

JURIDICAL IMPLICATIONS OF THE CONSTITUTIONAL COURT'S RULING FOR IMPEACHMENT OF THE PRESIDENT AND/OR VICE PRESIDENT IF PROVEN TO HAVE COMMITTED CORRUPTION

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ABSTRACT

The assertion that the Indonesian state is based on law has proven that the law is placed at the most important level in the life of the state as a manifestation of the rule of law as commander in chief. Therefore, every attitude, decision, policy, behavior, act of state apparatus and citizens in the life of the nation and state must obey the applicable legal rules and norms, and this applies equally to every citizen so that they get equality before the law. The President and/or Vice President who carry out the mandate of the people as the Head of State and government, can be dismissed for reasons stipulated by the 1945 Constitution. The process of dismissing the President and/or Vice President from office has undergone various changes since the pre-amendment of the 1945 Constitution and Post-amendment, with its various characteristics, the 1945 Constitution has now provided space for the Constitutional Court to examine and adjudicate the opinion of the DPR in the context of dismissing the President and/or Vice President if it is suspected that they have committed unlawful acts or are no longer fit to serve as President. The 1945 Constitution also mandates that the process of dismissing the President and/or Vice President is taken through the parliamentary political process and then submitted to the legal process through the Constitutional Court, then returned to the political process at the MPR which determines the dismissal in the Plenary Session. Although the political process appears to be more dominantly put forward, so that constitutional debates arise in addressing the impeachment process in Indonesia, the crime responsibility of a President and/or Vice President must be processed thoroughly in accordance with the legal system in force in Indonesia, as a consequence of an act that violates the law.

Keywords: *Impeachment, Constitutional Court Decision, Juridical Implication*

A. BACKGROUND

In Indonesia's constitutional record after the reformation, the dismissal of the President and/or Vice President is no longer only the will of the Legislative body but must also involve the judicial institution, namely the Constitutional Court as the institution that exercises judicial power in addition to the Supreme Court. The impeachment adopted by the 1945 Constitution is a combination of political process and *legal process* at the same time.¹ The process of dismissing the President and/or Vice President begins with a request from the House of Representatives (DPR) to the Constitutional Court to examine, adjudicate, and decide the opinion of the DPR that the President/Vice President has violated the law. Violations of the law contained in articles 7A and 7B are in the form of treason against the state, corruption, bribery, other serious criminal acts, or despicable acts. Dismissal may also be requested if the House of Representatives is of the opinion that the president/vice president no longer qualifies as President and/or Vice President.

The practice of *impeachment* has been carried out in the political and constitutional law system in Indonesia with all its controversies in the case of the dismissal of President Soekarno with TAP MPRS No. XXXIII / MPRS / 1967 and President Abdurrahman Wahid which is based on TAP MPR No VII / 1973 and Tap MPR No III / 1978.²

In theory, the impeachment process in Indonesian constitutional law requires hard work from the DPR by stating that the President or Vice President has fulfilled one of these elements, then the DPR can submit a demand for dismissal to the People's Consultative Assembly (MPR). However, the Dpr must first submit it to the Constitutional Court (MK). Then the Constitutional Court decides whether the House's allegations are true or false. So, it must first be proven through the judicial process in the Constitutional Court.

¹ Pasal 3 ayat 3, Pasal 7A, 7B, dan Pasal 24 C ayat (2) UUD 1945 (Perubahan Ketiga)

² Indonesia, TAP MPRS No. XXXIII/MPRS/1967 dan TAP MPR No VII/1973 dan Tap MPR No III/1978.

If in the trial the president is found guilty, the Constitutional Court can make a decision that grants the application of the Dpr. On the basis of the granting decision, the Dpr submitted a demand for the dismissal of the President and/or Vice President to the People's Consultative Assembly. It should be noted that the opinion of the House of Representatives stating that the President and/or Vice President has fulfilled one of the elements of a criminal act must be the opinion of the institution. Thus, in Article 7B paragraph (3) of the 1945 Constitution, it is determined that the submission of an opinion to the Constitutional Court must be with the support of at least $2/3$ (two-thirds) of the number of House of Representatives members present, which is attended by at least two-thirds of the number of House of Representatives members.³

The authority to adjudicate by the Constitutional Court against the opinion of the House of Representatives on the impeachment of the President and /or Vice President, although in the literature and the opinion of Constitutional Law experts that the object examined and tried by the Constitutional Court is a Request (Opinion of the House), but according to the author, the Legal Subject of the President and / or Vice President is inseparable from his personal person, because the person who committed the crime or violation is a President or Vice President, let alone a President or Vice President committing the crime of Corruption or other offences of being in the performance of his state duties. Then furthermore, what is at the heart of the author's research is how the juridical and political implications that arise after the verdict is read out and applies finally and bindingly.

