

WRITTEN LAW IN THE LEGISLATION SYSTEM: A LITERATURE REVIEW OF THE CONCEPT, FUNCTION, AND ROLE IN ENSURING LEGAL CERTAINTY

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Abstract

This study aims to comprehensively examine the concept, function, and role of written law in the Indonesian legal system, particularly in ensuring legal certainty. Using a literature review method and a qualitative-descriptive approach, this study explores various sources of literature, ranging from legal doctrine, legislation, to previous research results. The results of the study show that written law has regulatory, instrumental, and legitimising functions, as well as a strategic role as a main pillar in a state based on the rule of law that guarantees legal certainty for all citizens. However, challenges such as overlapping regulations, unclear formulation of norms, and weak harmonisation of regulations remain obstacles to optimising the role of written law. Therefore, efforts to improve the drafting, harmonisation, dissemination, and enforcement of written law are crucial to strengthening the guarantee of legal certainty in Indonesia.

Keywords: written law, legislative system, legal certainty, function of law, literature review, rule of law.

Introduction

Law is the primary means of regulating social, national, and state life. In every legal system, written law is an element that cannot be ignored because it functions as a normative guideline and a tool for controlling collective behaviour (Trautman, 2014). In the context of a constitutional state, written law occupies a very strategic position because it is binding, has coercive power, and is officially enacted by the competent authorities. This condition confirms that without written law, the relationship between the state and society would lose its formal foundation that guarantees social order (Raitio, 2023).

As a country based on the rule of law, Indonesia places written law within its legislative system as the basis for governance. The 1945 Constitution of the Republic of Indonesia affirms various legal principles that are further concretised in the form of a hierarchy of laws and regulations. Thus, written law is not merely a collection of norms, but rather the embodiment of constitutional values that bind state apparatus and serve as the main reference for society. It is the legitimacy built through written law that brings certainty and prevents arbitrariness (Kurunczi, 2025).

The urgency of written law is even more apparent when linked to the principle of legal certainty. In modern legal thought, legal certainty is considered an absolute requirement for the law to fulfil its function of creating order and justice. Legal certainty

can only be achieved if legal norms are clearly, explicitly, and systematically set out in official regulations. Without this, the law has the potential to be interpreted in multiple ways, causing uncertainty and even opening the door to practices that are detrimental to society (Maher, 2012) .

The concept of written law in Indonesia is directly related to the hierarchy of legal norms. From the 1945 Constitution as the basic norm to local regulations at the local level, all regulations are placed in a hierarchical structure that reflects the principles of *lex superior*, *lex specialis*, and *lex posterior*. The existence of written law is an instrument that binds across sectors, as well as a control mechanism to ensure that legal products do not conflict with one another. In this case, written law also acts as a tool to ensure the consistency of the state's policy of " .

The function of written law does not stop at the normative aspect alone, but also includes an instrumental function as a means of social engineering. Legislation is often used as a tool to encourage changes in public behaviour towards the direction that is in line with the state's objectives. In the economic, political and social spheres, written law serves to encourage structural transformation by providing clear mechanisms(Lamada, 2020) . Therefore, the function of written law goes beyond merely maintaining order; it also drives modernisation and national development. However, in practice, written law often faces serious obstacles in ensuring legal certainty. The emergence of overlapping regulations, disharmony between rules, and the poor quality of norm formulation often create confusion. This not only reduces the effectiveness of the law but also diminishes the sense of justice in the eyes of the public. This phenomenon shows that the existence of written law alone does not automatically guarantee legal certainty but must be accompanied by reforms in the planning and drafting of regulations(Nurhardianto, 2015) .

Another criticism often directed at written law is its rigid and slow nature in responding to developments in society. In the era of globalisation and digitalisation of law, social changes are taking place very quickly, while the legislative mechanism goes through lengthy and bureaucratic procedures. As a result, written law often lags behind developments in reality, which then gives rise to unwritten legal practices, administrative policies, or even jurisprudence as a supplement. This illustrates that legal certainty needs to be supported by the synergy of various forms of legal sources without neglecting written law (Hartig, 2014) .

