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# The 2nd Proceeding "Indonesia Clean of Corruption in 2020"



"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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# JURIDICAL STUDIES ON SUBSTANCE AND PROCEDURE OF THE DISMISSAL OF THE PRESIDENT AND/OR VICE-PRESIDENT AFTER THE REFORMATION

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## ABSTRACT

Reformation era was proclaimed by the amendment of the 1945 Constitution (UUD 1945) of the Republic of Indonesia which was done by MPR since 1999 until 2002. The changes obviously gives consequences in regards to the substance and procedure of accountability of the President and/or Vice-President which were distinctive from the previous one which can be explored in the formulation of the 1945 Constitution of the Republic of Indonesia. The selection of the governmental system of Presidential gave impact towards the characteristics of such system which banished the accountability of the President to the parliament (MPR). Although the state of the President was strong (fixed executive), the dismissal might probably happen during their tenure when the President and/or Vice-President violating the law.

**Key Words:** *the dismissal of the President and/or Vice-President, substance, procedure*

### A. Background

A power in every country, which is categorized as a democratic country, will demand a big accountability regardless how big the power being authorized. UUD 1945 does not cite a word “accountability” explicitly in its formation of articles. However, the word can be found in the articles which are related to norms ruling the dismissal of the President and/or Vice-President during their tenure due to the allegation of law violation. The dismissal prosecutes the President’s liability of the deeds accused towards them. There are defined in Article 3 subsection (3), Article 7A UUD 1945 and continued in Article 7B regulating the process or mechanism of the dismissal of the President and/or Vice-President. The formulated articles are also in line with the oath of office spoken by the President and Vice-President in front of MPR. Thus, accountability is a consequence for the President as a party in a position which let him/her receives mandate from people holding sovereignty.

There is a constitutional mechanism in each country concerning the dismissal of the President due to an allegation of law violation caused by the President and/or Vice-President termed as *impeachment* (a term in US constitutional). Substantially, *Impeachment* is regulated in Article 7A and its process was formulated in Article 7B, which then was completed by a Constitution No. 24 Year 2003 about Constitutional Court, Constitution No. 17 Year 2014 About MPR, DPR, and DPD, also a Regulation of Constitutional Court No. 21 Year 2009 and MPR-DPR Code of Conduct. The dismissal of President in their tenure can be

done if only the President was accused as the doer of law violation as strictly regulated in the constitution. There are two concepts of President dismissal in the theory of constitutional law. The initial one is the impeachment concept and the second is *forum privilegium* concept.

In a constitutional system once applied, Indonesia once adopted a concept of *forum privilegium* when the regulation of KRIS 1949 Article 148 either in UUDS 1950 in Article 106 regulating the President and other high officials of the country are prosecuted on the first and last level in the Supreme Court due to crime, official violation, and the other contraventions which have been assigned by constitution. Meanwhile, the stipulation aforementioned has not been applied yet since then KRIS 1949 was stated invalid (approximately 9 months of being applied). However, UUD 1945 which is applied until this moment, does not regulate explicitly the model of *forum privilegium*.<sup>1</sup> After the third amendment toward UUD 1945, there are an option of President dismissal within his/her tenure as it is formulated in Article 7A and Article 7B UUD 1945. This paper will conduct a juridical study on the dismissal of the President and/or Vice-President after the reformation in Indonesian constitutional system which then yields a question on how is the study on the substance of the dismissal of the President and/or Vice-President in UUD 1945? And How is the study on the procedure of the dismissal of the President and/or Vice-President in UUD 1945?

