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Impeachment and Its Problem: The Study from Constitutional Law vs Criminal law Perspective in Indonesia*

Impeachment e seu problema: o estudo da perspectiva do Direito Constitucional versus Direito Penal na Indonésia

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Abstract

This paper will discuss the problems of the impeachment process in Indonesia. This issue focus on Articles 7A and 7B of the 1945 Indonesian Constitution. The two articles regulate the reasons for the impeachment process for

Resumo

Este artigo discutirá os problemas do processo de impeachment na Indonésia. O foco desta questão refere-se aos Artigos 7A e 7B da Constituição Indonésia de 1945. Os dois artigos regulam as razões do processo de impeachment do

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the President and/or Vice President. This paper highlights two points. First is the impeachment process in Indonesia. Second, regarding the issue of the impeachment process being carried out, whether it can be a reason to abolish the prosecutor's authority in prosecuting in the case of *ne bis in idem* or not. This research uses conceptual and historical approaches to analyze the problems discussed. From this study, the authors found that there are still problems in the legal aspect of evidence in the impeachment process, which still opens the possibility of the person being tried in another judicial system. Another finding is that the impeachment process and criminal/civil justice generally have different objects so that a person can be tried again. However, it needs to be strictly regulated in regulations related to the process and post-impeachment so that it no longer creates many interpretations in its implementation.

Keywords: impeachment; removal from the office; *ne bis in idem*; constitutional court; presidential system

*Presidente e/ou Vice-Presidente. Este artigo destaca dois pontos. O primeiro é o processo de impeachment na Indonésia. Em segundo lugar, quanto à questão do processo de impeachment em andamento, se pode ou não ser motivo para abolir a competência do Ministério Público em processar no caso de *ne bis in idem*. Esta pesquisa utiliza a abordagem conceitual e histórica para analisar os problemas discutidos. A partir desse estudo, os autores constataram que ainda há problemas no aspecto jurídico da prova no processo de impeachment, o que ainda abre a possibilidade de a pessoa ser julgada em outro sistema judicial. Outra constatação é que o processo de impeachment e a justiça criminal/civil geralmente têm objetos diferentes para que uma pessoa possa ser julgada novamente. No entanto, ele precisa ser rigorosamente regulamentado por normas relacionadas ao processo e pós-impeachment para que não crie muitas interpretações em sua implementação.*

Palavras-chave: impeachment; destituição do cargo; *ne bis in idem*; tribunal constitucional; sistema presidencialista.

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1. INTRODUCTION

What is the legal process for the President and/or Vice President who violates the constitution? Can the President be overthrown in the middle of his term when he is in charge? Questions like this will arise in countries that use a presidential system because one of the main characteristics of a presidential system is that the President has a fixed term in his leadership period.¹ In addition, the President is not responsible to parliament, so it cannot be dismissed at any time.² Therefore, to deal with exceptional conditions, it is also necessary to require a unique mechanism. This particular mechanism is called impeachment.

¹ ASSHIDDIQIE, Jimly. **Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi**. Jakarta: PT. Bhuana Ilmu Populer, 2007. p. 316. See SHIN, Jae Hyok. Cabinet Duration in Presidential Democracies. **Political Science Quarterly**, New York, vol. 128, n. 2, p. 317-339. 2013.

² LIJPHART, Arend. **Thinking About Democracy: Power Sharing and Majority Rule in Theory and Practice**. New York: Routledge, 2008. p. 149.

Indonesia is one of the countries that strictly uses a presidential system. At least, this affirmation is an agreement from various factions in the MPR when it makes amendments to the 1945 Constitution. The amendment to the 1945 Constitution also regulates several rules that strengthen the characteristics of the presidential system. The strengthening of this system can also be found in some laws that limit executive power.³

One of the characteristics of strengthening the presidential system in Indonesia is the regulation of the mechanism for the President's dismissal. Before the amendment, the law regarding this mechanism was only regulated in Article 8 of the 1945 Constitution, which reads, "If the President dies, quits, or is unable to carry out his obligations during his term of office, he is replaced by the Vice President until his term expires." This rule does not cover the dismissal mechanism if the President (and/or Vice President) violates the constitution. Therefore, the refinement of this rule is regulated later in the third amendment to the 1945 Constitution.

Article 7A of the third amendment of the 1945 Constitution regulates in more detail the reasons for the dismissal of a President and/or Vice President. The reason for his dismissal was because he was proven to have violated the law in treason against the State, corruption, bribery, other serious crimes, or other disgraceful acts, and was no longer able to fulfil the requirements as President and/or Vice President. This rule is supplemented by Article 7B, which regulates the impeachment mechanism. In this article, the impeachment mechanism involves three state institutions: the House of Representatives (DPR) as the 'prosecutor'; the Constitutional Court (MK) as the legal justification for the opinion of the DPR; and the People's Consultative Assembly (MPR) as the institution that gives the final decision.

In the process, the DPR plays a role in the prosecution process, which conducts investigations into alleged violations committed by the President. Then, if the DPR agrees that there has been an alleged violation of the law by the President, the process will continue to the Constitutional Court for legal proof. The process at the Constitutional Court lasts 90 days after the case is registered in the Constitutional Case Registration Book. Suppose the Constitutional Court confirms the opinion of the DPR. In that case, the process continues to the MPR, a political process within 30 days from when the MPR receives the DPR's proposal accompanied by the Constitutional Court's decision.

The presidential impeachment process in Indonesia still has several problems. One of them is related to the issue of the impeachment process being carried out and whether it can be a reason to abolish the Prosecutor's authority in prosecuting in the case of *ne bis in idem* or not. In previous studies, the results of the presidential

³ Indonesian Constitution in English available in: <https://www.mkri.id/public/content/infoumum/regulation/pdf/uud45%20eng.pdf>, see Article 7, Article 5 & 20, Article 14 (1) & (2)..

impeachment decision were not *ne bis in idem*. The research results from the Constitutional Court's researchers found that the object of the case in the Constitutional Court trial differed from that of the case at the District Court.⁴ At the regulatory level, the procedural law related to impeachment in the Constitutional Court is regulated explicitly in Constitutional Court Regulation Number 21 of 2009 concerning Guidelines for Proceeding in Deciding the Opinion of the House of Representatives regarding Alleged Violations by the President and/or Vice President. However, that law still does not provide clarity regarding a person's position when he is dismissed as President and whether he can still be prosecuted for his crime or not.

Article 19 paragraph (3) of the Constitutional Court Regulation Number 21 of 2009 explained that if the President is guilty of a criminal act, then the verdict is to "justify the opinion of the DPR because the President is proven to have violated the law and the President no longer meets the requirements as President." Meanwhile, Article 20 of the PMK states that it is possible for someone who has been demoted as President to be brought forward in a criminal, civil, or state administrative trial by their respective principles and procedural law. It means that if a President is proven guilty in an impeachment trial at the Constitutional Court, he cannot be considered 'proven' to have committed a crime because it is still possible for his offence to be tried in the criminal justice system. Therefore, the term "proven" in the Constitutional Court Regulation becomes problematic because it still opens the possibility of that person being tried in another judicial system and can lead to *ne bis in idem*.

