
ANALYSIS OF THE DISMISSAL OF THE HEAD OF STATE BASED ON THE 1945 NRI CONSTITUTION ON SOCIAL MEDIA

Richie Lay Tan¹, Yosia Luther Sinaga², Jonathan Liauw³

Tarumanagara University, Indonesia

¹Richielay37@gmail.com, ²yosia.sinaga16@gmail.com, ³liauwjonathan5@gmail.com

ABSTRACT; A dive into Article 7a & 7b of the 1945 NRI Constitution about the stopping of a Head of State and the exploration of its application on social media. This writing is done in a Juridical Normative method with primary data in the form of writings that may help dive and explain onto elements that are stated on the articles which will be interpreted to answer the points of this writing. The Head of State can be stopped if he has breach the terms that is prohibited in the Articles such as betraying the State, Desplicable acts, Corruption, Bribery, Crimes, or no longer fulfilled the requirements, these act can also be done in Social Media and can lead to the stopping of a Head of State.

Keywords: Head of state; Social media; State course.

INTRODUCTION

The Head of State is the supreme representative of a Sovereign State, of which he may or may not be the head of government. The role of a head of State is primarily as a representative of the symbol of unity and integrity of the State within the country and to foreign States¹. The Head of State of Indonesia, namely the President, as a leader who has a responsibility to his people, there is also the need for a plan to stop or replace the Head of State when the Head of State has violated the established Values and integrity. As Head of State that has been determined by Indonesia itself. A legal basis contained in Indonesian State Law that regulates on the grounds that a head of state can be terminated is in Articles 7a and 7b of the 1945 NRI Constitution² applied in MPR Decree no. 2 of 2001 concerning the Accountability of the President of the Republic of Indonesia K.H. Abdurrahman Wahid. This is an important source of reference because this provision is an event that has basic elements similar to Articles 7a and 7b of the 1945 NRI Constitution.

In 2003, the MPR enacted MPR Decree No. 1 of 2003 concerning Review of the Material and Legal Status of MPRS Provisions and MPR RI Provisions from 1960 to 2002. Where there is a review of other MPR provisions regarding Material, Existence, Legal Status for existing and future Legal provisions. This provision is also useful to provide legal certainty.³ In the MPR TAP, several statuses have been given to other MPR TAPs.

In the results of the decree, MPR decree No. 2 of 2001 has been included into the sixth category where the MPR TAP has not continued its actions and has completed its actions. This shows that the MPR decree can still be the basis of reference for this study.⁴

The main element that can be a reason for the dismissal of the President is a violation of the direction of the State carried out by the President, be it a violation of the Constitution, MPR Decrees or other laws and regulations.⁵ This can be seen in Article 7a of the 1945 NRI Constitution which reads "if proven to have committed a violation of the law in the form of treason against the state" is one of the Legal Bases on which a Head of State can be dismissed. Indonesia's direction can be based on several approaches, namely the Inductive and Deductive Approaches, the

¹ Munro, A. (2023). "Head of State." Encyclopedia Britannica, February 24, 2023. <https://www.britannica.com/topic/head-of-state>.

² Pasal 7a and 7b UUD NRI 1945.

³ Ketentuan MPR RI Nomor I/MPR/2003 Tentang Peninjauan terhadap Materi dan Status Hukum Ketentuan MPRS dan Ketentuan MPR RI Tahun 1960 sampai dengan Tahun 2002.

⁴ *Ibid*

⁵ Sunarno (2011), DI PEMBERHENTIAN PRESIDEN REPUBLIK INDONESIA DARI MASA KE MASA, LEGAL DISCOURSE VOL. IX, OCT. 2, 2011

Inductive approach, namely compiling Government principles that contain the nature of mass ideology, and the Deductive approach requires a source of shelter for people's aspirations.⁶ This results in several perspectives on the direction of the State of Indonesia, on the one hand can be seen the direction of the State by looking at the ideology in the establishment and progress within Indonesia and the other side that looks to the present and will be based on values valued by the community in the present.

