

# A Regulation of Construction for General Principles of Good Governance as a Review for Impeachment of Indonesian President

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## Abstract

Construction Principles regulation of Good Governance as a review of impeachment for President in his position, therefore used two methods namely: Amendment method of Indonesian constitution of 1945 that is known as the regulatory term; and law construction method by the judge of the Constitutional Court (MK-RI) that is known as the system of jurisprudence. Constructed through amendment methods of the Indonesian Republic Constitution of 1945 is the President or Vice President may be impeachment in their position of office by the Assembly on the proposal of the House of Representatives, both if it is proven to have violated the law in the form of treason, corruption, bribery, other high criminals, or misdemeanours, or proved to have violated Principles of Good Governance, and proved no longer qualifies as President or vice President. While the results of the legal construction by the judges of the Constitutional Court (MK-RI) will be included in the legal consideration of judges is not in the dictum of the decision set forth in the jurisprudence. The results of the two methods gave birth to the theory of formal recognition (of the formal recognition), so that it becomes positivist instrumentalist as a review of impeachment for contemporary.

**Keywords:** Construction, Principles of Good Governance, Review, Impeachment, President.

## 1. Introduction

Construction<sup>1</sup> law regulation a reason for impeachment of President on his position in this article interpreted rearrangement of legal norms setting a reason for impeachment of president to give a purpose and a new paradigm as a review of Indonesia president impeachment.

The regulation is a reason for impeachment of president in his position has been defined in Article 7A of the 1945 Constitution of the Republic of Indonesia to demonstrate the Indonesian State has clear rules and mechanisms and have forward the principles of a democratic legal state constitutional Indonesian version apart from the influence of political conspiracy in the formulation of the articles on the reasons and mechanisms of the President in the discharge of his president. It has described the constitutional design changes that result strongly suggests the power control of the actions of the President, even though the issue of dismissal is primarily an issue of violation of law with political overtones that accompanied it. Design of these violations, are (1) Treason on the state. (2) Corruption. (3) Bribery. (4) other serious high crime or (5) a misdemeanors. (6) Proven no longer qualifies as President or Vice President.

Design by infringing the law as a reason for impeachment of president under Article 7A of Indonesian constitution of 1945 needs to be constructed, considering it too strengthen the position of the President as head of state and government are not easily impeached in his position. Whereas in such condition.<sup>2</sup> the President may perform arbitrary actions and abuse of power can even harm the country.

According to Sudarsono, a mis-intrepret of power, including the power (detournement de pouvoir) and acts of arbitrary (willekeur /abuse de pouvoir) is a phenomenon that has long existed, also once reminded on the importance of control over the use of authority (authority) itself. Moreover, with the presumption of validity (vermoden van rechtmatigheid = praesumptio iustae causa), which requires us to consider valid advance an act of government before any decisions or rulings to the contrary. This principle according to Sudarsono, can

<sup>1</sup> The word "construction" has no significant meaning, if not paired with another word that has the purpose or intent of language writer. According to Indonesian Dictionary Compiler Team, (2008), construction is the arrangement (model) a building word in a sentence or group of words, meaning build, repair, build. Construction can also be interpreted as the manufacture or design-building and the preparation of (Pius A Partanto & M. Dahlan Al Barry, 365). While Sarwiji (2008) argued that the construction (construction meaning) is contained in the meaning of language construction. Therefore, the construction of meaning in this paper is the development or building a word or phrase as a new model in the context of language previously considered less appropriate.

<sup>2</sup> In theory the system of government Presidensial where the President seated as head of state and government of the position of the President is very strong and not easy to be dismissed of his rule, lawlessness as a legitimate reason dismissal of his rule set out in Article 7A of the above does not mean simplify the dismissal of the President, but will strengthen the position of the president in Indonesia Presidensial system results 1945 changes.

encourage a person to abuse their authority or acting arbitrarily, if controls on the use of authority itself is weakened or reduced.<sup>1</sup>

Based on the statement above, violations of the law as a reason for impeachment of president under Article 7A of Indonesian constitution of 1945 is not adequate due to the strong position of the President as head of state and government as the character of the presidential government system, because the condition can lead to judicial careless action and abuse of power can even endanger the State. Therefore, it is necessary principles of good governance as legal reasons impeachment of the President of Indonesia through the method of amendment by the People's Consultative Assembly (MPR) or through a construction method that results are to be established in the form of the jurisprudence of the Constitutional Court of the Republic of Indonesia (MK-RI).