From the previous description, the impeachment process still has the potential to cause problems, especially from the perspective of constitutional law and criminal law. This article will answer at least two issues. First, how is the impeachment process in Indonesia? Second, whether the impeachment process that was carried out could be a reason to abolish the Prosecutor's authority in prosecuting in the case of *ne bis in idem*. This doctrinal research uses a conceptual and historical approach to answer these two questions. According to theory, the conceptual approach is used to find out the concepts related to impeachment and *ne bis in idem*. Then, a historical approach is used to see how Indonesia's impeachment process has occurred.

This paper will be divided into five parts for a more in-depth explanation. The first part will explain the background of the problem, problem statement, literature review, and state of the art. The second part will explain the history and the development of impeachment in Indonesia, which will consist of the history of impeachment and impeachment regulations and practices in Indonesia. Furthermore, in the third section, we will discuss the problem with the impeachment from constitutional law and

⁴ INDONESIA, **Mekanisme Impeachment dan Hukum Acara Mahkamah Konstitusi**. Laporan Penelitian Mahkamah Konstitusi Republik Indonesia. Jakarta: Mahkamah Konstitusi Republik Indonesia, 2005. p. 82.

criminal law perspectives. The discussion and discussion section will then close with The Impeachment: What's Next After Impeachment? This paper will conclude based on the debate and discussion in the previous section.

2. THE HISTORY AND THE DEVELOPMENT OF IMPEACHMENT IN INDONESIA

2.1. The History of Impeachment

Impeachment is a concept that was first introduced in the UK federal constitution. Britain imposed impeachment in limiting the powers of the monarch who committed offences beyond the reach of criminal justice. Impeachment becomes a parliamentary tool to monitor political abuses by the king.⁵ The practice of impeachment first occurred in England in November 1330 during the reign of Edward III. Impeachment was carried out against Roger Mortimer, the eighth Baron of Wigmore, and the first Earl of March. Initially, impeachment was a form of parliamentary instrument in seeking accountability of the King's advisers.

Along with its development, this concept was then used by senators, judges, ministers, and ordinary employees, either because of criminal offences or because of abuse of executive power. In 1642, there was a battle between the executive, the king and the parliament. Parliament impeached the Earl of Stafford, the minister of King Charles I, who exercised tyranny and arbitrariness. Berger stressed that the impeachment shows that the UK is demonstrating the nature of parliamentary supremacy.⁶

The United States then inherited the concept of impeachment on a more modern government in 1797 which was imposed on William Blount. The House of Representatives impeached Blount for his involvement in Louisiana and Florida's economic development efforts related to the sale of land. Until then, the Senate removed Blount, a senator from Tennessee, from his position. Blount's impeachment was then deemed unconstitutional by Congress because, conceptually, impeachment could not be carried out against members of the legislature.⁷

Britain and America then laid the basic concept of implementing impeachment on acts of high crimes and misdemeanours by government officials who abused

⁵ BERGER, Raoul. **Impeachment: The Constitutional Problem**. s.l. s.n. 1973. See COLE, P, Jared; GARVEY, Todd. **Impeachment and the Constitution**. s.l. s.n. 2019. p. 20.

⁶ TARIHORAN, Naf'an. **Makna Impeachment Presiden Bagi Orang Amerika**. Jakarta, 1999. 24-26 p. Thesis (Doctorate) - Doctorate in Law Program, University of Indonesia.

⁷ TARIHORAN, Naf'an. **Makna Impeachment Presiden Bagi Orang Amerika**. Jakarta, 1999. 26-27 p. Thesis (Doctorate) - Doctorate in Law Program, University of Indonesia.

individual power and endangered the State.⁸ The practice of the two countries shows that the trial of impeachment comes from a parliamentary state. Impeachment occurs because the King or Prime Minister is directly responsible to legislature members.

The impeachment practices above were a phenomenon before stability was created in the federal constitution. There is no involvement of institutions and branches of power other than the legislature in the impeachment process.⁹ In its development, other institutions and branches of power began to be involved, such as the Supreme Court, a panel of state court judges, or a combination.¹⁰ These additional powers exist to ensure fairness in the impeachment process.

2.2. Impeachment Regulation and Practice in Indonesia

This section will describe the arrangements and practices regarding impeachment in Indonesia in various constitutions that Indonesia has used.

2.2.1. *Impeachment in UUD 1945*

The 1945 Constitution in the early post-independence period did not regulate the mechanism for dismissing the President. The only arrangements that exist are the provisions of Article 8 of the 1945 Constitution regarding the change of power of the President and Vice President if they die, quit, or are no longer able to carry out their obligations during their term of office.¹¹ This law was inseparable from the conditions that were still newly independent at that time. Soekarno, in the session of the Preparatory Committee for Indonesian Independence (PPKI) emphasized that the 1945 Constitution was provisional.

The enforcement of the 1945 Constitution began to be impure and consequent when the function of the Central Indonesian National Committee (KNIP) was replaced as an auxiliary body to the President to carry out the functions of the House of Representatives (DPR).¹² This replacement was added with Government Decree No. X, dated October 16, 1945, replaced the Indonesian government system from a presidential system to a parliamentary one.

⁸ GERHARD, J, Michael. **Impeachment: What Everyone Needs to Know**. s.l. s.n. 2018. See COLE, P, Jared; GARVEY, Todd. **Impeachment and the Constitution**. s.l. s.n. 2019. p. 4.

⁹ WOOD, S, Gordon. **The Creation of The American Republic**. s.l. s.n. 1969. See COLE, P, Jared; GARVEY, Todd. **Impeachment and the Constitution**. s.l. s.n, 2019. p. 4.

¹⁰ HOFFER, Peter; HULL. **Impeachment in America**. s.l. s.n. 1984. See COLE, P, Jared; GARVEY, Todd. **Impeachment and the Constitution**. s.l. s.n. 2019. p. 4.

¹¹ INDONESIA. **Mekanisme Impeachment dan Hukum Acara Mahkamah Konstitusi**. Jakarta: Mahkamah Konstitusi, 2005. p. 26.

¹² Indonesian Constitution in English available in: <https://www.mkri.id/public/content/infoumum/regulation/pdf/uud45%20eng.pdf>.

The enactment of the parliamentary system at that time increasingly showed that the 1945 Constitution was only a semantic value. In a parliamentary system, the position of head of government is held by the Prime Minister while carrying out the functions of executive power. Meanwhile, the mandate of the 1945 Constitution requires that the executive power in Indonesia is the President. It explains that the existence of the 1945 Constitution was not yet at the stage of deep contemplation and was still in the stage of searching for the constitutional character of post-independence Indonesia.¹³ Therefore, during this period, there was a legal vacuum related to dismissing the President from office.