In a time when the use of Social Media is increasing rapidly and people can express opinions freely without social restrictions that are usually applied in society because of the comfort of freedom without realizing it this can offend others who may arise from the use of social media⁷, this can trigger the emergence of an individual who will be sophist, an individual who according to Plato can be characterized by rude selfishness and reckless manipulative behavior, with a frequent rhetorical statement and fact-playing aimed at targeting and pitting a party⁸.

This can cause some problems with the element seen in Article 7a of the 1945 NRI Constitution which reads "Treason against the State and despicable acts" as already stated, treason against the State can be concluded as against the direction of the State, which can be seen inductively and deductively. This raises several important questions about the writing, what would happen if a group of sophist individuals came together and created propaganda that succeeded in creating a force that influenced the public's perception of the head of state, if the power of the masses was large enough, could they be considered as a legitimate concept that could be interpreted as a direction for the State of Indonesia?

Another problem also arises with the use of "Reprehensible Deeds", what can be categorized as a despicable act? whether any action perceived as inappropriate or objectionable by a group of individuals can be used as an excuse to remove the Head of State?, can they result in too high social standards for the Indonesian head of state? This is not answered and also has a lack of references due to the lack of an incident in the country of Indonesia where this law has been used.

There is also a question related to Social Media, whether actions or statements made on Social Media constitute an action that meets the necessary conditions to be grounds for dismissal of a Head of State? This is especially a focal point because a group of parties who may not support a head of state can use everything available on social media and label such actions as "reprehensible".

Reprehensible acts can be interpreted as all acts that are contrary to the Penal Code, deviations from the behavior of the President or Vice President against the 1945 Constitution, and all acts that violate the offenses of the Criminal Law.⁹ The Great Dictionary Indonesian interprets the word "Action" as 'something done; deed'¹⁰ and "Reprehensible" as 'reprehensible and inappropriate'.¹¹ then it can be formulated that a reprehensible act, according to KBBI is an act that does not deserve to be done. Dr. Hufron., SH., MH argues that reprehensible acts are very general and multiinterpreted, with an abstract nature,¹² supporting the statement that there is a lack of explanation in the Article.

As mentioned earlier, the case of Abdurrahman Wahid is one of the cases used as an important reference source. This is because this case is a case where an Indonesian Head of State has been demoted by his position after being considered to have violated the direction of the Indonesian State.¹³ From this case, several types of elements can be taken that are considered to be a violation

⁶Memahami GBHN (2019), Yudi Latif, DIREKTUR SEKOLAH PANCASILA <https://www.kompas.id/baca/utama/2019/08/22/114226121> diakses tanggal 29-3-2023 pkl 11:54

⁷ Ernie Suggs (2016) Lack of restraint persists on social media, Atlanta Journal-Constitution, <https://www.detroitnews.com/story/business/personal-finance/2016/06/12/lack-restraint-persists-social-media/85799272/> diakses tanggal 4-1-2023 pkl 21:33.

⁸ N.P White (1993) Sophist, Hackett Publishing.

⁹ Muhammad Irham, Nani Mulyati (2021) Perbuatan Tercela Sebagai Salah Satu Alasan Pemakzulan Presiden Dan/Atau Wakil Presiden Dalam Kajian Hukum Pidana Di Indonesia.

¹⁰ Tindakan. 2016. Pada KBBI Daring. Diambil 4 april 2023, dari <https://kbbi.kemdikbud.go.id/entri/tindakan>.

¹¹ Tercela. 2016. Pada KBBI Daring. Diambil 4 april 2023, dari <https://kbbi.kemdikbud.go.id/entri/tercela>.

¹² Hufron (2016) PERBUATAN TERCELA SEBAGAI ALASAN PEMAUKZULAN PRESIDEN DAN/ATAU WAKIL PRESIDEN DIH, Jurnal Ilmu Hukum Vol. 12, No. 23, Hal. 64 – 74.

¹³“Mahfud MD: Gus Dur Lengser Lewat Politik Tanpa Mekanisme Hukum” (2013), <https://www.mkri.id/index.php?page=web.Berita&id=7947> diakses tanggal 4-2-2023 pkl 20:59.

of the direction of the State, with the trust of the MPR as the People's representative of the President who has lost trust.

