

# The Philosophical Values for the Judge Constitutional Court in Implementing the Principle of Shame (*Principle of Al-Haya'*) as a Review of Indonesian Impeachment

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## Abstract

The aim of this study was to find out the philosophical values for the judge constitutional court in implementing the principle of shame (*principle al-haya'*) as a review of Indonesian impeachment. This research uses the method of (*nomative legal research*), namely: a research that is done with the purpose to find the principles and philosophical basis (*dogma or doctrine*) of positive law, and the research of legal discovery *in concreto* that is appropriate to solve a case law such as the impeachment of the president in his profession using *the pricple of al-haya'*. This research approach used in this research is *statute approach, conseptual, historical approach, comparative approach, and philoshopy approach*. Data types and sources, namely *primary sources or outhorities, secondary sources or authorites, and tertiary sources or authorites*. The result of this research, formally juridical Implementation of the principle of al-haya' as a review of the impeachment of the Indonesian President by a Constitutional Court judge (MK-RI) based on the provisions of Article 5 juncto Article 10 of act Law Number 48 of 2009 concerning philosophical power to fill in the incompleteness, obscurity and emptiness of legal norms in the 1945 Republic of Indonesia Constitution and establish a national legal system. Technically, by the judges of the Constitutional Court (MK-RI) can be approached through the legal reasoning of induction and deduction. The method of implementation on shame principle (*principle of Al-haya'*) by the judges of the Constitutional Court (MK-RI) was done by deductive advance, means that the principle of specialty is devoted again to the legal field is concerned, the new rules do basically the deduction of law is concerned. Then deducted again into the substantive rules, and rules deducted longer be the case. After that is done in the case of the implementation of the rules of concrete case by the judge.

**Keywords:** Philosophical values, Judge constitutional court, Implementing, Principle of shame (*principle al-haya'*), as a review of Indonesian, Impeachment.

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## INTRODUCTION

The Constitutional Court of the Republic of Indonesia as one of the executors of independent and independent judicial powers to organize constitutional justice to enforce law and justice as an entrance to examine alleged violations of law committed by the President. One violation of the law as a reason for dismissal of the President is a misdemeanors.

Misdemeanors as the legal reason for the dismissal of the President is an act that can demean the President. The meaning of dehumanizing the President, is that there are many aspects or multiple interpretations, so that criminal acts can be interpreted, or actions that do not reflect attitudes that are generally

considered shameful (violating the principle of shame) or government actions that do not reflect people's welfare, or actions others that can be qualified against the principle of shame (*principle of al-haya'*).

In several countries in the world, there has not been found the application of the principle of shame as a test stone for the dismissal of the President by their Constitutional Court. So the results of this study will be data or comparative material for countries in the world, because of the principle of shame (*principle of al-haya'*) this is very importan.

The paradigm of the implementation on shame principle (*principle of Al-haya'*) As the review of the

impeachment for precedent that is very urgent because universally, it has been not a review of impeachment for precedent because there is no a national or international legal system and it does not become *ius constitutum*, whereas a feeling shame is being the character for every humans being in the nation and the state.

Theoretically, the absence of the (*principle of al-haya'*) as the review of the impeachment for the Indonesian president is contrary with the religiosity and the human nature recognition theory, that every religious person is being with shame character, and every soul (*person*) must have been completed with shame as human nature without looked to what religion and culture are. Socially, the feeling of shame is a soul that is afraid of something that makes his self bad either to the god and humans, also between the nation and the state.

The problem to be examined is how The Philosophical Values For The Judge Constitutional Court In Implementing The Principle Of Shame (*Principle Al-Haya'*) As A Review Of Indonesian Impeachment?

## MATERIAL AND METHOD

This research uses the method of (*nomative legal research*), namely: a research that is done with the purpose to find the principles and philosophical basis (*dogma or doctrine*) of positive law, and the research of legal discovery *in concreto* that is appropriate to solve a case law such as the impeachment of the president in his profession using *the pricple of al-haya'*. This type of research is commonly as dogmatic study or commonly known as *doctrinal research* [1].

Legal research at Morris L. Cohen's view is "legal research is the process of governing activities in human society" [2]. Cohen further added "it involves locating both the rules which explain or analyze these rules" [3].