The constitutional process under the 1945 Constitution against impeachment must be used by a quorum that is not simple, namely a quorum of

³ Indonesia, Diatur dalam Pasal 7B UUD 1945.

2/3; whereas until now there has been no mechanism in the rules of the House that specifically regulates this impeachment procedure.⁴

The consensus of the discussion that will be raised by the author is that if Amar the decision is to justify the opinion of the DPR, then as a next step, the DPR holds a plenary session to forward the proposal of dismissal to the MPR then the MPR must hold a Special Session to decide on the dpr proposal no later than 30 days after the MPR accepts the proposal.⁵

In order to carry out this constitutional mandate, the object of examination is the Opinion of the House of Representatives on the allegations of the DPR to the President or Vice President that the President and/or Vice President has committed Corruption. The problem that the author is worried about today is the emergence of legal implications for the implementation of this impeachment procedure , both during the examination at the Constitutional Court in adjudicating, deciding the opinion of the Dpr and the legal and political impacts that will arise if the Constitutional Court declares proven in its ruling.

The Impeachment Verdict depends on two main things, namely: the "Entrance" or the reasons that can meet the articles of impeachment; and the support and political constellations in the House and the DPD that support impeachment, for example committing corruption crimes." Corruption can be indicted in the impeachment of the president because it can be used as an entrance to the impeachment of the President and/or Vice President whose one of the reasons for impeachment is an element of the Corruption Act article.

By looking at the very powerful position of the President/Vice President in the Presidential system in Indonesia, it must be interpreted that the position of President or Vice President requires special treatment, especially if the President

⁴ Hamdan Zoelvam, *Pemakzulan Presiden di Indonesia*, Sinar Grafika, Jakarta, 2011.

⁵ Hamdan Zoelvam, *Pemakzulan Presiden di Indonesia*, Sinar Grafika, Jakarta, 2011.

and/or Vice President violates the law, the Constitution in Indonesia regulates how the procedures are handled.⁶

The issue of whether or not there are juridical implications (legal consequences) of the Constitutional Court's decision in terms of impeachment is important to study, according to the author because: *first*, there is no legal umbrella for the emergence of juridical implications (legal consequences) of the Constitutional Court's decision in the issue of impeachment, namely for the Offense committed is a Corruption Crime. In principle, everyone is equal *before the law*, therefore a President and/or Vice President can be submitted to the Corruption Court. The same is also not clearly regulated in Law No. 8 of 2011 concerning the Constitutional Court or the Constitutional Court Regulations which are used as the basis for the Procedural Law of the Constitutional Court in the procedure for transferring Impeachment cases to the Tipikor Court. *Second*, what Constitutional Theory is embraced by the Indonesian Constitution in terms of processing the Impeachment of the President and/or Vice President. *Third*, the emergence of judicial dualism towards the authority to try and decide by Judges of the Constitutional Court on the qualification of violations of the law against corruption in the authority to decide criminal cases. *Fourth*, the emergence of criminal liability for a President and/or Vice President after being dismissed by the MPR through the Plenary Session, because it is proven to have committed Corruption Acts as examined and tried by the Constitutional Court.

The focus of the discussion in this study is the juridical implications of the Constitutional Court Decision on the Criminal responsibility of the President and / or Vice President when proven to have committed Corruption.

1. RESEARCH METHODS

⁶ Harun Alrasid, *Pengisian Jabatan Presiden*, Pustaka Uta Grafiti, Jakarta, 1999, hlm 10. Lihat juga pada Dr. Hufron, SH.,MH, *Pemberhentian Presiden di Indonesia*, (Antara Teori dan Praktik), Laksbang Pressindo Yogyakarta dan Kantor Advokat "Hufron & Rubaie", hlm 787.