To the President and reasons of a general nature associated with the President's actions that are considered to have violated the Constitution along with the direction of the State and laws and regulations.¹⁴

According to the 1945 NRI Constitution Articles 7a, 7b and 24C paragraph (2) which regulate the removal of the President and Vice President from office, the President, Vice President or both can be removed from office through a method called *impeachment* (accuse/indict).¹⁵ Impeachment means an accusation against a head of state which, if deemed true, will result in the removal of a head of state.¹⁶ The articles mentioned above regulate the *impeachment* mechanism that can be carried out against the President and his Deputy who can ultimately remove a President from office.

According to the applicable law, the dismissal of a President from office must be done for clear reasons and only the People's Consultative Assembly (MPR) is authorized to remove a President from office and on the proposal of the DPR (House of Representatives), the following reads from Article 7a of the 1945 Constitution which regulates this matter: "The President and/or Vice President may be removed during his term of office by the People's Consultative Assembly on the proposal of the House of Representatives, either if proven to have committed a violation of the law in the form of treason against the State, Corruption, Bribery, other serious crimes, or reprehensible acts or if proven no longer qualified as President and/or Vice President."¹⁷ In the event of an accusation against the head of State, the following *impeachment* mechanism will be carried out against the Head of State concerned:

1. The DPR submits a proposal for the dismissal of the President to the People's Consultative Assembly (MPR), which is preceded by a request addressed to the Constitutional Court (MK) in order to adjudicate, examine and decide the validity of the DPR's opinion regarding violations of the Law committed by the President (violations of the Law in question have been regulated in Article 7a of the 1945 Constitution).
2. The MPR shall hold a session no later than 30 days after receiving the proposal.
3. The MPR gives a decision on the proposal from the DPR either accepted or rejected, this decision is the result of a plenary meeting held by the MPR which must be attended by at least 3/4 of the total number of MPR members and approved by at least 2/3 of the total number of participants in the plenary meeting, after the President is given the opportunity to deliver an explanation in the plenary meeting room.

In the end, the decision of the People's Consultative Assembly will determine whether the President should be removed from office or the President can still continue and assume office as a President¹⁸.

PROBLEM

So, several points can be formulated The main point that needs to be answered or obtained a deepening of this research is related to the impact of social media on the dismissal of the head of state. These points are:

1. What can be meant as the direction of the state?
2. Are there actions carried out by the head of state on social media that can be considered as violating the direction of the state or reprehensible acts?
3. Can social media be used as a reference point for the direction of the country and by extension, a force that needs to be considered by the House of Representatives and other important parties in discussing the dismissal of the head of state?

RESEARCH METHODS

This research will be carried out in a normative juridical manner on the basis that we will use based on the interpretation of the elements mentioned in Article 7a of the 1945 NRI Constitution as well

¹⁴ Hufron (2016) PERBUATAN TERCELA SEBAGAI ALASAN PEMAKZULAN PRESIDEN DAN/ATAU WAKIL PRESIDEN DIH, Jurnal Ilmu Hukum Vol. 12, No. 23, Hal. 64 – 74.

¹⁵ UUD NRI 1945 Pasal 7a, 7b, dan 24c

¹⁶ Charles L. Black, Jr. (1998), "Impeachment: a Handbook", Yale University

¹⁷ UUD NRI Pasal 7a

¹⁸ UUD NRI 1945 Pasal 7b

as comparisons with similar situations that have occurred and hypotheses on the expansion of material that can be included in the elements mentioned in the Article.

The data that will be used primarily are secondary data where the primary data will come from the 1945 NRI Constitution and other regulatory authorities that may be concerned and secondary data from source sources that may add insight into this issue and assist in data processing.

After the collection of relevant data, an analysis of the data and context will be carried out subjectively where the interpretation of the matters stipulated in the Article will be used as a basis for the formulation of what matters in the present can be included as meeting the criteria for dismissal of the head of state as stipulated in the 1945 NRI Constitution. The focus of this study.

