

The Annulment of the Constitutional Court's Decision from the Perspective of Hans Kelsen's Pure Legal Theory (Validity & Applicability of Norms)

Rahmad Hidayah

Universitas Bima Internasioanal MFH

Article Info

Article history:

Received: 21 October 2025

Publish: 1 December 2025

Keywords:

Constitutional Court;

Norm Validity;

Hans Kelsen;

Pure Theory of Law;

Legal Applicability.

Abstract

The phenomenon of the annulment or delegitimization of Constitutional Court (MK) decisions raises significant legal and theoretical issues in Indonesia's legal system, given that such decisions are constitutionally final and binding. This study aims to analyze the possibility of invalidating MK decisions through the lens of Hans Kelsen's Pure Theory of Law, focusing on the concepts of norm validity and applicability within the legal system's hierarchical structure. The research applies a normative juridical approach, using deductive and interpretative analysis of primary and secondary legal materials, alongside the Grundnorm theory to assess the position of MK decisions within the norm structure. The findings reveal that although formally derived from a constitutional institution, the validity of MK decisions may still be questioned if they are inconsistent with the fundamental norms of the Constitution. The absence of a formal mechanism to revoke MK decisions creates tension between legal positivism and substantive justice. The study concludes that Kelsen's theory offers a robust conceptual framework for objectively evaluating legal norms and provides a philosophical basis for reforming oversight mechanisms against judicial deviation. Thus, this research contributes to the advancement of normative-positivist legal theory discourse and encourages the renewal of understanding regarding the legitimacy of constitutional adjudication in Indonesia.

This is an open access article under the [Lisensi Creative Commons Atribusi-BerbagiSerupa 4.0 Internasional](https://creativecommons.org/licenses/by-sa/4.0/)



Corresponding Author:

Rahmad Hidayah

Email: rahmadhidayah3362@gmail.com

1. BACKGROUND OF THE PROBLEM

The Constitutional Court (MK) of Indonesia is a judicial institution with vital authority to interpret and enforce the constitution. Since its establishment through the third amendment to the 1945 Constitution of the Republic of Indonesia (UUD 1945), the MK has been a key factor in the structuring of Indonesian constitutional law.

One of the most fundamental aspects of the Constitutional Court's authority is to test laws against the 1945 Constitution. However, in practice, legal and theoretical debates arise when the Constitutional Court's decisions are deemed procedurally flawed, exceed its authority, or do not meet the principles of the rule of law.

The phenomenon of "cancellation" or invalidity of a Constitutional Court decision has given rise to polemics, considering that constitutionally, the Constitutional Court's decision is final and binding (*final and binding*). When demands arise for the annulment of the Constitutional Court's decision, a fundamental question arises: is it possible and legally valid to annul the decision of an institution whose decision is final.

This issue has become increasingly complex following Constitutional Court Decision No. 90/PUU-XXI/2023, which sparked controversy regarding the age of presidential

candidates. Some considered the decision to violate judicial ethics principles, leading to demands for its annulment from the public and academics.

This problem is not only practical but also theoretically profound, especially from the perspective of pure legal theory (*Pure legal theory*) developed by Hans Kelsen. This theory emphasizes the purity of legal analysis, separating law from morality and politics.

Hans Kelsen views that the validity of legal norms originates from basic norms (*Basic standard*), and legal validity depends on its position within the hierarchy of norms. In this context, the validity of a Constitutional Court decision must be seen from its existence within the applicable legal system. If a Constitutional Court decision deviates from the legal-formal boundaries stipulated by the 1945 Constitution and laws, then, according to Kelsenian theory, its validity can be questioned. Therefore, it is important to examine whether a Constitutional Court decision deemed deviant still has legal validity.

In the context of a state governed by the rule of law, every legal norm—including constitutional court decisions—must be subject to the principle of legality. If a decision contradicts a higher norm, its validity is threatened, even if it formally originates from a constitutional institution.