## B. DISCUSSION

### 1. State Institution Involved in the Process of the Dismissal of the President and/or Vice-President

The allegation of law violation, committed by the President and/or Vice-President, which has been prosecuted in a trial of MK is called “pemakzulan” or impeachment (Constitutional term of US). The term of impeachment is not written in our constitution. In the newest edition of *Kamus Besar Bahasa Indonesia*, “makzul” means putting the position; the abdicated king. Jimly Asshiddiqie explained that the word “pemakzulan” is derived from Arabic which means being abdicated from a position, given up or similar with the term impeachment in western countries’ constitution.<sup>2</sup> Impeachment or

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<sup>1</sup> Mahfud MD, 2007, *A Debate on Constitutional Law After the Amendment*, Pustaka LP3ES, Jakarta. For this moment, an option upon *forum privilegium* is neither an exact choice since this model was sharp in the ideal-theoretical level but blunt when facing the realities in Indonesian contexts, most importantly, it was affected by factors of the independence of the judiciary which was perceived not maximum, including the courts and police, whose each leaders was under the shade of recruitment which has not been independent, yet.

<sup>2</sup> Arifin Hendra Tanujaya, *Between the Dismissal, UUD 1945, Constitutional Court Regulation*, in Kompas 7 February 2010

“pemakzulan” requires an accountability in regards to DPR control to the President and/or Vice-President. The procedure of impeachment or dismissal is regulated explicitly in UUD 1945 so that political institutions owned by DPR cannot easily (politically) renounce the President and/or Vice-President. In addition, DPR cannot give up on the President and/or Vice-President which are proven violating the law, so that the dismissal on their position or impeachment was stated as the consequence.

The existence of MPR in the representative system is perceived as a typical character of democratic system in Indonesia. DPR membership elements reflects a tenet of political democracy while the elements of DPD memberships indicate a principal of the local representation so that the concerns from local area are not neglected. The changes of positions in MPR makes the understanding concerning the manifestation of people’s sovereignty implemented in State’s institutions can be reflected through three branches of power namely representative institution, the President, and the stakeholders of judiciary.<sup>3</sup> MPR as State’s institution has authorities, one of which is an authority to impeach the President and/or Vice-President if they violate the constitution.<sup>4</sup>

The relation between MPR and DPR, in terms of organizing MPR trial regarding the impeachment of the President and/or Vice-President, can only be processed if it is preceded by a notion from DPR, after the decision of Constitutional Court proposed to MPR to be convened as soon as possible. Hence, state’s institutions involved in the process of the President and/or Vice-President impeachment are as follows: DPR as the seconder of the President and/or Vice-President impeachment; MK as an institution which investigates, adjudicates, and decides the impeachment notion/motion of DPR; MPR as an institution which determines the proposal of DPR referring to the impeachment of the President and/or Vice-President.

Provided that the law violation was convened in the Constitutional Court, the trial can be stated as *forum privilegium* meaning that it is a particular court assessing whether the President can be dismissed or not during his/her tenure. Indonesia once adopted the concept of *forum privilegium* when KRIS 1949 was formulated explicitly either in Article 148 or UUDS 1950 in Article 106 which regulated that the President and the other high officials of the state are sent into the court in the first and last level in the Supreme Court facing an accusation of their being criminals, contravening the position, and other

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<sup>3</sup> A.M Fatwa , A Portrait of State’s Constitution After the Amendment of UUD 1945 in National Law Convention of BPN, Jakarta, 15-16 April 2008.

<sup>4</sup> Look at the formulation in Article 3 and Article 8 subsection (2) (3) UUD 1945.

violations which has been assigned by Constitution. Meanwhile, UUD 1945, valid nowadays, completely does not regulate the model of *forum privilegium*.<sup>5</sup>

## 2. A Study on the Substance of the Impeachment of the President and/or Vice-President in UUD 1945

The provision of the impeachment of the President and/or Vice-President is reaffirmed in UUD 1945 through UUD 1945 the formulation of Article 7A:

President and/or Vice-President can be impeached during their tenure by People's Consultative Assembly according to the proposal by the House of Representative, either it has been proven violating the law in the form of betrayal toward the state, corruption, bribery, other felonies, or misconduct, or being proven that they are no longer qualified as the President and/or Vice-President.