2.2.2. *Impeachment in Republik Indonesia Serikat Constitution 1949*

In Indonesia's volatile political situation to defend independence, the 1949 Constitution of the Republic of Indonesia (RIS) has been in force since December 27, 1949. The concept of the Indonesian government in the 1949 RIS Constitution is very different from the provisions in the 1945 Constitution. The 1949 RIS Constitution requires a federation combining presidential and parliamentary systems.

The 1949 RIS Constitution does not clearly and in detail regulate the process of dismissing the President. Article 118 paragraph (1) of the 1949 RIS Constitution states that the President is inviolable.¹⁴ The provisions in the 1949 RIS Constitution delegate to federal law to regulate the mechanism for electing the President if the President is absent, passes away or leaves office.¹⁵

In addition, the rights of members of the DPR also further explain that the 1949 RIS Constitution does not recognize an impeachment mechanism. The rights granted in the form of the right of interpellation and the right of inquiry are instruments for implementing checks and balances against the government. In the event of a crime or violation of office by the President, the 1949 RIS Constitution only states that the Supreme Court has the authority to try at the first and highest level against him.¹⁶

During the promulgation of the 1949 RIS Constitution (27 December 1949 - 17 August 1950), Indonesia did not experience impeachment. Similar to the 1945 Constitution, the enactment of the 1949 RIS Constitution was only temporary because

¹³ INDONESIA. **Mekanisme Impeachment dan Hukum Acara Mahkamah Konstitusi**. Jakarta: Mahkamah Konstitusi, 2005. p. 28.

¹⁴ INDONESIA, **Konstitusi Republik Indonesia Serikat**, Ps. 118. Bunyi Pasal 118 sebagai berikut: (1) Presiden tidak dapat diganggu gugat; (2) Menteri-menteri bertanggung jawab atas seluruh kebijaksanaan Pemerintah, baik bersama-sama untuk seluruhnya, maupun masing-masing untuk bagiannya sendiri-sendiri dalam hal itu.

¹⁵ Indonesia, **Konstitusi Republik Indonesia Serikat**, Ps. 72

¹⁶ Indonesia, **Konstitusi Republik Indonesia Serikat**, Ps. 148 ayat (1).

politically, it was a response to the interests of creating a form of state under the wishes of the Dutch.¹⁷

2.2.3. *Impeachment in Contemporary Constitution 1950*

Federation was deemed incompatible with the character of Indonesia by national figures at that time, so the RIS Constitution was abandoned. Then on August 17, 1950, the Provisional Constitution of 1950 (UUDS 1950) was enacted. The form of state adopted at that time was a unitary state with a combination of presidential and parliamentary systems. In this system, President is the Head of State and is assisted by the Vice President.¹⁸ However, the Prime Minister is running the day-to-day government.¹⁹

The position of the President in the 1950 Constitution is powerful. Article 83, paragraph (1) of the 1950 Constitution states that the President and Vice President are inviolable.²⁰ This article means that the DPR cannot dismiss the President and Vice President. On the contrary, the President can dissolve the DPR. The dissolution of the DPR is carried out by a Presidential Decree which must then be followed by the election of a new DPR within 30 days.²¹

As with several previous constitutions, the 1950 Constitution did not clearly state the reasons and mechanisms for impeachment. The existing regulation is only a mechanism for replacing the President when he dies, quits, or cannot fulfil his obligations within the term of office.²² As stipulated in the RIS Constitution, state officials, including the President, if they commit a crime, will be tried by the Supreme Court at the first and last level. But the regulation does not explain whether the Supreme Court can dismiss the President or not.²³

2.2.4. *Impeachment Based on Constitution Assembly's Decision*

One of the mandates in the 1950 Constitution was the establishment of a Constituent Assembly whose orientation was to form a Constitution with the Government.

¹⁷ ASSHIDDIQIE, Jimly. **Konstitusi dan Konstitusionalisme Indonesia**. Jakarta: Mahkamah Konstitusi Republik Indonesia dan Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia, 2005. p. 89.

¹⁸ Provosional Constitution of the Republic of Indonesia in English available in <https://www.worldstatesmen.org/Indonesia-Constitution-1950.pdf>. Article 45 (2).

¹⁹ Provosional Constitution of the Republic of Indonesia in English available in <https://www.worldstatesmen.org/Indonesia-Constitution-1950.pdf>. Article 51 (2).

²⁰ Provosional Constitution of the Republic of Indonesia in English available in <https://www.worldstatesmen.org/Indonesia-Constitution-1950.pdf>. Article 83 (1).

²¹ Provosional Constitution of the Republic of Indonesia in English available in <https://www.worldstatesmen.org/Indonesia-Constitution-1950.pdf>. Article 84.

²² Provosional Constitution of the Republic of Indonesia in English available in <https://www.worldstatesmen.org/Indonesia-Constitution-1950.pdf>. Article 48.

²³ Provosional Constitution of the Republic of Indonesia in English available in <https://www.worldstatesmen.org/Indonesia-Constitution-1950.pdf>. Article 106.

The election of constituent members is carried out by the people directly through elections. However, the constituents of the 1955 general election were dissolved by Soekarno through a Presidential Decree dated July 5, 1959.²⁴ During 1956-1959, the Constituent Assembly almost completed the Constitution.

The draft established by the Constituent Assembly is contained in the Decision of the Constitutional Preparatory Committee No. 9/K/PK/1959 concerning the formulation of draft articles of the Constitution concerning the Executive Board.²⁵ The Constituent Assembly puts forward two opinions regarding the position of the President on impeachment. First, as head of government assisted by the Vice President and ministers, the President is responsible to the Council of People's Representatives and the Council of Regional Representatives (Senate). If the President is proven to have violated the Constitution, committed treason to the State, and committed acts that violate public decency.²⁶ The second opinion states that the position of the President cannot be contested, and the President can dissolve the House of Representatives based on the provisions of the Constitution.²⁷

2.2.5. *Impeachment in UUD NRI 1945*

Regulations regarding Impeachment clearly and unequivocally only appeared in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). The impeachment process in Indonesia involves three high state institutions, namely the House of Representatives (DPR), the Constitutional Court (MK), and the People's Consultative Assembly (MPR).

2.2.5.1. Process in House of Representatives (DPR)

The impeachment process is the implementation of the DPR's highest supervisory function. Article 7B paragraph (2) of the Indonesian Constitution 1945 states: "The opinion of the House of Representatives that the President and/or Vice President has violated the law or no longer meets the requirements as President and/or Vice President is in the context of carrying out the supervisory function of the Regional Representative Council."²⁸ The authority of the DPR to prosecute in principle does not indicate a su-

²⁴ See NASUTION, Adnan Buyung. **Aspirasi Pemerintahan Konstitusional di Indonesia: Studi Sosio-Legal atas Konstituante 1956-1959**. Jakarta: Pustaka Utama Grafiti, 1995. p. 319.

²⁵ INDONESIA. **Kembali Kepada Undang-Undang Dasar 1945**. 3. ed. Jakarta: Penerbitan Khusus, 1959. p. 182.