On the other hand, Indonesian law does not recognize a mechanism for annulling Constitutional Court decisions. This creates a tension between legal positivism and the demands of substantive justice. When formal law provides no solution, a theoretical approach becomes essential for assessing the validity of norms.

Various previous studies have discussed the Constitutional Court's authority from a legal theory perspective, but few have specifically addressed the annulment of Constitutional Court decisions through the lens of Kelsen's theory. This approach, however, could provide a systematic and objective analytical framework.

By using Kelsen's pure legal theory, this study attempts to answer the fundamental questions: Is there a possibility of annulment or delegitimization of the Constitutional Court's decision from the perspective of Hans Kelsen's theory, even though formally the decision is final and binding and How the concept of validity and enforceability of norms in the perspective of Hans Kelsen's pure legal theory can be used to assess the validity of the Constitutional Court's decision which is controversial or considered to be constitutionally deviant.

This research is also important in examining the relationship between legal norms, institutional authority, and constitutional control in a modern rule of law. The validity of norms is not solely determined by their formal sources, but also by their position and consistency within the legal structure.

Cases like Decision No. 90/PUU-XXI/2023 provide a significant entry point for understanding the limits of the Constitutional Court's authority within the framework of legal theory. This issue is not merely a matter of positive law but also touches on fundamental conceptual aspects.

This phenomenon demonstrates the need to reformulate the concept of validity and enforceability of norms in Indonesia. The absence of a mechanism for annulling Constitutional Court decisions demands an analysis that goes beyond normative positivism. In modern legal systems, norms that no longer meet the principles of justice or legal logic are often deemed sociologically invalid even though they remain normatively valid. This challenges the fundamental assumptions of classical positive law.

Kelsen's theory opens up a discussion about the legitimacy of norms based on their structure within the legal system. If a norm lacks a consistent relationship to a higher norm, then, theoretically, it loses its validity.

In this context, the validity of the Constitutional Court's rulings could be questioned if they are proven inconsistent with the basic principles of the constitution, the highest norm

in the Indonesian legal system. Therefore, this research is not only legally relevant but also philosophically and theoretically relevant, as it examines the limits of legal logic within the framework of a state governed by the rule of law.

This issue is also closely related to the legitimacy of constitutional institutions and public trust. Decisions deemed to be deviant can erode the integrity of the Constitutional Court and trust in the legal system as a whole.

With this background, this research is important to clarify the limits of the validity of legal norms within the framework of the Indonesian legal system, as well as how pure legal theory can provide a basis for reviewing the validity and enforceability of Constitutional Court decisions.

Problem Formulation

- 1) Is There a Possibility of Cancellation or Delegitimization of the Constitutional Court's Decision from the Perspective of Hans Kelsen's Theory, Even Though Formally the Decision is Final and Binding?
- 2) How Can the Concept of Validity and Applicability of Norms from the Perspective of Hans Kelsen's Pure Legal Theory Be Used to Assess the Validity of Constitutional Court Decisions That Are Controversial or Considered Constitutionally Deviant?

Research Objectives or Contributions

This research theoretically contributes to enriching the discourse on legal validity and the enforceability of norms within the framework of Hans Kelsen's pure legal theory. This approach is still rarely used specifically in the analysis of the Constitutional Court institution in Indonesia. The main contribution is to broaden the understanding of the relationship between constitutional authority and the validity of legal norms, especially when deviations occur in the implementation of judicial authority.

Academically, this article contributes to the development of normative-positivistic legal theory in Indonesia by adapting it to the practice of constitutional institutions and the dynamics of the Indonesian legal system.

From a practical perspective, this research can be used as a consideration in formulating an internal control mechanism for deviant Constitutional Court decisions, without having to wait for a constitutional revision.

This research can also be a reference for policy makers, judges, and academics in designing the legal boundaries of the authority of state institutions and developing accountability mechanisms for constitutional institutions.

By offering an evaluative framework based on Kelsen's theory, this research plays an important role in encouraging the renewal of Indonesian constitutional law discourse to be more systematic, theoretical, and not merely pragmatic.