The research in this paper uses a normative legal research model as well as in other legal research. This means that in this study, every literature will be critically studied such as laws and regulations, books, articles, journals, magazines, and other materials related to the issue of impeachment in Indonesia. Considering that the data targets are juridical, data analysis is carried out with qualitative analysis and the results are presented in a descriptive form. Before being analyzed, the data obtained is then processed by first selecting and clarifying it logically, systematically, and juridically.

1. DISCUSSION

1. The Legal Position of the President and/or Vice President in Impeachment

In some countries that recognize the impeachment mechanism, if the president is suspected of committing a criminal act, the president will be *impeached* first. After he was out of office, an examination was carried out on him. In the absence of regulations on this subject, the recommendations given by the House requesting due process against alleged violations of the law by the president, the logic would be limited to mere recommendations. The reason is that this is the full authority of law enforcement officials to follow up on the recommendations or not. In fact, according to the author, in the absence of a recommendation from the House, a Attorney General should be able to examine these criminal allegations. The reason is, considering that the allegations filed are corruption which is a general offense and not a complaint. So that when there is such an indication, the Attorney General must immediately conduct an investigation.

Where is the actual legal position if a President and/or Vice President is suspected of having committed an unlawful act in the form of a Corruption Crime?. The Third Amendment to the 1945 Constitution contains provisions for the dismissal of the President and/or Vice President in his term of office which are based solely on juridical **reasons** and only refer to the normative-limitative provisions mentioned in the constitution. In addition, the dismissal process can

only be carried out after precedence of a constitutional process through the Constitutional Court (MK) which will examine, adjudicate and decide the opinion of the DPR that the President and/or Vice President has committed a violation of the law in the form of corruption. When the House of Representatives exercises its constitutional right to impeach the President and/or Vice President by obtaining strong evidence that it has committed acts of Corruption, the legal position of the President and/or Vice President is still fixed, and is in charge of leading the government as usual, not as a reported, suspect, as the application of criminal law, even though the actions of the President and/or Vice President are criminal delicts, namely Corruption.

After the Constitutional Court gives a verdict on the opinion of the DPR and the content of the Constitutional Court's decision is to justify the opinion of the DPR, the next stage is the impeachment process in the MPR. In accordance with the Regulation of the People's Consultative Assembly of the Republic of Indonesia Number 1 of 2014 concerning the Rules of the People's Consultative Assembly of the Republic of Indonesia Article 117, 118, 119 and 120.

Based on this article, it can be said that the legal position of a President and / or Vice President when the Impeachment process is carried out, does not affect any legal status against him, either during the trial process at the Constitutional Court or in the Special Session of the MPR (SI MPR). The President and/or Vice President are only as respondents who are given invitations to summons by the DPR, MK and MPR. This special judicial process for the president seems to straddle the principle of equality before the law which is a condition for the continuity of the state of law. The impeachment hearing is a political trial, so there is no known criminal sanction of fines or confinement. Nevertheless, after being impeached, a state official can be retried in the general judiciary with a prosecution process that begins from scratch in accordance with the indictments addressed against him.

In other words, the legal position of the President and/or Vice President who has been dismissed in the Special Session of the MPR still has a legal position that must still be held accountable under criminal law, namely re-examination through Investigation, Investigation and Prosecution. But the problem is that there is no constitutionally regulated mechanism for resolving cases. Because there has been no example of impeachment of the President and/or Vice President after the third amendment to the 1945 Constitution in Indonesia, the legal instruments regulated by the constitution have not been implemented. But do you have to wait for an impeachment event? according to the author this does not reflect the essential purpose of the law, we must prepare the legal instruments in advance before the impeachment process occurs in the future, so that if the President and/or Vice President has a definite legal position in every process and his legal position after dismissal.

1. Juridical Implications of the Constitutional Court's Decision on the Opinion of the House of Representatives on the Impeachment of the President and/or Vice President

Before changes to the 1945 Constitution, the President and/or Vice President may be dismissed for reasons of a political nature, not juridical reasons. This can happen and be implemented in countries with a presidential system of government. Therefore, the Third Amendment to the 1945 Constitution contains provisions for the dismissal of the President and/or Vice President in his term of office based solely on juridical reasons and only referring to the normative-limitative provisions mentioned in the constitution.

