

Analisis Proses Hukum Presiden dan/atau Wakil Presiden Setelah Diberhentikan dan Diimpeach, Studi Hukum Peraturan Mahkamah Konstitusi Nomor 21 Tahun 2009 = Analysis of The Legal Process of the President and/or Vice President After Get the Sack and Impeach in Legal Studies of the Law Ordinance of The Constitutional Court Number 21/2009

Isykamal, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=9999920557134&lokasi=lokal>

Abstrak

Tesis ini membahas tentang penerapan proses hukum Presiden dan/atau Wakil Presiden setelah di-impeach studi hukum peraturan Mahkamah Konstitusi Nomor 21 Tahun 2009 tentang Pedoman Beracara dalam Memutus Pendapat Dewan Perwakilan Rakyat Mengenai Dugaan Pelanggaran Oleh Presiden dan/atau Wakil Presiden. Penelitian ini merupakan penelitian dengan menggunakan metode penelitian hukum normatif dimana metode ini menggunakan studi kepustakaan dalam pengumpulan datanya, kemudian data-data yang diperoleh dianalisis dengan menggunakan pendekatan Undang-Undang, pendekatan konseptual, dan pendekatan sejarah, serta pendekatan perbandingan hukum. Pemberhentian Presiden dalam masa jabatannya tidaklah dibenarkan dalam sistem presidensial, namun ada beberapa pengecualian yaitu apabila yang bersangkutan telah melanggar Pasal 7A UUD NRI 1945. Berdasarkan pengalaman sejarah ketatanegaraan Indonesia dalam pemakzulan jabatan presiden, yaitu Presiden Soekarno dan Presiden Abdurrahman Wahid. Pemakzulan tersebut hanya berdasarkan karena Presiden dianggap tidak mampu menjalankan haluan negara. Namun belum ada catatan sejarah mengenai pemakzulan presiden dikarenakan presiden melakukan tindak pidana berat maupun korupsi. Apabila hal itu terjadi, dan dinyatakan bersalah oleh Mahkamah Konstitusi, apakah mungkin Presiden dan/atau Wakil Presiden kemudian diajukan kembali ke Pengadilan Umum untuk dimintai pertanggung jawabannya dihadapan hukum? Dalam Pasal 20 PMK No. 21 Tahun 2009 hal demikian ternyata dibenarkan, karena tidak menutup kemungkinan diajukannya Presiden dan/atau Wakil Presiden dalam persidangan pidana, perdata, dan/atau tata usaha negara sesuai dengan asas dan hukum acara masing-masing. Kemudian timbul pertanyaan lain, apakah hal demikian tidak melanggar asas nebis in idem karena telah diadili di MK? Apabila kita melihat dari perspektif objek perkaranya, bahwa yang menjadi objek perkara impeach di MK adalah pendapat DPR, bukan pribadi dari seorang Presiden dan/atau Wakil Presiden itu sendiri. Maka dari itu, peradilan umum dapat melakukan proses hukum untuk meminta pertanggungjawaban pidana atas pelanggaran hukum yang telah dilakukannya. Artinya disini, hal itu tidak bertentangan dengan asas nebis in idem.

.....This thesis studied about the practice of the legal process of The President and/or Vice President after being impeach studies of the law ordinance of constitutional court number 21/2009 about for guidelines on how to discontinue the house of representatives people regarding alleged offenses by The President and/or Vice President. This research using a normative-law study method in which it uses literature studies in data collection, and then data obtained is analyzed using Statute Approach, Conceptual Approach, Historical Approach, and Law Comparison Approach. The President's dismissal on his term is not justified in the presidential system, but there are certain exceptions when it comes to violating Article 7A of UUD NRI 1945. Based on the history experience of Indonesian President for office impeach President, who is

President Soekarno and President Abdurrahman Wahid. The impeach was based only on the fact that the President was deemed incapable of carrying out the country's course. However, there is not record of the President's impeach as the President has committed both criminal and corruption. if that happens, and was convicted by The Constitutional Court, would it be possible for the President and/or Vice President to be remanded back to the Public Court to hold him accountable before the law? In Article 20 of the 2009 constitution no. 21 ordinance of constitutional court such is justified, as it does not rule out the possibility of a President and/or Vice President in criminal, civil and state administration in accordance with the principles and laws of the proceeding. Then another question arises, whether such is not the case violating the principles of nebis in idem for being tried in the Constitutional Court? When we see from the perspective of the object, that which became the object of the impeachment in the constitutional court is the opinion of the House of Representatives, not personally of the President and/or Vice President himself. Hence, public justice can carry out a legal process in which a criminal will be held accountable for the crimes he committed. It means here that it does not conflict with the principle of nebis in idem.