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## Impeachment as a Means of Presidential Removal in the Study of Indonesian Constitutional Law Post-Reform

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**Abstract:** This article explores the implementation of criminal sanctions against the President of Indonesia for constitutional violations, focusing on the interplay of executive power and oversight mechanisms. It emphasizes the importance of understanding the limitations of law enforcement agencies and the necessity of preventive measures to avert such violations, aiming to maintain constitutional integrity and stability. The study critically examines the impeachment process as outlined in Articles 7A and 7B of the 1945 Constitution, highlighting its classification as a political decision and the roles of key institutions such as the MPR (People's Consultative Assembly), DPR (House of Representatives), and MK (Constitutional Court). The findings reveal that the impeachment mechanism, while necessary for upholding the rule of law, faces challenges including politicization and inefficacy in resolving political conflicts, which may lead to societal polarization. The article calls for a thorough evaluation of the impeachment process to identify weaknesses and enhance transparency, fairness, and community participation. Ultimately, it argues that a well-functioning impeachment mechanism is crucial for preserving democracy, maintaining the integrity of state institutions, and ensuring justice within the Indonesian political system.

**Keyword:** Impeachment, Presidential, Constitutional, Law enforcement, Human rights

### INTRODUCTION

In the context of implementing criminal sanctions against the President for constitutional violations, it is necessary to consider various aspects related to executive power and the existing oversight mechanisms. In addition, it is also important to understand the limitations of the powers held by law enforcement agencies in enforcing the law and maintaining the balance of power among the branches of government (Mujaddidi, 2021). In addition, it is also important to pay attention to preventive measures that can be taken to prevent constitutional violations by the President and to create a deterrent effect for those who commit constitutional violations.

It is important to maintain the integrity and stability of the constitution and to prevent the occurrence of a constitutional crisis in the future. Thus, the implementation of criminal sanctions against the President must be carried out carefully and proportionally, without violating the principles of democracy and human rights (Katimin & Farida, 2020). In addition,

the necessity of cooperation between the executive, legislative, and judicial branches in overseeing and ensuring compliance with the constitution is also key to maintaining the stability of a democratic government system.

The cooperation between the three institutions can also ensure that no single party holds absolute power in governing. Thus, every step taken by the government will be more assured of its compliance with the constitution and the rights of citizens. In addition, collaboration between institutions can also minimize the occurrence of conflicts of interest that could harm society as a whole. Thus, efforts to maintain the integrity of the constitution and the stability of government must be a top priority for every country that adheres to a democratic system (Hardjaloka Jl Sawah Lio No & Lima -Jakarta, 2012).

Only the impeachment procedure, as outlined in Articles 7A and 7B of the Republic of Indonesia's 1945 Constitution, may result in the removal of the President. This research explores two aspects: first, how the method for the dismissal of the president and/or vice president is stated in the 1945 Constitution of the Republic of Indonesia following the revisions. Secondly, what does it mean to be a political choice when the removal of the president and/or vice president via the impeachment process? This study adopts a legislative approach as part of its normative methodology (Hufron, 2016). The study concludes that, first, the mechanism for the dismissal of the president and/or vice president after the amendment involves three institutions: the MPR, DPR, and MK, based on the fundamental reason of immoral acts that contradict the principles of legality and legal certainty. Secondly, the absolute authority in impeachment matters is a constitutional right of the MPR, as the Constitutional Court is only given the obligation to provide legal opinions to the DPR. This is a step towards a rule of law that resolves political cases with legitimate evidence. The removal of the president and/or vice president through the impeachment process is still dominant, considering that after the Constitutional Court decided that the impeachment case would be brought to the People's Consultative Assembly (MPR), and the MPR consists of the House of Representatives (DPR).

However, some parties criticize this impeachment process as being vulnerable to politicization and manipulation by those with specific interests. In addition, the impeachment process is also considered less effective in resolving political conflicts, as it tends to trigger tension and polarization in society. Therefore, a thorough evaluation of this impeachment mechanism is necessary to maintain political stability and justice within the rule of law (Rahmat Ade et al., 2024).