The proses of impeachment in in Indonesia through the proces of three state institutions directly, namely by the House of Representatives (DPR), the Constitutional Court (MK-RI), and the People's Consultative Assembly (MPR). However, whether or not the president impeached in his position depends on the political purpose, especially if the majority of the Assembly members of the election winner and as supporters of President or as the opposition of the President, the achievement of courum can be arranged. This study was conducted to answer legal issues (legal issue), how the construction of the runway setting AUPB as a review of impeachment on the President of Indonesia.

## 2. Research Method

This research method is the study of law (legal research), is a legal research done in order to find the principle or the doctrine of positive law. This research is commonly known as the study of dogmatic or commonly known as the doctrinal research.<sup>2</sup> Selection of this type of research tailored to the legal issues under study, namely that the law drafted in the form of legislation formed, built and enacted by the competent institutions, in addition to the norms of unwritten laws that are always evolving development of human civilization in accordance with legal principles that have universal values.

The approach used is a theoretical approach, the approach of the law (statute approach), approach to the concept (conceptual approach), approach to history (historical approach), the comparative approach (comparative approach), the philosophical approach (philosophy approach). The types and sources of legal materials, such as primary legal materials, secondary, and tertiary. While the method of collection of legal materials do with identifying and / or browse relevant legislation, and then analyzed using an instrument theory, methods of construction and the amendment method and results are presented in the form of an analytic descriptive or prescriptive analytics. Therefore, construction and application settings AUPB as an impeachmen review of the President is done through two ways, method of amendment and method of construction as the following description:

## 3. Result and Discussion

### 3.1 The Construction Law Setting of the general principles of Good Governance As a review of President impeachment.

#### 3.1.1 Amendment Method

The word is derived from the English namely, the "amendment" which means the change or to amend, to alter, and to revise. The term "change" comes from the word "change" that got prefix and suffix's. Etymologically, the word "change" means things changed condition, transition, transfer or exchange. These changes can mean "repeal", "Extra" and "repair" / revision.<sup>3</sup>

Another term change is the reform. So the notion of "constitutional changes" may include two senses, namely: (1). Amendments to the constitution (constitutional Amendment). (2). constitutional reform.

Broadly, there are two kinds of changes system to the Constitution made by several countries, namely: (1) The first system is, when a Constitution is changed, then that will apply is the Constitution or a new whole constitution, This means that the constitution has been amended from every sections that has nothing to do anymore with the old constitution. This system goes into (constitutional reform). This system adopted by almost all countries in the world, including the Netherlands, Germany, and France. (2) The second system, when a Constitution or the constitution is changed, the original constitution remains is still operate. Changes to the constitution an amendment of the original constitution, or an addendum or insertions of the original constitution. Or in other words, part of the amended constitute or be part of the constitution, so between the change and the parts of the original constitution is still relevant. Applicability of the constitution to change the system is still

<sup>1</sup> Sudarsono, "Choice of Law In Dispute Resolution State Administration in the State Administrative Court", *Speech Inauguration Position Professor in the field of Law of the State Administration At UB Faculty of Law*, delivered at a meeting of the Senate Open University of Brawijaya, Malang, March 26, 2008, p. 1-2

<sup>2</sup> Soetandyo Wignjosoebroto, *Legal Research: A Typology*, People magazine Indonesia the first year No. 2 in 1974.

<sup>3</sup> Taufiqurrohman Syahuri, *Constitutional Law: Constitution Amendment Process and Procedures in Indonesia 1945-2002*, first printing, (Jakarta: Ghalia Indonesia, 2004), p. 44.

based on the time of entry into force of the old constitution (still using the old year at the time the constitution was established, cursive writer), so that the old values in the original constitution that has not changed still exist. This system adopted in the United States with the popular term "amendment". The constitution of 1945 changes follow the system of this amendment.<sup>1</sup>

Broadly, the changes to the constitution through two ways, namely:<sup>2</sup>

1. Juridical way, operated such the formal rule that stipulated in the constitution itself, or may be ruled by other legislation. (This method is usually called *vervassung anderung*).
2. Non juridical way, constitutional changes usually occur due to certain reasons or special condition that leads to the change of constitution. Such changes can alter totally or partially in accordance with the needs. (This method is called *vervassung wandlung*, which is revolutionary).

In the RI State Constitution of 1945 had no legal means as a basis for changing the 1945 Constitution, in which the Assembly that holds the basic law that rely upon Article 37 jo. Article 3, in section (1) has the authority to change and establish the Constitution.

Amendments on the Constitution of 1945 is very reasonable to do to enter AUPB as the basis of impeachment review for the President, the existence of Principles of Good Governance (AUPB) in the Constitution of 1945, will demonstrate the design perfection the results of the fifth stage of the Constitution of 1945 changes in regulating the reason for impeachment of president in the future and Indonesian national legal system seen from the systematic method of amendment and interpretation as part of the overall system of law.