DISCUSSION

Thus, the direction of the state can be interpreted in two ways, inductively and deductively. The understanding that can be taken as the direction of the state inductively can be seen from the values that are the basis of the ideology of the Indonesian state, this is Pancasila¹⁹ which is also contained in the 1945 Constitution. This means that the direction of the Indonesian State is to maintain important values in society such as the values of justice, togetherness, honesty, independence, truth, trust, openness, peace, and others. The state will also uphold human rights such as the right to life, education, work, association, family, happiness, think, behave and develop potential.²⁰

While the direction of the state when viewed deductively, namely by looking at society as a whole to reach a conclusion. Social media, as a source of aspirations of the general public produces formulations about the direction of the Indonesian state. It has been realized that the use of social media as a tool to trigger social conflicts, but it is also recognized that with social media, bridges between people and important state figures to convey their aspirations have become easier.²¹ This results in an event where constructive aspirations and opinions that are merely destructive and reprehensible share a common place and can overlap with each other.²² Despite this, social media can also be used as a tool to revitalize the relationship between the state and society if done competently. The head of state who presents himself as trusted and supported will take the aspirations of the people seriously and in that case, get an idea of what direction the country wants by the people.²³

With that, social media with its power to change public opinion and its ability to give back to political policies even if not directly, can be interpreted as a determinant for the direction of the community state if implemented competently.²⁴

Thus, actions that can be taken by the Head of State that can be carried out on social media that can be considered to have violated the direction of the state or constitute a reprehensible act can be interpreted as follows:

Violating the direction of the country:

1. Take actions that go against the basic values of the state such as Pancasila and Bhineka Tunggal Ika;
2. Expressing opinions or statements that contain injustice or favoritism towards a group
3. Spreading lies;
4. Disturbing the peace of Society;
5. Threatening public safety;
6. Not respecting basic human rights;
7. Ignoring the aspirations of the community conveyed to him.

Disgraceful act

1. Actions that are contrary to applicable laws, especially negative actions related to the Criminal Code and the ITE Law.

¹⁹ Widiatama, W., Mahmud, H., & Suparwi, S. (2020). Ideologi Pancasila Sebagai Dasar Membangun Negara Hukum Indonesia. *Jurnal USM Law Review*, 3(2), 310-327.

²⁰ Widiatama, W., Mahmud, H., & Suparwi, S. (2020). Ideologi Pancasila Sebagai Dasar Membangun Negara Hukum Indonesia. *Jurnal USM Law Review*, 3(2), 310-327.

²¹ Cahyono, A. S. (2016). Pengaruh media sosial terhadap perubahan sosial masyarakat di Indonesia. *Publiciana*, 9(1), 140-157.

²² Marliadi, R. (2019). Tindak tutur ekspresif pujian dan celaan terhadap pejabat negara di media sosial. *Jurnal Bahasa, Sastra dan pembelajarannya*, 9(2), 132-141.

²³ Luik, J. E. (2012). Media sosial dan presentasi diri.

²⁴ Alam, S. (2021). Penggunaan media sosial sebagai alat komunikasi politik. *Avant Garde*, 9(1), 67.

2. Actions that are considered by societal norms as inappropriate or deserve to be sanctioned or disciplined.

Result The results are not in-depth because this study aims only to analyze applications and define the dismissal of heads of state based on the 1945 NRI Constitution if applied to social media. With these results, the author argues that social media can be used as a point to determine the direction of the country and should be considered by political figures with reminders to think wisely and openly but also with vigilance and skepticism about all opinions that will be encountered because there are also individuals who use social media not to build and encourage the country, but to spread negativity and cause conflict.

CONCLUSION

Articles 7a and 7b The 1945 NRI Constitution has provided procedures for terminating a Head of State, but in this Article there are some writings that require deepening, and there is also a question of the application of this Article to the use of social media. The result of this writing is that reprehensible acts can be interpreted as something that is contrary to the Criminal Code and also as an act that is viewed by the community as inappropriate or worthy of sanctions while the direction of the state is something that can be concluded in two ways, inductive and deductive where the inductive view sees the Indonesian view as its stance, namely a state that respects human rights and important values of the Indonesian people, and deductive which is more dynamic and is the aspiration of society that is not filtered but will also contain views and opinions that can be destructive to the values of the State.

