

Formal Validity and Legal Integrity: A Review of Hans Kelsen's and Ronald Dworkin's Philosophy of Law on Constitutional Court Decision No. 90/PUU-XXI/2023

Angelila Dzakwan Pratiwi*

Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jakarta

*Corresponding Author e-mail: angeliladzpratiwi@gmail.com

Abstract: *This paper examines Constitutional Court Decision No. 90/PUU-XXI/2023, which added an alternative requirement to the minimum age of presidential and vice-presidential candidates, through Hans Kelsen's pure theory of law and Ronald Dworkin's theory of law as integrity. There are two research questions: (1) how is the decision assessed from the standpoint of legal validity under Kelsen's theory, and (2) how is it assessed from the standpoint of principle and integrity under Dworkin's theory. The study uses normative legal research with conceptual, case, and statutory approaches. The findings indicate that the decision remains formally valid and binding because the Court's judgments are final under the Constitution, and the Honorary Council of the Constitutional Court (MKMK) did not annul it even though it found a serious ethics violation by the then Chief Justice. However, the decision is difficult to defend under Dworkin's integrity criterion, because the principle of impartiality was compromised and the Court's reasoning was inconsistent with its own decisions issued on the same day. The paper concludes that the case reveals a gap between validity and legitimacy that pure formal theory cannot close, and recommends institutional safeguards on recusal and judicial reasoning.*

Abstract: Tulisan ini mengkaji Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 yang menambahkan syarat alternatif pada batas usia minimum calon presiden dan wakil presiden, dengan menggunakan teori hukum murni Hans Kelsen dan teori hukum sebagai integritas Ronald Dworkin. Terdapat dua rumusan masalah: (1) bagaimana putusan tersebut dinilai dari sisi keabsahan hukum menurut teori Kelsen, dan (2) bagaimana putusan tersebut dinilai dari sisi prinsip dan integritas menurut teori Dworkin. Penelitian ini menggunakan penelitian hukum normatif dengan pendekatan konseptual, kasus, dan perundang-undangan. Hasil penelitian menunjukkan bahwa putusan tersebut tetap sah secara formal dan mengikat karena putusan Mahkamah bersifat final menurut Konstitusi, dan Majelis Kehormatan Mahkamah Konstitusi (MKMK) tidak membatalkannya meskipun menemukan pelanggaran etik berat oleh Ketua Mahkamah Konstitusi saat itu. Namun, putusan tersebut sulit dipertahankan menurut kriteria integritas Dworkin, karena prinsip imparialitas terganggu dan pertimbangan Mahkamah tidak konsisten dengan putusan-putusannya sendiri yang dijatuhkan pada hari yang sama. Tulisan ini menyimpulkan bahwa kasus tersebut menunjukkan adanya kesenjangan antara keabsahan dan legitimasi yang tidak dapat dijembatani oleh teori formal murni, serta merekomendasikan pengamanan kelembagaan terkait pengunduran diri hakim (recusal) dan penalaran yudisial.

Article History

Received: 10 October 2026

Revised: 15 October 2026

Published: 22 October 2026

Keywords: *Constitutional Court, Hans Kelsen, Ronald Dworkin, Legal Validity, Integrity*

Kata kunci: *Mahkamah Konstitusi, Hans Kelsen, Ronald Dworkin, Keabsahan Hukum, Integritas*

 <https://doi.org/10.5281/zenodo.23590955>

This is an open-access article under the [CC-BY-SA License](#).



INTRODUCTION

The oldest question in the philosophy of law is what makes something law, and whether valid law is always worthy of obedience. Two major traditions answer differently. Hans Kelsen (1881–1973) held that law is a normative order whose validity derives from a higher norm, not from morality or politics (Kelsen, 1967, pp. 193–195). Ronald Dworkin (1931–2013), by contrast, argued that law consists not only of rules but also of moral principles that judges must take into account so that their decisions are consistent and just (Dworkin, 1977, ch. 2).