Bagir Manan (1999) subjectively assess the various laws and regulations (including the 1945 changes, cursive author) created to solve the situation immediately, so that less attention insight into the future. Even legislation has only a limited. This deficiency can actually be restricted if the law enforcement agencies play an active role to fill various legal vacuum or provide a new understanding of a term. The way out is to pay attention principles of good governance (italics author).

Thus, the inclusion of the principles of good governance in RI State Constitution of 1945 through the amendment method, is part of the legal system as a whole new paradigm impeachment review of President in the future. Where the principle of the Principles of Good Governance in question is not all principle, but some of the principles on the identification authors, namely: (1) the principle of a certain of Law. (2) The principle of welfare / happiness. (3) The principle of Unity and Integrity. (4) Principle of Protection of Life Protection. (5) Principle of Honesty. (6) The principle of Shame (*al-haya* '). (7) The principle of Faith. (8). Ethical Principles

Violations of the Principles of Good Governance are either attitude, behavior or action in the form *vrije beleidsregel*, though the Principles of Good Governance not incorporated in the Constitution of 1945, then Principles of Good Governance can be applied as a means of impeachment review of the President by the Constitutional Court (MK-RI), if Parliament wished to propose the dismissal of the President in his position to the MPR only first be submitted to the Constitutional Court (MK-RI).

The absence AUPB are nominally in Indonesian Constitution of 1945, did not become a barrier for the Constitutional Court to accept the case of the impeachment for President to the alleged violation AUPB, because the judges of the Constitutional Court implicitly can base to Article 5, and explicitly Article 10 of Law No. 48 of 2009 concerning Judicial Authority in view of the urgency AUPB a review of impeachment for President in his position.

Although, it does not have a position formally, then AUPB can be used as a review of the President in his capacity of AUPB as norms of unwritten laws containing ethical values of the rule of law, because AUPB realized from ethical values are upheld, then AUPB can still be used as review in accordance with the impeachment of the President for the legal construction discovery freely (*vrije rechtsvinding*).

Amendments on the 1945 Constitution as its entrance Principles of Good Governance (AUPB) that legally, the law indicates current renewal (*ius constitutum*) by law aspired (*ius constituendum*).

This means that the formulation of legal norms formulation of Article 7A RI State Constitution of 1945 regarding the violations of the law as a reason for dismissal law the president in his position constructed with a new statement, within the meaning of the update to further refine the substance of the Constitution in organizing a reason for impeachment of president as forming and limiting state power.

The absence of Principles of Good Governance as the review of impeachment for president, according to the author, caused by the following:

1. The drafting changes of third stage to the Indonesian Constitution of 1945 supposed to protect and strengthen the position of the President as head of state and of government by eliminating the Principles of Good Governance (AUPB) as one reason for the impeachment of the President in his position,
2. The drafting changes of third stage to the Indonesian Constitution of 1945 to protect the president from those who feel they have the power (political and economic power) to drop over the actions that

<sup>1</sup> Sri Soemantri M, *Procedure And amandment Systems of the Constitution* (Bandung: Alumni, 1987), p. 81

<sup>2</sup> Vide Taufiqurrohman Syahuri, *Op.Cit*, p. 45.

can be used as the impeachment review of the President.

3. In the event of alleged violations of the law as stipulated in Article 7A of the Constitution of 1945, then proof must take the long way which is not easy to be operated.

### 3.1.2 Methods of Construction Law

Understanding of the legal construction of setting a reason for impeachment of president in this research intended realignment or rebuild by not changing the original law setting a reason for impeachment of president in his position. It was as set out in Article 7A RI Constitution of 1945 as a reason for impeachment review of the President is considered less precise, so that the necessary new construction to apply the test as a tool AUPB dismissal of the President. The goal is to provide new repertoire reason for impeachment of president in the future, and as contributions to the repertoire of Constitutional Law.

The principles of good governance as a principle, is part of the general legal principle by Indroharto considered to be a part of positive law. According J.J.H.Bruggink, the principle of the law is the law that affect the rules of behavior, because the principle of law plays a role in the interpretation of the rule of law, and the rules that determine the area of application of the law.<sup>1</sup>

Based on that statement, the principles of good governance as a legal principle, it also gives explanation or instructions to the judges of the Constitutional Court (MK-RI) in resolving the concrete events relating to the president's actions are contrary to the principles of good governance as a review for impeachment of the President.

In society there is a value, value will form the principle and principles will form the legal norms, if occur the vague norm / not clear, then how to resolve the unclear methods of interpretation. But if there is a vacuum of norm (legal vacuum) to a concrete event, then the solution is to the method of construction (construction law). In case of incomplete norms in concrete events, the methods to solve it is the amendment method. However, if there is a conflict of norms, then the solution is the methods of judicial review.