²⁶ INDONESIA. **Kembali Kepada Undang-Undang Dasar 1945**. 3. ed. Jakarta: Penerbitan Khusus, 1959. p. 186.

²⁷ INDONESIA. **Kembali Kepada Undang-Undang Dasar 1945**. 3. ed. Jakarta: Penerbitan Khusus, 1959. p. 195.

²⁸ Indonesian Constitution in English available in: <https://www.mkri.id/public/content/infoumum/regulation/pdf/uud45%20eng.pdf>.

bordinate relationship with the President. Jimly Asshiddiqie explained that the power of the DPR is a logical consequence of the DPR's supervisory function of the government so that the implementation of government runs according to the corridors of the constitution.²⁹

As the beginning of the DPR's supervisory function in proposing the dismissal of the President and/or Vice President, it begins with the right to express opinions held by each member of the DPR.³⁰ Article 8 paragraph (4) of the Regulation of the House of Representatives Number 1 of 2020 concerning the Rules of Conduct stipulates that the right to express opinions of members of the DPR can be exercised on: (1) Government policies or regarding extraordinary events that occur in the homeland or internationally; (2) Follow-up on the implementation of the right of interpellation and the right of inquiry; or (3) Allegations that the President and/or Vice President have violated the law, whether in the form of treason against the State, corruption, bribery, other serious crimes, or disgraceful acts and/or the President and/or Vice President no longer meet the requirements as President and/or Vice President.

If this right is exercised, the proposal must be made by at least 25 members of the DPR.³¹ Documents accompany the proposal: (1) the material and reasons for submitting the proposed statement of opinion; and (2) valid material and evidence for alleged actions or material and valid evidence for alleged non-fulfilment of the requirements as President and/or Vice President.³²

The proposal was then discussed in a plenary session of the DPR by providing an opportunity for the proposers, factions, and each member to express opinions regarding the proposed dismissal.³³ Then in a plenary meeting, it is decided whether the proposal can be accepted in principle or not.³⁴ If the proposal is rejected, it cannot be resubmitted during the trial period. However, the DPR will form a special committee involving all factions if accepted.³⁵ The special committee has 60 days from its establish-

²⁹ AMANADA, Karina. **Tinjauan Ketatanegaraan terhadap Mekanisme dan Pengaturan Impeachment di Indonesia Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 setelah Perubahan.** 156-157 p. Thesis (Bachelor) – Bachelor in Law Program, University of Indonesia.

³⁰ INDONESIA. **Peraturan Dewan Perwakilan Rakyat Republik Indonesia tentang Tata Tertib**, Peraturan DPR RI No. 1 Year 2020. Article 8 (4).

³¹ INDONESIA. **Peraturan Dewan Perwakilan Rakyat Republik Indonesia tentang Tata Tertib**, Peraturan DPR RI No. 1 Year 2020. Article 191 (1).

³² INDONESIA. **Peraturan Dewan Perwakilan Rakyat Republik Indonesia tentang Tata Tertib**, Peraturan DPR RI No. 1 Year 2020. Article 191 (2).

³³ INDONESIA. **Peraturan Dewan Perwakilan Rakyat Republik Indonesia tentang Tata Tertib**, Peraturan DPR RI No. 1 Year 2020. Article 192 (3).

³⁴ INDONESIA. **Peraturan Dewan Perwakilan Rakyat Republik Indonesia tentang Tata Tertib**, Peraturan DPR RI No. 1 Year 2020. Article 194 (1).

³⁵ INDONESIA. **Peraturan Dewan Perwakilan Rakyat Republik Indonesia tentang Tata Tertib**, Peraturan DPR RI No. 1 Year 2020. Article 194 (2).

ment to report on the implementation of its duties in the DPR plenary meeting.³⁶ During this period, the special committee discusses the alleged violations with the President and/or Vice President. This process is referred to as the investigation process attached to the DPR to examine and investigate the President and/or Vice President directly.³⁷

The decision to accept the special committee report must be approved by the DPR plenary meeting attended by at least 2/3 of the total number of members and the decision to be approved by at least 2/3 of the total number of members present.³⁸ If the decision of the plenary meeting approves the proposal, it will be forwarded to the Constitutional Court.

2.2.5.2 Procedure in Constitutional Court

Procedurally, Constitutional Court Regulation Number 21 of 2009 gives the Constitutional Court 90 days after the application is registered to decide on the opinion of the DPR regarding allegations of dismissal of the President and/or Vice President.³⁹ The stages of trial for cases of dismissal of the President and/or Vice President consist of:⁴⁰ (1) Preliminary Examination Session; (2) Responses by the President and/or Vice President; (3) Evidence by the DPR; (4) Evidence by the President and/or Vice President; (5) Conclusion by the DPR as well as the President and/or the Vice President; and (6) Verdict.

There are three forms of decisions that the Constitutional Court can issue in cases of alleged dismissal of the President and/or Vice President. First, the decision states that the application cannot be accepted because the applicant does not meet the formal requirements. Second, the decision was rejected because the accusation that the President and/or Vice President had violated the law or the President and/or Vice President no longer met the requirements as President and/or Vice President was not proven. Third, the decision confirms the opinion of the DPR when it is proven that the President and/or Vice President have violated the law and/or no longer fulfill the requirements of their position.⁴¹

³⁶ INDONESIA. **Peraturan Dewan Perwakilan Rakyat Republik Indonesia tentang Tata Tertib**, Peraturan DPR RI No. 1 Year 2020. Article 195 (1).

³⁷ INDONESIA. **Mekanisme Impeachment dan Hukum Acara Mahkamah Konstitusi**. Jakarta: Mahkamah Konstitusi, 2005. p. 68-69.

³⁸ INDONESIA. **Peraturan Dewan Perwakilan Rakyat Republik Indonesia tentang Tata Tertib**, Peraturan DPR RI No. 1 Year 2020. Article 196 (4).

³⁹ INDONESIA. **Peraturan Mahkamah Konstitusi tentang Pedoman Beracara dalam Memutus Pendapat Dewan Perwakilan Rakyat Mengenai Dugaan Pelanggaran oleh Presiden dan/atau Wakil Presiden**. Peraturan Mahkamah Konstitusi No. 21 Year 2009. Article 19 (1).

⁴⁰ INDONESIA. **Peraturan Mahkamah Konstitusi tentang Pedoman Beracara dalam Memutus Pendapat Dewan Perwakilan Rakyat Mengenai Dugaan Pelanggaran oleh Presiden dan/atau Wakil Presiden**. Peraturan Mahkamah Konstitusi No. 21 Year 2009. Article 19 (3).

⁴¹ INDONESIA. **Peraturan Mahkamah Konstitusi tentang Pedoman Beracara dalam Memutus Pendapat Dewan Perwakilan Rakyat Mengenai Dugaan Pelanggaran oleh Presiden dan/atau Wakil Presiden**. Peraturan Mahkamah Konstitusi No. 21 Year 2009. Article 19 (3).