2. RESEARCH METHOD

This research uses a normative juridical approach based on an analysis of applicable positive legal norms. This approach was chosen because it is appropriate for examining legal validity and the applicability of norms within the framework of legal theory, particularly Hans Kelsen's pure legal theory (Kelsen, 1967).

A statutory approach is used to analyze the position of Constitutional Court decisions within the hierarchy of norms under the 1945 Constitution, as well as their relationship to the Constitutional Court Law and related technical regulations. This allows for an examination of the validity of decisions based on applicable legal norms.

A historical approach is used to trace how the concept of validity and enforceability of norms developed in the Indonesian legal system from the colonial period to the reform era, including the transformation of the constitutional system and the formation of the

Constitutional Court after the Amendment to the 1945 Constitution (van Vollenhoven, 1901; Asshiddiqie, 2006).

The conceptual approach is carried out by analyzing key concepts such as legal validity, the applicability of norms, and Grundnorm as formulated by Hans Kelsen. Data analysis techniques are carried out using a deductive and interpretive approach, namely compiling legal arguments based on the relationship between norms and the position of the Constitutional Court's decisions in the legal system, through a study of relevant literature.

3. RESULTS AND DISCUSSION

1) There is a possibility of cancellation or delegitimization of the Constitutional Court's decision from the perspective of Hans Kelsen's theory, even though formally the decision is final and binding.

Hans Kelsen in Pure Theory of Law introduced the concept of norm hierarchy, where the validity of a norm depends on norms at a higher level until it reaches a hypothetical grundnorm (Suhenriko, M. 2023).

In the Indonesian legal system, the Constitutional Court's decisions are the highest norm under the constitution and are final and binding on all institutions and citizens. From Kelsen's perspective, the validity of the Constitutional Court's decisions is formally guaranteed because they are issued by an organ authorized by the constitution, and their formation procedures are in accordance with higher norms: namely, the constitution and the law establishing the Constitutional Court.

However, Kelsen also emphasized the importance of the efficacy aspect as a condition for norm validity: a norm becomes effective and therefore valid only if it is factually accepted and obeyed by society and relevant institutions (Herdhianto, V. D., Firdaus, S. U., & Maharani, A. E. P. 2022). Thus, even though the Constitutional Court's decision is formally "final and binding," there is the possibility of delegitimization if the norm is not obeyed or is factually undermined.

For example, if the Constitutional Court's decision is ignored by the executive or legislative powers, or is opposed by the majority of society, then its effectiveness could collapse, so that its validity is shaken according to Kelsen.

Kelsen's theory of changes in basic norms through revolution or coup d'état in the legal order explains situations where formal norms become invalid because they have been factually replaced by new norms (Hadi, F., Gandryani, F., & Afifah, F. 2025).

In the case of *Uganda v Matovu*, the Court recognized that an effective revolution could replace an old constitution with a new one, even if not through the formal mechanisms provided for by the old norms: this meant that the old norms were delegitimized and replaced.

Projection to the Constitutional Court's decision: if there is a change in the legal system (for example a fundamental overhaul of the constitution) that is not regulated in the applicable normative system, then the MK's decision assets could lose their validity status because the basic norms have shifted.

From the aspect of legitimacy, Kelsen distinguishes between legality (normative validity) and legitimacy (socio-political effectiveness). Constitutional Court decisions have legality, but their socio-political legitimacy can be weakened if they are perceived as unfair or contradictory to societal values.

Kelsen does not speak directly about political legitimacy, but the basic theory suggests that ineffective norms eventually lose legal force because they are not practically followed.

In the context of the Indonesian legal system, the Constitutional Court's decisions still have formal legal force, but if systemic resistance arises—for example, non-

compliance by the DPR, the President, or law enforcement officials—then functional delegitimization occurs.

According to Kelsen, legal order is a system of norms that must be stable. Consistent violations of Constitutional Court decisions can lead to fragmentation of the system, weakening its overall legality.