This difference was tested in practice in Indonesia in October 2023. On 16 October 2023, the Constitutional Court (MK) delivered Decision No. 90/PUU-XXI/2023 on the judicial review of Article 169 letter q of Law No. 7 of 2017 on General Elections. The petitioner, a student from Surakarta, asked the Court to add an alternative requirement of experience as a regional head to the minimum age of 40 for presidential and vice-presidential candidates. The Court partially granted the petition: the age requirement of 40 remained, but an alternative was added for persons who have held or are holding an office elected through general elections, including regional head elections (Constitutional Court of the Republic of Indonesia [MK], 2023b, p. 1; legal considerations para. [3.14.1], p. 50 et seq.). The decision was taken by a divided bench and contained dissenting and concurring opinions (MK, 2023b, sections on dissenting opinions [Justices Wahiduddin Adams, Saldi Isra, Arief Hidayat, and Suhartoyo] and concurring opinions [Justices Enny Nurbaningsih and Daniel Yusmic P. Foekh]). Public attention grew because the Chief Justice at the time, Anwar Usman, was the brother-in-law of the President and the uncle of Gibran Rakabuming Raka, the President's eldest son, who ultimately ran as vice-presidential candidate and was directly affected by the ruling (detikBali, 2023; see also MK, 2023b, para. [3.6] point 4, pp. 23–24, which records that the petitioner admired the then Mayor of Surakarta).

On 7 November 2023, the MKMK, in Decision No. 2/MKMK/L/11/2023, found Anwar Usman guilty of a serious violation of the code of ethics and conduct of constitutional justices and removed him as Chief Justice. At the same time, the MKMK stated that it had no authority to re-assess or annul Decision No. 90 itself (Honorary Council of the Constitutional Court [MKMK], 2023; see also MK, 2023c). This raises a philosophical question: is a decision born from a process that has been declared ethically flawed still valid as law, and does validity alone make it worthy of respect?

This paper attempts to answer that question using the theories of Kelsen and Dworkin as analytical tools.

RESEARCH METHOD

This is normative (doctrinal) legal research, which studies law as norms, principles, and doctrine to answer the legal issue at hand (Marzuki, 2017). Three approaches are used. The conceptual approach maps the ideas of Kelsen and Dworkin. The case approach examines Constitutional Court Decision No. 90/PUU-XXI/2023 and MKMK Decision No. 2/MKMK/L/11/2023. The statutory approach examines the 1945 Constitution, Law No. 7 of 2017 on General Elections, Law No. 48 of 2009 on Judicial Power, and related regulations.

Primary legal materials consist of statutes and of judicial and ethics-body decisions. Secondary materials consist of books, journal articles, and news reports. The materials are analysed qualitatively through deductive reasoning, that is, drawing conclusions from the theoretical framework to the facts of the case. It should be noted that the author discusses only the legal and philosophical aspects of the decision and does not assess the political motives of the parties, because motives cannot be proven from the text of a decision.

RESULT AND DISCUSSION

Theoretical Framework

1. Kelsen's pure theory of law. Kelsen sought to cleanse legal science of political, sociological, and moral elements. In his view, a legal norm is valid because it was created in accordance with a higher norm, in a hierarchy of norms (*Stufenbau*) that ends in a presupposed basic norm (*Grundnorm*) (Kelsen, 1967, ch. V, esp. pp. 193–195 and 198–201). The question “is this norm valid?” differs from “is this norm just?”. Kelsen also stressed that norm creation by competent officials,

including judges, is part of the concretisation of law. A judicial decision that has become binding is a valid individual norm so long as it was made by a competent organ through the prescribed procedure (Kelsen, 1967, pp. 193–195). In Indonesia, Kelsen’s thought has been studied, among others, by Jimly Asshiddiqie and M. Ali Safa’at (Asshiddiqie & Safa’at, 2006).