An evaluation of this impeachment mechanism needs to be conducted carefully and meticulously, in order to identify potential weaknesses and necessary improvements. As a law enforcement institution, the Constitutional Court must ensure that the impeachment process is conducted transparently, fairly, and in accordance with the law. In addition, community participation and the involvement of other stakeholders also need to be enhanced in this process, so that the decisions made can reflect the will and common interests. Thus, the impeachment mechanism can serve as an effective instrument in maintaining the integrity and credibility of state institutions, as well as strengthening democracy and the rule of law in Indonesia (Dadi Junaedi Iskanda, 2017).

It is also important to ensure that the impeachment process is not misused for political or personal interests. The Constitutional Court must remain independent and not be influenced by pressure from any party, so that the decisions made are truly based on the existing evidence and law. Thus, this institution can maintain public trust in justice and the continuity of democracy in Indonesia (Rahman, 2017).

In addition, the role of the Constitutional Court is also very important in upholding the principles of democracy and the rule of law. By maintaining the integrity and credibility of state institutions, the Constitutional Court can ensure that the executive, legislative, and judicial

powers remain balanced and that there is no abuse of power. Thus, this institution can serve as the last guardian in upholding justice and the continuity of democracy in Indonesia.

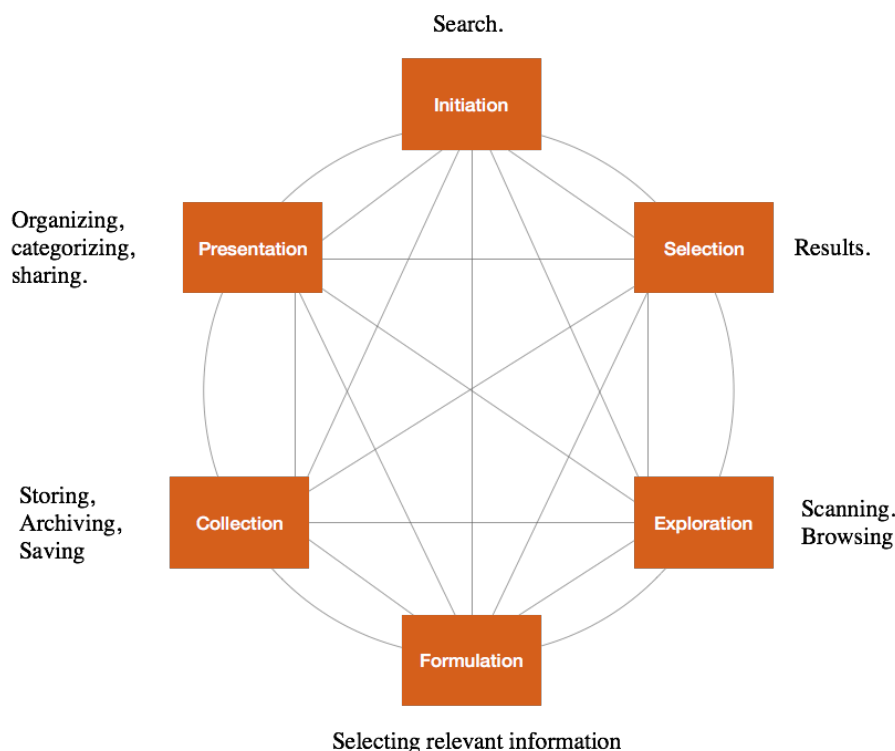
Through the decisions made, the Constitutional Court can also ensure that every citizen has equal rights in the eyes of the law and that no discrimination occurs. This will strengthen the democratic principles that underlie the state of Indonesia. In addition, the Constitutional Court also plays a role in resolving conflicts between state institutions and ensuring the protection of human rights. Thus, the Constitutional Court not only serves as the final guardian of justice but also as the ultimate protector of democracy in Indonesia.

It is interesting to examine whether criminal charges or impeachment against the president can be implemented within the constitutional system of Indonesia. Considering that no Indonesian president has ever been convicted or impeached since the reform era of 1998. This indicates that the implementation of criminal charges and impeachment against the president indeed poses a significant challenge within the Indonesian legal system. Nevertheless, the existence of the Constitutional Court as an institution for law enforcement and a guardian of democracy is expected to provide assurance that any legal violations committed by the president will be addressed fairly and transparently. Thus, the existence of the Constitutional Court is very important in maintaining the balance of power and justice in Indonesia.

