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power (Judicial Power Law). Article 2, paragraph (4) of the Judicial Power Law states that one of the principles in the procedural law of the Constitutional Court is that justice must be carried out quickly without overriding accuracy and thoroughness in seeking justice and truth in deciding cases.

Based on this article, if it is related to human rights violations that occur in this research issue if in Indonesia there is still an incomplete definition of disgraceful acts as one of the reasons for impeaching the President and a legal vacuum in regulating non-compliance with

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the Constitutional Court's decision by the President, then what happens is that the parties in the judicial process will potentially not get their rights to be resolved effectively.

In fact, what needs to be taken into account regarding the Constitutional Court's authority in making decisions contained in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia is that the Constitutional Court decision is final. The final nature of the Constitutional court decision actually contains the principle of *erga omnes*. The principle of *erga omnes* is believed to have emerged from Latin, which consists of two syllables, namely “*erga*” and “*omnes*”. The word “*erga*” means “for”, while “*omnes*” means “all”. Christian J. Tams, based on an international law perspective, is of the view that the principle of *erga omnes* is aimed “against all”, “between all”, or has the meaning of “against all”. Therefore, the principle of *erga omnes* can be interpreted as a principle that states that a decision applies to all parties and is not limited to just the parties involved in the case (inter parties) but also applies to other state institutions concerned if the institution is mentioned in the MK decision. This principle implies that all parties must comply with the decision order ([Pratiwi & Listiningrum, 2022](#)), especially when taking corrective actions as decided by the Constitutional Court.

The principle of *erga omnes* has the power to regulate the implementation of a decision after it is read, including regulating certain prohibitions ([Putri, 2022](#)). Based on the explanation of the principle of *erga omnes* contained in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the researcher concluded that if there is a party that does not comply or does not implement the Constitutional court decision, then that party can be said to have committed an act of constitutional disobedience to the Constitutional court decision. Therefore, researchers feel it is urgent to establish a legal basis for regulating disobedience to the Constitution, especially if the party violating is the President.

The establishment of a legal basis for disobeying the Constitution against the Constitutional court decision by the President is very important because, basically, in Indonesia, which is a country with a presidential system of government, the President has an important position as both head of state or symbol of the state as well as head of government ([Prayitno, 2020](#)). The President, as regulated in the Indonesian constitution, has powers in the executive sector, as stated in Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, in the legislative sector, as stated in Article 5 paragraph (1) of the 1945 Constitution of the Republic of Indonesia as well as in the judicial sector as contained in Article 14 of the 1945 Constitution of the Republic of Indonesia ([Widayati et.al., 2023](#)).

The position of President will ultimately have implications for his great responsibilities. Therefore, so that in carrying out his office, the President can remain in accordance with existing legal regulations, Article 9 paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that before the President assumes office, he will be asked to take an oath or promise according to his religion witnessed by the Assembly. People's Consultative Assembly (hereinafter referred to as “MPR”) or People's Representative Council (hereinafter referred to as “DPR”) with an oath that reads as follows:

“By Allah, I swear that I will fulfill the obligations of the President of the Republic of Indonesia (Vice President of the Republic of Indonesia) as well and fairly as possible, upholding the Constitution and implementing all its laws and regulations as straight as possible and being devoted to Nusa and Nation.”

Based on the President's oath, researchers will focus on the part which states that the President, in fulfilling his obligations, will adhere to the Constitution as best and fairly as



possible. This sentence in the oath will then have the consequence that after taking office, the President is required to be able to always comply with the Constitution and not actually commit violations. In this part of Article 9 paragraph (1), researchers in this discussion will relate it to the interpretation of disgraceful acts in impeachment as the legal basis for establishing regulations on constitutional disobedience against Constitutional Court decisions made by the President.

The basis for the researcher's argument, which interprets the act of constitutional disobedience towards the Constitutional court decision as one of the elements of disgraceful acts contained in the concept of impeachment, is due to the purpose of impeachment itself, namely as an implementation of Indonesia which is a state of the law as well as a welfare state. Therefore, the President's actions must be done based on the law ([Irham, 2022](#)). So, if the President commits constitutional disobedience, the President can be held accountable through the impeachment mechanism because he has committed a disgraceful act.