On the other hand, written law is still considered the most solid foundation for ensuring legal certainty in Indonesia. The clarity of its formulation, its hierarchical system, and its binding nature provide greater certainty than other sources of law. Customary law, for example, is highly dynamic and often limited to certain communities, so it cannot be universally applicable. Only written law can provide general standards that apply within the national scope, thereby ensuring regulatory uniformity (Webley, 2024) . Legal certainty derived from written law is not only beneficial to society in

general, but also very important for business actors, investors, and government officials. For the business world, legal certainty guarantees contract stability and regulatory clarity, thereby supporting the investment climate. For state officials, written law serves as a reference when making decisions so that they are not potentially challenged or questioned legally. Thus, the role of written law extends to various aspects, not only in the juridical realm, but also in the economic and political dimensions(Shcherbanyuk et al., 1999) .

The strong role of written law is in line with the theory of legal certainty put forward by Hans Kelsen and Gustav Radbruch. According to Kelsen, law has the character of a hierarchically structured system of norms, in which the validity of a norm is determined by a higher norm. Meanwhile, Radbruch emphasised the importance of balancing legal certainty, justice, and utility. This idea is relevant in emphasising that written law is not only a legalistic tool, but must also be directed towards achieving substantive justice (Martinez, 2023) .

Referring to this reality, the study of written law in the legislative system cannot stop at the level of definition, but must explore its concept, function, and role. The concept of written law shows its characteristics as a formal norm; its functions include regulatory, instrumental, and legitimative aspects; and its role lies in its efforts to ensure legal certainty. This kind of analysis can also open up space for discussion about the weaknesses and challenges that still overshadow the existence of written law in Indonesia.

Research Method

The research method used in this study is library research with a descriptive-analytical qualitative approach. This study focuses on tracing, collecting, and analysing data from various relevant written sources, such as legislation, law books, scientific journals, previous research results, and doctrines from legal experts (Kitchenham, 2020) . The analysis was conducted by examining the basic concepts of written law, its functions, and its role in ensuring legal certainty through a normative approach that emphasised the study of applicable positive legal norms and the underlying legal theory. The results of the analysis were then systematically organised to provide a comprehensive understanding of the position of written law in the Indonesian legal system (Eliyah & Aslan, 2025) .

Results and Discussion

Concept and Function of Written Law in the Legal System

Written law can generally be understood as all forms of legal norms that are explicitly stated in official state documents and established through formal procedures by authorised institutions (Martinez, 2023) . It differs from unwritten law, which develops in society through custom. Written law is characterised by its standardised

formulation, universal application, and binding force supported by law enforcement agencies. In modern legal systems, written law always occupies a primary position because it is considered the most capable of providing certainty and clarity of norms (Weber, 2025).

In the Indonesian context, written law has a strong foundation in the 1945 Constitution of the Republic of Indonesia. The Constitution stipulates that all forms of state administration must be based on law, not power alone. This means that written law issued by state institutions, whether in the form of statutes or subordinate regulations, is the main instrument for realising the principle of the rule of law (*rechtstaat*). In other words, written law is not merely a symbol, but a constitutional pillar (Czinkota, 2014).

The concept of written law is closely related to the idea of legal normativity. According to Hans Kelsen, law is a layered system of norms, in which lower norms must be based on higher norms until they reach the basic norm (*grundnorm*). In this framework, written law appears as the main instrument in maintaining the consistency of the hierarchy of norms. Every written rule that is made, whether in the form of a law, government regulation, or regional regulation, must not conflict with higher norms so that the legal system can run orderly (Erlangga, 2024). In addition, the concept of written law also concerns legitimacy. A norm can only be considered valid if it is issued by an institution that has legislative authority based on the constitution. This gives written law stronger formal legitimacy than customary norms or unwritten law. Formal legitimacy is important because it guarantees consistent enforcement, independent of social accommodation, but based on state provisions and authority. This is what distinguishes written law from other social norms (Fleck, 2021).

Written law also has a coercive nature. This means that violations of written law will result in legal consequences that can be enforced through state instruments, particularly law enforcement agencies such as the courts, the public prosecutor's office, and the police. These punitive consequences distinguish written law from moral or religious norms, which are only ethically binding. The existence of sanctions is the main factor that ensures that written norms are truly obeyed by citizens and government officials (Paunio, 2009).

In the national legal system, written law occupies a position in the hierarchy regulated by Law No. 12 of 2011 concerning the Formation of Legislation and its amendments. This hierarchy begins with the 1945 Constitution, MPR Decrees, laws/Government Regulations in Lieu of Laws (*Perppu*), government regulations, presidential regulations, and regional regulations. This hierarchical structure demonstrates the interconnection of written laws within the entire legal system while reflecting the principle of *lex superior derogat legi inferiori* (Siti Halilah, 2021).