Therefore, this paper attempts to delve deeper into the issues of criminal law or impeachment from the perspective of constitutional law in Indonesia. In this context, the Constitutional Court plays a vital role in upholding the rule of law and maintaining the balance of power among the executive, legislative, and judicial branches. As an independent institution, the Constitutional Court is expected to ensure that the legal process against the president is conducted fairly without political pressure. Thus, the power of the president will not be misused and justice can be realized within the Indonesian legal system.

## **METHOD**

Employing the library search strategy, this research is a normative study. The methodology employed pertains to the process of the president and/or vice president being removed from office. As a major way of obtaining a degree of scientific research in line with the formulation of the problems and the study's objectives, this research method is adopted and is one of the aspects of the topics to be examined. The study will involve analyzing various case studies and legal frameworks surrounding the impeachment process. By utilizing the library search strategy, relevant scholarly articles and legal documents will be examined to provide a comprehensive understanding of the topic. Ultimately, this normative study aims to contribute to the existing literature on presidential impeachment and provide valuable insights for policymakers and scholars in the field.



Picture 1: Research Flow of Literature Study

## RESULTS AND DISCUSSION

### The 1945 Constitution Post-Amendment's Procedure for Removing the President and/or Vice President

Section 4 of the UUD 1945 states clearly that the president must follow the UUD in carrying out his duties and that the president's advisor is the Vice President. This applies to both before and after the UUD 1945 changes. This particular process of educating the nation through specialized training is one way to put the nation's hukum principles into practice. According to this concept, the law, politics, and economics are the three main pillars of national life that must be upheld. According to Jimly Asshiddiqie, customs based on law were originally practiced in the penduduk's earlier days (Purnomo, n.d.).

According to MPR Decree No. III/MPR/1978 regarding the Position and Work Procedures of State Institutions, "the President is no longer subject to and accountable to the MPR and at the end of their term provides accountability for the implementation of the State Guidelines" following the 1945 Constitutional amendment. A vote of no confidence or other political grounds cannot be used by the MPR as an excuse to remove the President and/or Vice President (Syawawi, n.d.).

After the amendment of the 1945 Constitution, the process for the dismissal of the president has been detailed in the 1945 Constitution, which specifies the reasons for the dismissal of the president and/or vice president during their term in Article 7A (Mihradi & Lathif, 2020). This article outlines the reasons for the president and/or vice president to be dismissed, while Article 7B provides the legal basis for impeachment, which is formulated as follows:

Article 7A of the 1945 Constitution states, "The president and/or vice president may be dismissed during their term of office by the People's Consultative Assembly upon the proposal of the People's Representative Council, either if proven to have committed legal violations in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful

acts, or if proven to no longer meet the requirements as president and/or vice president."(Komisi Yudisial, n.d.)

The president and/or vice president can be dismissed during their term solely for one of the following reasons:

- a) Committing legal violations in the form of treason against the state,
- b) Corruption,
- c) Bribery,
- d) Other serious criminal offenses,
- e) Disgraceful conduct,
- f) Proven to no longer meet the requirements as president and vice president.

Article 7B states as follows:

1. The proposal for the dismissal of the President and/or Vice President may be submitted by the House of Representatives to the People's Consultative Assembly only after first requesting the Constitutional Court to examine, adjudicate, and decide on the opinion of the House of Representatives that the President and/or Vice President has committed legal violations in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts; and/or the opinion that the President and/or Vice President no longer meets the qualifications to serve as President and/or Vice President.
2. The opinion of the House of Representatives that the President and/or Vice President has committed legal violations or no longer meets the requirements to be President and/or Vice President is in the context of carrying out the supervisory function of the House of Representatives.
3. The submission of a request from the House of Representatives to the Constitutional Court can only be made with the support of at least 2/3 of the total members of the House of Representatives present in a plenary session attended by at least 2/3 of the total members of the House of Representatives.
4. The Constitutional Court is required to examine, adjudicate, and decide fairly on the opinion of the House of Representatives no later than ninety days after the request from the House of Representatives is received by the Constitutional Court.
5. If the Constitutional Court decides that the President and/or Vice President has been proven to commit legal violations in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts; and/or it is proven that the President and/or Vice President no longer meets the requirements to serve as President and/or Vice President, the House of Representatives will hold a plenary session to forward the proposal for the dismissal of the President and/or Vice President to the People's Consultative Assembly.
6. The People's Consultative Assembly is required to hold a session to decide on the proposal from the House of Representatives no later than thirty days after the People's Consultative Assembly receives the proposal.
7. The decision of the People's Consultative Assembly on the proposal to dismiss the President and/or Vice President must be made in a plenary session of the People's Consultative Assembly attended by at least 3/4 of the total members and approved by at least 2/3 of the members present, after the President and/or Vice President have been given the opportunity to present an explanation in the plenary session of the People's Consultative Assembly.