Contemporary studies emphasize the importance of judicial restraint so that the Constitutional Court does not function as a positive legislature, which has the potential to trigger structural conflicts between legislative norms and constitutional norms (Wicaksono, D. A., & Tonralipu, A. S. A. T. 2021).

Constitutional Court decisions that expand norms or create new norms (judicial activism), even though formally legal, can reduce the effectiveness of jurisprudence and trigger rejection of legislative or public norms.

This statement shows that delegitimization is not because the decision was formally overturned, but because the resulting norm was avoided, not implemented, or challenged—which means it is no longer effective as a norm.

Although there is no formal mechanism to overturn a Constitutional Court decision once it has been announced, Kelsen's theory opens up the possibility that historically, effectiveness can replace formal legality if the underlying norm shifts.

Therefore, even if there is no formal annulment process, delegitimization of the Constitutional Court's decisions may occur through shifts in basic norms in conditions of political crisis, extraconstitutional constitutional changes, or national commission of decisions.

In Kelsen's perspective, formal validity remains untouched until a higher norm replaces it, but factual validity can be eroded if the norm is no longer adhered to.

2) The Concept of Validity and Applicability of Norms from the Perspective of Hans Kelsen's Pure Legal Theory Can Be Used to Assess the Validity of Constitutional Court Decisions That Are Controversial or Considered Constitutionally Deviant

The problem begins with a critical question: how can the concept of validity and enforceability of norms from the perspective of Hans-Kelsen's pure legal theory be used to assess the validity of controversial Constitutional Court decisions.

Pure Legal Theory (*Pure Theory of Law*) Kelsen defines law as a system of norms based on hierarchical relations. Each norm acquires binding power (*validity*) from higher norms, until reaching the *grundnorm* as the final source of validity (Muhtadi, M. 2011).

The concept of validity for Kelsen does not assess the content of norms from a moral or justice perspective, but rather from the procedure and its origins in the legal hierarchy: norms are valid if they are formed by authorized organs according to higher norms (Rizhan, A. 2020).

The concept of applicability (*efficacy*) relates to the realization of norms in social practice. Valid norms do not necessarily apply if they are not enforced; conversely, norms can be effective even if their existence is questionable if they are applied widely (Anshori, Z. 2015).

In the Indonesian system, the Constitutional Court's decision as a final and binding Constitutional Court decision is an individual norm in the form of a judicial decision which only gains force if issued through the correct constitutional procedure (Hidayah, R., et.al 2024).

In the hierarchy of norms according to Kelsen, the Constitutional Court's decisions are under the constitution (UUD1945) and are based on laws (UU MK), which in turn obtain validity from the constitution, and all of that comes from the Indonesian

grundnorm: "the people are obliged to submit to the Constitution as the highest rule". To assess the validity of a controversial Constitutional Court decision, the validity analysis begins by examining the procedure for the formation or consideration of the Constitutional Court whether it is in accordance with procedural norms (UU MK, internal regulations of the Constitutional Court) and thus has a legitimate origin according to higher norms.

If a Constitutional Court decision is suspected of deviating from the constitution, this does not mean it is logically invalid, because, according to Kelsen, moral orientation is irrelevant to formal validity. A norm is valid if it complies with the procedures and structures of positive law. However, if the Constitutional Court's decision is produced by an illegitimate procedure—for example, through judicial corruption or a quorum violation—then the internal norms of the decision lose validity because the issuing body lacks authority under higher norms.

The concept of a grundnorm is often assumed implicitly in pure legal theory. For Indonesia, the default grundnorm is the assumption that "the 1945 Constitution should be obeyed as the highest basic framework," without reference to external moral values (Azis, A. P. 2015).

In the context of the Constitutional Court, if the Constitution has been amended and the Constitutional Court Law has also changed, then the validity of the decision depends on whether the Constitutional Court applies the norms based on the amendments to the Constitution and the laws in force at that time.

In controversial cases, evaluating the validity of norms can be problematic: for example, if the constitution contains a norm that does not explicitly address a particular issue, the Constitutional Court might create a precedent that is considered broad or contradictory. From Kelsen's perspective, the assessment of "broad" or "contradictory" has no bearing on formal validity—as long as the Constitutional Court continues to apply only the given norm, and the decision is issued according to authorized procedures.

