



# Strafbaar Feit as a Reason for Impeachment of The President

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## ABSTRACT

One of the legal reform agendas in Indonesia is to strengthen the presidential government system by clearly and firmly regulating the reasons for impeachment in the constitution. Article 7A of the 1945 Constitution of the Republic of Indonesia explains that the President and/or Vice President can be impeached for serious offenses such as treason, corruption, bribery, disgraceful acts, and other serious crimes. Considering the extensive powers of the President, it is important to analyze criminal acts further as reasons for impeachment. This research uses a normative juridical approach with descriptive-analytical analysis. Data collection methods are conducted through library research with primary data sources in the form of laws and secondary sources in the form of relevant literature. The research results show that the impeachment mechanism in Indonesia involves the Constitutional Court in assessing the House of Representatives' accusations against the President, ensuring that impeachment is based on political and legal decisions. Additionally, criminal acts committed by the President can still be pursued in general courts for legal accountability. This aligns with the rule of law principle that ensures everyone is subject to the law without exception. Adjustments by state institutions involved in the impeachment procedure are expected to clarify the implementation of impeachment in Indonesia.

**Keywords:** Impeachment, President, *Strafbaar Feit*

## ABSTRAK

Salah satu agenda reformasi hukum di Indonesia adalah memperkuat prinsip pemerintahan presidensial dengan mengatur alasan impeachment secara tegas dan pasti dalam konstitusi. Pasal 7A UUD NRI Tahun 1945 menjelaskan bahwa presiden dan/atau wakil presiden dapat di-impeach apabila melakukan pelanggaran berat, seperti: pengkhianatan terhadap negara, korupsi, penyuapan, perbuatan tercela, serta tindak pidana berat lainnya. Mengingat luasnya kekuasaan presiden, penting untuk menganalisis lebih lanjut tindak pidana sebagai alasan impeachment. Penelitian ini menggunakan pendekatan yuridis normatif dengan analisis deskriptif-analitis. Metode pengumpulan data dilakukan melalui penelitian kepustakaan dengan sumber data primer berupa undang-undang dan sumber sekunder berupa literatur yang relevan. Hasil penelitian menunjukkan bahwa mekanisme impeachment di Indonesia melibatkan Mahkamah Konstitusi untuk menilai tuduhan terhadap Presiden, tujuannya untuk memastikan bahwa impeachment tidak hanya didasarkan pada keputusan politik tetapi juga keputusan hukum. Selain itu, tindak pidana yang dilakukan oleh presiden tetap dapat dilanjutkan ke pengadilan umum untuk pertanggungjawaban hukum. Hal ini sejalan dengan prinsip negara hukum yang memastikan bahwa setiap orang tunduk pada hukum tanpa terkecuali. Penyesuaian aturan oleh lembaga negara yang terlibat dalam prosedur impeachment diharapkan memperjelas pelaksanaan impeachment di Indonesia.

**Kata kunci:** *Impeachment*, Presiden, Tindak Pidana



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## 1. Introduction

A law exists as a reference and guideline in regulating people's lives. The purpose of the law is to ensure that society gets justice, order, and prosperity. To achieve this goal, the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945) as the highest basic law, seeks to adapt to the developments

and legal needs of the Indonesian people.<sup>1</sup> These adjustment efforts can be seen from the constitution which has changed from time to time. One of the changes included a mechanism for dismissing the president from his term of office in the 1945 Constitution of the Republic of Indonesia. This arrangement is intended to strengthen the president's position in the presidential government system in Indonesia. The confirmation of the presidential system of government is characterized by: the existence of a fixed term of office for the president, the president's position as head of state and head of government, the existence of a mutual monitoring and balancing mechanism, and the existence of an impeachment mechanism regulated in the constitution.<sup>2</sup> The presence of a clear mechanism regarding the dismissal of the president will of course provide clear and definite parameters so that the dismissal of the president is not only motivated by political reasons, but also through legal mechanisms.

The history of Indonesian constitutional affairs shows that before there was a mechanism for dismissing the president in the Indonesian constitution, the dismissal of the President was carried out based solely on political grounds. This can be seen from the dismissal of President Soekarno through TAP MPRS Number XXXIII/MPRS/1967, the majority of the MPRS did not accept Soekarno's accountability speech which was named Nawaksara. President Abdurrahman Wahid also experienced a similar thing and was judged to be based only on political interests, starting from not accepting the explanations presented in the first and second memorandums regarding the Buloggate and Bruneigate cases, then the president issued a Presidential Decree to disband parliament. In the end, the House of Representatives issued a third memorandum with the agenda of revoking the president's mandate. If we look at the provisions of MPR Decree Number III/MPR/1978, the revocation of President Abdurrahman Wahid's mandate is not entirely correct, it is more likely to be against the Presidential Decree regarding the dissolution of the House of Representatives.<sup>3</sup>

The absence of clear and definite provisions in the constitution has made impeachment intimidated by strong political interests and ignored legal aspects. This certainly contradicts the principle of the rule of law contained in Article 1 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which emphasizes that: "The Indonesian state is a state of law". Therefore, the law must be used as a guide and reference in every action taken by the state, including regarding the dismissal of the President from his term of office.<sup>4</sup> Accusations to remove the President from office are known as impeachment. Black's Law Dictionary explains that impeachment is: "a criminal proceeding against a public officer, before a quasi-political court, instituted by a written accusation called articles of impeachment".<sup>5</sup> The use of the word quasi-political regarding impeachment is because this mechanism is carried out not only based on political reasons but the accusation in question must be proven through law. This is in line with the opinion regarding impeachment expressed by Marsilam Simanjuntak, in essence, he believes that impeachment is a special legal (criminal) prosecution process against a public official before a quasi-political court, because he has violated the law as determined by the Law.<sup>6</sup>

Impeachment is an effort to provide oversight of the president's performance, as well as balance the president's very central power. However, impeachment does not necessarily end with the dismissal of the president. This is because impeachment is the initial process of dismissing the president from his term

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<sup>1</sup> Amalia Diamantina and Devi Yulida, "Reinforcement of Green Constitution: Efforts for Manifesting Ecocracy in Indonesia," in *IOP Conference Series: Earth and Environmental Science*, vol. 1270 (Institute of Physics, 2023), p. 1–6, <https://doi.org/10.1088/1755-1315/1270/1/012005>.