As the researcher explained in the beginning, the reason for the law of impeachment for the President under Article 7A of 1945 mentioned above is not considered adequate for too strengthen the position of the President as head of government, and it allows the President did in defiance of the law or violate the General Principles of Good Governance, necessitating the construction law setting a reason for impeachment of president in his position.

Construction was taking conclusions that include in direct expression of the text, from the elements that are known and contained in the text, the conclusions contained in the spirit, and not on the letters that are printed on the text.<sup>2</sup> According to Achmad Ali, the construction consists of: argumentation, analogy; argumentum a-contrario; rechtsverwijning (a concrete law); and fiction.<sup>3</sup>

But unlike Achmad Ali above, what is included in the construction method by Achmad Ali above, by Sudikno (1993: 21) included in the criteria of argumentation methods, namely: method of thinking analogy, methods of narrowing the law, and the methods of a-contrario.<sup>4</sup>

According to Achmad Ali, should be strictly separated between the method of interpretation by the method of construction or interpretation by the method of construction. It was not only needed in the systematics of law, but also in the world to practice law in the courts.<sup>5</sup>

Achmad Ali also admits, some experts consider that there are no difference between the interpretation and construction, none of them have even identified it. In fact, there are experts who objected, if the interpretation is considered legal discovery, for legal discovery conotated as the formation of a new law. As the judge's ruling in the case of *Chatenay Versus Brizilian Submarine Telegraph Co* (1981) holds the view that the interpretation and construction there is no difference, they are used synonymously.<sup>6</sup> Construction was carried out

<sup>1</sup> J.J. H. Bruggink, *Reflection about Law*, (Bandung: Citra Aditya Bakti, 1999), p. 120

<sup>2</sup> Ibid, p. 142

<sup>3</sup> Achmad Ali, *Raising the Curtain law: Suatu Kajian Filosofis dan Sosiologis*, (Jakarta: Chandra Pratama, 1996), p. 168

<sup>4</sup> Ibid, p.169

<sup>5</sup> Ibid, p.166

<sup>6</sup> The main requirement to do construction according to Rudolph von Jhering in (Scholten, 1988: 67-69), as quoted by Ahmad Ali, namely:

1. Covering material positive law

Construction should be able to see all the positive legal field is concerned. Such as laws that specify that if a holding of an item with the title bezit, apparently lost it because it appropriated other people, and he will lose its title after the passing of one year since the goods are in the hands of others. Moreover, the existence of a doctrine bezit that can be acquired or switch to other people as soon as the goods are on hand, it is clear that these teachings are not based on good construction on the basis of the law. This means it is not able to cover the existing legal provisions. Construction should be declared eligible to receive bezit obtain title, should be followed yearly basis.

2. Not to be denied himself

In the manufacture of construction should not be any logical contradictions in it. For example, there is the doctrine that the owner can be a holder of a mortgage on his own goods. This teaching included the construction of a misnomer,

on legal norms are rated event of a vacancy or the vacuum of the norm.

### 3.1.3 Reasons Construction Law

#### 3.1.3.1 Incompleteness Law (Uncompleteness of Norm)

Philosophically demonstrate the application of Principles of Good Governance test as impeachment review of the president has not been implemented, its essence (essence) AUPB is to fill the incompleteness and vagueness and emptiness of legal norms a reason for impeachment of president that is in the Constitution state RI 1945 of which are not obvious, such as the reason of "moral turpitude", so it can be used as a touchstone Principles of Good Governance impeachment of the President in his position to assess the actions or deeds of President breaking / contrary of Principles of Good Governance.

AUPB existence as a review of impeachment of the President in his position, in this article is intended as an reform of national law (law of the reform) within the meaning of the amendment of Article 7A RI State Constitution of 1945, or through the jurisprudence of the Constitutional Court. During the President's reasons for termination based solely on the legal norms contained in the RI State Constitution of 1945 as the state constitution, so judged not reflect the spirit of the spirit of the values contained behind Principles of Good Governance.

Meanwhile, at the level of a modern constitutional state impeachment of the President in his position is not enough based on violations of the norms that exist in the Constitution of 1945 as the state constitution so as not to narrow the meaning "the state constitution law", but the necessary flexibility to solidify Principles of Good Governance as the foundation the review by extending parliamentary control to the function of the President, without prejudice to the stability of the Indonesian Presidensial system.