This research approach used in this research is *statute approach, conceptual, historical approach, comparative approach, and philosophy approach*. Data types and sources, namely *primary sources or authorities, secondary sources or authorities, and tertiary sources or authorities*. The primary data collection technique is done by indentifying and tracing legislation related to the impeachment of the president. Secondary data was collected by studying *research*

*libraries*, both books and journals. Tertiary data is collection from encyclopedies and dictionaries to explain primary and secondary data, in addition data collection is also done by interviewing some experts in their capabilities, and can be obtained without being limited by time and place. The technique of data analysis used the interpretation methods and legal theory instruments.

## RESULT AND DISCUSSION

### Ethical and Moral Urgency for the President as Head of State and Government

In the meaning of a government position as a profession attached to the President as state administrator, there is no position that is free from ethics as legal norms and morality for a President who is made procedurally for the holder of the office concerned. Therefore, the President's code of ethics should be contained in the Law on Organizational Ethics.

Ethics can be interpreted as a set of principles or values of morality that contain norms that become guidelines and footholds of human beings or administrators in carrying out their duties and authority. While moral values and norms are a norm that describes humans in life in society, nation and state and good and bad behavior, right and wrong based on human nature that is realized through freedom of his will.

Furthermore, moral according to etymology, means the same as ethics in the form of values and norms that become the grip of humans or government administrators in carrying out their duties and authorities. Values and norms are a measure of the morality of human actions in terms of good or bad, right or wrong. In the life of the state moral values and norms are made a positive legal basis created by legislators.

In the ethical study of moral goodness, humans will struggle with the activities of the heart (heart), values, souls, attitudes, starting from activities that pay attention to simple phenomena to complex in one's internal factors that touch personality and conscience [4].

While as a moral foundation in the administration of government is ethics, so that a good and dignified government will be formed (the President as the state and government organizer)

In relation to ethics and morals Zainuddin Ali argues, the system of values and norms that are the basis of ethics does not stem from values, but solely

<sup>1</sup> Soetandyo Wignjosoebroto, "law and methods and legal research : a typology, Indonesian society magazine first year No. 2 1974.

<sup>2</sup> Morris L. Cohen & Kent C. Olson, Legal Research, West Publishing Company, St. Paul, Minn, 1992, P.I, in Peter Mahmud Marzuki, Legal research, (Jakarta: Kencana Prenada Media Group, 2006), P. 29.

<sup>3</sup> Ibid

<sup>4</sup> Inu Kencana Syafie, *Government Ethics*, Jakarta: Rineka Cipta, 2011, p. 6.

depends only on descriptive thinking from the formulator of value and ethical systems [<sup>5</sup>].

If the president as the organizer of government upholds ethics and morals, then he has shame as a human nature inherent in every human soul. Shame is a universal principle without distinguishing social and religious status.

If the ethical-moral is enforced and upheld as well as taking it precedence over the norm of law, then the rule of law will be followed. Ethics enforcement should be higher than the norm of law, because if the ethics is better, the other will be good too, but the problem happened in Indonesia since the norm of law is not brought closer to the ethical-moral even far from the moral, so that there is a *"legal norms without meaning"* [<sup>6</sup>].

### History of the President's Impeachment in Indonesia

The dynamics of the shift in the dismissal of the President in Indonesia can be ensured to occur within a period of two times the leadership of the President starting from President Soekarno and President Abdurrahman Wahid aka Gusdur by creating the accompanying politics as follows:

*First*, the shift related to the dismissal of the President formally took place when President Soekarno issued the Eleven March 1966 Warrant to the Minister of the Army General Soeharto, among others: for and on behalf of the President / commander in chief of the great leader of the revolution:

*"Take all necessary measures to ensure security and calm and the stability of the government and the course of the revolution and guarantee the personal safety and authority of the President / Commander in Chief of the great leader of the MPRS Mandatary revolution for the integrity of the nation and the Republic of Indonesia, and implement the teachings of leaders great revolution"*

*"Coordinate the implementation of orders with the commander of the other forces as well as possible"*

<sup>5</sup> Zainuddin Ali, *Sociology of Law*, Jakarta: Sinar Grafika, 2007, p. 22

<sup>6</sup> Nadir, Philosophical Validity, Theoretical, Normative And Empirical Paradigm Of General Principles Of Good Governance (AUPB) As A Review Of Presidential Impeachment, in the Brawijaya Law Journal Vol. 4 No. 1 2017, p.110

*"In order to report everything related to the duties and responsibilities as mentioned above"*

In this connection, Bagir Manan and Kuntana Magnar assessed that the Eleven March March 1966 Order was formally an act of constitutionality in the usual broad sense. Because with the position of minister, the Army Commander is the assistant to the President in the sense of Article 17 of the 1945 Constitution. Thus, the President for the smooth implementation of his duties, at any time can issue orders or instructions to his assistants to take actions that are general or special [<sup>7</sup>].