However, further analysis can assess social validity: whether the Constitutional Court's decisions are followed by state institutions and accepted by the public. If they are not effectively implemented, their validity is questionable, even if they are formally valid. For example, a Constitutional Court decision deemed to violate the principle of popular sovereignty or majority rule, but enforced without public acceptance, is considered to be ineffective, even if formally valid.

Criticism of Kelsen's theory: Hart, Dworkin, and Raz note that the excessive separation of law and morality makes the theory ignore democratic legitimacy and substantive justice (Wibowo, A., & Laksito, J. 2024).

However, for a formal legal assessment framework, Kelsen's theory emphasizes that the validity of norms is independent of moral content. This provides the basis for objectively assessing the procedural validity of Constitutional Court decisions.

Implementation in journal research: researchers can structure criticism of Constitutional Court decisions based on three levels: (a) conformity of procedures with the Constitutional Court Law and the constitution; (b) normative derivation from the constitution; (c) social effectiveness in society.

Each level is analyzed using data: decision documents, evidence of procedural violations, implementation reports, and public acceptance surveys. This approach meets the standards of normative legal methodology with an empirical basis.

By distinguishing between formal validity (procedural and derivative norms) and social validity, Kelsen's pure legal theory provides a powerful analytical tool for assessing the legitimacy of controversial Constitutional Court decisions without

incorporating moral values. If a decision is issued through a legitimate procedure and its norms are normatively derived from the constitution, it is valid even with controversial content. Conversely, if the procedure is flawed or the norms are not derivatively valid from the constitution, the decision loses formal legitimacy and cannot be considered valid according to the legal hierarchy.

4. CONCLUSION

According to Kelsen's theory, there is a possibility of delegitimization or "belief that the decision is invalid" even though formally the Constitutional Court's decision is final and binding, as long as the basic norms that support its validity change or the norms are not effective in socio-political reality.

By distinguishing between formal validity (procedural and derivative norms) and social validity, Kelsen's pure legal theory provides a powerful analytical tool for assessing the legitimacy of controversial Constitutional Court decisions without incorporating moral values. If a decision is issued through a legitimate procedure and its norms are normatively derived from the constitution, it is valid even with controversial content. Conversely, if the procedure is flawed or the norms are not derivatively valid from the constitution, the decision loses formal legitimacy and cannot be considered valid according to the legal hierarchy.

5. BIBLIOGRAPHY

Anshori, Z. (2015). *Keberlakuan Peraturan Pemerintah Pengganti Undang-Undang (Perpu)* (Doctoral dissertation, UNIVERSITAS AIRLANGGA).

Asshiddiqie, J. (2006). Hukum Tata Negara dan Pilar-Pilar Demokrasi. Jakarta: Konstitusi Press.

Azis, A. P. (2015). *Kritik Atas Prinsip Obyektivitas Berbasis Grundnorm Dalam Teori Hierarki Norma (Studi Perbandingan Sejarah Hukum Tata Negara Indonesia dan Jerman)* (Doctoral dissertation, Universitas Brawijaya).

Castillo-Ortiz, P. (2020). The dilemmas of constitutional courts and the case for a new design of Kelsenian institutions. *[Journal]*. link.springer.com

Dyzenhaus, D. (2017). Interpretive Authority and the Kelsenian quest for legality. *Jurisprudence*. juris.jotwell.com

EffectiveLaws.com. (2024). "Kelsen's Pure Theory of Law: Concept, Principles, and Criticism". effectivelaws.com

G. Villa-Rosas, J. L. Fabra-Zamora & J. E. Núñez (eds.), Kelsen's Legacy: Legal Normativity, International Law and Democracy (Oxford, 2025). [Wikipedia](https://en.wikipedia.org)

Garoupa, N., & Spruk, R. (2024). Populist constitutional backsliding and judicial independence... arXiv. [arXiv](https://arxiv.org)

Hadi, F., Gandryani, F., & Afifah, F. (2025). Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dalam Perspektif Teori Hukum Konstitusi. Wijaya Putra Law Review, 4(1), 61-84.