From the formulation aforementioned, it can be revealed that there are two reasons of the impeachment of the President and/or Vice-President:

- 1) Has violated the law in the form of treason toward the state, corruption, bribery, other felonies, or misconduct. In Article 10 subsection (3) Consitution No. 24 Year 2003 about Constitutional Court, it was stated that the defined matters are: a) the betrayal toward the State is criminal acts towards the state's security as it has been regulated in the constitution; c) corruption and bribery are a criminal act categorized as corruption or bribery as regulated in the constitution; c) other felonies are the criminal acts which are penalize by 5-year or more imprisonment; d) misconduct is an act of lowering the dignity of the President and/or Vice-President.
- 2) No longer qualified as the President and/or Vice-President as it is defined in Article 6 of UUD 1945, that it: a prerequisite of being an Indonesian nationality since his/her birth and neber receive other nationalities due to their own willingness, never betray the country, and has an ability, spiritually and physically, in doing the duties and obligation as the President and/or Vice-President. Meanwhile, if when becoming the President the qualifications and conditions are adjusted, from healty to unhealthy can be disqualified as the President, do that it can be an excuse of suing the impeachment of the President and/or Vice-President. Such constitutional conditions are regulated

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<sup>5</sup> Moh Mahfud MD, 2007, A Debate on Constitutional Law, LP3ES, Jakarta. For this moment, an option upon *forum privilegium* is neither an exact choise since this model was sharp in the ideal-theoretical level but blunt when facing the realities in Indonesian contexts, most importantly, it was affected by factors of the indepenence of the judiciary which was perceived not maximum, icluding the courts and police, whose each leaders was under the shade of recruitment which has not been independent, yet.

further in the constitution of the Election of President and Vice-President No. 23 Year 2003 which was then amended by Constitution No. 42 Year 2008.

The substance of the President and/or Vice-President Impeachment has been carefully regulated in detail, although the implementation is seemingly uneasy, complicated, and needs a long journey of law. In some extents, related to the law substance, UUD 1945 only regulates the dismissal of the President and/or Vice-President which is accused on the law violation due to criminal acts. The two excuses of the impeachment regulates the existence of an indication of law violation which is categorized as criminal violation.

Although historically, the leader of a state (king, Emperor, President, or the other terms) always has the right of invulnerability (being vulnerable from any law claims) which is often stated as *Beyond the reach of judiciary process*. To describe the term, a doctrine of *The King can do no wrong*, the so-called *The Presidential immunity from judiciary direction* in the United States, appear.<sup>6</sup>

Therefore, the head of governmental State cannot be sent to the court but he/she can be defeated through political struggle. In order to regulate such issue, in the norms of law, it is called *coup d'etat, impeachment*.<sup>7</sup>

According to a constitutional doctrine, the President and Vice PrePresident has a right of invulnerability, so that they cannot be accused and processed for the sake of law enforcement during their tenure. As the result, constitutionally, it is not allowed to do an investigation and lar accusation by the officers/law enforcers towards the President and/or Vice-President durign the tenure. Thus, materially, the substance of the impeachment cannot be prosecuted as if a criminal case committed by civilians.

The President and/or Vice-President are the holders of political positions, hence, the institution which accuses and decides are the parliament as political institution, not law enforcement agencies (court). This means that political agency which is finally declares a decision toward the impeachment of the President and/or Vice-President of the criminal proceeding proposed by DPR.<sup>8</sup> Thus, constitutionally, there is no investigation and law

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<sup>6</sup> Look Deny Indrayana, Kompas, July 2013. It was initially emerged in a verdict of Court in Mississippi vs Johnson in 1867. The verdict affirmed that the President has a status beyond the government's reach of power court, The President was placed beyond the reach of judicial direction. The gound of US's constitutional argument is a doctrine of power separation. The doctrine was extended and it encompasses the President' personal acts before serving as the President, such as a case of Clinton vs Jones with a right of "suspend: *en-tittle him to delay of both the trial and discovery*"