Before discussing further how to interpret acts of constitutional disobedience towards the Constitutional court decision as one of the elements of disgraceful acts in the concept of impeachment, researchers will first explain the meaning of disgraceful acts in the current Indonesian national legal system. The regulation of disgraceful acts from the constitutional law perspective can be found in Article 7A, Article 7B, paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia. Still, these articles do not explain the meaning of disgraceful acts. Apart from that, disgraceful acts are also regulated in Article 10, paragraph (3) letter d of the Constitutional Court Law, which defines disgraceful acts as actions that can lower the dignity of the President and/or Vice President. The word "degrading dignity" actually gives rise to a very broad understanding regarding whether the degrading action in question only covers the scope of legal norms or whether it includes actions contained in religious norms, politeness norms and moral norms. Until now, the restrictions regarding disgraceful acts have not been regulated further, especially in the context of impeachment. Therefore, there is still a blurring of norms.

The emptiness of norms contained in the regulation of acts of constitutional disobedience towards the Constitutional court decisions and the ambiguity of norms that occur in the meaning of disgraceful acts in Article 7A of the 1945 Constitution of the Republic of Indonesia is actually in conflict with legal certainty. The implementation of legal certainty in written legal rules in Indonesia is very important because Indonesia basically adheres to a civil law legal system ([Winata, 2019](#)) which makes statutory regulations or written legal rules its main source of law ([Syauta, 2022](#)) so that in the Indonesian legal system, a policy cannot be implemented if the legal basis has not been regulated in advance in written regulations ([Sibarani, 2021](#)). Based on this description, it can be concluded that for legal certainty to be realised in regulation, it must be ensured that the regulation does not suffer from emptiness or ambiguity in norms. Furthermore, Jan Michiel Otto, in his theory of legal certainty, holds the view that legal certainty in a country can be realised if: The existence of legal rules that are consistent, clear, easy to obtain and issued by or recognised because of the existence (power) of the state; The existence of government agencies that submit and obey these regulations by implementing them properly and maximally in the exercise of their respective authorities; There is a majority of citizens who agree with the content of the rules and therefore adapt their behaviour to these rules; There are judges who are independent and impartial in applying these legal rules consistently; There are judicial decisions that are concretely implemented ([Indarto, 2022](#)).

Based on the theory of legal certainty, it can be concluded that regulating constitutional disobedience towards MK decisions, especially those carried out by the President, is very necessary. The impeachment regulations in Article 7A of the 1945 Constitution of the

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Republic of Indonesia, which apply in Indonesia, are an adoption of the impeachment concept found in the US. Several reasons for impeachment apply in the US, such as punishment for treason, bribery, or other serious crimes and misdemeanours ([Irham, 2021](#)). Several impeachment cases have occurred in the US, for example, in the cases of President Andrew Johnson, President Richard W. Nixon, President William Jefferson Blythe, and President Donald Trump. Based on several kinds of literature, it is stated that the basic reasons that occur in Presidential impeachment cases in the US are based on reasons of violating constitutional provisions and laws, having committed perjury, and not carrying out obligations as President as stated in his oath of office.

Furthermore, in the Philippines, there have been several impeachment cases, for example, against President Gloria Arroyo, President Benigno Aquino, and President Joseph Ejercito Estrada. In these three cases, it can at least be concluded that there are several reasons for impeachment in the Philippines, such as treason, bribery, gratification, corruption, betrayal of public trust and/or proven violations of the constitution. Meanwhile, there have also been several impeachment cases in South Korea, such as those in the case of President Roo Moo Hyun and President Park Geun Hye. The South Korean Constitution only specifies that the reason for impeachment is a violation of the law.

Based on comparing the 3 countries regarding the reasons for impeachment, each country has a different interpretation regarding disgraceful acts. Meanwhile, in Indonesia, by using constitutional interpretation, the researcher concluded that the interpretation must be based on the sentence of the disgraceful act itself, which is in accordance with Article 7A of the 1945 Constitution of the Republic of Indonesia and must be interpreted in accordance with Article 10 paragraph (3) of the Constitutional Court Law, namely as an action that can degrade dignity. President and/or Vice President. Apart from that, by using a historical approach, the author concludes that, in fact, disgraceful acts are used as one of the reasons for impeachment because the President is required to be responsible, and work must be in line with the moral values of Pancasila and the 1945 Constitution of the Republic of Indonesia. So, based on this argument, in fact, if it is related to the President of Indonesia's oath contained in Article 9 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, then if the President has violated his oath, especially not complying with the 1945 Constitution of the Republic of Indonesia, this has been said to be a disgraceful act.