2. Dworkin’s theory of law. Dworkin criticised Hart’s positivism for treating law as a set of rules. In his view, when rules do not give a clear answer (*hard cases*), judges must rely on principles, that is, moral standards demanding justice, fairness, and due process (Dworkin, 1967, 1975). In *Law’s Empire*, Dworkin developed the idea of law as integrity: judges must interpret law as a coherent whole, as if written by a single author consistent in principle, and must treat like cases alike (Dworkin, 1986, chs. 6–7). In his “chain novel” metaphor, a judge is like an author writing a new chapter who must remain faithful to the preceding chapters.

B. Relevant Facts of the Case

First, on the same day, 16 October 2023, the Court delivered several decisions on the age limit for presidential and vice-presidential candidates. The petitions in Case No. 29-51-55/PUU-XXI/2023, which asked for a lower age limit, were rejected, and the Court held the matter to be an open legal policy (*open legal policy*) of the legislature. Meanwhile, Case No. 90/PUU-XXI/2023 was partially granted (MK, 2023a; MK, 2023b, para. [3.12], pp. 26–28; on the treatment of Article 169 letter q as an open legal policy in the former decisions, see Hukumonline, 2023).

Second, of the nine constitutional justices, five granted the petition in part. However, only three fully agreed with the reasoning and the ruling, while the other two had different reasons, accepting an exception only for governors. Four justices dissented (MK, 2023b, sections on dissenting and concurring opinions; the remaining three justices, Anwar Usman, Guntur Hamzah, and Manahan M.P. Sitompul, fully supported the ruling; on the five justices converging only on the office of governor, see Hukumonline, 2023).

Third, the MKMK found a serious ethics violation by the Chief Justice and removed him from the position of Chief Justice, but stated that it had no authority to change the Court’s decision (MKMK, 2023, operative part [serious violation of the Sapta Karsa Utama principles of impartiality, integrity, competence and equality, independence, and propriety; removal from the office of Chief Justice]; on the Council’s lack of authority to assess Decision No. 90/PUU-XXI/2023, see RRI, 2023).

Assessment of the Decision under Kelsen

From Kelsen’s perspective, the decision is hard to declare formally invalid. Article 24C paragraph (1) of the 1945 Constitution gives the Court the authority to review statutes against the Constitution, and its decisions are final. The decision was taken by a competent organ following a procedure set by statute, so within the hierarchy of norms it is valid and generally binding (1945 Constitution of the Republic of Indonesia, Art. 24C(1); Law No. 24 of 2003 on the Constitutional Court, as lastly amended by Law No. 7 of 2020, Art. 10(1)(a) and its Elucidation, under which decisions are final and acquire binding legal force from the moment they are pronounced). This finality explains why the MKMK itself stated that it could not annul the decision, and why the election management body was obliged to follow up by adjusting its technical regulations (Komisi Pemilihan Umum, 2023, Art. 13(1)(q)).

Kelsen would stress that disappointment with the content of a decision, or suspicion of the judges’ motives, is a political and moral matter, not a matter of validity. This separation also provides certainty: if a decision could be voided merely because it was deemed unethical, every final decision would remain open to challenge and the legal order would lose its stability.

However, the Kelsenian analysis leaves one point to be tested: whether the procedure by which the decision was made satisfied the conditions set by the higher norm. Article 17 of Law No. 48 of 2009 contains two relevant layers. Paragraphs (3) and (4) require a judge to withdraw where he is tied by blood or marriage, up to the third degree, to another member of the bench, the prosecutor, an advocate, or a party being tried, while paragraph (5) requires withdrawal where the judge has a direct or indirect interest in the case, and paragraph (6) states that a violation of paragraph (5) renders the decision invalid (Law No. 48 of 2009 on Judicial Power, Art. 17(3)–(6)). The question is whether the Chief Justice's ties to the President and to Gibran, who was not a party but was the figure the petitioner expressly admired, amount to an indirect interest under paragraph (5). In the case under discussion, the MKMK held that the Chief Justice should not have involved himself in a case carrying a potential conflict of interest, but it did not conclude that the decision was void. On the positivist side, if the invalidity clause in paragraph (6) is read narrowly, as not reaching a kinship tie with a person who is not a party, or if the Court's own procedural law is held to be the exclusive standard for the composition of the bench, Kelsen's theory tends to treat the breach as an ethical and procedural violation by the individual judge, not as a defect that automatically voids the resulting norm. The author argues that this is where Kelsen's theory shows its limit: it rightly explains *why the decision remains in force*, but not *whether it deserves respect*.