Article 7B paragraph (1) stipulates that a proposal for the dismissal of the president and vice president can be submitted by the DPR to the MPR only after first requesting the Constitutional Court (MK) to examine, adjudicate, and decide on the DPR's opinion that the president and vice president have committed legal violations in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts; and/or the opinion that the

president and vice president no longer meet the qualifications to serve as president and vice president, commonly known as the impeachment process.

Regarding the procedure for the dismissal of the President before the end of their term, Article 7 of the MPR RI Decree No. III/MPR/1978 states that the DPR submits a memorandum to remind the President, and if within a period of 3 months the President does not heed the first memorandum, the DPR will submit a second memorandum. Furthermore, if within a period of 1 month the second memorandum is not heeded by the President, the DPR may request the MPR to hold a Special Session to demand accountability (Misbahuddin, 2019).

This provision is motivated by the desire to implement the principle of checks and balances among state institutions (the Parliament, the President, and the Constitutional Court) as well as the concept of a rule of law (Sunarto, 2016). In accordance with its authority, the DPR as a representative institution proposes the dismissal of the president and vice president during their term as part of its supervisory function, while the Constitutional Court carries out the legal process regarding the dismissal proposal by examining, deliberating, and making a decision on the DPR's opinion. The DPR's opinion that the president and vice president have committed legal violations or no longer meet the requirements to serve as president and vice president is in line with the implementation of the DPR's supervisory function as stipulated in Article 7B paragraph (2) of the 1945 Constitution (Tibaka, 2017).

Impeachment is synonymous with the word accuse. (*menuduh*). In historical studies, it is believed that impeachment originated in the 14th century in England. The parliament uses the impeachment institution to process high-ranking officials and very powerful individuals involved in corruption cases or other matters that do not fall under the jurisdiction of ordinary courts (Ilham Imaman, 2017).

The process of dismissing the President and/or Vice President can be initiated by the House of Representatives to the People's Consultative Assembly only after first submitting a request to the Constitutional Court to examine, adjudicate, and decide on the opinion of the House of Representatives that the President and/or Vice President has committed legal violations in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts; and/or the opinion that the President and/or Vice President no longer meets the qualifications to serve as President and/or Vice President.

The application of impeachment in the dismissal of the president and/or vice president, impeachment is one of the extraordinary oversight functions of the legislative body over the executive and judicial branches. Impeachment is a political action that results in removal from office and the possibility of being barred from holding a position, rather than a criminal penalty or the imposition of civil damages.

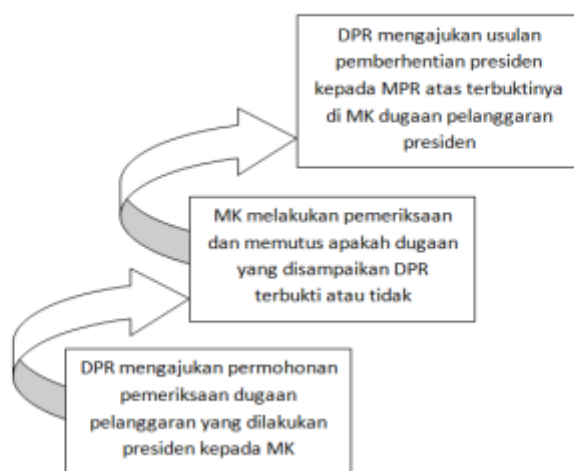
The dismissal of the President and/or Vice President through the impeachment mechanism is outlined in Article 7B of the 1945 Constitution. The DPR, as a legislative body, has the full right to propose the dismissal of the president to the MPR. Because the DPR carries out oversight functions, it can argue that the president and/or vice president has committed unlawful acts; disgraceful actions and/or no longer meets the qualifications to serve as president.