<sup>2</sup> Hufon, "Perbuatan Tercela Sebagai Alasan Pemakzulan Presiden Dan/Atau Wakil Presiden," *DIH, Jurnal Ilmu Hukum* 12, no. 23 (2016), p. 64–74, <https://doi.org/10.30996/dih.v12i23.895>.

<sup>3</sup> Herman Bastiaji Prayitno, "Proses Pemakzulan (Impeachment) Presiden Menurut UUD NRI Tahun 1945 Dihubungkan Dengan Hak Untuk Menyatakan Pendapat DPR RI," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan* 8, No. 2 (2021), p. 203–20.

<sup>4</sup> Mahkamah Konstitusi and Konrad Adenauer Stiftung, "Mekanisme Impeachment Dan Hukum Acara Mahkamah Konstitusi," 2005.

<sup>5</sup> Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (St Paul Minn: West Group, 1991).

<sup>6</sup> Yoga Pertamayasa, "Kewenangan Impeachment Oleh DPRD Terhadap Kepala Daerah," *Jurnal Yustika: Media Hukum Dan Keadilan* 23, No. 1 (2020):, p. 49–66, <https://doi.org/https://doi.org/10.24123/yustika.v23i01.2297>.

of office also known as impeachment.<sup>7</sup> Hamdan Zoelva explained that the term impeachment is the equivalent of the term dismissal and dismissal of someone from their term of office.<sup>8</sup> If we look at the provisions in the 1945 Constitution of the Republic of Indonesia, Indonesia does not use the terms impeachment or impeachment, the terms used are 'dismissed' and 'dismissal'.

Historically, impeachment was first known in England in the 14th century. At that time, parliament used the impeachment institution to process high-ranking officials related to corruption cases, as well as other matters that were not under the authority of ordinary courts. The United States Constitution regulates impeachment in Article 2 Section 4 which states: "The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors."<sup>9</sup>

In its development, through the 3<sup>rd</sup> amendment to the 1945 Constitution (UUD 1945), Indonesia also provided limitation regulations regarding impeachment, in which Article 7A of the 1945 Constitution of the Republic of Indonesia states that the reasons for impeachment are related to treason against the state, corruption, disgraceful acts, and serious crimes. other. The next article also explains the impeachment mechanism which must first pass evidence at the Constitutional Court, before being decided politically at the People's Consultative Assembly (MPR).

Article 24C Paragraph (2) of The 1945 Constitution of the Republic of Indonesia it was explained that: "The Constitutional Court is obliged to provide a decision on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution". The addition of stages for proof at the Constitutional Court is a form of strengthening the presidential government system in Indonesia. The presidential system of government emphasizes the president as head of state and head of government,<sup>10</sup> so that the president has very broad authority and duties in administering the state.

These central authorities and duties must be followed by the integrity of the President as the holder of state power, one of which is obeying the law. In this regard, Article 7A of the 1945 Constitution of the Republic of Indonesia explains that the President and/or Vice President can be dismissed from their term of office for violating the law. In simple terms, a violation of the law is any act that violates the legal regulations that apply in society and results in legal consequences for the perpetrator. If we look at the provisions of the 1945 Constitution of the Republic of Indonesia, the legal violations referred to are treason against the state, corruption, bribery, disgraceful acts, and other serious criminal acts. Based on this description, it is known that the president and/or vice president can be dismissed if they commit a criminal act. The term criminal act comes from a term known in Dutch Criminal Law, namely "*strafbaar feit*". *Strafbaar feit* consists of three words, namely *straf* which is translated as criminal and law, then *baar* which is translated as can and may, while the last one is *feit* which is translated as action, event, violation, and deed. Even though many terms have been used both in statutory regulations and in various legal literature as translations of the term *strafbaar feit*, the term criminal act is a term that is officially used in statutory regulations in Indonesia. Pompe further formulated that a *strafbaar feit* is nothing other than an "action which according to a statutory formulation has been declared as a punishable action". This was also explained by Vos who stated that *strafbaar feit* is a human behavior that is punishable by law and regulations.<sup>11</sup> Marshall further said "A crime is any act or omission prohibited by law for the protection of the public and punishable by the state in a judicial proceeding in its name", from this opinion, it is known

<sup>7</sup> Adella Anindia and Poppilea Erwinta, "Perbandingan Konstitusional Pengaturan Impeachment Presiden Antara Indonesia Dengan Jerman," *Risalah Hukum*, vol. 17, 2021, <https://doi.org/https://doi.org/10.30872/risalah.v18i2.600>.

<sup>8</sup> Hamdan Zoelva, *Impeachment Presiden Alasan Tindak Pidana Pemberhentian Presiden Menurut UUD 1945* (Jakarta: Konstitusi Press, 2014).

<sup>9</sup> Op.Cit., Mahkamah Konstitusi and Konrad Adenauer Stiftung, "Mekanisme Impeachment Dan Hukum Acara Mahkamah Konstitusi."

<sup>10</sup> Ucha Widya, "Pemberhentian Presiden Dan/Atau Wakil Presiden Undang-Undang Dasar Negara Republik 1945 Pasca Perubahan," *Lex Renaissance* 7, no. 1 (2022): 194–208, <https://doi.org/https://doi.org/10.20885/JLR.vol7.iss1.art15>.

<sup>11</sup> Adami Chazawi, *Pelajaran Hukum Pidana, Bagian 1, Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan & Batas Berlakunya Hukum Pidana*, (Jakarta: PT RajaGrafindo Persada, 2002) (Jakarta: PT RajaGrafindo Persada, 2002). p 67, 72

that a criminal act is an act or omission that is prohibited by law to protect society and can be punished based on applicable legal procedures. A similar thing was also expressed by Moeljatno who argued that criminal acts are actions that are prohibited by a legal prohibition which is accompanied by threats (sanctions) in the form of certain penalties, for anyone who violates the prohibition. On another occasion, Moeljatno also said with the same substance that criminal acts are actions that are prohibited and punishable by criminal law, whoever violates this prohibition.<sup>12</sup> Furthermore, the definition of a criminal act itself is regulated in the National Criminal Code which has been ratified at this time, namely Law no.1 of 2003 concerning the Criminal Code which in Article 144 states that criminal acts include criminal conspiracy, preparation, attempt and assistance in committing criminal acts unless otherwise specified in the law.

Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a legal state, which means a legal state is a state that upholds the supremacy of law to uphold truth and justice, and no power cannot be accounted for. There are three basic principles or principles in law enforcement in every country that adhere to the rule of law, namely supremacy of law, equality before the law, and law enforcement in a way that does not conflict with the law (due process of law). One of the important principles or principles of a rule of law is the principle of equality before the law.<sup>13</sup>

The process of impeaching the President on the grounds of a criminal act must of course be in line with the principle of equality before the law which is supported by the principle of the rule of law. Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "all citizens are equal in law and government and are obliged to uphold these laws without exception." This is in line with the principle of equality before the law, where all citizens have the same position in terms of law enforcement. There is no such thing as impunity or selective logging in its enforcement. All Indonesian citizens from the highest positions, including the president to ordinary people who violate the law, will be treated fairly according to the criminal offenses they have committed.

The success of implementing this principle is of course also driven by the independence that existing law enforcement agencies, such as the police and the prosecutor's office, must have. As the mandate of the Preamble to the 1945 Constitution of the Republic of Indonesia stated "to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's blood," this includes the role of the Police and Prosecutor's Office which must be free from the influence of any party and any political interests so that the independence of the Police and Prosecutor's Office is very important. required. Even though structurally the Police and Prosecutor's Office are under executive power, these two law enforcement agencies must be free from executive interference and are required to always maintain their independence so that if the president commits a criminal act, the impeachment process or mechanism can still be carried out. This is a form of equality before the law so that the law can be enforced without regard to ethnicity, race, religion, or the position of the ruler.

Based on the explanation above, in the author's opinion, it is important to analyze further regarding criminal acts as a reason for the President's impeachment. The formulation of the problem to be discussed is: *First*; What is the scope of *strafbaar feit* in Indonesian Criminal Law?; *Second*; What are the regulations regarding Presidential impeachment in Indonesia?; *Third*; Why is there a need for an impeachment mechanism against a President who commits *strafbaar feit*? The aim of this article is *first*: to analyze criminal acts in Indonesian legal regulations. *Second*: analyze the arrangements for Presidential impeachment, especially the arrangements and mechanisms contained in the 1945 Constitution of the Republic of Indonesia and its derivative regulations. *Third*; analyze the importance of impeachment before trying the president and/or vice president who has committed a criminal act.

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<sup>12</sup> Hanafi Amrani & Mahrus Ali, *Sistem Pertanggungjawaban Pidana Perkembangan Dan Penerapan* (Jakarta: PT RajaGrafindo Persada, 2015). p. 14-15

<sup>13</sup> Nadya Thamariska, Suzanalisa Suzanalisa, and Sarbaini Sarbaini, "Penerapan Asas Persamaan Dihadapan Hukum (Equality Before The Law) Terhadap Pelaku Tindak Pidana Umum Suku Anak Dalam (SAD) Di Wilayah Hukum Polres Sarolangun," *Legalitas: Jurnal Hukum* 15, No. 1 (2023), p.110, <https://doi.org/10.33087/legalitas.v15i1.438>.

To ensure there is novelty related to this article, several similar articles will be described and the differences explained. *First*, an article from Hufron discusses "Disgraceful Acts as Reasons for Impeaching the President and/or Vice President". The main difference between this writing and Hufron's writing lies in the specification of the object of study. Previous writing explained disgraceful acts as a reason for impeaching the President.<sup>14</sup> Meanwhile, this writing discusses impeachment specifically for committing a criminal act. *Second*, an article from I Gede Ngurah Bayu Krisna, Gusti Bagus Suryawan, and Wayan Arthanaya, with the title: "Impeachment Mechanisms in the Indonesian Constitutional System". The article discusses impeachment in general, as well as the implications of the Constitutional Court's decision regarding impeachment.<sup>15</sup> Meanwhile, the writing carried out by the author focuses on criminal acts as a reason for impeachment, as well as knowing the importance of impeachment before trying the President and/or Vice President in criminal justice. Based on this, it is known that this article will focus on criminal acts as a reason for the President's impeachment.

## 2. Method

This research is normative juridical research with a statutory approach. Normative juridical research is library legal research carried out by examining library materials or secondary data.<sup>16</sup> The research specifications used are descriptive-analytical. Meanwhile, the data collection method used is library research, namely by searching for legal material and data that is relevant to the material being researched in this writing.<sup>17</sup> To obtain maximum data from research, this research uses primary data sources, in the form of laws. Meanwhile, secondary sources include literature related to the impeachment of the President for committing criminal acts, which is then analyzed descriptively and qualitatively and presented in narrative text.

## 3. Analysis And Discussion

### 3.1 Scope of *Strafbaar Feit* in Indonesian Criminal Law Rules

In general, Criminal Law is a part of public law that contains or contains provisions regarding general rules of criminal law and (which are linked/related to) prohibitions on committing certain acts (active/positive or passive/negative) which are accompanied by threats of sanctions. in the form of a penalty (*straf*) for those who violate the prohibition. Then the Criminal Law also contains certain conditions when that must be fulfilled/must be in place for the violator to be subject to criminal sanctions which are threatened with prohibitions on the act he or she violates. Finally, Criminal Law contains the actions and efforts that the state may or must carry out through its equipment (for example police, prosecutors, and judges), against those who are suspected and charged as violators of criminal law in the framework of the state's efforts to determine, impose and implement sanctions. criminal law against him, as well as the actions and efforts that may and must be carried out by suspects/defendants who violate the law to protect and defend their rights from state action in the state's efforts to enforce the Criminal Law.<sup>18</sup>

In Criminal Law, the term criminal act which comes from Dutch is known, namely "*strafbaar feit*". Even though this term is found in the Dutch WvS as well as the Dutch East Indies WvS (KUHP), there is no official explanation of what is meant by *strafbaar feit*. However, the terms that have been used both in existing legislation and in various literature as translations of the term *strafbaar feit* include the term criminal act. The term criminal act can be said to be an official term used in laws and regulations in Indonesia, for example, one of which is the National Criminal Code or Law Number 1 of 2023 concerning the Criminal Code which uses the term criminal act in the formulation of its articles.<sup>19</sup>

<sup>14</sup> Op.Cit., Hufron, "Perbuatan Tercela Sebagai Alasan Pemakzulan Presiden Dan/Atau Wakil Presiden."