It is clear that the *subjectum litis* of the case is DPR as the applicant and the President and/or Vice President as the respondent. The *objectum litis* is an act of violating the law or the condition of the President and/or Vice President which causes him to no longer meet the requirements as President and/or Vice President.

2.2.5.3. Process in People's Consultative Assembly (MPR)

After the Constitutional Court conducts a hearing, and when its decision confirms the opinion of the DPR, then the DPR convenes a plenary meeting to forward the proposal to dismiss the President and/or Vice President to the MPR. The MPR is obliged to hold a session to decide on the proposal no later than 30 days after the proposal is received.⁴² The proposal from the DPR is accompanied by a decision of the Constitutional Court that has confirmed the occurrence of a violation of the law and/or that the President and/or Vice President no longer fulfills the requirements as President and/or Vice President.⁴³

To process the DPR's proposal, the MPR then conducts a plenary session to decide on the proposal to dismiss the President and/or Vice President submitted by the DPR. The leadership of the MPR will also invite the President and/or Vice President to explain the proposal for his dismissal at a plenary meeting. Decision-making is done by a majority vote mechanism. The requirement for the majority vote is based on a meeting attended by at least 3/4 of the total number of members, then the decision is approved by at least 2/3 of the members present.⁴⁴

2.3. Impeachment Practices in Indonesia

After the proclamation of independence, the Indonesian people went through various stages, including the change of President and Vice President who led Indonesia. From 1945 to 2022, at least two impeachment experiences took place in Indonesia: the impeachment of Soekarno and Abdurrahman Wahid.

2.3.1. Impeachment of Soekarno

As the first President of Indonesia at the end of his term, Soekarno experienced a problematic situation related to the political turmoil of the Indonesian nation. Responding to the movement of the G-30 S/PKI, President Soekarno issued Presidential

⁴² INDONESIA. **Peraturan Majelis Permusyawaratan Rakyat tentang Tata Tertib**. Peraturan MPR No. 1 Year 2019. Article 114 (1).

⁴³ INDONESIA. **Peraturan Majelis Permusyawaratan Rakyat tentang Tata Tertib**. Peraturan MPR No. 1 Year 2019. Article 114 (2).

⁴⁴ INDONESIA. **Peraturan Majelis Permusyawaratan Rakyat tentang Tata Tertib**. Peraturan MPR No. 1 Year 2019. Article 115 (3).

Decree No. 179/KOTI/1965 to appoint the Commander of Kostrad, Major General Suharto, as Commander of Operations to restore Security and Order on October 1, 1965. The March Eleventh Order followed this order to Lieutenant General Suharto to take the necessary actions to ensure the security and stability of the government.⁴⁵

Amid the turbulent political situation then, Soekarno needed to give an accountability report to the MPRS on June 22, 1965 as the Nawaksara speech. The essence of the address was as follows: (1) An invitation to 'retrospect' on the President's position as the Great Leader of the Revolution, the mandate of the MPRS, and the President for life; (2) Accountability regarding the implementation of the Outlines of State Policy based on MPRS Decree No. I and II 1960; (3) Implementation of tasks related to political development and economic development; and (4) Further explanations linked to Guided Democracy, implementation of the GBHN, as well as plans for re-purification of the 1945 Constitution relating to the duties of the MPR/S and the positions of the President and Vice President.

Through Decree No. 5/MPRS/1966 dated July 5, 1966, asked President Soekarno to complete the accountability report, mainly relating to the description of the causes of the G-30 S/PKI. President Soekarno then responded with Presidential Letter No. 01/Pres/67 or 'Complementary Nawaksara'. President Soekarno explained that the G-30 S/PKI occurred because of three things: the confusion of the PKI leadership, the trickery of the Nekolim subversion, and the presence of unscrupulous elements.⁴⁶ In addition, the Supplementary Nawaksara also contains an invitation to eliminate conflict situations to save the revolution, and create unity and integrity.

The response from the MPRS concluded that the President was negligent and did not fulfil his constitutional provisions. The President is seen as denying the obligation to be responsible to the MPRS and only stating that he is solely responsible for the GBHN. Article 1 paragraph (2) of the Indonesian Constitution 1945 has emphasized that sovereignty is in the hands of the people and is carried out entirely by the People's Consultative Assembly.

The resolution exacerbated the situation, and the Memorandum of the MPRS Special Session in 1967 from the DPR GR whose points stated:⁴⁷ (1) President Soekarno has been unable to fulfil his constitutional responsibilities, as befits a mandate to the MPRS; (2) President Soekarno has been unable to carry out the guidelines and decisions of the MPRS, as befits a mandate to the MPRS. In addition, to the President's Nawaksara

⁴⁵ ZOELVA, Hamdan. **Impeachment Presiden: Alasan Tindak Pidana Pemberhentian Presiden Menurut UUD 1945**. Jakarta: Konstitusi Press, 2005. p. 91-92.

⁴⁶ ZOELVA, Hamdan. **Impeachment Presiden: Alasan Tindak Pidana Pemberhentian Presiden Menurut UUD 1945**. Jakarta: Konstitusi Press, 2005. p. 93-94.

⁴⁷ ZOELVA, Hamdan. **Impeachment Presiden: Alasan Tindak Pidana Pemberhentian Presiden Menurut UUD 1945**. Jakarta: Konstitusi Press, 2005. p. 95-96.

speech, the MPRS is of the view that:⁴⁸ (1) Nawaksara's speech and its complements are not following the will and wishes of the people and the MPRS; (2) There has been an announcement of the transfer of power to General Suharto on February 20, 1967; (3) There are findings that indicate that Soekarno has carried out a policy that indirectly benefits the movement of the S/PKI. On these grounds, the MPRS rejected President Soekarno's accountability report and dismissed him from his position as President.

From the explanation above, the mechanism for the dismissal of President Soekarno is more dominantly carried out at the MPRS level, both regarding the request for accountability of the President and an assessment of the reasons for his dismissal.

2.3.2. *Impeachment of Abdurrahman Wahid*

The polemic regarding Bulog's Yanatera funds and the Sultan of Brunei Darussalam's aid fund of Rp Thirty-five billion and US\$ 2 million, respectively, has brought the name of President Abdurrahman Wahid. Due to this polemic, 236 DPR's members proposed using their right to investigate the two cases. Therefore, on September 5, 2000, a Special Committee (Pansus) of the DPR RI was officially formed to investigate these cases.

After working for 4.5 months, the findings of the Special Committee concluded:⁴⁹ (1) Regarding the Bulog Yanatera case, the Pansus considered that it was strongly suspected that President Abdurrahman Wahid played a role in the disbursement and use the funds; (2) As for the case of the Sultan of Brunei's aid fund, the Special Committee views that the President's inconsistency regarding the issue of the Sultan of Brunei Darussalam's assistance. It shows that the information from the President to the public is invalid. Therefore, the DPR decided:⁵⁰ (1) Receive and approve the report on the work of the Special Committee and decide to follow up by submitting a memorandum to remind that President Abdurrahman Wahid has seriously violated the State Policy. The point of the violation is Article 9 of the 1945 Constitution concerning the Oath of Office, as well as violating the Decree of the People's Consultative Assembly of the Republic of Indonesia No. XI/MPR/1998 concerning State Administration that is clean and free from KKN; (2) Regarding the alleged violation of the law, will return the settlement based on the applicable legal provisions.