The juridical judgment according to the author has caused juridical implications that cannot be avoided and give rise to contradictory laws, there are legal consequences that must be ignored in order to carry out the consequences of legal decisions that arise. According to the authors, these emerging implications will be a common thought for Constitutional Law academics to better seek out what legal solutions are most ideally used in order to achieve legal

certainty and justice. There are many issues, impacts, risks and in this writing. The author takes the word Implications for the provisions regarding the article of dismissal of the President and / or Vice President both in juridical and political implications that will arise to the process, its decision and the application of its implementation. Therefore, the author will examine the juridical implications of the Constitutional Court's decision on the proposed opinion of the Dpr having an impact on the ongoing legal constituencies.

The author's concern in the process of dismissing the President and/or Vice President is that the Constitutional Court decides the right or wrong opinion of the DPR on allegations of violation of the law in the form of alleged corruption committed by the President and/or Vice President. In the process, the object examined, tried, and terminated from the impeachment of the President and/or Vice President is the proposal or opinion **of the House** of Representatives for which the Constitutional Court is not adjudicating on charges of impeachment. The arrangement to dismiss the President and/or Vice President causes a lot of struggles for political interests because the decision of the Constitutional Court is not final and binding, besides that the decision issued by the Constitutional Court still has to be returned to the DPR to be handed over to the MPR, which of course the two institutions are political institutions.

Corruption is a cause that can be used to dismiss the President and/or Vice President during his term of office. This is stated in the provisions of Article 7A of the 1945 Constitution. In this discussion, of course, if we discuss Corruption, the laws and regulations that we refer to are in Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes.

In article 7B paragraph (5), it is explained that **if** the Constitutional Court decides that the President is proven to have violated the law and/or it is proven that the President no longer qualifies as President, then the DPR will immediately hold a Plenary Session to forward the Decision of the Constitutional Court to the

MPR. However, ironically, Article 7B paragraph (5) does not regulate the time limit for the length of time the DPR must hold a Plenary Session to forward the proposal to dismiss the President to the MPR after the Constitutional Court determines that the President and/or Vice President are proven to have committed violations of the law in the form of Corruption. The absence of this time limit, the House of Representatives may buy time not to hold a Plenary Session or vice versa to move the Plenary Session, it all depends on the interests of the majority of members of the House, therefore juridically there is no legal certainty regarding the deadline for holding the Plenary Session of the DPR.

Furthermore, Article 7B paragraph (5) of the 1945 Constitution stipulates that if the Constitutional Court decides that the President is proven to have violated the law and/or it is proven that the President is no longer qualified as President, then the DPR will hold a Plenary Session to forward the proposal to dismiss the President to the MPR. What if the opposite happens to the Constitutional Court's decision states that the President and/or Vice President is not proven to have violated the law and/or it is proven that the President and/or Vice President qualifies as President and/or Vice President. Whether the DPR must carry out the Plenary Session also not to forward the DPR's proposal to the MPR, it seems that the 1945 Post-Amendment Constitution also does not regulate in detail the next process, but is stated in Law Number 17 of 2014 concerning the MPR, DPR, DPD and DPRD (MD3), namely "In the event that the Constitutional Court decides that the opinion of the DPR as referred to in Article 214 paragraph (2) is not proven, the proposed dismissal of the President and/or Vice President cannot proceed".

A judgment that is considered to be the act of a state official results in the party to the case will be bound by the said judgment which has established what became law, either by changing the previous legal circumstances or by simultaneously giving rise to new legal circumstances. The parties bound by the award may be intended as parties who are obliged to comply with the changes in the legal circumstances created as a result of the award and implement it.

Therefore, the law mandates that the proposal of the DPR's opinion to the Constitutional Court on the impeachment of the President and/or Vice President for alleged violations of the law committed must first be decided by the Constitutional Court whether the President and/or Vice President is found guilty of violating the law. In this discussion, the President and/or Vice President are found guilty of corruption, of course, the decision of the Constitutional Court is final and binding as well as the first and last level, then the result of the Constitutional Court's decision will be brought by the DPR to the MPR to determine the dismissal of the President and/or Vice President. In this case, the author argues that criminal liability has arisen for a President and / or Vice President because it has been proven to have committed Corruption, where Corruption is a Criminal Act, then automatically criminal liability is attached and the consequence is that the President and / or Vice President must be held accountable for these actions in accordance with applicable laws and regulations.