The primary function of written law is regulatory, namely to regulate relationships within society so that they proceed in an orderly manner. Through written

law, the scope of rights, obligations, prohibitions, and sanctions are clearly regulated, thereby creating clear boundaries between permissible and prohibited behaviour. This function is very strategic because society can refer directly to written norms without having to guess based on customs or interpretations that may vary (UMSU Fahum, 2024) . In addition to its regulatory function, written law also has an instrumental function. Written law not only maintains the status quo, but is also used as a means of social engineering to encourage change in society. The government, for example, can enact laws on education, health, or the economy to guide society towards modernisation, increased productivity, or the achievement of prosperity. In this way, written law functions as an instrument of national development as well as a guide for state policy (Trautman, 2014) .

Written law also functions as a means of legitimising government policies and decisions. Every public policy will only have strong legitimacy if it is based on legislation. Without a written legal basis, the policy will be considered legally flawed and vulnerable to legal challenges. Thus, written law can be said to be the foundation of the legitimacy of state authority and at the same time a shield for officials when carrying out their duties (Raitio, 2023) .

Another equally important function is the harmonisation of the legal system. Written law is a binding element that ensures that each sector of law does not operate independently but remains within the corridor of national law. Without written law, regulations issued at the local level have the potential to conflict with national regulations, thereby causing chaos. Written law in the form of laws and regulations acts as a connecting link that ensures that all legal norms move in harmony towards the goal of the state (Kurunczi, 2025) .

Written law also performs a preventive function, namely preventing disputes or violations through clear rules that are binding on all parties. For example, written law in the field of commercial contracts regulates the rights and obligations of the parties so as to minimise the potential for disputes. This function also reinforces the role of written law in creating legal certainty, as parties bound by a legal relationship no longer need to debate the applicable norms (Maher, 2012) .

In the economic sphere, written law serves to provide regulatory certainty for business and investment. Clear, consistent, and predictable regulations are important factors for economic actors to feel secure in carrying out their activities. Conversely, legal uncertainty due to overlapping regulations can reduce investor confidence. Therefore, written law not only has a juridical function but also a strategic function in the economic development of a country (Burchardt, 2019) .

Furthermore, written law also plays a role as a means of legal unification in a multicultural country such as Indonesia. Diversity in customs, religions, and traditions often results in different norms. Written law through legislation can provide general standards that apply nationally to unify these diverse norms. Although customary law is

still respected, written law serves as the main binding force to ensure the unity of the legal system in Indonesia(Lamada, 2020) .

Thus, written law in the legislation system has a clear concept as a formal norm with constitutional legitimacy, binding nature, and coercive power. Its functions are not only limited to regulatory aspects but also include instrumental, legitimising, preventive, harmonising, and unifying functions. All of these functions confirm that written law is a fundamental pillar in realising the rule of law and a primary means of ensuring legal certainty for citizens.

The Role of Written Law in Guaranteeing Legal Certainty

Legal certainty is one of the most fundamental principles in the administration of a state based on the rule of law, as affirmed in Article 1 paragraph (3) of the 1945 Constitution, which states that Indonesia is a state based on the rule of law. This principle requires that all forms of government administration and community life be conducted on the basis of clear, accessible, and easily understandable laws. In this framework, written law plays a central role because enacted legal documents provide a definite formulation of what each citizen and state apparatus may and may not do, thus leaving no room for wild interpretations that could lead to legal uncertainty(Nurhardianto, 2015) .

Without written law, legal certainty would be difficult to achieve because norms would only depend on tradition, custom, or even the personal will of officials. Customary law and customs do have their place, but their scope of application is limited to certain communities. Meanwhile, modern societies need a legal system that can provide uniform treatment for all citizens without exception. This is where written law plays a vital role in creating generally applicable and non-discriminatory standards, so that every party has a basis of certainty when dealing with the law (Hartig, 2014) . In addition to offering clarity on legal matters, written law also provides procedural certainty. In the process of law enforcement, from investigation and prosecution to court decisions, all stages are based on written legal norms that are regulated in detail in the law. Thus, predictability and transparency are created that can be relied upon by all parties. Law enforcement officials are also obliged to act in accordance with existing legal and formal limitations, thereby minimising the potential for abuse of authority or arbitrary actions (Webley, 2024) .