Implementation of Principles of Good Governance as a review for impeachment of President during his position represents a new paradigm to enhance the formulation of norms of Article 7A State Constitution of Indonesia Year 1945 is not perfect yet in regulating the reasons for the impeachment of the President and at the same time narrowing the act of arbitrariness act or acts of the President as organizer government by strengthening the system does not reduce the significance of presidensial system of Indonesian version that has been set in the RI State Constitution of 1945.

In relation to the construction of the laws governing Principles of Good Governance as a new paradigm of impeachment review of the President in his position with the amendment method of the 1945 Constitution, or through the construction method by the Constitutional Court set forth in the form of jurisprudence is a right way.

In this regard, looking the common law system constructed by the principle of stare decisis as an indirect control by the courts was higher against the lower court, it may ensure a vaste jurisprudentie because the farther implementation of the law of justice, because of too strong enactment legislation and codification, then jurisprudence came to help ease public anxiety.<sup>1</sup>

In its development, the establishment of law through jurisprudence in the common law system in spite of the perceived ease the anxiety of the society of justice, considered running slow, because not all cases or disputes are resolved through the courts, the tradition of the common law also uses the legal establishment through legislation carried out by Parliament.<sup>2</sup>

In regard to the existence of Principles of Good Governance review of impeachment of the President in his position with the construction method specified by the Constitutional Court in the form of jurisprudence as a form of building national legal system in the future.

Abdul Hakim G. Nusantara mention two (2) models of legal development strategy, namely the development strategy of orthodox law and legal development strategies responsive. The development strategy of orthodox law is characterized by the absolute role of state institutions (government and parliament) in determining the direction of the development of law in society.<sup>3</sup>

Law generated by this strategy into nature positive of instrumentalist. The law became a powerful instrument for the implementation of the ideology and program of the country. Civil law tradition and the tradition of socialist law can be categorized in the development strategy of orthodox law.<sup>4</sup>

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because the mortgage itself is a right held by a person on the property of others.

#### 3. The aesthetic factor

Construction would contain the beauty factor, the construction is not a made-up thing. Construction should be able to provide a clear picture of something, therefore it should be fairly simple and does not even raped. With the clear picture of a problem, then it is possible the incorporation of various regulations, creation of new meanings and others. Thus, the construction must contain three terms, namely: material, logical unity, and forms.

<sup>1</sup> Sunaryati Hartono, *Capita Selecta Comparative Law*, (Bandung: Adiyta Citra Bakti, 1991),P.104

<sup>2</sup> Ibid, p.104.

<sup>3</sup> Vide A.Hakim G. Nusantara "*Wisdom and Law in Indonesia Development Strategy: A Critical Review of the Political Development of National Law*" in Artidjo Alkostar and M. Sholeh Amin (Ed.) *Development of Law in National Law Political Perspective*, LBH Yogyakarta in cooperation with Rajawali Press , Jakarta, 1986, p. 155.

<sup>4</sup> Ibid, p. 156



While the legal development strategies that are responsive to characterize the role of the judiciary and the broad participation of social groups or individuals in the community to determine the direction of development of the law. Pressure from the broad participation of the community and its position relatively freedom enable the judiciary seeing the perspective of the future, especially in the face of conflicts arising that delivered to him.<sup>1</sup>

Role of Principles of Good Governance as a review of impeachment for the President is very important, even it have shown in some legislations in Indonesia, even though its name is still a principle, how importance of this Principles of Good Governance, so that the legitimacy of government action are not adequately reviewed by law, but also reviewed with the Principles of Good Governance.

Role of Principles of Good Governance was not enough to stop for limited on testing the validity of the decision from the government that led to the cancellation of the decision, but must contribute to the realm of the impeachment on the President, if the Principles of Good Governance is violated.

To strengthen the role of Principles of Good Governance as the review of the impeachment for the President in his term for the future and are philosophically become an instrument of justice and to overcome the incompleteness, vagueness, emptiness and weakness of the rule of law in the Constitution of the State Republic of Indonesia of 1945, it is needed a position and formal recognition of Principles of Good Governance in the Constitution the Republic of Indonesia of 1945, or through the jurisprudence of the Constitutional Court.

### **3.1.3.2 The Reason of Recognition on the General Principles of Good Governance**

Politically amendment to the Indonesia Constitution of 1945, or through the jurisprudence of the Constitutional Court (MK-RI) in order to provide recognition of formal existence of the Principles of Good Governance (AUPB) as a review of impeachment for the President in his term will be determined by political support in the Assembly institutions, and the purpose of the Constitutional Court in constructing the law.

It can be seen in Article 3 section (1) of the Indonesia Constitution 1945 asserted the authority to change and establish the Constitution there are instituted political called People's Consultative Assembly (MPR), and freedom of constructing conducted by a judge Constitutional Court.