The mechanism for the dismissal of the president and/or vice president is as follows:

1. The MPR is required to hold a plenary session to decide on the DPR's proposal regarding the dismissal of the president and/or vice president within a maximum of 30 days from the receipt of the proposal by the MPR.
2. The proposal from the DPR must be accompanied by a decision from the Constitutional Court stating that the president and/or vice president has been proven to have committed legal violations in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts and/or an opinion that the president and/or vice president no longer meets the qualifications to serve as president and/or vice president.

3. The MPR invites the president and/or vice president to provide an explanation regarding the proposal for their dismissal in a plenary session of the MPR. If the president and/or vice president do not attend to provide an explanation, the MPR will still make a decision on the proposal for the dismissal of the president and/or vice president. The MPR's decision on the proposal for the dismissal of the president and/or vice president must be made in a plenary session of the MPR attended by at least 3/4 of the total members and approved by at least 2/3 of the members present.

The impeachment mechanism regulated in Article 7B of the 1945 Constitution is more laden with political content than legal. In fact, the normative formulation that could lead to the dismissal of the president and/or vice president is closely tied to legal terminology, namely having committed legal violations such as treason against the state, corruption, bribery, other serious crimes, or disgraceful acts and/or the opinion that the president and/or vice president no longer meets the qualifications to serve as president and/or vice president.



Picture 2: The procedures outlined in the 1945 Constitution

### **The removal of the President through the impeachment process and/or the Vice President is referred to as a political decision**

The removal of the president and/or vice president through the impeachment process is a prosecution carried out by the House of Representatives, which can be motivated by political interests, subsequently proven through legal proceedings, namely from the House of Representatives to the Constitutional Court (Saharuddin Daming, 2015). The Constitutional Court is one of the judicial power institutions that handles cases of the dismissal of the President and/or Vice President in Indonesia, after considering the official proposal from the House of Representatives regarding allegations against the president and/or vice president deemed to violate Articles 7A and 7B of the 1945 Constitution of the Republic of Indonesia. This is based on its authority to fulfill its obligation, which is to adjudicate cases of legal violations committed by the president and/or vice president. If the President and/or Vice President resigns during the examination at the Court, the examination process is halted, and the application is declared void by the Constitutional Court. The legal basis for such resignation is stipulated in the Constitutional Court Regulation Number 21 of 2009 concerning Guidelines for Proceedings in Deciding the House of Representatives' Opinion on Allegations of Violations by the President and/or Vice President.

In Indonesia, the mechanism for the dismissal of the President and/or Vice President as regulated in Article 7B of the 1945 Constitution of the Republic of Indonesia differs from the 1945 Constitution prior to the amendments. Mahfud M.D., based on his research on various constitutions around the world, argues that theoretically, the removal of the President and/or

Vice President according to the 1945 Constitution of the Republic of Indonesia applies a mixed model between impeachment and the privileged forum of the process for removing the President and/or Vice President, which begins with political assessment and decision-making in the House of Representatives, indicating the application of the impeachment model. Next, the mechanism from the House of Representatives will proceed to examination and legal judgment by the Constitutional Court, which is seen as a form of special court to adjudicate legal violations committed by the President and/or Vice President during their term in office. (model forum privilegium).

The proposal for the dismissal of the president and vice president can be submitted by the DPR to the MPR only after first requesting the Constitutional Court (MK) to examine, adjudicate, and decide on the DPR's opinion that the president and vice president have committed legal violations, such as treason against the state, corruption, bribery, other serious crimes, or disgraceful acts, and/or the opinion that the president and vice president no longer meet the qualifications to serve in their positions. The MK is required to examine, adjudicate, and decide fairly on the DPR's opinion within a maximum of 90 days after the DPR's request.

After receiving the decision from the Constitutional Court, the MPR will hold a Plenary Meeting for the dismissal of the president. This plenary session must meet the quorum requirement of  $\frac{3}{4}$  of MPR members being present, and  $\frac{3}{4}$  of those present must agree to make a decision regarding the dismissal of the President and/or Vice President as proposed by the DPR. The MPR plenary meeting can decide to dismiss the president and/or vice president from their positions. However, the MPR can also decide not to dismiss the president and/or vice president from their positions.