The next analysis is that if the decision of the Constitutional Court is interpreted not to be final and binding, why is that ? because historically the existence of the Constitutional Court in the process of dismissing the President and/or Vice President was only put as one of the mechanisms that must be passed in the process of impeachment of the President and / or Vice President, who support such opinions include Zain Badjeber and Ni'matul Huda. The existence of a different understanding of the provisions of article 24 C paragraph (2) of the 1945 Constitution can give birth to juridical problems regarding the authority of the MPR to dismiss the President and/or Vice President, namely whether the MPR is bound by the decision of the Constitutional Court or not, where in the Plenary Session the MPR will later ask for an explanation ⁷from the President and/or Vice President to the decision of the Constitutional Court stating that it is guilty of committing a Corruption Crime, moreover, it is likely that the President

⁷Dr. Hufron, SH., MH. *Dismissal of the President in Indonesia, Between Theory and Practice*. Laksbang Pressindo Yogyakarta and Advocat Office "Hufron & Rubaie". March 2018 Surabaya. p 175.

and/or Vice President may bring new evidence that proves that the President and/or Vice President is innocent and that the Constitutional Court's ruling is considered erroneous. In addition, a thick political nuance will occur in the struggle for the fulfillment of a quorum of 3/4 of the number of members and approved by at least 2/3 of the number of members present, after the President and/or Vice President is given the opportunity to deliver an explanation at the plenary meeting of the People's Consultative Assembly.⁸ Moreover, although the Constitutional Court played a role in deciding whether or not the President and/or Vice President committed corruption, the final verdict of impeachment of the President and/or Vice President remained in Parliament.⁹

Based on the provisions of the Constitutional Court Regulation Number 21 of 2009, it has regulated the following main matters:

1. The decision of the Court granting the application of the House of Representatives does not rule out the possibility of submitting the President and /or Vice President in criminal, civil and/or administrative trials in accordance with their respective principles and procedural laws.
2. If the procedural law of examination of the Opinion of the House of Representatives has not been regulated in this Regulation, *mutatis mutandis* applies the principles of the relevant procedural law, both the criminal procedural law, the civil procedural law, and the procedural law of state administration

⁸ Lihat pasal 7B ayat (7) UUD 1945.

⁹ Pan Mohamad Faiz dan Muhammad Erfa Redhani, Analisis Perbandingan Peran Kamar Kedua Parlemen dan Kekuasaan Kehakiman dalam Proses Pemberhentian Presiden, *Jurnal Konstitusi*, Volume 15 Nomor 2 Juni 2018. H.254.

3. Matters that have not been stipulated in this regulation will be decided at the Consultative Meeting of judges.

It can be known that the Court's decision granting the dpr's application does not rule out the possibility of the President's submission in criminal, civil and/or administrative trials in accordance with the principles and applicable procedural law. Then after the issuance of the Constitutional Court Decision which imposed that the President and/or Vice President was proven to have violated the law, then the DPR immediately held a Plenary Session to forward the proposal to the MPR, at that time it was also open to file criminal charges or civil lawsuits, as well as state administration against the President and/or Vice President. This provision on the one hand is interpreted to anticipate the legal vacuum of the Constitutional Court Regulation Number 21 of 2009 concerning Guidelines for Decisions in Deciding the Opinions of the House of Representatives regarding Alleged Violations by the President and / or Vice President.

Furthermore, after the MPR accepts the DPR's proposal, the MPR must hold a Plenary Session to decide the DPR proposal within no later than 30 (thirty) days after the MPR accepts the proposal. The juridical implication that arises is that there is no provision in the constitution to require the MPR to implement the decisions that have been issued by the Constitutional Court institution regarding the dismissal of the head of state who has no legal consequences or sanctions so that the non-implementation of the Constitutional Court decision by the MPR will give birth to legal uncertainty, where the MPR as the executor of the Constitutional Court decision.¹⁰

According to the author, the decision set by the Constitutional Court should be implemented immediately by mobilizing the Special Session to dismiss the President and/or Vice President who is proven to have committed the Crime of Corruption without voting and fulfilling the quorum of members present at the Plenary Session, this will lead to the implication of the Constitutional Court's

¹⁰ See Article 7B paragraph (6) of the 1945 Constitution

decision only being a blank paper that can be played by political elites who have a strong interest in retain the President and/or Vice President as head of state. If the vote is carried out and the majority of votes of members do not accept the decision set by the Constitutional Court, then the non-implementation of the Constitutional Court decision proposed by the DPR has violated the provisions of Article 1 Paragraph (1) of the 1945 Constitution which states that the State of Indonesia is a State of Law where one of the elements of the state of law is the rule of law or law enforcement.