Political purpose to build together for the national legal systems in the context of the i of the impeachment of president on the review of Principles of Good Governance (AUPB), in addition to the reasons already set out in Article 7A RI State Constitution of 1945 included in the political sphere of law. Thus, according to the legal political briefly Wahjono Padmo is closely related to the law that will be established in the future (*ius constituendum*). However, with regard to the formulation of legal politics propounded by Padmo Wahjono above, very close to the "*ius constituendum*" within the meaning of (Principles of Good Governance as the review of impeachment of the President in the amendment to the Constitution of 1945, or through jurisprudence is the substitution of "*ius constitutum*" (incomplete rule of law grounds of Article 7A impeachment of the President of RI State Constitution of 1945), therefore, the "*ius constitutum*" today, in the past the "*ius constituendum*".

Related with those statements, the purpose of Assembly to make changes to the RI State Constitution of 1945, or through jurisprudence to enter the General Principles Good Governance (AUPB) in it as a review of impeachment for the President in his position and impose it as an Indonesian positive law (*ius constitutum*).

Law politics in this article shows that:

1. Paradigm implementation of Principles for Good Governance as a means of impeachment review of the President through the method of amendment of the Constitution of 1945, or through jurisprudence to give formal recognition to the position and Principles of Good Governance as a form of building national legal system in the context of the impeachment of the Indonesia president ,
2. Amendment of RI State Constitution of 1945, to give formal recognition to give a position to Principles of Good Governance as an impeachment review of the President in his position is a form of legal reform in Indonesia.

3. To what extent the reform was implemented, it is largely determined by the political aim of the stakeholders authorized of the institution that has the authority to make changes to the RI State Constitution of 1945, the People's Consultative Assembly (MPR).

In a society that operate the continental European system (civil law system) or the civil law tradition, its formation is done by the legislature. Meanwhile, in a society that implement to state common law tradition (common law system) authority centered on judges (judges as a central of legal action).<sup>2</sup> Thus, the establishment of law in the meaning of the amendment of Article 7A RI State Constitution of 1945, is part of the national political law.

Therefore it contains on how to make / create and formulate an AUPB in RI State Constitution of 1945 in the sense of giving the room a formal recognition of the Principles of Good Governance (AUPB) as a review

<sup>1</sup> Ibid

<sup>2</sup> Lili Rasjidi & I.B. Wyasa Putra, *The Law as one System*, (Bandung: CV. Mandar Maju, 2003), p.163

of Indonesia president.

Based on those statements, operating the legal political amendment in Section 7A State Constitution of 1945, it means to hold elections in order to achieve the result of amendment in the Constitution of 1945, which meets the requirements and principles of law as well as meet the rules of the establishment of laws and regulations that meet the fairness, certainty, and expediency.

Policy efforts to amend the State Constitution RI 1945 in order to implement the Principles of Good Governance as a review of impeachment of the President in his position, in essence can not be separated from the political goals of the law itself, which creates certainty of process and mechanism of impeachment the President in his position. Therefore, policy or legal political amendment in Article 7A RI State Constitution of 1945 is part of the national political law. Efforts to change policy Article 7A State Constitution RI 1945 in order to implement the Principles of Good Governance test as a tool dismissal of the President in his president also included in the realm of development of national law, and it can only be done depends on political law.

The direction of development of national laws (including the construction of Principles of Good Governance, cursive writer) in order to establish a national legal system based on Pancasila and the 1945 Constitution, namely:<sup>1</sup>

1. Result a national law that organizes general obligation of government and the implementation of national development.
2. The creation of the legal apparatus that is clean, dignified, devoted, conscious and law-abiding, have a sense of humanity and justice like professional, efficient and effective.
3. Availability of adequate facilities and infrastructure.
4. The creation of conscious society and law-abiding.

For example, as an example of the construction of the law by the Constitutional Court (MK-RI), is a legitimate reason misdemeanours. RI State Constitution of 1945 does not provide clarity and clear boundaries, but Article 10 section (3) of Law Number 24 of 2003 on the Constitutional Court, giving instructions, that "moral turpitude" "as acts that can be degrading the President.

Misdemeanours as the reason for the impeachment of the President of the law, can be interpreted in various ways, in perspective terminology violation of criminal law, civil, administrative, and can be interpreted from the perspective of terminology violation of ethics, and religion. In the perspective of ethical conduct ethical violations are very clearly degrading the President in his capacity as head of state and government, for example, "the President cheat, fornicate with another woman". Cheating and adultery is immorality so unethical, even breaking the law.