However, the Eleven March 1966 Warrant which was issued was merely administrative (administrative), immediately changed when the Provisional Decree of the People's Consultative Assembly Number IX / MPRS / 1966 was issued concerning the Order of the President / Commander of the Armed Forces / the Great Leader of the Revolution / MPRS Mandate [<sup>8</sup>].

*Secondly*, the shift in the dismissal of the President in Indonesia happened to President Abdurrahman Wahid alias Gusdur, revoking the mandate as President at the Special Session held in August 2001 through a political process on the grounds that the president had violated the State Policy which until now was still vague and not attended and refused to take responsibility in the MPR Special Session.

In the case of President Abdurrahman Wahid, it was juridically according to the above provisions, as decided by the House of Representatives on May 30, 2001 that the MPR SI would be held on August 1-7, 2001 with the agenda of holding the President accountable. This means that the MPR Special Session can only be held at the initiative of a DPR institution and through the stipulated stages and times because of alleged state violations [<sup>9</sup>].

The legal deviation in the MPR's Special Session was not following up on the MPR Special Session on August 1, 2001 to follow up on the DPR's request regarding the results of the DPR's Special Committee on Bulog and the Donation of the Sultan of Brunei. The MPR Special Session was carried out without a DPR memorandum which was in the

<sup>7</sup> Bagir Manan & Kuntana Magnar, *The Some Legal Issues in Indonesian State Administration*, Bandung: Alumni, 1997, p. 9.

<sup>8</sup> Ibid.

<sup>9</sup> Miftakhul Huda, *"Remembering the Impeachment of Gusdur in the SI MPR"*, in the [http://www.miftakhulhuda.com/2010/01/\\_9710.html](http://www.miftakhulhuda.com/2010/01/_9710.html), accessed 1 April 2019.

provisions of the explanation and the MPR Decree itself had to be passed [<sup>10</sup>].

The birth of the Declaration was responded to by the DPR, so that the House Speaker sent a letter dated July 23, 2001 No. KS02 / 3709 / H / DPR / RI to the Supreme Court, and the Supreme Court issued a consideration signed by Bagir Manan on July 23, 2001 which stated that the Declaration was against the law [<sup>11</sup>].

While the case of President Abdurrahman Wahid regarding the allegations of Buloggate and Bruneigate was on track, it must be truly proven that the President seriously violated the MPR Decree Number XI / MPR / 1998 concerning the Implementation of a Clean and Free Community Service. The MPR is limited in assessing the accountability for the implementation of the MPR's provisions and is not justified by deviating from new reasons. However, legally President Abdurrahman Wahid stated that the Attorney General's Office was not involved in misusing the Yanatera Bulog Foundation funds and donations of the Sultan of Brunei Darussalam [<sup>12</sup>].

The acceleration of the 2001 MPR Special Session was supported by the majority in the MPR except by members of the PKB and PDKB factions. As many as 292 MPR members from 601 MPR members who attended agreed to accelerate the implementation of the MPR Special Session. It must be a violation of the decree of the MPR Number III / MPR / 1978 and the prevailing rules and regulations indeed like it or not that is the condition of the parliament at that time [<sup>13</sup>].

Through the support of the majority in the MPR, the MPR dismissed and revoked and stated that the MPR was no longer valid in its decision to appoint Abdurrahman Wahid as President of the Republic of Indonesia as stipulated in the Decree of the People's Consultative Assembly of the Republic of Indonesia Number: II / MPR / 2001 concerning the Responsibility of the President of the Republic of Indonesia K.H. Abdurrahman Wahid

That shows the mechanism of dismissal of the President through the political mechanism in the MPR, without involving the judicial process, if the Constitutional Court (MK-RI) was formed at that time, then surely Abdurrahman Wahid was not dismissed for his term of office for reasons and allegations of proven violations

Based on all the reasons for the dismissal of the President who was accused of President Soekarno and Abdurrahman Wahid at the time, there was no reason to violate the principle of shame, but the Nawaksara speech and its complement were rejected, one of the reasons being "economic decline and" moral decline ". Thus causing the dismissal of President Soekarno. The accusation of "moral degeneration", in this paper by the author, qualifies as a principle of shame, so that it can be qualified as a despicable act in the context of Article 7A of the 1945 Constitution of the Republic of Indonesia.