Based on this argument, researchers relate it to the constitutional interpretation of the Constitutional court decision, which, if carried out by the President, can be qualified as a disgraceful act in the concept of impeachment because basically compliance with the Constitutional court decision is contained in Article 24C paragraph (1) which states that the Constitutional court decision is final, where this word also contains the principle of *erga omnes* which means that the Constitutional court decision not only needs to be obeyed by the relevant parties but must be obeyed by the entire community, including the President. Based on this, in order for the President to carry out his duties in accordance with the principles of Pancasila and the 1945 Constitution of the Republic of Indonesia, because in both legal bases, often very general rules are still found, Indonesia as a country adhering to the civil law system requires written regulations ([Syahlan, 2021](#)) in the form of legislation to implement those principles concretely ([Muktiono, 2022](#)). Therefore, in this regard, the researcher feels the need to change Article 10 paragraph (3) letter d of the Constitutional Court Law concerning the qualification of a disgraceful act



3.3. Comparison of the Regulations of Disgraceful Act in the United States of America, the Philippines and South Korea

Impeachment has various definitions according to various expert views, Simanjuntak defines impeachment as a process of special criminal lawsuits aimed at a public official in front of a quasi-political court based on allegations of violation of the law as contained in the 1945 Constitution of the Republic of Indonesia. Impeachment is a process of indictment of the actions of public officials who are considered to have deviated. This understanding is often understood with impeachment being synonymous with dismissal, whereas, in practice, impeachment is not always resolved by the dismissal of the President and/or Vice President being held accountable ([Fatkhurohman, 2019](#)).

The establishment of the impeachment mechanism is actually one of the consistencies of the Indonesian government in implementing the principle of checks and balances in the administration of the wheels of government. The principle of checks and balances aims to implement supervision and balance in each branch of government power in exercising its authority ([Ahirullah, 2023](#)). Because of this, impeachment in its implementation is expected to protect the sovereignty of the people so that the President, in carrying out his duties in government, remains in accordance with applicable laws ([Bergas, 2019](#)). In this discussion, the researcher will use a comparative approach to explain how the impeachment mechanism is compared in Indonesia, the US, the Philippines and South Korea.

3.3.1 Impeachment Mechanism in Indonesia

Impeachment, as seen by Asshidiqie, is defined as the act of indicting or holding accountable based on mechanisms regulated in a country's constitution ([Rahman, 2019](#)). Indonesia typologically can be said to embrace a form of presidentialism that is included in a pure presidential system because of the position given to the President ([Kupper, 2021](#)). The link between impeachment and the presidential system of government is that the President has the power to carry out his role as head of government and state ([Arrsa & Listiningrum, 2022](#)). Therefore, impeachment in this system of government cannot be done immediately. Still, the President must go through legal procedures in the form of summons to be held accountable if he is suspected of violating the law.

Establishing impeachment in Indonesia is inseparable from the reforms that began in 1998. Since that year, the political life of the state has always developed. One of the reform demands is the amendment of the 1945 Constitution. This amendment is motivated by the fact that the existence of the 1945 Constitution of the Republic of Indonesia is still not maximised as a foundation for democratic life ([Widayati, 2020](#)).

The idea of Impeachment as an extraordinary mechanism in Indonesia emerged after the third amendment to the 1945 Constitution ([Sampe, 2022](#)). Impeachment can be carried out against the President and/or Vice President if they are suspected of having violated the law as formulated in Article 7A of the 1945 Constitution of the Republic of Indonesia ([Ma'rifatulloh & Sudarsono, 2019](#)).