Based on the example of those cases, the House proposed the impeachment of the President of the Assembly, first be submitted to the Constitutional Court (MK-RI) to be examined by reason / charges of the president had committed "misdemeanours". Judges of the Constitutional Court (MK-RI) can construct through methods of *Rechtsvervijsnings* (concrete law). Concrete law method aims to concretize a legal rule that is too abstract.

After the judge assesses and collects facts and formulate it, then do identification law or implement AUPB, that the president found guilty of "misdemeanours" as a reflection of actions degrading the President, so that the construction of the judges of the Constitutional Court (MK-RI) showed that the actions of the President it qualifies Principles of Good Governance sign violation, namely the principle of ethical principles which contain elements of moral shame is everything that is based on moral, closely related to ethics, decency and propriety, based on the norms prevailing in a good life.<sup>2</sup>

Decision of the Constitutional Court (MK-RI) for the behaviour of the President, obviously recognise AUPB existence as the review of impeachment of President in his position. The position of the Constitutional Court (MK-RI) only concretize to qualify for "misdemeanours" as a violation AUPB, where "deeds reprehensible" has been used as a reason for impeachment of president at the RI State Constitution of 1945.

The reasons of law construction that have made by the Constitutional Court (MK-RI) based on the examples of such cases, based on the Article of 5 section (1) of Law Number 48 of 2009 concerning Judicial Authority, where the judges of the Constitutional Court (MK-RI) has an obligation to explore, follow, understand the values of law and justice alive in the community, so that the law would be created that sense of

<sup>1</sup> H.A.S. Natabaya, *National Legal Development: In Writing set Honoring 70 Years Prof. Mochtar Kusumaatmadja*, Mieke Komar, et.al, (ed), *Mochtar Kusumaatmadja: Educator and Statesman*, (Bandung: Alumni, 1999), p. 292.

<sup>2</sup> Nevertheless, against the decision of the Court of Representatives as stipulated in Law No. 24 of 2003 on the Constitutional Court Article 83 paragraph (1), (2) and (3). Amar that the Constitutional Court's decision on the opinion of the House of Representatives is composed of three possibilities, namely: (1) Amar-RI Constitutional Court ruling stating that the request can not be accepted if the request does not qualify. (2) Amar decision of the Court of Representatives expressed the opinion justify the Legislative Assembly if the President and / or Vice-President convicted the alleged action. (3) Amar-RI Constitutional Court ruling stating that the petition be rejected if the President and / or Vice President not guilty of the alleged actions by the Parliament.

fairness, and the decision of the Constitutional Court (MK-RI) in the case of this would be jurisprudence as a form of strengthening the development of the law through jurisprudence.

According M.Yahya Harahap, that one function of jurisprudence are as follow:<sup>1</sup>

1. Uphold the realization of law standards.
2. Establish a unified legal frame wor (uniformity of the same legal ) and unified legal opinon (uniformity perception of law).
3. The creation of the certainty of law enforcement.
4. Preventing disparity decision (to prevent another another judge's decision, and the law imposed).

According to Paulus Effendi Lotulung, the most effective way to promote the Principles of Good Governance, in the future is through jurisprudence, especially in the form of jurisprudence, it is because:<sup>2</sup>

1. In addition to the path of jurisprudence, namely the legislative way, for example, takes a long time and the process of discussion at the Parliament that is difficult and board.
2. Jurisprudence way allows developed in Indonesia, because Indonesia recognizes the system of jurisprudence as a source of law. In order to optimize the application of this jurisprudence AUPB through until its purpose, it is in need of knowledge of the judges were very deep on the Law on State Administration.
3. In order for the judge's decision to have the weight of the jurisprudence, scientific and accountable, then the decision should describe the deep philosophical foundation, the construction of a logical law, and his motivation is clear. The three requirements are this decision which is the heart of the decision of the judge is often called *ratio decidendi*.

According to Sudarsono, the rule of written law and jurisprudence obtain normative meaning based on where the application of the rule of law, in this connection between the rule of written law and jurisprudence give each other purpose.<sup>3</sup>

Implementation AUPB through the jurisprudence of the judges of the Constitutional Court (MK-RI) as a review of impeachment for the Indonesia president contemporary is one effective way, as if through the legislative-regulatory amendment to the Constitution the Republic of Indonesia Year 1945 requires a relatively long time and a starting-pull interests politics in the MPR. Even if it is a new way and never performed by the judges of the Constitutional Court (MK-RI). The effect of the application through the way jurisprudence, then sooner or later it will pass into the way of regulation-amendment to the Constitution of 1945.