### **The Philosophical Values for the Judge Constitutional Court in Implementing the Principle of Shame (*principle al-haya'*) as a Review of Indonesian Impeachment**

The president is as the head of state and government has board authority and has the freedom to do legal actions (*rechshandeling*) such as *vrijebeidsregel* which is resulted from the discretion principle *freies ermessen*, or acts of behaviorial attitudes that violate to (*the principle of al-haya'*) . Extensive authority and freedom of action cannot be used unlimitedly, although as a logical consequence of the understanding on the *welfare state*, because one of the purposes of action freedom is to fill the legal vacuum, but it may not be contrast with laws and regulations and not to violate (*the principle of al-haya'*), then the actions of the president (*vrijebeidsregel*), or actions of behavioral attitudes that are contrary to the values of the *principle of al-haya'* are measured by the principle of shame (*principle of al-haya'*) and the president can be impeached during his profession.

The implementation of the shame principle (*principle of al-haya'*) as a review for administrative judges and constitutional justices of the president impeachment, princply is suitable with the values of Pancasila and the 1945 constitutional Indonesia to be developed which the realization can be seen from the decision of the constitutional court judges as the judicial power subject to maintain law and justice.

To implement the *principle of al-haya'* as the review of impeachment of the president, there are several actions of the president that can be qualified violate to the *principle of al-haya'*, namely:

- The president actions of *vrijebeidsregel* which was from the principle of discretion / *nachfreiesermessen* / *beoordelingvrijheid* [<sup>14</sup>].

<sup>10</sup> Ibid.

<sup>11</sup> Ibid,

<sup>12</sup> Dalam [www.tempointeractive.com](http://www.tempointeractive.com), Senin (28/5) pukul 20.25 WIB 28 Mei 2001 jam 10.05 WIB.

<sup>13</sup> Ibid.

<sup>14</sup> Nach Freies Ermessen is the freedom for state administration to take the decision based on the suitable opinion, when got unclearness in the source of written law, while beoordeling vrijheid the freedom for state administrative to take the actions based on a suitable opinion, if there is not legal law which arranged then can



- The president's actions make regulations that do not guarantee the regularity of the administration of government or do not guarantee public services effectively, efficiently and do not provide the maximum benefit to the people in particular, the the people welfare.
- Actions of behavioral attitudes that can be qualified as despicable attitude as a legal reason for president impeachment.

In formal juridical there is an entrance for the principle of shame (principle of *al-haya* ') as a review of the impeachment for the president in his profession by the constitutional court (MK-RI) through article 5 juncto article 10 of law Number 48 of 2009 concerning judicial power, confirms:

*"Constitutional judges and judges must explore, follow, and understand the legal values and sense of justice that lives in society"*

*"Courts are prohibited from refusing to examine, hear, and decide on a case that is filed under the pretext that the law does not exist or unclear, but is obliged to evaluate and try it"*

Epistemologically the provision of Article 5 paragraph (1) in juncto with Article 10 paragraph (1) of law number 48 of 2009 concerning judicial power, indicate the existence of freedom and independence for judges of the constitutional court (MK-RI), and become the basis for using the shame principle (*principle of al-haya* ') as a review to evaluate the president's actions that violate the principle of *Al-haya* in the perspective of the president impeachment, besides the written legal norms regulated in Article 7A of Indonesian republics of Constitution 1945.

Besides, Article 5 paragraph (1), the meaning of judges must explore the values and laws that live in society is the basis for constitutional Court judges (MK-RI) implicitly to develop the principle of shame (principle of *al-haya*) which is contained in human beings generally and as an abstraction of the social reality of Indonesian society. Therefore, through the decision of the constitutional court (MK-RI) the principle of *al-haya* can be placed as a test stone for the dismissal of the president of Indonesia

The affirmation of Article 5 of juncto with Article 10 above, enables the principle of *al-haya* to

be seen at Jazim Hamidi, *the application of AAUPPL by Administrative (an effort to "Clean and Stable Government")*, of Journal UNISIA, V ol. XXX No. 66 December 2007, P. 352

have an important / urgent position in Indonesian president impeachment in the future, therefore, the existence of *the principle of al-haya* ' need to be established through the recognition path in a norm written in the 1945 constitution of the republic of Indonesia established by the legislator, or can be through the jurisprudence of the constitutional court (MK-RI), in order to build Indonesia's national legal system.