1. The President is no longer subordinate to and accountable to the MPR. The President cannot be dismissed by the MPR during their term for reasons of a vote of no confidence or political reasons. The President can only be removed through the impeachment process as regulated in Articles 7A and 7B of the 1945 Constitution after the amendments.
2. The absolute authority in impeachment matters is a constitutional right of the MPR (People's Consultative Assembly), as the Constitutional Court is only obligated to provide legal opinions, which are solely for the DPR (House of Representatives). This represents a step towards a rule of law that resolves political issues with legal evidence compiled by the DPR. Therefore, the political intensity in impeachment cases still dominates, considering that after the Constitutional Court's decision, the impeachment matter is brought to the MPR, which also consists of members from the DPR. Essentially, impeachment in Indonesia can be categorized into two processes: the political process, commonly referred to as impeachment, and a special constitutional court for high-ranking officials who are indicated to have violated the law, known as forum privilegium.

There are two prominent differences, the first being that impeachment is an accusation or charge from members of the House of Representatives against the President and/or Vice President for violating the law as stated in the 1945 Constitution of the Republic of Indonesia. The process originates from members of the House of Representatives who come from political parties. If the legal case is initiated by a member of a political party, its content is political, even if a violation actually occurs, because the petitioner serves as a balance and overseer of government implementation, not to mention the coalition of political party groups that are always critical of the government. Legally, it is indeed valid and the absolute authority lies with that institution; however, in the process, the political tendencies are felt more strongly than the legal process. This is evidenced by the calculation of the support quota for the impeachment and the percentage levels of those present.



In the comparison of constitutions conducted, there are at least reasons for the Dismissal of the President and/or Vice President. At least based on the previous explanation, there are two legal grounds in the impeachment mechanism in the Republic of Indonesia, namely first, proven to have committed legal violations (in the form of treason against the state, corruption, bribery, other serious crimes, and disgraceful acts), and second, proven to no longer meet the requirements as President and/or Vice President. (atau dapat disebut dengan incompetent). In legal matters, the applicant can be an individual or a group if the respondent is suspected of committing a legal violation in any form; the legal complaint can be enforced. In another situation at the DPR, the complaint is not strong.

The DPR, as the applicant, also serves as the decision-maker in the case, meaning that the allegations put forward by the DPR are decided by the MPR, which is essentially the DPR itself. Impeachment is indeed decided constitutionally by the MPR, but the MPR is a court that acts on behalf of the people's representatives, not a legal court as it should be. Secondly, the privilege forum is a realization of a special court that handles state officials accused of abusing power. This court is established and presided over by judges whose expertise is beyond doubt, as their legal analysis is sharp and they are experienced in handling cases, possessing statesmanlike character, impartiality, and professionalism in upholding and enforcing justice. This forum is specifically for high-ranking state officials and not an ordinary court. In Indonesia, the realization of the privileged forum is the Constitutional Court.

## CONCLUSION

The mechanism for the dismissal of the president and/or vice president after the amendment involves three institutions: the MPR (People's Consultative Assembly), the DPR (People's Representative Council), and the MK (Constitutional Court), with the fundamental reason being actions deemed disgraceful that contradict the principles of legality and legal certainty. The MPR, as a representative body of the people, makes decisions based on political considerations, while the MK, as a judicial institution, determines the validity of the reasons for the dismissal of the president and/or vice president as charged by the DPR based on legal considerations.

The absolute authority in impeachment matters is a constitutional right of the MPR (People's Consultative Assembly), as the Constitutional Court is only obligated to provide legal opinions, which are solely for the DPR (House of Representatives). This represents a step towards a rule of law that resolves political issues with legal evidence compiled by the DPR. The political intensity in impeachment matters still dominates, considering that after the Constitutional Court's decision, the impeachment case is brought to the MPR, which also consists of members from the DPR. Essentially, impeachment in Indonesia can be categorized into two processes: the political process, commonly known as impeachment, and a special constitutional court for high-ranking officials who are indicated to have violated the law, referred to as forum privilegium. The process originates from members of the House of Representatives who come from political parties. If the legal case is initiated by a member of a political party, its content is political, even if a violation actually occurs, because the applicant serves as a balance and overseer of government implementation, not to mention the coalition of political party groups that are always critical of the government.

This mechanism needs to be reconsidered to prevent the dismissal of the President and/or Vice President solely for political reasons. The Constitutional Court, regarding the mechanism and procedures for the dismissal of the President and/or Vice President, is a good step towards realizing an impartial and independent judiciary; however, the Constitutional Court can only issue legal opinions, and the final decision remains in the hands of the People's Consultative Assembly (MPR).

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