Violations of the law referred to in the article include treason against the state, corruption, bribery, other serious crimes, disgraceful acts and if the President and/or Vice President no longer meet the requirements to be able to serve. The further explanation of the reasons for impeachment is as follows:

1. Treason against the state. Treason against the state. This crime is mentioned in Article 10, paragraph (3) letter a of the Constitutional Court Law as a crime against the stability of state security. This act is a crime that destroys the joints of state life.;



2. Bribery and corruption, as Article 2 paragraph (1) and Article 3 of Law No. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning the Prevention and Eradication of Corruption, defines corruption as a form of unlawful action by a person to provide benefits for himself, others or corporations through activities of abuse of authority, opportunities or means that he has due to the position he holds and ends up causing losses to state finances or affecting the course of the state economy;
3. Criminal offences in the aggravation classification are punishable by more than 5 (five) years imprisonment;
4. Disgraceful act. This action, as stipulated in Article 10 paragraph (3) of Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court, defines disgraceful acts as acts that can degrade the dignity of the President and/or Vice President; and
5. If they no longer meet the requirements to hold the office of President and Vice President.

Furthermore, the mechanism for implementing impeachment is explained in Article 7B of the 1945 Constitution of the Republic of Indonesia as follows:

1. House of Representatives (*DPR*) can propose the dismissal of the President and/or Vice President on the condition that it has first submitted a request to the Constitutional Court to conduct an examination, try and decide that the President and/or Vice President has been proven to have violated the law. If the Constitutional Court has ruled that the President and/or Vice President has been found guilty, the *DPR* can proceed to propose the dismissal to the *MPR*;
2. The submission of the *DPR's* request for a proposal to dismiss the President and/or Vice President to the Constitutional Court is determined in a plenary session, which must be attended by at least 2/3 of the *DPR* members with the approval of at least 2/3 of the *DPR* members;
3. After the *DPR* submits a request for the dismissal of the President and/or Vice President to the Constitutional Court, the Constitutional Court is obliged to give a decision no later than 90 (Ninety days) after the Constitutional Court receives the *DPR's* request;
4. If the Constitutional Court gives a decision that the President and/or Vice President is proven to have violated the law as stipulated in Article 7A of the 1945 Constitution of the Republic of Indonesia, then the *DPR* can hold a plenary session to forward the proposal to dismiss the President and/or Vice President to the *MPR*;
5. After the *DPR* forwards its proposal to the *MPR* based on the Constitutional court decision, the *MPR* must hold a session to determine whether or not to accept the *DPR's* proposal to dismiss the President and/or Vice President no later than 30 (thirty) days after the *MPR* receives the proposal;
6. Furthermore, after the President and/or Vice President has been allowed to give his/her opinion in a plenary meeting of the *MPR*, the *MPR's* decision on whether or not to accept the *DPR's* proposal must be made through a plenary meeting of the *MPR* with a minimum of 3/4 of the members present with the approval of at least 2/3 of the members present.

3.3.2 Mechanism of Impeachment in the United States

Implementing impeachment in the US involves 2 state institutions, the Senate and the House of Representatives. This is stipulated in Article I, Section 2, Clause 5 of the US Constitution, which states, "The House of Representatives shall elect its speaker and other

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officials; and shall have the sole power to impeach". In addition, there is also Article I, Section 3, Clause 6 of the A Constitution, which states that: "the senate shall have the sole power to try all impeachments when the president of the United States is tried, the chief justice shall preside, and no person shall be convicted without the consent of 2/3 of the members present" ([The Constitution of the United States, 1992](#)).

The reasons that can be used as a basis for impeachment in the US are listed in Article II, section 4 of the US Constitution, which states that the President and/or Vice President and all civil officials in the US can be removed from office through the mechanism of impeachment if they commit other misdemeanours, serious crimes, bribery and treason ([Anindia & Rosmini, 2021](#)). The impeachment procedure in the US begins with a proposal for impeachment from several members of the House of Representatives; after that, the proposal will be discussed at the House of Representatives plenary session whether the proposal can be continued or not. However, before this right is exercised, the House of Representatives first forms a committee that compiles articles of impeachment containing the reasons for the House of Representatives to be used as a basis for impeaching the President and/or Vice President. After the process, the Senate can issue its decision if it has been attended by at least 2/3 of the members at the Senate session.

The Senate's impeachment decision can only decide whether or not the President and/or Vice President is dismissed; it cannot impose sanctions in other forms, such as sanctions in civil or criminal law.