<sup>15</sup> I Gede Ngurah Bayu Krisna, Gusti Bagus Suryawan, and Wayan Arthanaya, "Mekanisme Impeachment Presiden Dalam Sistem Ketatanegaraan Indonesia" 1, no. 2 (2020), p. 296–99, <https://doi.org/10.22225/jkh.1.2.2567.296-299>.

<sup>16</sup> Soerjono Soekanto and Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2004).

<sup>17</sup> Joenaedi Efendi and Jhonny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris* (Depok: Kencana, 2018).

<sup>18</sup> Adami Chazawi, *Pelajaran Hukum Pidana, Bagian 1, Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan & Batas Berlakunya Hukum Pidana*, (Jakarta: PT RajaGrafindo Persada, 2002). p.2

<sup>19</sup> Fitri Wahyuni, *Dasar-Dasar Hukum Pidana Indonesia* (Tangerang Selatan: PT Nusantara Persada Utama, 2017). p.35

Talking about criminal acts, a person who commits a criminal act can be sentenced to a criminal sentence if he fulfills the elements of a criminal act as regulated either in the Criminal Code or regulated in other regulations outside the Criminal Code. Lamintang stated that the elements of criminal acts can generally be broken down into basic elements consisting of subjective elements and objective elements. The subjective element is an element that is internal or that exists within the perpetrator and includes everything that is in his mind and heart. Meanwhile, objective elements are elements related to the situation, namely the circumstances in which the perpetrator's actions must be carried out.<sup>20</sup> However, it is felt that the elements put forward by Lamintang are still too simple in describing the elements of a criminal act.

In the doctrine of Criminal Law, apart from being known as the concept of a criminal act, it is also known as the concept of criminal responsibility where these two things are put forward by experts which lead to two things, namely *first*, the teaching which includes the notion of criminal responsibility into the definition of a criminal act or which is known as the doctrine of monism/monistic views and *secondly*, teachings which explicitly exclude the meaning of criminal responsibility from the definition of criminal acts or what is known as the doctrine/teaching of dualism/dualistic views.

In the teachings of monism, the concepts of criminal responsibility, guilt, the ability to be responsible, and reasons for forgiveness are one unit or inseparable from the concept of criminal acts. Experts who provide an understanding of criminal acts which include these four things, are actually of the view that criminal acts and criminal responsibility/guilt cannot be separated. The implication is that the proof of objective elements (criminal acts) and subjective elements (guilt) cannot be separated. The judge will automatically declare that the defendant is proven guilty of committing a criminal offense if the act is prohibited and punishable by crime and in which there is guilt which is proven based on the facts revealed in the trial.<sup>21</sup> One of the legal experts who adhere to monism, namely Jonkers, details the elements of a criminal act consisting of a) the act (which); b) against the law (related to); c) mistakes (made by people who can); d) accountable. Then *Schravendijk* lists the elements of a criminal act as: a) behavior (of the person); b) contrary to legal convictions; c) threatened with punishment; d) carried out by people (who can); e) blame/mistake.<sup>22</sup>

On the other hand, in the doctrine of dualism, the definition of criminal acts solely refers to acts both active and passive. Meanwhile, whether the perpetrator commits a criminal act is blameworthy or has made a mistake, is no longer in the area of a criminal act but has entered the realm of criminal responsibility/guilt. In other words, whether the concrete person who committed the act was sentenced to a crime or not, the meaning of a criminal act is regulated.<sup>23</sup>

Criminal acts refer to prohibited actions. This was emphasized by Moeljatno who stated that criminal acts only refer to the nature of the act, namely the nature of being prohibited with the threat of criminal penalties if violated. In line with the definition of a criminal act as stated by Moeljatno, the elements contained in a criminal act only contain three things, namely the subject of the offense which is addressed by legal norms (*norm address saat*), prohibited acts (*strafbaar*), and criminal threats (*strafmaat*). These three things are criminalization issues that fall within the scope of criminal acts. On the other hand, criminal responsibility only questions the subjective aspects of the perpetrator of the criminal act. At this stage, the issue no longer revolves around the act and its unlawful nature but rather relates to under what circumstances the author can be held responsible for the criminal act. From here we can see the difference between criminal acts and criminal liability. Criminal acts are only oriented toward actions

<sup>20</sup> P.A.F Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: Citra Adhitya Bakti, 2013). p.15

<sup>21</sup> Hanafi, Amrani, *Sistem Pertanggungjawaban Pidana Perkembangan Dan Penerapan* (Jakarta: PT RajaGrafindo Persada, 2015). p.12

<sup>22</sup> Op.Cit., Adami Chazawi, *Pelajaran Hukum Pidana, Bagian 1, Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan & Batas Berlakunya Hukum Pidana*, (Jakarta: PT RajaGrafindo Persada, 2002). p.80

<sup>23</sup> Op.Cit., Hanafi, Amrani, *Sistem Pertanggungjawaban Pidana Perkembangan Dan Penerapan* (Jakarta: PT RajaGrafindo Persada, 2015). p.14

that are prohibited based on legal norms, while criminal responsibility refers to subjective attitudes that are based on a person's legal obligation to obey the law.<sup>24</sup>

Furthermore, R Tresna, who is also an adherent of dualism, stated that the elements of a criminal act consist of a) an act/series of (human) acts; b) which is contrary to statutory regulations; c) punitive action is taken. Vos further believes that the elements of criminal acts are as follows: a) human behavior; b) threatened with a criminal offense; c) in statutory regulations). From each of the elements that have been described by adherents of the dualism teaching, there are no significant differences where criminal acts are still interpreted as prohibited acts, contained in a statutory regulation and subject to criminal penalties for those who commit them. Even though there is an impression that every act that is contrary to the regulations must always be accompanied by the threat of criminal punishment, in the elements described there is no suggestion regarding the (subjective) conditions attached to the person for a criminal to be imposed. Of the elements described above, it does not concern the maker himself or the maker being punished, but rather because of his actions.<sup>25</sup>

In connection with these two views, the National Criminal Code (Law Number 1 of 2023 concerning the Criminal Code), which has now been passed itself, has adhered to this dualism ideology/teaching where in its legal regulations it has separated criminal acts and criminal responsibility. The application of criminal liability is also inseparable from the doctrine of strict liability and vicarious liability. As stated in the Explanation of the Criminal Code, Strict liability in Law Number 1 of 2023 concerning the Criminal Code, which explains in terms of absolute liability, the perpetrator of the crime. Meanwhile, vicarious liability is vicarious liability where this responsibility extends to the actions of his subordinates who carry out work or actions for him within the limits of his orders.