<sup>7</sup> *Ibid*

<sup>8</sup> According to Jody C. Baumgatner and Naka Kada (editor) President impeachment in Comparative Perspective, Praeger, Westport, CT, 2003, page 71 in Hamdan Zoelva, 2011, *The Impeachment of President*

accusation toward the President and/or Vice-President, but an investigation and prosecution toward the individual.<sup>9</sup> The accountability in a criminal law will be prosecuted and completed after they become a civilian (opportunity backing shoot).<sup>10</sup> An escape which is often used by the President and/or Vice-President which are in their tenure is resigning themselves, since law violation is more about the individual responsibility.<sup>11</sup>

This concept gives a definition that materially, the President and/or Vice-Presidents have been invulnerable towards any accusitional law, so that the articles which should have been implemented in the constitution is only a display of norms which are exhibited formally, since what is required in the Presidential system of the government is fixs term, the elected President and Vice-President was done directly and the excuses and mechanism of the President and/or Vice-President impeachment is arranged, in which, literally, it is regulated to complicate the impeachment.<sup>12</sup> Therefore, this system wants the President and/or Vice-President be inviolable during their tenure as the head of state, king/queen in a government system of parliamentary.

Law violation committed by the President and/or Vice-President is categorized as criminalization, but the decision of MK is not a criminal decision, but a constitutional judgement with political consequence. It is called political in nature since the political

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*in Indonesia*, Sinar Grafika, Jakarta, page(s) 39-44. There are five factors causing the emergence and the successful of an effort of impeaching the President and/or Vice-President in their tenure: *First*, the provision of constitution and legislations; *Second*, power balance between many branches of powers. In relation to the impeachment, the relationship between the President and legislative institutions possessing a right of doing the impeachment is crucial; *Third*, the structure of political parties in impeaching the President involves other political parties' members which are placed in representative institution. If the President was chosen without any formal ties to a political party, the impeachment process will be easier. Contrastly, the President and the majority of the members of legislations are from the same party with good disciplinary, theouretically, it is hard to dismiss the President during his/her tenure; *Fourth*, the popularity of the President is very influential. It is hard to impeach the President with high popularity. In contrast, the President with low popularity, are forced to be subjected to a formal investigation, nevertheless the level of popularity prior to the impeachment is not the exact indicator in determining President's luck; *Fifth*, the factor of mass media, economical condition, and international pressure.

<sup>9</sup> Constitution gives several options: First, the impeachment toward the President and/or Vice-President (Article 7A and 7B UUD 1945); Second, the President and/or Vice-President utilize a right of suspending the accusation and presecution until its tenure ends; Third, the President and/or Vice-President resigns from their position (Richard Nixon, on August 9<sup>th</sup>, 1974 in the case of Watergate; Fourth possibility, The President and/or Vice-President lead off from the duties during the process of investigation. However,until today, there is no clear rule of law.

<sup>10</sup> This term is derived from an expert's statement given by Ismail Suny in discussing the impeachment in the 19<sup>th</sup> Trial of PAH I BP MPR, May 29, 2001, in Comprehensive Script of the Amendment of the 1945 Constitution (UUD 1945) of the Republic of Indonesia, Book IV of State's Governmental Power, Vo. 1, General Secretary and Secretariat, Constitutional Court, Jakarta, Page 396.

<sup>11</sup> Look at Darrman Sugianto, 2015, Political Law on the Impeachment of the President and/or Vice-President in the Constitutional System of the Republic of Indonesia, Thesis, Semarang Islamic University of Sultan Agung, page 156.

<sup>12</sup> In a country with unsettled democracy or political system under immature Presidential governmental system would give a chance for the President to use his/her power authoritatively.

position possessed is only because the political support, so that the sanctions in the constitutional law will end up as a political penalty which still loads supports or not in a political way of a parliament, not a law penalties which is judged in the case of impeachment as it is regulated in the constitution.