Two things need to be considered in constructing the DPR's conclusions. First, the DPR distinguishes that there are two violations against President Abdurrahman

⁴⁸ INDONESIA. **Ketetapan Majelis Permusyawaratan Rakyat Sementara tentang Pencabutan Kekuasaan Pemerintahan Negara dari Presiden Soekarno.** Ketetapan MPR No. XXXIII/-MPRS/1967.

⁴⁹ Decision of the House of Representatives of the Republic of Indonesia Plenary Meeting on 1 February 2001. See ZOELVA, Hamdan. **Impeachment Presiden:** Alasan Tindak Pidana Pemberhentian Presiden Menurut UUD 1945. Jakarta: Konstitusi Press, 2005. p. 100-101.

⁵⁰ Decision of the House of Representatives of the Republic of Indonesia Plenary Meeting on 1 February 2001. See ZOELVA, Hamdan. **Impeachment Presiden:** Alasan Tindak Pidana Pemberhentian Presiden Menurut UUD 1945. Jakarta: Konstitusi Press, 2005. p. 100-101.

Wahid: violations of the State Policy and the Criminal Law. Settlement of State Policy violations is followed up with a memorandum to the President. In contrast, violations of criminal law are submitted to legal processes by applicable legal provisions. Second, the Special Committee shifted the substance of the case from previously related to Abdurrahman Wahid's involvement in the case of Bulog Yanatera funds and the Sultan of Brunei's financial assistance to a violation of the President's oath of office and a violation of MPR Decree No. XI/MPR/1998.

Based on this decision, the DPR RI submitted the first Memorandum to the President on February 1, 2001, then the second Memorandum on May 1, 2001. As a follow-up, the Special Session of the People's Consultative Assembly of the Republic of Indonesia was held from August 1 to 7, 2001 with the schedule of accountability of President Abdurrahman Wahid. But before that happened, President Abdurrahman Wahid issued a policy of replacing the National Police Chief, S. Bimantoro with Chaeruddin Ismail. This replacement is contrary to MPR Decree No. VI/MPR/2000 Article 7 paragraph (3) that the DPR RI must approve the dismissal and appointment of the National Police Chief. Therefore, the agenda for the Special Session of the People's Consultative Assembly of the Republic of Indonesia was accelerated to July 21-23 2001. However, in the early hours of July 23, 2001, through the Decree of the President of the Republic of Indonesia, President Abdurrahman Wahid froze the MPR RI and the Golkar.⁵¹ Due to this series of events, the MPR RI finally dismissed President Abdurrahman Wahid. The President was declared to have violated the State Policy due to his absence from the Special Session of the People's Consultative Assembly in 2001 and the issuance of the Presidential Decree of the Republic of Indonesia on July 23, 2001.

Based on the explanation, President Abdurrahman Wahid's impeachment shows the DPR's more dominant role. The involvement of the MPR is still being considered at the final decision to decide on the dismissal of the President because the President is the mandate of the MPR, so the MPR is then authorized to appoint and dismiss the President.⁵²

3. THE PROBLEM WITH THE IMPEACHMENT PROCESS

3.1. Constitutional Law Perspective

Theoretically, impeachment is divided into several forms. Naoko Kada divides impeachment into two models, namely legislative-dominant and judicial-dominant. This division is based on the authority to decide on an impeachment process.

⁵¹ ZOELVA, Hamdan. **Impeachment Presiden: Alasan Tindak Pidana Pemberhentian Presiden Menurut UUD 1945**. Jakarta: Konstitusi Press, 2005. p. 102-103.

⁵² ZOELVA, Hamdan. **Impeachment Presiden: Alasan Tindak Pidana Pemberhentian Presiden Menurut UUD 1945**. Jakarta: Konstitusi Press, 2005. p. 104.

Legislature-dominant is a model of the impeachment mechanism that gives power to the legislature as the final decision maker on whether the President can be dismissed or not. Meanwhile, the judiciary-dominant model is a model of the impeachment mechanism that gives authority to the judiciary as the final decision on whether the President can be dismissed or not.⁵³

Besides Naoko Kada, Anibal Perez Linan also classified the models of impeachment on the same basis as Naoko Kada. However, Linan divides impeachment into three models, namely the congressional model, judicial model, and mixed model. The congressional model is when the final decision to dismiss the President is in the hands of the legislature. Meanwhile, the judicial model is when the final decision in the process of removing the President is in the hands of the judicial institution. There is also a mixed model: the combination of the congressional and judicial models.⁵⁴ If the accusation against the President is related to the general criminal code, then the Supreme Court carries an impeachment trial. However, if the allegations against the President are related to criminal rules related to office, then the Senate, which is the second chamber, is carried out an impeachment trial.⁵⁵

There is also a division of impeachment models based on the legislature's role in impeachment, which is divided into three: the American model, the judiciary-dominant model, and the unicameral model. An American model is a form of impeachment that places the first chamber as the party making the accusation or initiating the impeachment process and the second chamber acting as the jury. Meanwhile, the judiciary-dominant model is a form of impeachment that gives authority to representative institutions to hold trials conducted by judicial institutions. A unicameral model is a form of impeachment that places the same legislature as the one who made the accusation or who initiated the impeachment process at the same time that gives the final decision.⁵⁶

Referring to the theory above, Indonesia is one country that uses the congressional model because the final decision is in the People's Consultative Assembly. However, the process still involves the Constitutional Court in terms of legal justification related to the opinion of the DPR regarding alleged violations committed by the President and/or Vice President. Processes with this model can potentially cause problems from a constitutional law point of view.

⁵³ KADA, Naoko. **Politics of Impeachment in Latin America**. San Diego, 2002. 100-110 p. Thesis (Doctorate) – Doctorate in Law Program, University of California.

⁵⁴ PEREZ-LINAN, Anibal. **Presidential Impeachment and the New Political Instability in Latin America**. New York: Cambridge University Press, 2007. p. 133-143.

⁵⁵ DOVAL, Gisela Pereyra; ACTIS, Esteban. The Political and Economic Instability of Dilma Rousseff's Second Government in Brazil: Between Impeachment and the Pragmatic Turn. **India Quarterly**, s.1., s.n., v. 72, n. 2, p. 120-131, 2016.

⁵⁶ HINOHOSA, Victor J; PÉREZ-LIÑÁN, Anibal S. Presidential Survival and the Impeachment Process: The United States and Colombia, **Political Science Quarterly**, v.121, n. 4, p. 654-655, 2006.