The Constitutional Court's decision on the dismissal of the President and/or Vice President is not final, because the Constitutional Court's decision may not be implemented by the MPR if the majority of votes in parliament does not meet the requirements of the MPR Plenary Session. Seeing the phenomenon of the implications of the Constitutional Court's decision, it provides free space for state instruments in determining the legal status of a President and/or Vice President when it is suspected that he has been proven to have committed a Corruption Crime. The role of the Constitutional Court as the final interpreter of the constitution (the final interpreter of the constitution) and also the protector of the citizen's constitutional rights provides a change in the interpretation of the phrase "the other party" is one of the efforts of the Court in protecting the constitutional rights of its citizens.¹¹

Furthermore, the author gives his thoughts again about other juridical implications that will arise in terms of the proposed opinion of the Dpr regarding the dismissal of the President and/or Vice President which has been decided by the Constitutional Court and has been determined by the Plenary Session of the

¹¹ Jurnal Konstitusi volume 15 nomor 2 Juni 2018. Implikasi Putusan Mahkamah Konstitusi Nomor 85/PUU-XIV/2016 terhadap Praktek Persekongkolan Tender. Titis Anindyajati

MPR that it decides to dismiss the President and/or Vice President on the proposal of the DPR, that the President and/or Vice President quit his office, where the mpr decision as referred to is determined by the provisions of the MPR.

Then further the discussion of these juridical implications does not stop here, after the President and /or Vice President are dismissed by the MPR Provisions from their duties because they are proven to have committed Corruption Crimes, of course, there are still legal consequences that must be carried out by the President and / or Vice President, namely criminal responsibility for Corruption Crimes committed. In the constitution of the 1945 Constitution, there is no provision on the status of the President and/or Vice President after it has been terminated through the MPR Provisions, whether a President and/or Vice President must carry out criminal justice back to the Corruption Court in view of the provisions of the Constitutional Court Regulation Number 21 of 2009 which regulates the submission of the President and/or Vice President to a criminal trial, civil and/or state administration in accordance with their respective principles and procedural laws.

Another author's concern arises in the question, whether the submission of the President and/or Vice President who is found guilty of committing a Corruption Crime can be submitted directly to the Corruption Crimes court, while Article 7B of the 1945 Constitution has mandated a mechanism for dismissing the President and/or Vice President. In the case of the MPR, not dismissing the president, does not mean that the MPR annulled the Constitutional Court's decision that justified the House of Representatives opinion of the alleged violation of the law by the president. Therefore, the President may then be criminally prosecuted through ordinary criminal justice when there are allegations of criminal acts committed by the president. The process of dismissing the president was a specific judicial process that did not match the usual judiciary in criminal courts. Considering the provisions and constitutional practices regarding the process of dismissing the president both in the Indonesian constitution and in other countries, the process of dismissing the president is very

closely related to political issues in the parliament (DPR and MPR) considering the actions committed by the president worthy of being the reason for dismissal. Therefore, in the judicial process of dismissing the president, it is not criminal responsibility that is the focus of his attention but is political responsibility.¹²

It is further explained that what is consensual of the 1945 Constitution regarding the dismissal of the President and/or Vice President is that the constitutional process can be passed by a written constitutional mechanism, so that the President and/or Vice President who is considered as the head of state can quit his position honorably. However, according to the author of the constitution, it is forgotten that there is criminal responsibility attached to the subject of the law if it is proven to have committed an unlawful act, namely Corruption. According to Gerhard, impeachment of the President and/or Vice President is a unique legislative decision, it can only be carried out within the framework that the constitution restricts.¹³ There are at least three models of presidential impeachment trials in the constitutions of various countries, namely¹⁴:

1. A two-level judicial process by such a representative institution of the people as in the United States.
2. The three-level judicial process, which is in addition to the people's representative institutions, must also be with the decisions of judicial institutions such as in Germany, France, and South Korea, and

¹² Winarno Adi Gunawan. *Pemakzulan (Impeachment) Presiden Dalam Perspektif Hukum Tata Negara*

¹³ Hamdan Zoelvam, *Pemakzulan Presiden di Indonesia*, Sinar Grafika, Jakarta, 2011, h. 32

¹⁴ Hamdan Zoelvam, *Pemakzulan Presiden di Indonesia*, Sinar Grafika, Jakarta, 2011, h. 40

3. The mixed model is a two-tiered judicial process but involves judicial institutions during impeachment proceedings such as Indonesia and Russia.