Stabilization of the legal principle (principle of shame, cursive writer (*principle of al-haya*')) can function, among others, namely [<sup>15</sup>]:

- As a bond between various legal rules, which will ensure the integration of rules in a system bond
- Ensure legal rules are established and implemented in accordance with the objectives of the law (justice and legal certainty), for example the principle of accuracy is for certainty
- Ensure (flexibility) in implementing legal rules to a concrete situation

The implementation of *the principle of al-haya* ' as review of the impeachment for the president by the constitutional court (MK-RI) judge is very appropriate to be done, although there is no explicit legal basis, but the paradigm of implementing the principle of *al-haya* ' as a review of impeachment in his profession, philosophically to fill in the incompleteness, unclearness and emptiness of legal norms in the 1945 constitution of the Indonesian republic and to establish a national legal system to impeach the president and vice-president. Therefore, beside to pay attention to the provision of Article 5 juncto Article 10 of act Number 48 of 2009 concerning judicial power is very basic for examining and adjudicating the impeachment of the president and the vice president in his profession.

Related with this phenomenon, Achmad Ali revealed that the one who resolved the dispute was not the rule of law contained in laws, customs, treaties, jurisprudence, doctrine and religious law, but the one who resolved the dispute was "legal rules that resulted from judges' judgments [<sup>16</sup>].

The president in behaving must pay attention to the principle of shame (*principle of al-haya* ') as the

<sup>15</sup> Bagir Manan, *"implementation reserach of law"*, workshop of the rule of academical text in arranging the regulation by BPHN, Jakarta, 9-11 November 1993, Jasim Hamidi, the implementation of general principle of establishing a good governance (AAUPL) around administrative court of Indonesia, (Bandung: Citra Aditya Bakti, 1999), P. 181.

<sup>16</sup> Achmad Ali, *Breaking legal law: sociology and philosophical*, first publishing, (Jakarta: Chandra Pratama, 1996), P. 141.

basis for behave so that it does not violate it as a responsive principle formed from the nature of the human soul with the superior universal principle, because of the *principle of al-haya'* as the basis of efforts to protect the people as a parameter of action, therefore the government acts in accordance with the philosophical parameters outlined in the principle of shame (*principle of al-haya'*).

The 1945 constitution of the Republic of Indonesia Article 7A as the reason for impeachment of the president is not sufficient to provide the resolve to the complexity of the action of the government which need more material and formal legality. When the legal norms contained of the basic law as a state constitution are not able to resolve the legal, social and political problems that arise from government actions or actions that lead to the violation of *the principle of al-haya'*.

Related with this case, in the United States in its development, what is meant by law is that it does not mean to have the positive law issued by the authorities of written regulations, but the patterns of relations that have been steady and continuously carried out in the community and accepted as something that must be done, is actually a law. So the law comes from regularity (*regularities*) originating from the facts or association of society it self (including the principle of shame (*principle of al-haya'*) in the Indonesia context), this conception of thought underlying the birth of the legal flow of realism pioneered by Oliver W. Holmes with the thought of *the life of law is not logic but experience* [<sup>17</sup>].

According to the legal realism, the role of the judge is very important in deciding the case, he must not only use positive law, but also must find a law that (*actually*) exists in the life of the community to become the basis of his decision. This flow of legal realism is then became the basis of *sociological jurisprudence* studies, which conceptualize law as regularity that has been patterned, steady, repeated and accepted as a necessity that must be done because it provides benefits for life [<sup>18</sup>].

In such conditions, the principle of shame (*principle of al-haya'*) must be a solution a guiding principle and a reference to test the president's actions, because of the vast authority, so that the principle of al-haya can be made into a review of the president impeachment in his profession.

Philipus M. Hadjon stated that the implementation of the legal principle (including the principle of shame (*principle of al-haya'*) by

administrative judges (by constitutional justices, cursive writers) in court, can be technically approached in 2 (two) ways, namely: through legal reasoning for induction and deduction [<sup>19</sup>].