First, what is the process of the special committee of the DPR to obtain valid materials and evidence related to alleged violations of the constitution by the President and/or Vice President? Will the DPR Special Committee work on its own, or will it ask for help from law enforcement officials to find evidence? If so, will the police respond to the request of the special committee of the DPR because the police are under the President? In this case, there are no clear rules regarding how the DPR process collects valid supporting materials and evidence.

Second, is the word 'opinion' referred to in Articles 7A and 7B of the 1945 Constitution of the Republic of Indonesia a political or legal opinion? If it is a political opinion, then the DPR's statement has the potential to be influenced by likes and dislikes without a clear framework or standard. This condition can be found in the impeachment process of Abdurrahman Wahid, who in the decision to dismiss him was deemed to have violated the direction of the state. In fact, state policy (*Haluan Negara*) is a form of political framework and is only a general guideline in politics, law, economics, and so on.

Third, the Constitutional Court's decision is final and binding, while the impeachment process in Indonesia places the Constitutional Court in the middle of the process. What if the Constitutional Court's decision confirms the DPR's opinion but it turns out that the MPR did not demote the President? If so, will the Constitutional Court's decision not be final and binding? Furthermore, the fourth problem is if the President is in the process of impeachment, should he be suspended or continue to carry out his position? This issue has not been explicitly regulated in the laws and regulations in Indonesia.

3.2. Criminal Law Perspective

Provisions regarding the process of impeachment of the President and/or vice President can be seen in Constitutional Court Regulation Number 21 of 2009. Article 19 paragraph (3) of Constitutional Court Regulation Number 21 of 2009 explains that if the President and/or vice President is guilty of a criminal act, then the verdict is "justifies the opinion of the DPR because that the President and/or Vice President is proven to have violated the law and the President and/or Vice President no longer meet the requirements as President and/or Vice President."

Article 20 of the Constitutional Court Regulation Number 21 of 2009 states that it is possible for someone who has been demoted as President and/or vice President to be brought forward in a criminal, civil, or state administrative trial following their respective principles and procedural law. From the description of Article 19 paragraph (3) and Article 20 of the Constitutional Court Regulation Number 21 of 2009, it can be interpreted that if a president and/or vice President is proven to have committed a

crime in an impeachment trial at the Constitutional Court, then he cannot be considered 'proven' to have committed a crime because it is still possible to commit a crime. Crime is tried in the criminal justice system. This 'proven' phrase can lead to *ne bis in idem* because the person can be tested in another judicial system.

The principle of *ne bis in idem* has been recognized in almost all criminal law systems worldwide. This principle aims to limit the state's power (through its law enforcement officers) to prosecute someone.⁵⁷ In the common law state system, the principle of *ne bis in idem*, or double jeopardy, refers to the protection of legal certainty and one's individual rights.⁵⁸ In the civil law state system, in addition to guaranteeing legal certainty, the principle of *ne bis in idem* also aims to ensure the protection of human rights.⁵⁹ Due to their different nature, regulations regarding the principle of *ne bis in idem* can be found in various hierarchies of laws and regulations, such as rules regarding human rights, restrictions regarding criminal procedural law, to those contained in the constitution of a country.

The meaning of the word *ne bis in idem* can be divided into three elements. The first is the element of the subject of the actor. The second is related to the meaning of bis to explain the importance of court decisions that have permanent legal force (*res judicata*). Third, it related to idem to explain the definition of 'the same action'.

The first element *ne bis in idem* is related to the subject of the perpetrator. In this element, what is meant by the subject of the perpetrator is the same person who is made a defendant against a decision that has permanent legal force and then is later prosecuted as a defendant for the same case.⁶⁰

The second element is related to the 'bis'. According to Bas Van Bockel, what is meant by 'final' is that there is no longer an ordinary procedure for litigants to file an objection (appeal/cassation) to a court decision.⁶¹ According to Indonesian criminal law, the meaning of 'bis' means that there is a court decision with permanent legal force against the same crime.⁶² There are several questions related to the importance of 'bis', should a criminal court decision be made? What about other (absolute) court

⁵⁷ WASMEIER, Martin. *Ne bis in idem and The Enforcement Condition: Balancing Freedom, Security and Justice?*. **New Journal of European Criminal Law**, s.l., vol. 5, n. 4, p. 534-555. 2014.

⁵⁸ ROGALSKI, Maciej. *The Exceptions to Res Judicata and the Prohibition of Ne Bis in Idem in Criminal Law*. **International Law Yearbook**, Polska, p. 103-138, 2017-2018.

⁵⁹ WASMEIER, Martin. *Ne Bis in Idem and The Enforcement Condition: Balancing Freedom, Security and Justice?*. **New Journal of European Criminal Law**, s.l., vol. 5, n. 4, p. 534-555. 2014. Also see VERVAELE, John A. E., *The Transnational Ne Bis in Idem: Principle in the EU Mutual Recognition and Equivalent Protection of Human Rights*. **Utrecht Law Review**, Utrecht, vol.1, p. 100-118. 2005.

⁶⁰ RIZQI, Khodijah Puteri Miftahul. *Upaya Hukum yang Dapat Dimohonkan Terhadap Putusan Perkara Pidana yang Ne Bis in Idem*. **Jurist-Diction**, Surabaya, vol. 4, n. 1, p. 195-212, 2021.

⁶¹ VAN BOCKEL, Bas. **Ne Bis in Idem in EU Law**. Cambridge: Cambridge University Press, 2016. p. 13.

⁶² HIARIEJ, Edward O.S. **Prinsip-Prinsip Hukum Pidana: Edisi Revisi**. Yogyakarta: Cahaya Atma Pustaka, 2016. p. 423.

decisions? Related to this, in its development, the meaning of 'bis' includes criminal justice and different administrative courts as long as the decision has administrative sanctions, which also cause a deterrent effect like criminal sanctions.⁶³ Unfortunately, this development is not yet recognized in Indonesian criminal law. The meaning of 'bis' in Indonesia is limited to court decisions related to the subject matter of the crime committed by the defendant. Decisions that can be written in the judge's order can be in the form of: Free Decision (*vrijspraak*), Release Decision (*Ontslag van rechtsvervolgning*) or Decision in the form of imposing a sentence on the defendant (*sentencing*).

Next is related to the meaning of *Idem*. The definition of *idem* is still a debate among academics. What is meant by "the same act?" The first view interprets *idem* in a narrow sense, which is only associated with the article used by the Public Prosecutor in the previous case (based on legal qualification).⁶⁴ Other views have different opinions on interpreting the meaning of *idem*. This view sees the meaning of *idem* not only as a legal qualification but includes actions that have substantial facts in common (substantially have the same points) with activities that have been punished in the previous case.⁶⁵ These three important elements need to be considered to assess whether a case is included in the scope of *ne bis in idem* according to criminal law.