Concerning criminal acts as grounds for impeachment of the President, the criminal acts referred to in the 1945 Constitution of the Republic of Indonesia regarding the dismissal of the president and/or vice president are treason against the state, corruption, bribery, and other serious criminal acts. When referring to the doctrine of Criminal Law, the term serious criminal offense is not known. The rules contained in the Criminal Code as the main criminal law regulations that are currently still in use divide criminal acts into crimes and violations. The rules regarding criminal acts as crimes are regulated in the second book of the Criminal Code, while the rules regarding offenses are placed in the third book of the Criminal Code.

However, the National Criminal Code which has been passed at this time, namely Law No. 1 of 2023 concerning the Criminal Code (which has only come into effect three years since it was promulgated, namely on January 2, 2026), is no longer differentiates between criminal acts (*strafbaar feit*) in the form of crimes (*misdriften*) and violations (*overtredingen*). For both, the term criminal act is used. So the National Criminal Code only consists of 2 (two) books, namely the first book on General Rules and the second book on Criminal Acts. The Third Book on Violations in *Wetboek van Strafrecht* was omitted, but its substance has been selectively accommodated in the Second Book. Regarding serious criminal acts in the National Criminal Code, they are categorized as Special Crimes as contained in Chapter XXXV, Part One, which states serious criminal acts against human rights. Apart from that, there are no other criminal acts that are considered serious crimes.

When compared with several other countries, America uses the term 'high crime' and differentiates the boundaries between misdemeanor reasons (ordinary acts or light punishments) and high crimes (bribery or other high crimes), although the boundaries between the two are still being debated.<sup>26</sup> Meanwhile, England itself classifies criminal acts based on its court hierarchy, which consists of: the crown court and

<sup>24</sup> Muhammad Ainul Syamsu, *Pergeseran Turut Serta Melakukan Ajaran Penyertaan (Teori Kritis Berdasarkan Teori Pemisahan Tindak Pidana Dan Pertanggungjawaban Pidana)* (Jakarta: PT Fajar Interpretama Mandiri, 2014). p.18

<sup>25</sup> Op.Cit., Adami Chazawi, *Pelajaran Hukum Pidana, Bagian 1, Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan & Batas Berlakunya Hukum Pidana*, (Jakarta: PT RajaGrafindo Persada, 2002). p.79

<sup>26</sup> Agus Mulyawan, "Analisis Perbandingan Proses Impeachment Amerika Serikat Dan Analisis Perbandingan Proses Impeachment," *Jurnal Ilmu Hukum* Jilid 5 no. 2 September 2010..

magistrate court. The Crown Court has the authority to examine and decide serious criminal cases while the Magistrate Court has the authority to examine and decide light criminal cases.<sup>27</sup>

The 1945 Constitution of the Republic of Indonesia does not define criminal acts, but the explanation can be seen in Article 10 paragraph (3) of The 1945 Constitution of the Republic of Indonesia. Treason against the state is a criminal act related to state security, while what is meant by corruption and bribery is a criminal act of corruption or bribery. Article 10 paragraph (3) letter C of Law Number 24 of 2003 concerning the Constitutional Court, explains that what is meant by other serious criminal acts are criminal acts that are punishable by imprisonment for five years or more. Referring to this, it is known that if the House of Representatives finds that the President and/or Vice President has committed a criminal offense that carries a penalty of five years or more, then the House of Representatives can submit a complaint to the Constitutional Court.

Even though Law Number 24 of 2003 concerning the Constitutional Court defines serious crimes as crimes that carry a minimum sentence of 5 years, the president and/or vice president can still be impeached if they commit a crime that carries a sentence of less than five years. The category of crimes under five years is included in the reasons for impeachment because of 'disgraceful acts'. A quo law explains that disgraceful acts are acts that can lower the dignity of the president and/or vice president. However, the meaning of disgraceful acts is actions that must violate the law. This is intended to avoid political games in concluding the reasons for the President's impeachment.<sup>28</sup>

As of the publication of this article, there is no legal regulation that regulates the process of impeaching the President regarding committing criminal acts. So the elements of criminal acts must be seen from each relevant law. Such as criminal acts of corruption and bribery which are contained in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Corruption Crimes, meanwhile related to betrayal of the state is currently regulated in Law Number 1 of 2023 concerning the Book of Laws. The Criminal Law regulated in Book Two concerning Criminal Acts, Chapter I Crimes against State Security, Part Two Crime of Treason, is stated in Article 192: "Every person who commits Treason with the intention that part or all of the territory of the Unitary State of the Republic of Indonesia falls under foreign power or for seceding from the Unitary State of the Republic of Indonesia, shall be punished with the death penalty, life imprisonment, or a maximum imprisonment of twenty years." The explanation explains that a criminal act committed to cause part or all of a country's territory to fall under foreign rule constitutes external treason (*landverraad*) because it involves a foreign country. A criminal act committed to separate part of a country's territory is internal treason (*hoogverraad*), because it does not involve a foreign country, although it can gradually involve foreign powers. Apart from that, the National Criminal Code (Law Number 1 of 2023) also mentions the word treason in Part Three: Crimes Against National Defense in Paragraph 2, treason against the state and leaking state secrets in article 203 states: " (1) Any person who: a. enter into relations with foreign countries or foreign organizations to mobilize them to commit acts of hostility or war with the Unitary State of the Republic of Indonesia; b. strengthen the intention of the foreign country or foreign organization to carry out the acts referred to in letter a; or c. promises assistance or helps foreign countries or foreign organizations prepare actions as intended in letter a. (2) If the act of hostility as intended in paragraph (1) results in a war, he will be punished with imprisonment for a maximum of 15 (fifteen) years.