Assessment of the Decision under Dworkin

For Dworkin, the central question is not only whether the decision is valid, but whether it can be justified by principles consistent with the whole legal practice. At least two principles are relevant.

First, the principle of impartiality. A judge may not sit in his own cause, in line with the widely recognised maxim *nemo iudex in causa sua*. When a judge has a family relationship with a party who will benefit from the decision, public trust that the case was decided on principle, not on relationships, becomes fragile. Dworkin insists that the legitimacy of a judge's decision depends on the judge's ability to show that it rests on generally applicable principles, not on personal preference or interest (Dworkin, 1977, ch. 4; Dworkin, 1986, chs. 6–7). The MKMK's finding of a serious violation confirms that this principle was compromised.

Second, the principle of consistency (integrity in the narrow sense). On the same day, the Court rejected petitions asking for a change in the age limit on the ground that it was an open legal policy, yet partially granted another petition that in substance changed the same age limit. Dissenting justices, notably Justice Saldi Isra, openly criticised this shift in position in their opinions (MK, 2023b, dissenting opinions of Justices Saldi Isra, Wahiduddin Adams, Arief Hidayat, and Suhartoyo; see also Bisnis.com, 2023). In Dworkin's framework, treating similar cases differently without a principled distinction violates the demand that law speak with one coherent voice. It should be noted that this assessment is analytical, and that the Court did offer a distinction: in its legal considerations it reasoned that the earlier petitions were ambiguous as to whether the alternative office was appointed or elected, whereas Petition No. 90 expressly concerned offices filled through general elections (MK, 2023b, legal considerations para. [3.12], pp. 26–28). That argument must be weighed, although the dissenting justices were not persuaded by it.

Dworkin also emphasises that a decision resting on reasoning the public cannot test fails the function of law as an accountable practice of interpretation. With a majority split in its reasons, the *ratio decidendi* of the decision becomes less clear, which weakens its ability to serve as a coherent precedent.

Comparison and Common Ground

Both theories are useful, but they answer different questions. Kelsen answers *whether the decision is law* (yes, valid and final). Dworkin answers *whether the decision was made in a way consistent with the integrity of law* (hard to defend). This difference explains why the decision continues to be implemented while public trust in its maker declines. Put differently, a legal system can be formally valid yet fragile in legitimacy.

Objections to the Dworkinian reading must also be stated. First, ideas of principle and integrity depend on judicial interpretation and can therefore be used to justify different outcomes; positivists often make this criticism of Dworkin. Second, if every decision can be re-assessed by moral criteria, legal certainty is threatened. In this case, both objections are softened by the fact that the criticism here concerns only impartiality and consistency, two principles already recognised by Indonesian positive law in the judicial code of ethics and the Judicial Power Law, not subjective morality.

CONCLUSION

This study concludes, first, that under Kelsen's pure theory of law Constitutional Court Decision No. 90/PUU-XXI/2023 remains valid and binding because it was made by a competent organ and is final under the Constitution; the ethics violation found by the MKMK does not automatically void the decision. Second, under Dworkin's theory, the decision is difficult to defend as part of law with integrity because the principle of impartiality was compromised and its reasoning was inconsistent with another decision delivered on the same day. The case shows that formal validity and substantive legitimacy can diverge, and that formal theory alone is not enough to explain the crisis of confidence in constitutional adjudication.