According to Sudarsono, the induction method is a method that concludes statements of observation (*specific*) concluded from a more general statement or from people's observations to universal statements, by this induction method is resulted from empirical understanding [<sup>20</sup>].

While the deduction method is a conclusion method which is processed from a continuous, logical statement, which illustrates the general arguments drawn by a specific conclusion, by this induction method is resulted from rationalism [<sup>21</sup>].

The paradigm of the implementation on shame principle (*principle of Al-haya'*) as the review of the impeachment for precedent, technically, by the judges of the Constitutional Court (MK-RI) can be approached through the legal reasoning of induction and deduction. The method of implementation on shame principle (*principle of Al-haya'*) by the judges of the Constitutional Court (MK-RI) was done by deductive advance, means that the principle of specialty is devoted again to the legal field is concerned, the new rules do basically the deduction of law is concerned. Then deducted again into the substantive rules, and rules deducted longer be the case. After that is done in the case of the application of the rules of concrete case by the judge [<sup>22</sup>].

In the induction method, the first step taken by the judge in handling disputes is to formulate facts, look for causal relationships and their probabilities. Then followed by the method of deduction, where the initial step is to gather facts, after the facts have been formulated, efforts are made to apply the law (*legal principle*).

The main step in implementing the law is identifying legal rules. The results of this step will find a variety of legal conditions, namely:

1. There is a legal vacuum (*vacancy in the legislation*). If this is the case, then the judge will adhere to the principle "*ius curia novit*",

<sup>19</sup> Philipus M. Hadjon, a study of *Dogmatic law science (Normatif)*, magazine of Yuridika, No. 6 Tahun IX November –Desember 1994, p. 12-14, in Jazim Hamidi, *the implementation AAUPL.... Op.Cit*, p. 13.

<sup>20</sup> I Dewa Gede Atmadja, Sudarsono, et al, philosophy of science : *From knowledge up to scientific law*, (Malang: Madani, 2014), P, 38

<sup>21</sup> Ibid p 38

<sup>22</sup> The method of implementing the principle of al-haya' is introduced from Jazim Hamidi, *Application AAUPL,..... Op.Cit*, p.135.

<sup>17</sup>FX. Adji Samekto, *Justice Not For All: Perspektif of critical law study*, first publishing, (Yogyakarta: Genta Press, 2008), p. 23-24.

<sup>18</sup> Ibid, p. 24-25

the judge must explore the legal values that live in the community. This effort is often referred to as the legal discovery method (*rechtsvinding*)

2. An antinomy condition will occur ( *conflict of legal norms*). The solution applies the principle of “ *lex posterior derogate legi priori*”, the principle “*lex specialis derogate legi generali*”, the principle of *lex superior derogat legi inferior*”.
3. In the face of vague legal norms, the judge adheres to the legal ratios contained in legal regulations, then establishes the correct method of interpretation.
4. In the event of an incomplete legal norm, the solution is to use the amendment method (cursive writer)

The process of implementing (*the principle of al-haya*'), in the process of impeachment of the president from the constitutional court (MK-RI), at least through the following stages, namely:

1. Requests for the impeachment of the president by the DPR to the MPR, but first submitted a request to the constitutional court to be examined, tried and decided on the opinion of the DPR that the president has violated the law or in accordance with Article 7A of the 1945 constitution.
2. Checking the file. After the application file is submitted by the DPR to the constitutional court, then a complete examination of the files is carried out, if the requirements are declared complete, then a case register is carried out for the scheduling of the trial day, and notification to the applicant in this case the Indonesian parliament.
3. Facts collection. After the file assessment process is complete, the next stage is the examination of legal facts. In this position the constitutional court judge selects the whole event and verifies it with the evidence presented by the applicant to confirm the truth. This stage in the civil procedure law is called the constricting stage. According to Sudikno, constricting means seeing or acknowledging justifying the occurrence of an event that was submitted to him, or methodologically according to Jazim Hamidi, including in the framework of an inductive approach.
4. Law identification, at this stage the constitutional court judge evaluates legal facts or legal events that have been examined to find out how the law is applied (including the implementation on the principle of *al-haya* ') for the event. This stage in the law of civil procedure is called qualifying. According to Sudikno, qualifying means finding the law against events that have been constricted, or methodologically according to Jazim Hamidi, including in the deducative step.