### 3.2 Impeachment Mechanisms and Procedures in Indonesia

Before the reform, provisions regarding the dismissal of the president were contained in Article 8 of the 1945 Constitution, which stated that: "If the President dies, resigns, or is unable to carry out his obligations during his term of office, he will be replaced by the Vice President until the end of his term. Even though it regulates the reasons for replacing the president with the vice president, the 1945 Constitution

<sup>27</sup> Rian Prayudi Saputra, "Perbandingan Hukum Pidana Indonesia Dengan Inggris" 21, no. 1 (2020): 1–9.

<sup>28</sup> Kadek Asprila Adi Surya and I Gusti Agung Ayu Dike Widhyaastuti, "Tindak Pidana Dan Pertanggungjawaban Pidana Sebagai Alasan Pemberhentian Presiden Dari Jabatannya (Pemakzulan)," *Kerta Wicara* 5, no. 4 (2016).



does not regulate the replacement mechanism and does not contain provisions that a President must obey the Constitution.<sup>29</sup>

Furthermore, Article 1 Paragraph (2) of the 1945 Constitution establishes the People's Consultative Assembly as the executor of the power of the Indonesian people. Therefore, the People's Consultative Assembly has the position of being the highest institution in administering the state, including appointing and dismissing the President, as explained in the Explanation of the 1945 Constitution, namely:<sup>30</sup>

*"The People's Consultative Assembly Appoints the President and Vice President. The People's Consultative Assembly holds the highest state power, while the president must carry out legal guidelines according to the outline of state policy that has been determined by the People's Consultative Assembly. The President is appointed by the People's Consultative Assembly acts and is responsible to the People's Consultative Assembly. In running the country's government, power and responsibility are in the hands of the president."*

Based on the explanation above, it is known that the 1945 Constitution places the president as a mandatary of the People's Consultative Assembly, thus, the People's Consultative Assembly can ask for accountability for the mandate given, as well as revoke the mandate given to the president.

Further regulations regarding presidential impeachment are not contained in the 1945 Constitution but are contained in MPR Decree No. III/1978 concerning the Position and Relationship of the Working Procedures of Highest Institutions with/or between High State Institutions, a quo MPR Decree explains that there are three possible reasons for dismissing the president, namely: at his request, permanent absence, or seriously violating State Policy. In this regard, if the House of Representatives considers that the President has violated State Policy, then under Article 7 Paragraph (2) MPR Decree No. III/MPR/1978, the House of Representatives can submit a memorandum to remind the President. If within three months, the president ignores the memorandum, then the House of Representatives can send a second memorandum and is given one month. However, if within one month the president ignores the House of Representatives memorandum, the House of Representatives can ask the assembly to hold a special session to hold the President accountable.

Furthermore, in Article 98 MPR Decree No. II/MPR/2000, explains that the MPR assesses the President's accountability through the People's Consultative Assembly's TAP which contains accepting or rejecting the President's accountability. If accountability is rejected in a general session, then the president can no longer run for president in the next period, however, if accountability is rejected in a special session, then the president can use his right to reply, if the right to reply is rejected, then the People's Consultative Assembly can dismiss the president from his term. Position.<sup>31</sup>

After the reform and the demand from the Indonesian people for a more democratic legal reform, legal reform was carried out through amendments to the 1945 Constitution. Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that: "Sovereignty is in the hands of the people and is implemented according to law. Constitution". The presence of the quo article has changed the order of Indonesian constitutional life, the People's Consultative Assembly is no longer positioned as the highest state institution, but rather the People's Consultative Assembly has an equal position with other state institutions. Thus, the People's Consultative Assembly can no longer dismiss the President for not implementing State Policy.

After the amendment, regulations regarding impeachment were contained in the 1945 Constitution of the Republic of Indonesia, this is in line with the principle of legality which requires that every action of an agency/official must be carried out according to the law. This also applies to impeachment, there

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<sup>29</sup> Ghunarsa Sujatnika, Ahmad Khozi, and Catur Alfath Satriya, "Impeachment and Its Problem: The Study from Constitutional vs Criminal Law Perspective in Indonesia," *Revista De Investigações Constitucionais* 11, No. 1 (2024), p. 257, <https://doi.org/10.5380/rinc.v11i1.87862>.

<sup>30</sup> Zakaria Bangun, *Sistem Ketatanegaraan Indonesia* (Bandung: Yrama Widya, 2020).

<sup>31</sup> Op.Cit., Widya, "Pemberhentian Presiden Dan/Atau Wakil Presiden Undang-Undang Dasar Negara Republik 1945 Pasca Perubahan."

must be detailed rules governing impeachment, reasons, mechanisms, and institutions authorized to handle the case.<sup>32</sup>

The mechanism for dismissing the President is included in Articles 7A and 7B of the 1945 Constitution of the Republic of Indonesia. The reasons for dismissing the president according to Article 7A of the 1945 Constitution of the Republic of Indonesia are: committing legal violations in the form of treason against the state, corruption, bribery, other serious criminal acts, disgraceful acts, and being proven not longer qualified as President and Vice President. Meanwhile, Article 7B of the 1945 Constitution of the Republic of Indonesia clearly explains the impeachment mechanism, namely:

*"Based on the House of Representatives 's proposal to the People's Consultative Assembly to make an indictment that was submitted to the Constitutional Court. The Court has the authority to examine, try, and decide on charges proposed by the House of Representatives and the People's Consultative Assembly. And if the Constitutional Court decides that the president and/or vice president has committed an offense in the form of treason against the state, corruption, bribery, other serious crimes, or other disgraceful acts, as stated in the Constitutional Court's decision, the House of Representatives will then hold a plenary session to forward the proposal for dismissal to the People's Consultative Assembly. Furthermore, the People's Consultative Assembly is obliged to hold a plenary meeting which is attended by at least 3/4 of the total members and approved by 2/3 of the total members present. This process appears to have two mechanisms, namely legal and political mechanisms."*

Based on a quo article, it can be concluded that the stages of impeachment in Indonesia according to the 1945 Constitution of the Republic of Indonesia must go through three stages, namely: *First*: the stage in the House of Representatives, related to the House of Representatives 's supervisory function. *Second*: stages at the Constitutional Court, to prove allegations of violations by the President by the House of Representatives, as well as; *Third*: the stages in the People's Consultative Assembly as decision-makers, whether the President is dismissed or not.