### 3.1.3.3 Reasons Stabilization Principles of Good Governance

When AUPB played as a test tool dismissal of the President in his term, then put the Principles of Good Governance in a very important position in assessing and controlling government action. The idea Principles of Good Governance test as a tool dismissal of the President of Indonesia as a new paradigm, and need to be strengthened in establishing a legal system of Indonesia. Stabilization AUPB test as a review for impeachment of the President of Indonesia require the legislator or jurisprudential scenario is required by countries emerging as Indonesia, far beyond the needs of the developed countries that have well-established legal system, and a system of laws and regulations.

Reform of the legal substance of the impeachment of the President or a fundamental of the law that have quality of paradigm requires a trip and political measures are not simple, but it takes courage measures by the legislature or the judiciary, the Constitutional Court (MK-RI).

Amendment to Article 7A RI State Constitution of 1945 to recognise the AUPB in it, or the formation of AUPB in the jurisprudence of the Constitutional Court (MK-RI), is essentially a crystallization of the battle some interests that dominated the political power. Thus, stabilization of AUPB gathering in the Indonesian legal system is a technically demanding job immediately resolved for strengthening the national legal system.

Mochtar Kusumaatmadja, principles of national law, whatever their origin (including of AUPB, cursive writer), need to be established for the continuation of the Indonesian national law as a system of positive law. The consolidation is also necessary for the business development of national laws, because the long-term development is possible only when there are concepts or principles of good national law.<sup>4</sup>

Understanding the consolidation of the principles of law in the sense in which the element containing the dynamic development of the principle of adapting to the changes that occur.<sup>5</sup>

<sup>1</sup> M.Yahya Harahap, "Development of fixed Jurisprudence", The paper delivered on the VI National Law Seminar, Jakarta, 25-29 July 1994, p. 19.

<sup>2</sup> Vide uraian Jazim Hamidi, *Application of the General Principles of the Governing Eligible (AAUPL) in Indonesia Courts Administration.*, (Bandung: Citra Aditya Bakti, 1999), p. 180.

<sup>3</sup> I Dewa Gede Atmadja, Sudarsono, et al, *Philosophy of Science: from the Tree of Knowledge Until the Scientific Character of Legal Sciences*, (Malang: Madani, 2014), p, 104-105

<sup>4</sup> Mochtar Kusumaatmadja, *The Concept of Law in Development, first edition of second publishing*, (Bandung: Alumni, 2006), p. 198-199

<sup>5</sup> Ibid,p.198-199



Furthermore, Mochtar Kusumaatmadja asserted, stabilization of the general principles of law (including the principles of good governance as the review of impeachment for President, cursive writers) can be done in two ways, namely:<sup>1</sup>

1. Operated by the business of establishment on a national law through legislation.
2. In the implementation stage, the principles of law (including the principles of good governance as the review of impeachment for President, cursive writer) to be established through judicial decisions (decision of the Supreme Court, including the Constitutional Court (MK-RI, cursive writers) as the first door check the case of the dismissal of the President, has the position and role, (as it will be a guideline for the House of Representatives, cursive writer), so it should be really a decision that is good and blameless. the decision (of the Supreme Court, including the Constitutional Court (MK-RI, cursive writer) should be really good and not confusing.

Based on some reasons of the legal construction of the above, it can be concluded that the purpose of this law is that the construction can be applied as a foundation Principles of Good Governance touchstone dismissal of the President in his president to satisfy the demands of justice and expediency for justice seekers.

Results of construction arrangements through amendment method, namely: President and / or Vice President may be dismissed in their term of office by the Assembly on the proposal of the House of Representatives, both if it is proven to have violated the law in the form of treason, corruption, bribery, acts pidatana other serious, or misconduct, or proved to have violated Principles of Good Governance, and proved no longer qualifies as President and / or vice President. If the construction of the settings through jurisprudence, the application AUPB as test equipment will be included in the legal considerations of the judges of the Constitutional Court (MK-RI) is not included in the verdict dictum.

#### 4. Conclusion

To construct the setting/regulation Principles of Good Governance and apply the review of impeachment of the President, then used two methods: using the method of amendment of the Constitution of 1945 commonly known as the regulatory way; and methods of construction law by the Constitutional Court (MK-RI) commonly known as the way of Jurisprudence. The results of the two methods resulting the theory of formal recognition, so that it becomes positifis instrumentalist as a foundation stone of contemporary Indonesian President impeachment.. construction results in the formulation of the RI State Constitution of 1945 is the President or Vice President may be removed in the future office by the Assembly on the proposal of the House of Representatives, both if it is proven to have violated the law in the form of treason, corruption, bribery, other high criminals, or misdemeanours, or proved to have violated Principles of good Governance, and proved to be longer qualifies as President and / or vice President. Wallahu A'lamu Bisshowab, Fainnahu Yarok.

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<sup>1</sup> Ibid.

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