The terms of violation of decency is formulated by a phrase “or a misconduct, and a phrase “even if it is no longer qualified as the President and/or Vice-President”. The phrase in the last sentence can be translated widely and open even if there is a tendency of being translated politically, and has no relation with the burden of illegal liability (criminal) as it is in the previous phrase in the formulation of Article 7A UUD 1945.

The materials of accountability should be in line with how big an authority possessed by the President in UUD 1945, which substantially arranged in Article 9 about the President and Vice-President oath and promise when it is spoken in front of MPR or DPR. While the formulation of Article 7A narrows the accusation of impeachment which does not include the violation on the oath and promise of the President and Vice-President, including a materials which are part of excuses of the impeachment of the President and/or Vice-President, with an excuse that it will be politically implicated.

However, conceptually, the impeachment of the President in a Presidential system which is fixs term, it was seen that, on the other side, there was an effort of avoiding a political contents, but on the other hand, the President and Vice-President, as long as they stand in their position, cannoe be presecuted by the apparatus of law enforcer when they violate the law (criminal) as it is accused in Article 7A UUD 1945. The process of ciminal presecution toward the President and/or Vice-President can only be conducted when the concerned party has become civilians.<sup>13</sup> The President can only be impeached by MPR in a political trial. Since the politic creates an essence of which the simplification or the complication of the President’s accountability during the accusation of law violation is depending on political reality established in the institutions such as DPR or MPR. Moreover, there are factors beyong the parliament which could affect directly or indirectly, either the popularity of the President, a factor of President’s impeachment, of the influence of mass media orienting on the investigative journalism which is way more easier to be transfomed to public.<sup>14</sup> Thus, banishing the materials of the violation of oath

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<sup>13</sup> Look at the statement of Ismail Suny in the 19<sup>th</sup> Trial Treatise of PAH I BP MPR, 29 May 2001 in *Risalah Komprehensif ..... Op. Cit.* page 394

<sup>14</sup> Hamdan Zulva, 2011, ..... *Op. Cit.* Page 39

of office as an excuse of the President and/or Vice-President impeachment is unfounded political reasons.

In the formulation of Article 7B subsection (2) UUD 1945,<sup>15</sup> it is DPR's notion of the law violation accused to the President and/or Vice-President for the sake of impeding the function of DPR's control. This function can be done by employing the rights possessed by DPR. The rights are as follows:<sup>16</sup>

- a. To ask for statements to the government (interpellation right) concerning government policy which is important and strategic, also widely impactful towards people's living, nation, and state;
- b. In order to conduct an investigation (right of inquiry) toward the implementation of a constitution and/or government's policy related to the things which are of important, strategic, and widely impactful towards people's living, nation, and state which presumably contradicts the rules of constitution;
- c. To state the notion of the government's policy or in regards to extraordinary events happened nationally or internationally, and a supposition as it has been normed in Article 7A UUD 1945.

Conceptually, such materials are those included in the field of governmental matters which has been the authority of the President, and receive a control from DPR, as it has been formulated in Article 79 Constitution No. 17 Year 2014. The implementation of the function of the control upon the government's policy enters a political area as it is in the governmental system of parliamenter, since it could end up with a right where DPR could speak their notions. The implementation of the rights of DPR is formulated in Article 194 to Article 214 subsection (2) Constitution No. 17 Year 2014, it was arranged ... "DPR states the decision on a right of stating the notion to the Constitutional Court to obtain a judgement". This step can be done is the implementation of the interpellation right and right of inquiry has been passed, but the implementation of such right can be continued until the right of stating the notion. This provision makes the President restricted and could cause the President imposed by DPR, although the option of the governmental system is Presidentialism which is *fixs executive*.<sup>17</sup>

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<sup>15</sup> The notion of the House of Representative that the President and/or Vice-President has violated the law or being no longer qualified as the President and/or Vice-President.