3.3.3 Impeachment Mechanism in the Philippines

Implementing impeachment in the Philippines stems from the charges filed by the House of Representatives, which is regulated in Article XI Section 3 part (1) of the Philippine Constitution. The reasons that the House of Representatives can use as a basis for impeachment are contained in Article XI Section 2 of the Philippine Constitution, which explains that the President and/or Vice President can be impeached if proven to have violated the constitution, committed treason, graft, corruption, other criminal acts and betrayal of public trust.

The House of Representatives has several functions in implementing impeachment, such as conducting investigations and prosecutions against the President and/or Vice President. Furthermore, if the Article of Impeachment is approved by the House of Representatives by a simple majority vote, then the House of Representatives can bring the impeachment case to a hearing at the Senate level.

The impeachment exercise contained in the Philippine Constitution must at least get the approval of about 1/3 of the members of the House of Representatives in order to proceed to the hearing at the Senate level. Parties that can be impeached in the Philippine Constitution are not limited to the President and/or Vice President alone but can also be carried out on members of the Supreme Court, Constitutional Commission and Ombudsman as stipulated in Article XI Section 2 of the Philippine Constitution ([Fadlullah & Hardjanto, 2016](#)).

In addition, Article XI Section 6 of the Philippine Constitution provides that if Articles of Impeachment have been filed with the Senate, the Senate has the authority to hear the charges emanating from the House of Representatives. In the case of impeachment proceedings against the President, the Senate will be presided over by the Chief Justice of the Supreme Court. The Senate will issue a decision when the examination has been carried out. As ordered by Article XI Section 6 of the Philippine Constitution, the decision must be attended by at least 2/3 of the senate members. The decision issued by the Senate in an



impeachment case cannot be in the form of criminal or civil sanctions but only in the form of whether or not the President and/or Vice President is dismissed ([Hadi, 2016](#)).

3.3.4 Impeachment Mechanism in South Korea

Unlike Indonesia, which adheres to a presidential system of government, South Korea uses a semi-presidential system of government. There are several differences between the two government systems, such as in a semi-presidential government system, there is no tendency for the President to become a dictator; this is based on the argument that there has been a division of authority between the head of state and the head of government. In addition, in this system of government, the President has big legitimacy because direct elections by the people only act as head of state, and the prime minister leads the government. Although Indonesia and South Korea have different systems of government, they have similarities in that the Presidents of both countries are elected through general elections ([Wasti, 2018](#)).

Several articles regulate impeachment in the South Korean Constitution. The institutions involved in the process include the Constitutional Court and the National Assembly. Article 65 paragraph (1) of the South Korean Constitution stipulates that those who can be impeached are the President, Prime Minister, members of the State Council, Head of the Executive Ministry, Constitutional Court Judges, judges, members of the Election Commission, Chairman and members of the Audit and Inspection Board, and other public officials. Several reasons can be used as a basis for impeachment, such as violations of the constitution and the law in carrying out the obligations of the office held.

The impeachment process in South Korea begins when the parliament or national assembly submits a proposal for impeachment and receives at least 2/3 approval from members of parliament. If the parliament approves the impeachment motion, then the President is obliged to be disabled from office until the issuance of the Constitutional court decision.

Based on the comparison of the implementation of impeachment in several countries, researchers actually do it based on 3 main things, namely the existence of comparative links, similarities and differences found in each country. However, based on this comparison, if examined further from the perspective of international human rights, which researchers associate with the reasons for misconduct, researchers found that all of the comparison countries have not detailed the meaning of misconduct as a reason for impeachment. This can be found in Article II Section 4 of the Constitution of the United States, Article XI Section 2 of the 1987 Constitution of the Republic of the Philippines, Article 65 Section I of the Constitution of the Republic of Korea, which does not include the existence of misconduct as one of the reasons for the impeachment process.

The existence of incomplete arrangements regarding the definition of misconduct will certainly result in the course of justice not being maximised. Of course, this contradicts the mandate of Article 8 of the Universal Declaration of Human Rights (UDHR) 1948, which explains that the state guarantees every citizen gets an effective resolution from a competent national court for the violations he is accused of. Thus, it can be concluded that if there are still problems in the basic arrangements, it will be certain that the implementation of justice will experience obstacles in the future.

