

On impeaching the president

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President Abdurrahman Wahid has been heavily criticized in recent weeks, especially for his idea to revoke a 24-year-old ban on communism.

As the ban is sanctioned by the 1966 decree of the People's Consultative Assembly, it is not under his authority to repeal it. Prominent Muslim clerics and the chairman of Nahdlatul Ulama, Indonesia's largest Islamic organization that Abdurrahman used to chair, have also dismissed the idea.

On the other hand, the "axis force," a grouping of Islamic-oriented representations, has suggested that the annual session of the Assembly, scheduled in August this year, be turned into an Extraordinary Session to demand Abdurrahman's accountability.

The argument is that he has violated the Constitution, the Assembly decrees and his presidential authority.

Foreign observers have also argued that the next several months will be crucial for Abdurrahman's survival.

It has been speculated that the combination of economic drift and political challenges from the military may lead to a period of heightened uncertainty in the run-up to the August Assembly session. A mistake in this argument, however, is the impression that he will have "to make a key accountability speech" before the Assembly.

This mistake is reinforced by the fact that former president B.J. Habibie was forced to relinquish his presidency last October, following his failure to gain the required majority to support his accountability report before the Assembly.

The speech was not a mere address. It was an obligatory accountability speech made at the end of his interim administration.

The Assembly's General Session in 1999 was also meant to elect the president and vice president. The Assembly's refusal against his accountability evidently contributed to his decision to withdraw his candidacy.

According to Assembly Decree No.2/1999, this year's Assembly session is not intended to demand the president's accountability. It is scheduled to evaluate the government's progress report, which will be presented before the Assembly.

The axis force's political tone has also quickly changed and Vice President Megawati Soekarnoputri, chairwoman of the Indonesian Democratic Party of Struggle (PDI Perjuangan), has pledged her

loyalty to Abdurrahman. Moreover, the president and vice president are constitutionally appointed for a five-year term.

It seems very unlikely that Abdurrahman will be impeached for his not-so-performing governance. It can only be speculated that the Assembly will issue pressing notices on his governance. Therefore, a constitutional perspective on the impeachment of the president is needed here. How would it proceed, who would initiate it and on what grounds?

Impeachment of the president is indeed stipulated in the 1945 Constitution. The president is appointed by the Assembly and is answerable to it. He is the "mandate" of the Assembly and has the obligation to implement its decrees under the constant supervision from the House of Representatives whose members are concurrently members of the Assembly.

He must therefore "seriously listen" to the opinions of the House, although he is not answerable to it. If the House views that the president has violated the general outline of State Policy Guidelines as stipulated in the Constitution and decreed by the Assembly, a Special Session of the Assembly can be convened.

The president is therefore summoned to present his accountability.

However, it is the House who will initiate the impeachment process. The president must be duly notified by the House and given the first memorandum of no confidence. If within three months after the first memorandum has been issued the president has not complied, or the House is not satisfied with his performance, the House will then issue the last memorandum to which the president is given a month to comply with.

If the president continues to transgress the State Policy Guidelines, or he has still not complied with the memorandum, the House is in the right position to call for a Special Session of the Assembly (Article 7 of Assembly Decree No. 6/1973).

This Special Session is meant to demand the president's accountability. A logical and legal consequence is that the president can be dismissed from office.

But several problems can arise from the above explanation. There are no fixed rules to initiate the House's notification or to cast the vote. Does the dismissal of the president imply the dismissal of the vice president too?

Why is the vice president automatically dismissed if the one who has transgressed is the president? Who will then hold the power of the executive, and for how long?

Unfortunately, Indonesian constitutional law has no comprehensive answer to these questions. It can be argued that the vice president cannot automatically be dismissed if the president is dismissed by the Assembly's Special Session. The vice president will certainly assume presidency.

If the vice president is forced to also step down from office, the ministers of home affairs, defense and foreign affairs would concurrently preside over the government until the new president and vice president are elected by the Assembly, in line with Article 5, Clause 2 in the 1973 Assembly Decree.

This might not be the case, since the Assembly in session may at the same time elect the president and the vice president. If the Assembly defers the elections and calls for legislative elections instead, the above triumvirate presides until the Assembly elects the president and the vice president.

The triumvirate will serve for the remaining tenure of the chief executive.

Constitutional matters aside, the more pressing issues President Abdurrahman faces is obviously the concern over the slow progress of economic and financial reform, the restive provinces and the establishment of the rule of law. (Sumber: *The Jakarta Post*, 8/4/2000)