Presenting the Constitutional Court as an assessor of allegations submitted by the House of Representatives to the President is a concrete manifestation of the implementation of the rule of law, and is in line to provide independent judicial power and not influenced by other forces that override the law,<sup>33</sup> while also supporting State implementation is based on the principle of checks and balances. The Constitutional Court's presence in the Presidential impeachment process also aims to strengthen the presidential government system in Indonesia. This is because it removes the President from his term of office, not only through a political court in the House of Representatives but also through a legal justice mechanism, namely at the Constitutional Court.

The provisions of Article 83 of Law Number 24 of 2003 concerning the Constitutional Court further explain the possibility of a Constitutional Court decision based on the opinion of the House of Representatives, namely: *First*; The Constitutional Court's decision stated that the application could not be accepted, because the application did not meet the requirements. *Second*; The Constitutional Court's decision confirmed the House of Representatives 's opinion. *Third*; The Constitutional Court's decision states that the application is rejected if it is not proven that the alleged act was committed.<sup>34</sup> Furthermore, if the House of Representatives 's request is not accepted or rejected by the Constitutional Court, the House of Representatives cannot forward the dismissal proposal to the People's Consultative Assembly as the final decision maker. This is intended to ensure that the President cannot be dismissed without clear and definite evidence. However, even though the Constitutional Court decides that the House of

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<sup>32</sup> Ilham Imaman and Andri Kurniawan, "Mekanisme Pemakzulan (Impeachment) Presiden Dan/Atau Wakil Presiden Oleh Majelis Permusyawaratan Rakyat Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *JIM Bidang Hukum Kenegaraan* 1, no. 1 (2017): 206–11.

<sup>33</sup> Bagir Manan, *Teori Dan Politik Konstitusi* (Yogyakarta: FH-UII Press, 2004).

<sup>34</sup> Op.Cit., Prayitno, "Proses Pemakzulan (Impeachment) Presiden Menurut UUD NRI Tahun 1945 Dihubungkan Dengan Hak Untuk Menyatakan Pendapat DPR RI."

Representatives' opinion is acceptable, it does not necessarily mean that the President can be dismissed from his term of office. Based on the information above, it can be concluded that the Constitutional Court's decision regarding the House of Representatives' request is only a consideration for the People's Consultative Assembly, while the final decision regarding the dismissal of the President is in the hands of the People's Consultative Assembly.

The 1945 Constitution of the Republic of Indonesia stipulates that the President, in carrying out his duties, is assisted by a Vice President, both of whom are elected directly by the people as a pair. According to the provisions of the 1945 Constitution, the President is considered a state institution, which includes the Vice President. Therefore, the impeachment procedures outlined in the 1945 Constitution apply not only to the President but also to the Vice President.

### 3.3 The Requirement of Impeachment of the President Who Conducts *Strafbaar Feit*

Indonesia is a unitary country in the form of a republic. This is stated in Article 1 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Like republican countries in general, Indonesia places the President as head of state and executive (head of government). The dual positions held by the President mean that the President holds a central position in state administration in Indonesia. The President as head of state plays a role by the mandate given by the 1945 Constitution of the Republic of Indonesia, including appointing ambassadors and consuls, holders of authority over the Army, Navy, and Air Force, being responsible for providing adequate health service facilities and public service facilities, and other duties as contained in the 1945 Constitution of the Republic of Indonesia. Meanwhile, the President as head of government plays related roles: establishing government regulations, ratifying draft laws, proposing candidates for Constitutional Justices, determining candidates for Supreme Court Justices, appointing and dismissing Judicial Members, as well as other authorities has been described in the 1945 Constitution of the Republic of Indonesia.

Based on this explanation, it can be concluded that the President has broad authority in determining the direction and policies of the country. This large authority is of course followed by the presence of supervision in the administration of the state carried out by the President, one of which is ensuring that the President complies with the provisions of the Criminal Law as contained in Article 7A of the 1945 Constitution of the Republic of Indonesia. In essence, according to the provisions of a quo article, the President can be dismissed from his term of office, if he commits a violation.

It needs to be underlined that impeachment is not just an effort to uphold the law but is also an instrument to maintain the balance of power, as well as public trust in the President's institution. As Lord Acton said: "Power tends to corrupt but absolute power corrupts absolutely". To anticipate abuse of power, a mechanism is needed to ensure that the authorities work by the mandate and responsibilities given<sup>35</sup>

The presence of an impeachment mechanism provides a forum for legal and political accountability for the president. This is because the president can first be politically charged through impeachment (supervisory function), then the indictment is examined through a Constitutional Court trial (legal accountability), and can then be dismissed during his term of office, through a People's Consultative Assembly trial.<sup>36</sup> Impeachment in the dismissal of the President is one of the extraordinary supervisory functions of the legislative and judicial institutions. Impeachment is a political action with a penalty of stopping or prohibiting holding a position, not a criminal penalty or civil compensation.<sup>37</sup>

<sup>35</sup> Devi Yulida, Kartika Widya Utama, and Xavier Nugraha, "Verifikasi Manual Manifestasi Asas Kecermatan Sebagai Batu Uji Terhadap Keputusan Tata Usaha Negara," *USM Law Review* 5, no. 1 (January 29, 2022), p. 128, <https://doi.org/10.14710/jphi.v1i1.128-145>.

<sup>36</sup> Yuniar Riza Hakiki, "Kontekstualisasi Prinsip Kekuasaan Sebagai Amanah Dalam Pertanggungjawaban Presiden Dan Wakil Presiden Republik Indonesia," *As-Siyasi Journal of Constitutional Law* 1, no. 2 (April 15, 2022): 74–93, <https://doi.org/10.24042/as-siyasi.v1i2.11401>.