RECOMMENDATION

1. The legislature should expressly regulate in the Constitutional Court's procedural law a judge's duty to withdraw from cases involving family interests, along with the consequences for the validity of the decision.
2. The Court should strengthen the duty to give reasons, including explaining the distinctions between similar cases and drafting an identifiable *ratio decidendi* where some justices give different reasons.
3. Further research should examine the impact of this decision on the application of *open legal policy* in subsequent Constitutional Court decisions.

REFERENCES

- Asshiddiqie, J., & Safa'at, M. A. (2006). *Teori Hans Kelsen tentang Hukum*. Jakarta: Sekretariat General and Registrar's Office of the Constitutional Court of the Republic of Indonesia.
- Bisnis.com. (2023, October 17). 4 Hakim MK yang Menolak Putusan Batas Usia Capres-Cawapres, Semua Kompak Bilang Aneh. Retrieved October 22, 2026, from <https://kabar24.bisnis.com/read/20231017/16/1704991/4-hakim-mk-yang-menolak-putusan-batas-usia-capres-cawapres-semua-kompak-bilang-aneh>
- Constitution of the Republic of Indonesia of 1945.
- Constitutional Court of the Republic of Indonesia. (2023a). *Decision No. 29-51-55/PUU-XXI/2023*.
- Constitutional Court of the Republic of Indonesia. (2023b). *Decision No. 90/PUU-XXI/2023*. Retrieved October 22, 2026, from

- Constitutional Court of the Republic of Indonesia. (2023c). MKMK Berhentikan Anwar Usman dari Jabatan Ketua Mahkamah Konstitusi. Retrieved October 22, 2026, from <https://www.mkri.id/berita/-19751>
- detikBali. (2023, November 7). Langgar Etik Berat, Anwar Usman Diberhentikan dari Ketua MK. Retrieved October 22, 2026, from <https://www.detik.com/bali/hukum-dan-kriminal/d-7024231/langgar-etik-berat-anwar-usman-diberhentikan-dari-ketua-mk>
- Dworkin, R. (1967). The Model of Rules. *University of Chicago Law Review*, 35(1), 14–46.
- Dworkin, R. (1975). Hard Cases. *Harvard Law Review*, 88(6), 1057–1109.
- Dworkin, R. (1977). *Taking Rights Seriously*. Cambridge, Mass.: Harvard University Press.
- Dworkin, R. (1986). *Law's Empire*. Cambridge, Mass.: Belknap Press of Harvard University Press.
- Honorary Council of the Constitutional Court. (2023). *Decision No. 02/MKMK/L/11/2023*.
- Hukumonline. (2023). Prof Saldi Isra Beberkan Misteri Putusan Syarat Usia Capres-Cawapres. Retrieved October 22, 2026, from <https://www.hukumonline.com/berita/a/prof-saldi-isra-beberkan-misteri-putusan-syarat-usia-capres-cawapres-lt652e043cda2fa/?page=all>
- Kelsen, H. (1967). *Pure Theory of Law* (M. Knight, Trans.). Berkeley: University of California Press.
- Komisi Pemilihan Umum. (2023). *Peraturan KPU No. 23 Tahun 2023 tentang Perubahan atas Peraturan KPU No. 19 Tahun 2023 tentang Pencalonan Peserta Pemilihan Umum Presiden dan Wakil Presiden* (Berita Negara Republik Indonesia Tahun 2023 No. 876). Retrieved October 22, 2026, from https://jdih.kpu.go.id/peraturan-kpu/download_abstrak/433
- Law No. 24 of 2003 on the Constitutional Court, as lastly amended by Law No. 7 of 2020.
- Law No. 48 of 2009 on Judicial Power.
- Law No. 7 of 2017 on General Elections.
- Marzuki, P. M. (2017). *Penelitian Hukum* (Rev. ed.). Jakarta: Kencana.
- RRI. (2023, November 7). MKMK Putuskan Anwar Usman Diberhentikan Tanpa Mengubah Putusan MK. Retrieved October 22, 2026, from <https://rri.co.id/hukum/434306/mkmk-putusan-anwar-usman-diberhentikan-tanpa-mengubah-putusan-mk>