<sup>16</sup> Look at Article 79 Constitution No. 17 Year 2014.

<sup>17</sup> Look at the agreements of MPR in Amending the UUD 1945, one of which is utilizing the Presidential system.

The provision in the Articles of Constitution No. 17 Year 2017 is perceived as the norms which are related to the impeachment provisions loaded in Article 7A and Article 7B UUD 1945 which are incoherent with the character of Presidential system. An eagerness of purifying the governmental system of Presidential become irrelevant since several provisions in both UUD 1945 and Constitution No. 17 Year 2014 detected an element of parliamentarism.

### 3. A Study on the Procedure of President and/or Vice-President Impeachment after the Reformation

The procedure of accountability of the President which impacts to the impeachment of the President and/or Vice-President in UUD 1945 is way more complicated if compared to the procedure of the impeachment in some countries i.e. United States (from DPR directly to Senate), South Korea, and Thailand, where the Constitutional Court can directly subject a penalty of the impeachment of the President and/or Vice-President.<sup>18</sup>

The constitution affirmed the power of constitutional power of the President and/or Vice-President by inputting the provision of President and Vice-President election directly by the people and the provision of impeachment in UUD 1945 and is formulated in more detail such as in Constitution No. 17 Year 2014 and the implementation process is regulated in the Constitution No. 24 Year 2003 about Constitutional Court as well as in the Regulation of Constitutional Court No. 21 Year 2009 in which during the implementation, technical barriers on procedural will be found so that it makes the implementation be that complicated and too meticulous.

Problem of procedural technique is initiated by the emergence of accusation of a notion from DPR that the President and/or Vice-President did violate the law as it is formulated in Article 7A UUD 1945. To obtain enough evidence as it has been the prerequisite in the Regulation of Constitutional Court, what acts should be done? Will DPR investigate as well as the other law enforcer (i.e. police) in investigating the case of criminal law violation? And, will the right of inquiry for the sake of DPR control be technically probable in finding the evidence? It is because the President always be invulnerable towards the accusation of law during their tenure that it is defined as *beyond the reach of judiciary process*. this makes the procedure of impeachment in the Presidential governmental system is literally to affirm that in the case of criminal

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<sup>18</sup> Susana Rita, *Pemakzulan Sulit, Meski Bukan Hal Mustahil*, in Kompas, 2 March 2010

violation, President and/or Vice-President cannot be accused. Therefore, the accusation from the DPR are mostly initiated by political elements if compared to the former evidence which is juridically criminal.

In some countries which involved MK during the impeachment process, the judgement of MK is the final and binding.<sup>19</sup> But, the decision made by MK in Indonesia is placed as a decision which does not have a executing power<sup>20</sup> since the since it is the “in between” decision which will be tested by MPR to give final decision politically and as the political sanction for the President and/or Vice-President to put down their position when the accountability is accepted.

In the substantial or procedural regulation of the President’s accountability in the process of impeachment is basically a politican accountability, since the initial supposition of the violation was obtained from the result of control as it is regulated in the Constitution No. 17 Year 2014<sup>21</sup>, which caused the DPR notions be investigated, assessed, and judged by MK and DPR, even though the reasons are juridically criminal.