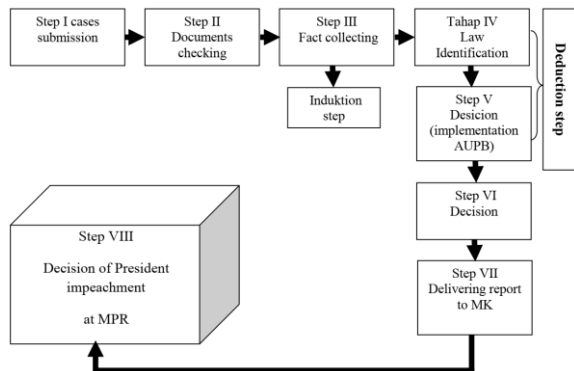
The first step is for judges to identify the rule of law and to interpret the rule of law which can be applied in a concrete event. Here the judge can apply the unwritten rule of law in the form of the principle of *al-haya* 'to evaluate the validity of government actions, whether or not there has been a conflict with the principle of *al-haya* or not, in addition to the violation of the law regulated in Article 7A of the 1945 Indonesian republic constitution as a written legal norm. The result of legal identification become an important part in the judges' consideration in deciding the case of the president's impeachment.

1. Establishment (*principle of al-haya* '). After the judge knows the subject matter of the dispute with examination and evidence that has been submitted and the legal facts at the trial, and provides legal considerations regarding the application of the principle of the principle of *al-haya* ), then the judge determines at this stage whether government action is contrary to the principle of shame (*principle of al-haya* ') or not, so that the president can be impeached from his position. This stage in the civil procedure law is called constituent. According to Sudikno, constituent means giving his constitution, establishing the law to the person concerned, giving justice.
2. Decision, After the judge determines the law (principle of *al-haya* ') against government actions that are in conflict with the principle of shame (principle of *al-haya* '), then the next step is the judge's decision on government actions that are contrary to the shame principle (*principle of al-haya* ') in the form of a decision of the Constitutional court judges read out in a session open to the public.
3. Submission of the result of the Constitutional Court's decision. After the judge determines in a decision read out in a public hearing for actions that violate with the principle of *al-haya* ', the next step is for the DPR to hold a plenary session of the DPR to continue the proposal to dismiss the president to the MPR.
4. Decision on the impeachment of the president. The results of the DPR plenary session decisions are submitted to the MPR, and the MPR is obliged to hold a hearing to decide on the proposal of impeachment within 30 days of the MPR accepting the proposal. The MPR's decision on the president impeachment was done at the MPR plenary meeting which was attended by at least 2/3 of the total members present at the meeting, after the president made an explanation.

The principle of *al-haya* implementation as a review for the impeachment of the president in Indonesia is a new paradigm in the repertoire of Indonesia Constitutional Law. Because according to Jhon J.O.I. Anyway, every theory or model is

constructed on the basis of a certain paradigm. Paradigm are a set of expressions that from the basis of scientific ideas. Assumptions need to be made because human ability is very limited to being able to reach complex and dynamic reality [23].

**Part-1: Hold of The Implementation of shame principle (*principle of al-haya*) as a review of Indonesian president**



Source: Dcreation writer cursive from some sources

## CONCLUSION

Formally juridical implementation of the principle of al-haya as a review of the impeachment of the Indonesian President by a Constitutional Court judge (MK-RI) based on the provisions of Article 5 juncto Article 10 of act Law Number 48 of 2009 concerning philosophical power to fill in the incompleteness, obscurity and emptiness of legal norms in the 1945 Republic of Indonesia Constitution and establish a national legal system. Technically, by the judges of the Constitutional Court (MK-RI) can be approached through the legal reasoning of induction and deduction. The method of implementation on shame principle (*principle of Al-haya*) by the judges of the Constitutional Court (MK-RI) was done by deductive advance, means that the principle of specialty is devoted again to the legal field is concerned, the new rules do basically the deduction of law is concerned. Then deducted again into the substantive rules, and rules deducted longer be the case. After that is done in the case of the application of the rules of concrete case by the judge. The principle of al-haya implementation as a review for the impeachment of the president in Indonesia is a new paradigm in the repertoire of Indonesia Constitutional Law.

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## Law and Regulation:

The Constitution of Indonesia 1945

The Law Number 48 of 2009 Concerning Judge Philosophical Power.

<sup>23</sup> John J.O.I. Ihalauw, *Teory construction:componen and Process*, (Jakarta: Grasindo, 2008), p. 144