Suppose the three 'ne bis in idem' elements are related to the research conducted. In that case, the question arises whether the trial process conducted by the Constitutional Court in the event of an impeachment due to a President and/or Vice President committing a criminal act becomes an obstacle for the Prosecutor to prosecute the President and/or vice President. or the Vice President because there has been a judge's decision with permanent legal force? The question relates to the element of 'bis'. In Indonesian criminal law, 'bis' is a final court decision on the same crime. The trial of the Constitutional Court did discuss the criminal acts suspected of the President and/or Vice President at the suggestion of the DPR. However, the decision of the Constitutional Court will later be used as material for the MPR's consideration to revoke the positions of President and/or Vice President. In other words, not as a final decision to revoke the position of President and/or Vice President.

As previously mentioned, the meaning of "bis" in Indonesia is still limited to the trial of the principal criminal case. The main point is whether the decision of the Constitutional Court in the impeachment trial touches the subject matter of the case or not. Keep in mind that impeachment is a political process. There are no criminal sanctions

⁶³ TRECHSHEL, Stefan. **Human Rights in Criminal Proceedings**. Oxford: Oxford University Press, 2005. p. 389.

⁶⁴ CONWAY, Gerard. *Ne Bis in Idem in International Law*. **International Criminal Law Review**, Leiden, vol. 3, n. 3, p. 217-244. 2003.

⁶⁵ WYNGAERT, Christine Van Den.; STESENS, Guy. *The International Non Bis In Idem Principle: Resolving Some of the Unanswered Questions*. **The International and Comparative Law Quarterly**, Cambridge, vol. 48, n. 4, p. 779-804. 1999.

or imprisonment in the impeachment process.⁶⁶ Criminal justice procedures can still be carried out after the revocation of the position of the President and/or Vice President if it is proven that there is a criminal act in the impeachment process.⁶⁷

Furthermore, *objectum litis* impeachment of the President and/or Vice President is an act of violating the law by the President and/or Vice President which causes him to no longer meet the requirements as President and/or Vice President. In other words, the object of impeachment is the revocation of the positions of the President and/or Vice President to become ordinary individuals. Moreover, what is being tried in the trial of the Constitutional Court is the position of the President and/or Vice President, not the President and/or Vice President as individuals. Therefore, the trial of the President and/or Vice President in the impeachment process does not prevent the Prosecutor from prosecuting the President and/or Vice President. The impeachment process does not preclude the criminal responsibility of a President and/or Vice President. Prosecutors can still sue the President and/or Vice President in a trial in a district court and do not violate the principle of *ne bis in idem*.

4. THE IMPEACHMENT: WHAT'S NEXT AFTER IMPEACHMENT?

As previously explained, the impeachment process in each country varies depending on the arrangements contained in each country's constitution. The next question is if the impeachment process has been completed with a decision that the President must be removed from office, can the person who previously served as President be criminally prosecuted to account for his actions?

In Indonesia, based on Article 20 Constitutional Court Regulation Number 21 of 2009, it is explained that the decision of the Constitutional Court that grants the request of the DPR does not rule out the possibility of the President and/or Vice President being proposed in criminal, civil, and/or state administrative trials following the principles and respective procedural laws. Based on this provision, if the President has been impeached in Indonesia, there is still the possibility of being prosecuted in a criminal, civil or state administrative manner.

Theoretically, this provision has justification because the initial purpose of the impeachment process is not to punish individuals but to protect society from abuse of

⁶⁶ FATKHUROHMAN. Menguji Kewenangan MPR RI pada Sidang Paripurna atas Putusan Mahkamah Konstitusi Mengenai Pemakzulan Presiden dan/atau Wakil Presiden di Indonesia (Sebuah Uji Kekuatan antara Keputusan Hukum dan Keputusan Politik). *Jurnal Majelis*, Jakarta, vol. 12, p. 87-106. 2019.

⁶⁷ FATKHUROHMAN. Menguji Kewenangan MPR RI pada Sidang Paripurna atas Putusan Mahkamah Konstitusi Mengenai Pemakzulan Presiden dan/atau Wakil Presiden di Indonesia (Sebuah Uji Kekuatan antara Keputusan Hukum dan Keputusan Politik). *Jurnal Majelis*, Jakarta, vol. 12, p. 87-106. 2019.

power.⁶⁸ This is because in the impeachment process, the person being tried is a public position held by that person, not the natural person concerned.

In the criminal justice process, the President and/or Vice President will be tried like ordinary individuals. The President and/or Vice President who has been impeached will still be prosecuted like ordinary individuals. It can be concluded after the impeachment process is carried out, the President and/or Vice President can still be tried in criminal justice as usual, starting from an investigation to being decided by a panel of judges in criminal trials like individuals in general. The opinion of the DPR which is the origin of the impeachment of the President and/or Vice President or matters contained in the trial of the Constitutional Court can be used as evidence in a criminal trial.

5. CONCLUSION

The regulation regarding impeachment in Indonesia is regulated in Articles 7A and 7B of the 1945 Indonesian Constitution. This arrangement is better than the arrangement in the previous constitution used in Indonesia. At least, the article regulates three things. First, the institutions involved in the impeachment process. Second, the reason for the dismissal of the President and/or Vice President. The third is the impeachment process for the President and/or Vice President.

The impeachment process in Articles 7A and 7B of the 1945 Indonesian Constitution starts from the DPR as an institution that prosecutes if there are allegations of constitutional violations committed by the President. Furthermore, the DPR will exercise the right to express its opinion if valid material and evidence are found regarding the President's alleged violations of the constitution. This right will be used as the object of the application (*objectum litis*) in the trial at the Constitutional Court.

The trial process in the Constitutional Court will follow Constitutional Court Regulation Number 21 of 2009 with three types of verdicts: unacceptable, rejected, or confirming the opinion of the DPR. If the Constitutional Court's decision is unacceptable or rejected, the President's impeachment process will stop because the allegations are not strong or are not proven. However, if the Constitutional Court decides to justify the opinion of the DPR if there is an alleged violation of the constitution, then the impeachment process will continue with the DPR asking the MPR to hold a special session. In the MPR's Special Trial, it will be determined whether the President is dismissed from his position or not through a voting mechanism by MPR members.

Suppose the President is successfully removed from his position. In that case, the criminal justice procedure can still be carried out after the revocation of the role of the President and/or Vice President if it is proven that there is a criminal act in the

⁶⁸ UNITED STATES, Department of Justice, Office of Legal Counsel. **Legal Aspects of Impeachment: An Overview**. Washington, D.C.: U.S. Department of Justice, 1974. p. 9.

impeachment process. This is possible because it is not included in *ne bis in idem*. Suppose in the impeachment process, the object of the petition is the opinion of the DPR regarding the alleged violation of the constitution committed by the President, then in the criminal justice. In that case, the object of the trial is the criminal act committed by the President. In addition, when he is demoted from the position of President, that person will return to being an ordinary citizen. The ability of a President who has been removed from office to be prosecuted and tried again has also been stated in Article 20 of Constitutional Court Regulation Number 21 of 2009. Thus, the impeachment process in Indonesia does not rule out the possibility for the prosecutor to be able to prosecute and the district court to try again someone who has been demoted from the position of President.

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