## C. CLOSING

### Conclusion

1. Juridically, the President and/or Vice-President have been invulnerable towards any law accusation, so that the articles stated in the constitutions are only the display of norms or exhibition for the sake of formality, since what is wanted by the Presidential governmental system is the fixs term. The directly elected President and/or Vice-President and the ideas of excuses and mechanism in impeaching the President are only a way to complicate the process. Thus, substantially, the impeachment of the President and/or Vice-President cosisted in Article 7A UUD 1945 cannot be prosecutued as it is for other criminal violation toward the other civilians. The existence of the process covers personal investigation and accusation. The accountability of criminal law will be processed and completed after they become

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<sup>19</sup> As it is ini Germany and South Korea

<sup>20</sup> Look at Kunti Dyah Waedani, 2007, ..... *Op. Cit.* Page 80

<sup>21</sup> 1.To ask for statements to the government concerning government policy which is important and strategic, also widely impactful towards people’s living, nation, and state; 2. In order to conduct an investigation toward the implemetation of a constitution and/or government’s policy related to the things which are of important, strategic, and widely impactful towards people’s living, nation, and state which presumably contradicts the rules of constitution;3. To state the notion upon the government’s policy or in regards to extraordinary events happened nationally or internationally, and a supposition as it has been normed in Article 7A UUD 1945.

civilians (opportunity backing shoot). Therefore, the head of state governmental cannot be prosecuted, but they can be defeated through political struggle.

2. The procedure of the impeachment of the President and/or Vice-President in UUD 1945 as well as in the Constitution No. 17 Year 2014 is way more complicated if compared to the procedure of impeaching in other countries. President's accountability in the impeachment process is basically a political accountability, since the initial supposition of law violation was acquired from the result of a control when DPR used their interpellation rights, inquiry right, and the right of stating their notions as regulated in the Constitution No. 17 Year 2014, which continues to criminal accusation as affirmed in Article 7A and Article 7B UUD 1945.

## REFERENCE

- Andi Irman Putra Sidin, 2009, *Presidensial Buruk Rupa Cermin di Belah*, in *Memahami Hukum Dari Konstruksi Sampai Implementasi*, Rajawali Pers, Raja Grafindo, Jakarta
- A.M Fatwa ,Potret Konstitusi Negara Pasca Perubahan UUD 1945 dalam Konvensi Hukum Nasional BPN, Jakarta, 15-16 April 2008.
- Arend Lijphat,1995,*Sistem Pemerintahan Parlementer dan Presidensiil*, Penyadur Ibrahim R, et al., Raja GrafindoPersada, Jakarta
- Anthony Quinton (*Edited by*), 1993, *Political Philosophy*, Oxford University Press
- AchmadGunaryo (Editor), *Hukum, Birokrasi Dan Kekuasaan Di Indonesia*, Undip, Semarang
- BagirManan, JimlyAsshiddiqie, 2006, *Amandemen UUD 1945 Dan Pemilihan Presiden Secara Langsung*,General Secretary and Secretariat of Constitutional Court of RI, Jakarta.
- Darrman Sugianto, 2015, *Politik Hukum Pemberhentian Presiden dan/atau Wakil Presiden dalam Sistem Ketatanegaraan Republik Indonesia*, Thesis, Semarang Islamic University of Sultan Agung.
- Hamdan Zoelva, 2011, *Pemakzulan presiden di Indonesia*, Sinar Grafika, Jakarta
- Mahfud MD, 2007, *Perdebatan Hukum Tata Negara Pasca Amandemen*, Pustaka LP3ES Journals, Papers dan Newspaper
- Arifin Hendra Tanujaya, *Antara Pemakzulan, UUD 1945 Peraturan MK*, inKompas, 7 February 2010

Deny Indrayana, Kompas July 2013. *Pertama muncul dalam putusan Court in Mississippi vs Johnson Tahun 1867.*

Susana Rita, Pemakzulan Sulit, Meski Bukan Hal Mustahil, in Kompas 2 March 2010

Constitutional Journal, Volume 4 No. 2 June 2007

Constitutional Journal, Volume 3 No. 1, February 2006, Constitutional Court

The Regulation of Constitution

The 1945 Constitution of the Republic of Indonesia

The Constitution No. 24 Year 2003 about Constitutional Court

The Constitution No. 17 Year 2014 about MPR, DPR and DPD

Constitutional Court's Regulation No. 21 Year 2009

The regulation of MPR-DPR Code of Conduct