Hans Kelsen on Norm validity of Law. Philosophy@HKU. philosophy.hku.hk+1Studocu+1

_____. (1967). Pure Theory of Law (M. Knight, Trans.). University of California Press. (Original work published 1934).

_____. (1934/1967). Pure Theory of Law (Reine Rechtslehre). University of California Press.

_____. (1941). "The Pure Theory of Law and Analytical Jurisprudence", Harvard Law Review, 55, 44. mckinneylaw.iu.edu

_____. (1942). Judicial review of legislation: A comparative study of the Austrian and the American constitution. *The Journal of Politics*, 4(2), 183–207. scholarship.law.stjohns.edu+3Wikipedia+3Wikipedia+3Mahkamah Konstitusi RI

_____. (1961). General Theory of Law and State. Transaction Publishers. Cambridge University Press & Assessment+1Journals UMS+1

_____. (1973). Collected Essays. [relevant volume].

Herdhianto, V. D., Firdaus, S. U., & Maharani, A. E. P. (2022). OMNIBUS LAW DALAM PERSPEKTIF RANTAI VALIDITAS. *JURNAL EKONOMI, SOSIAL & HUMANIORA*, 3(06), 38-43.

Hidayah, R., Asmara, G., & Purnomo, C. E. (2024). Analysis of the Implementation of Community Participation in the Formation of Legal Regulations (A Juridical Review of the Ruling of the Constitutional Court Number 82/PUU-XXI/2023). *RESEARCH REVIEW International Journal of Multidisciplinary*, 9(2), 199-206.

Ilyas, A. et al. (2022). The authority of the constitutional court in establishing new norm ... *Jurnal JED. Journal Unismuh*

Mahkamah Konstitusi Republik Indonesia. (2023). Putusan Nomor 90/PUU-XXI/2023. <https://www.mkri.id>

Muhtadi, M. (2011). Penerapan Teori Hans Kelsen Dalam Tertib Hukum Indonesia. *Fiat Justicia: Jurnal Ilmu Hukum*, 5(3).

Number Analytics. (2025). “Understanding Kelsen’s Pure Theory of Law”. Studocu+5Number Analytics+5Number Analytics+5

_____. (2025). Kelsen’s Pure Theory of Law Explained. Number Analytics. Number Analytics

Rizhan, A. (2020). Konsep Hukum Dan Ide Keadilan Berdasarkan Teori Hukum Statis (Nomostatics) Hans Kelsen. *Kodifikasi*, 2(1), 61-71.

Stanford Encyclopedia of Philosophy. (2002–2025). Kelsen’s Pure Theory of Law. *Stanford Encyclopedia of Philosophy*. Number Analytics+1scholarship.law.stjohns.edu+1

_____. (2019). “The Pure Theory of Law”. plato.stanford.edu

Suhenriko, M. (2023). Implementasi Teori Hierarki Hans Kelsen Terhadap Perumusan Kebijakan Di Indonesia. *Jurnal Ilmiah Multidisipin*, 1(2), 64-71.

van Vollenhoven, C. (1901). *Het Adatrecht van Nederlandsch-Indië*. Leiden: Brill.

Wibowo, A., & Laksito, J. 2024). FILSAFAT HUKUM. Penerbit Yayasan Prima Agus Teknik.

Wicaksono, D. A., & Tonralipu, A. S. A. T. (2021). Mencari Jejak Konsep Judicial Restraint dalam Praktik Kekuasaan Kehakiman Di Indonesia. *Jurnal Hukum & Pembangunan*, 51(1), 177-203.

Winarno, B. (2020). Teori dan Politik Hukum. Yogyakarta: UGM Press.

Zen, M. T. (2023). Kontroversi Putusan Mahkamah Konstitusi dan Problem Legitimasi. *Jurnal Konstitusi*, 20(2), 134–155. <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/1777>