The involvement of the judicial institution, namely the Constitutional Court in dismissing the President and/or Vice President in Indonesia according to the author is appropriate and in accordance with the presidential system adopted by Indonesia, a legal process where the examination is carried out legally through a special constitutional court which is basically a gross violation of the law that has been determined in the constitution. It is this process that is carried out by the Constitutional Court. Some experts consider that in this context ¹⁵, the function of the Constitutional Court becomes weak, where if the Constitutional Court has found the President and/or Vice President guilty, why is the MPR still given the opportunity not to bring down the President and/or Vice President. In fact, the author here argues that after the Constitutional Court decides that the President and/or Vice President is proven to have committed acts of Corruption Crimes, the Constitutional Court determines against the President and/or Vice President to be submitted to the Criminal Court through the Corruption Crimes Court, so that the MPR does not need to convene again to provide a determination on the dismissal of the President and/or Vice President.

Therefore, according to the author, the criminal liability of the President and/or Vice President will be fulfilled if the decision of the Constitutional Court orders the President and/or Vice President to be submitted to the Court in accordance with the criminal act committed. According to the author, this can minimize the political interests of the ruling party, the possibility that can occur is that the moment before the Plenary Session of the MPR is held has caused

¹⁵ Mahfud MD, *Constitutional Law Debate After Constitutional Amendment*, Rajawali Pers, Jakarta, 2010, pp. 138-139.

political deals between the President and / or Vice President and members of the MPR who in fact are members of the party carrying the President.

The controversy over the dismissal of the president will cause political conflicts that do not only involve political elites but involve groups of people at the lower levels, this results in the stability and security of the State not being guaranteed. Judging from the political and sociological impact of a massive and destructive impeachment, a *rule of the game* is needed for a clearer dismissal of the president and more guarantees the legal status of a president. After Amendment IV of the 1945 Constitution, Indonesia has the rules of the game regarding Impeachment which are regulated in Article 7 B of the 1945 Constitution also seems more juridical than political even though in practice in practice its political decisions are more dominant, namely in the hands of the MPR.¹⁶

In relation to the provisions of the MPR that has dismissed the President and/or Vice President, the impeachment sanctions imposed have punished the President and/or Vice President politically constitutionally, but whether the people take it for granted with the dismissal after the President and/or Vice President betrayed the state to commit corruption. In the author's opinion, constitutionally politically, the constitution has imposed sanctions on dismissal of the President and/or Vice President, but after the office of President and/or Vice President is released that there is still criminal liability to be resolved by the former President and/or Vice President, where the decision of the Constitutional Court has given juridical implications that it is evident against the proof that the former President and/or Vice President has committed corruption, and in

¹⁶ M. Fajrul Falaakh, "Presidensi dan Proses Legislasi Pasca Revisi Konstitusi" (Parlementarisme lewat pintu belakang ?), Makalah yang disampaikan dalam seminar nasional "Meluruskan Jalan Reformasi", yang diselenggarakan oleh Rektorat UGM, 25-27 September 2003.

accordance with the principle of equality before the law and law enforcement, the former President and/or Vice President can be submitted to the Corruption Court for criminal accountability.

1. CONCLUSION

The decision of the Constitutional Court is binding so that if the Constitutional Court examines, prosecutes the President and/or Vice President has been proven to have committed a violation of the law in the form of Corruption, the MPR must conduct a Plenary Session to dismiss the President and/or Vice President. If the People's Consultative Assembly does not implement the decision of the Constitutional Court due to political interests or the mistakes of the DPR institutions, the Constitutional Court in carrying out the process of dismissing the President and / or Vice President or the existence of new evidence that can free the President and / or Vice President from the accusations of the DPR for unlawful acts, then this attitude will cause heated political constituencies and other political implications that may violate legal principles that supporting the life of the nation and state , namely the principle of the State of law, the principle of constitutional and the principle of separation of powers due to the vacuum of law and the vacuum of norms in the constitution. Another consequence of the Constitutional Court's decision is not only the sanction of dismissal from office alone or political sanctions, but the existence of criminal responsibility in accordance with what criminal is carried out, namely criminal sanctions.

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