Social Media is a collection of opinions that government agencies need to pay attention to and can also be a place where a head of state needs to take care of the way he presents himself. The head of state can also take actions that have been violated in Articles 7a and 7b of the 1945 NRI Constitution on social media and if it has been determined by the state institution as a reason worthy of negotiation, can end in the dismissal of the head of state.

REFERENCES

- Alam, S. (2021). Penggunaan media sosial sebagai alat komunikasi politik. *Avant Garde*, 9(1), 67.
- Cahyono, A. S. (2016). Pengaruh media sosial terhadap perubahan sosial masyarakat di Indonesia. *Publiciana*, 9(1), 140-157.
- Charles L. Black, Jr. (1998), "Impeachment : a Handbook), Yale University
- Ernie Suggs (2016) Lack of restraint persists on social media, *Atlanta Journal-Constitution*, <https://www.detroitnews.com/story/business/personal-finance/2016/06/12/lack-restraint-persists-social-media/85799272/> diakses tanggal 4-1-2023 pkl 21:33
- Hufron (2016) PERBUATAN TERCELA SEBAGAI ALASAN PEMAKZULAN PRESIDEN DAN/ATAU WAKIL PRESIDEN DIH, *Jurnal Ilmu Hukum* Vol. 12, No. 23, Hal. 64 - 74
- Hufron (2016) PERBUATAN TERCELA SEBAGAI ALASAN PEMAKZULAN PRESIDEN DAN/ATAU WAKIL PRESIDEN DIH, *Jurnal Ilmu Hukum* Vol. 12, No. 23, Hal. 64 - 74
- Ketentuan MPR RI Nomor I/MPR/2003 Tentang Peninjauan terhadap Materi dan Status Hukum Ketentuan MPRS dan Ketetapan MPR RI Tahun 1960 sampai dengan Tahun 2002
- Luik, J. E. (2012). Media sosial dan presentasi diri.
- "Mahfud MD: Gus Dur Lengser Lewat Politik Tanpa Mekanisme Hukum" (2013), <https://www.mkri.id/index.php?page=web.Berita&id=7947> diakses tanggal 4-2-2023 pkl 20:59
- Muhammad Irham , Nani Mulyati (2021) ,Perbuatan Tercela Sebagai Salah Satu Alasan Pemakzulan Presiden Dan/Atau Wakil Presiden Dalam Kajian Hukum Pidana Di Indonesia.
- Memahami GBHN (2019), Yudi Latif,DIREKTUR SEKOLAH PANCASILA <https://www.kompas.id/baca/utama/2019/08/22/114226121> diakses tanggal 29-3-2023 pkl 11:54
- Marliadi, R. (2019). Tindak tutur ekspresif pujian dan celaan terhadap pejabat negara di media sosial. *Jurnal Bahasa, Sastra dan pembelajarannya*, 9(2), 132-141
- Munro, A. (2023) "head of state." *Encyclopedia Britannica*. (24 Februari 2023) <https://www.britannica.com/topic/head-of-state>.
- N.P White (1993) *Sophist*, Hackett Publishing

- Sunarno (2011), *PEMBERHENTIAN PRESIDEN REPUBLIK INDONESIA DARI MASA KE MASA*, WACANA HUKUM VOL.IX, 2 OKT.2011
- Tercela. 2016. Pada KBBI Daring. Diambil 4 april 2023, dari <https://kbbi.kemdikbud.go.id/entri/tercela>
- Tindakan. 2016. Pada KBBI Daring. Diambil 4 april 2023, dari <https://kbbi.kemdikbud.go.id/entri/tindakan>
- UUD NRI 1945 Pasal 7a, 7b, dan 24c
- Widiatama, W., Mahmud, H., & Suparwi, S. (2020). Ideologi Pancasila Sebagai Dasar Membangun Negara Hukum Indonesia. *Jurnal USM Law Review*, 3(2), 310-327.