<sup>37</sup> Op.Cit., Widya, "Pemberhentian Presiden Dan/Atau Wakil Presiden Undang-Undang Dasar Negara Republik 1945 Pasca Perubahan."

However, a President and/or Vice President are Indonesian citizens, who in their oath of office have promised to obey the law. This is in line with the purpose of impeachment, namely as an action to ensure that abuse of power does not occur and continues to carry out its duties by the principles of the rule of law.<sup>38</sup> Therefore, the legal process against the President and/or Vice President who violates the law must still proceed to a general trial. Impeachment is important because the President plays a very broad role as head of state and head of government.

Article 19 Paragraph (3) of Constitutional Court Regulation Number 21 of 2009 concerning Procedural Guidelines in Deciding on the House of Representatives 's Opinion regarding Alleged Violations by the President and/or Vice President, explains that the Constitutional Court's decision is: *First*; states that the application cannot be accepted if it does not meet the requirements. *Second*; confirm the opinion of the House of Representatives, *Third*; State that the application is rejected if the House of Representatives 's opinion is not proven. Even though the Constitutional Court has confirmed the House of Representatives 's opinion, it does not rule out the possibility that the violation case will proceed to a general trial. This matter has been regulated in Article 20 of Constitutional Court Regulation Number 21 of 2009 concerning Procedure Guidelines in Deciding on the House of Representatives 's Opinion regarding Alleged Violations by the President and/or Vice President, which states that: "The Court's decision granting the House of Representatives 's request does not preclude the possibility of the President/and or Vice President in criminal, civil and/or state administrative trials by their respective procedural laws.

The Police and Prosecutor's Office as law enforcement officers are located under the auspices of the President's institution, so it is appropriate that if the President commits a criminal act while in office he must first be removed from office. This is intended to guarantee the independence and integrity of law enforcement officials so that they are not influenced by pressure from those in power.

Even though the Constitutional Court has decided regarding the House of Representatives 's opinion regarding alleged criminal acts committed by the President and/or Vice President, the principle of *ne bis in idem* in Criminal Law does not apply, this is because the principle of *ne bis in idem* is interpreted as a prohibition on filing a lawsuit a second time in the same case after the subject, object, and grounds have been decided by the same court. This rule is regulated in Article 76 of the Criminal Code Paragraph (1), which regulates the handling of cases and prohibits prosecution of someone who has been convicted and the decision has obtained permanent legal force (*in kracht van gewijsde*). This applies to both criminal and civil cases.<sup>39</sup> In the impeachment case, the object of study by the Constitutional Court is the opinion of the House of Representatives, not the criminal act committed by the President. The Constitutional Court only assesses whether the House of Representatives 's opinion is justified or not. The Constitutional Court's decision was taken into consideration by the People's Consultative Assembly in the impeachment trial process at the People's Consultative Assembly. Meanwhile, the criminal justice process can still be continued as stated in Article 20 of Constitutional Court Regulation Number 21 of 2009 concerning Procedure Guidelines in Deciding the House of Representatives 's Opinion regarding Alleged Violations by the President and/or Vice President.

Based on the explanation above, it can be concluded that not all impeachment processes will end in impeachment. Therefore, the words 'impeachment' must be differentiated from 'removal from office' which means dismissal from office. Jethro K. Lieberman stated that: "Impeachment is how the federal officials may be removed from office for misbehavior". Impeachment is only a means to enable the dismissal of the President, but the results depend on the legal and political evidentiary process, especially regarding the dismissal of the President and/or vice president or not.<sup>40</sup>

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<sup>38</sup> Op.Cit., Prayitno, "Prosesn Pemakzulan (Impeachment) Presiden Menurut UUD NRI Tahun 1945 Dihubungkan Dengan Hak Untuk Menyatakan Pendapat DPR RI."

<sup>39</sup> Andrew and R Rahaditya, "Implementasi Asas Ne Bis In Idem Dalam Putusan Hakim Yang Berkekuatan Hukum Tetap Pada Perkara Pidana," *Unes Law Review* 6, no. 1 (2023): 2102, p.7,

<sup>40</sup> Op.Cit., Mahkamah Konstitusi and Konrad Adenauer Stiftung, "Mekanisme Impeachment Dan Hukum Acara Mahkamah Konstitusi."

When viewed from the accountability system of public officials, which also includes the President, TB Silalahi explained that the actions of public officials must meet two criteria, namely: *first*; do not conflict with applicable provisions, and; *second*: standards with efficiency and economy. Therefore, impeachment becomes a legal control over public accountability of public officials, which includes the President.

The impeachment trial is political, so there are no criminal or civil sanctions in it. However, a President who has been impeached can be tried again in a general court according to the charges brought against him. After the President and/or Vice President are proven to have committed a criminal act in a Constitutional Court trial, the President and/or Vice President must be held accountable for their actions. Criminal responsibility is a form of determining whether a suspect or defendant is responsible for a criminal act that has occurred. In other words, criminal responsibility is a form that determines whether a person is acquitted or convicted. Thus, regarding criminal acts committed by the president, regarding true accountability, this does not only involve legal issues but also relates to moral values or general decency adhered to by a society or groups in society, this is done to guarantee that criminal accountability can be obtained by fulfilling and upholding the values of justice.

#### 4. Conclusion

Based on the discussion above, it can be concluded that the president's vast power and authority must be balanced with effective oversight to maintain the system of checks and balances in state administration. Impeachment serves as a crucial mechanism to ensure that the President and/or Vice President adheres to the law and upholds integrity. According to Article 7B of the 1945 Constitution of the Republic of Indonesia, impeachment can be initiated against any President and/or Vice President who commits a criminal act, such as treason, corruption, bribery, other serious crimes, or disgraceful acts. The impeachment process involves both legal and political mechanisms, beginning with an indictment by the House of Representatives, followed by a judicial review by the Constitutional Court, and ultimately a decision by the People's Consultative Assembly. To ensure the effectiveness and clarity of impeachment procedures, it is essential for state institutions to align and refine related regulations, both at the constitutional and derivative levels.

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