Article 8 of the UDHR is the main indicator of whether each comparison country in this research on the implementation mechanism of impeachment has been in line with existing human rights provisions. UDHR is a formulation that contains human rights provisions that must be guaranteed to every individual. The validity of UDHR as a Common Standard of Achievement means that UDHR can apply to the international community as a whole.



Therefore, every country is obliged to comply with this provision. The results of the comparison in this sub-discussion based on the human rights perspective show that in the impeachment mechanism in Indonesia, the US, South Korea and the Philippines, there is one similarity, namely that these countries in their constitutional courts, especially in impeachment cases, there are still incomplete arrangements for the definition of the disgraceful act. Therefore, based on the perspective of Article 8 of the UDHR, the impeachment arrangements of each country, in the opinion of researchers, are still not optimal.

Meanwhile, in line with Article 8 of the UDHR as a rule of international law, in the scope of national law, the problem of incompleteness in the meaning of disgraceful acts as one of the reasons for impeachment of the President that occurred in Indonesia is also actually not in accordance with one of the ideals of the Indonesian nation to be able to provide guarantees, protection, legal certainty for every citizen as stipulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This happens because, of course, the judges in the Constitutional Court. However, they can further interpret the articles used as the basis for the petition in their decisions. Researchers argue that this will be difficult to achieve optimally because the judges do not get the main guidelines regarding the clarity of the meaning of the misconduct listed in the laws and regulations. The researcher's analogy can also be supported by the fact that Indonesia is currently a country whose legal system prioritises written laws and regulations over jurisprudence and customary law.

However, based on the results of the comparison of the regulation of misconduct in Indonesia with all the comparative countries, the researcher can conclude that what can be used as a futuristic lesson for the Indonesian legal system is the expansion of the parties that can be impeached on the grounds of misconduct for not complying with the Constitutional Court Decision.

The researcher's argument is based on the fact that currently, acts of non-compliance with the implementation of the Constitutional Court's decision are not only carried out by the President, but there are also other forms of non-compliance by several state institutions such as the Supreme Court and the Attorney General's Office. Although this research only focuses on the scope of the formation of sanctions for non-compliance with the Constitutional Court's decision by the President, through comparative technical analysis with the US, South Korea and the Philippines in the future in the same arrangement as a form of continuous improvement in Indonesian law, it is possible that Indonesia can expand the parties that can be impeached on the grounds of misconduct if they do not comply with the Constitutional Court's Decision.

4. Conclusion

The Constitutional Court is one of the state institutions that have a function as a protector of citizens' human rights. Therefore, the Constitutional court decision, as in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, is final; the word final contains the principle of *erga omnes*, which means that the decision must be obeyed not only by the parties concerned but the wider community. However, until now, there have still been many acts of constitutional disobedience or non-compliance with the Constitutional court decision made by the President. In answering the research issues in the discussion, the researchers first discussed the comparison of the implementation of impeachment in the US, South Korea and the Philippines. The answer to the first sub-discussion is based on the comparison conducted. Researchers use Article 8 of the UDHR as the main indicator to see



whether there are elements of human rights in each mechanism in the comparison countries. Based on the comparison, the researcher found that Indonesia and all comparison countries in the impeachment implementation mechanism are still not in line with the provisions of Article 8 of the UDHR. In addition, in the first discussion, the researcher also used the analysis of Article 28D of the 1945 Constitution to indicate whether or not the elements of human rights have been implemented from the perspective of national law. The analysis shows that the incompleteness of the meaning of disgraceful acts as one of the reasons for impeachment is not in line with one of the government's duties in providing guarantees, protection and fair legal certainty for every citizen.

Second, to answer the problem of lacuna in the regulatory basis for constitutional disobedience to the Constitutional court decision by the President, the researcher relates this to misconduct in the impeachment mechanism in Article 7A of the 1945 Constitution of the NRI. The researcher found the answer that the actual misconduct can be limited to violations of the President's oath stipulated in Article 9 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, where one of the President's oaths is to uphold the Constitution, based on these restrictions, it can be linked to the final nature of the Constitutional court decision in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Thus, if there is constitutional disobedience to the Constitutional court decision by the President, then the President can be held accountable through the impeachment mechanism. Therefore, to concretise this matter, it is necessary to regulate the qualifications of disgraceful acts further as previously initiated by researchers in the amendment to Article 10 paragraph (3) letter d of the Constitutional Court Law.

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