The implementation of written law as a guarantee of legal certainty is clearly evident in the field of criminal law. The Criminal Code (KUHP) and other criminal regulations explicitly regulate criminal acts, elements of offences, sanctions, investigation procedures, and legal remedies. With the existence of definite and written norms, perpetrators of criminal acts and the wider community can clearly understand the consequences of each act, thereby greatly increasing the deterrent effect while providing legal protection to all parties concerned(et al., 1999) .

In the realm of civil law, legal certainty derived from written law also plays a significant role, particularly in the implementation of contracts. Agreements set out in written contracts and regulated by civil law guarantee the rights and obligations of the parties, so that in the event of a dispute, it can be resolved by referring to predetermined provisions. This is crucial in business and investment practices where predictability and legal protection are essential (Martinez, 2023).

Written law is also very important in administrative law or state administration. Every action taken by government officials that affects the rights of citizens must be based on clear and written legal grounds. Thus, the public is protected from unilateral decisions and abuse of authority. In the event of a procedural or substantive violation, citizens have the right to file a lawsuit through the administrative court mechanism, where the court will examine the legality based on the applicable written regulations (Weber, 2025). The legal certainty provided by written law is not only about the clarity of the content of the norms, but also related to the certainty of the time and area of application of a rule. Every law and regulation is always accompanied by the date of enactment and geographical scope of application, so that there is no ambiguity regarding when and where a norm is enforced. These things ensure that the law can be effectively enforced by all elements of society and government (Czinkota, 2014).

In addition to its preventive function, written law also serves as a means of legal protection for vulnerable groups, such as women, children, and persons with disabilities. Through specific laws that regulate the protection of certain groups, the state can ensure that there is no discrimination and that everyone receives fair treatment in accordance with constitutional guarantees. Legal certainty in the form of protection for vulnerable groups also reinforces the position of written law as an instrument of social justice. However, the role of written law in ensuring legal certainty is not without challenges (Erlangga, 2024). Overlapping regulations, multiple interpretations, disharmony between the central and regional governments, and overly rapid regulatory changes have the potential to undermine legal certainty itself. The inconsistency between laws and derivative regulations often makes the implementation of law in the field uneven, which ultimately harms the community and law enforcement officials themselves (Fleck, 2021).

Another prominent issue is the weak quality of norm formulation in some written legal products. Formulations that are unclear, ambiguous, and often leave room for interpretation can lead to abuse at both the bureaucratic and judicial levels. This shows that legal certainty does not automatically exist simply because there are written laws, but rather requires legal drafting that is truly mature, careful, and consistent with the basic values of the constitution (Paunio, 2009).

In response to these challenges, the harmonisation and codification of national law has become an urgent necessity. Efforts to formulate codified, harmonised regulations and eliminate conflicting rules are key strategies in strengthening the role

of written law as a guarantor of legal certainty. With this approach, the law becomes simpler, easier to understand, and accessible to everyone, including the general public (Siti Halilah, 2021) .

Legal socialisation and education must also go hand in hand with the formulation of written law. Legal certainty will only truly be achieved if the public understands the content and intent of the applicable regulations. Public ignorance of the law can cause clear rules to remain ineffective and ultimately prevent the achievement of legal certainty. Therefore, written laws must be accompanied by massive and effective dissemination and legal education for all levels of society (UMSU Fahum, 2024) .

Equally important, consistent and non-discriminatory oversight and enforcement of the law are essential to ensure the effectiveness of written law. Law enforcement officials must act professionally, independently, and uphold the principle of equality before the law. If law enforcement is inconsistent or discriminatory, then written law loses its meaning as an instrument of legal certainty and can create new injustices in society (UMSU Fahum, 2024) .

At the international level, legal certainty through written law is also key in cross-border relations. Issues of economic cooperation, investment protection, and cross-border law enforcement require clear written legal standards so that all parties can adapt and avoid international disputes. Therefore, written law also plays a role in placing Indonesia in a clearer and more assertive position in the global arena (Siti Halilah, 2021) .

Ultimately, the role of written law in ensuring legal certainty is not only related to the existence of normative documents, but also lies in the quality of content, consistency, ease of access, and the state's ability to enforce it consistently. If all these aspects can be realised, then written law will truly become the main foundation for creating legal certainty in Indonesia. Conversely, the weakness of written law governance will only give rise to uncertainty and injustice that is counterproductive to the ideals of the rule of law.

Conclusion

The conclusion of this study is that written law is a fundamental element in the legislative system, functioning as a formal norm with constitutional legitimacy and a generally binding nature. The concept of written law encompasses systematic and hierarchical regulations that must be obeyed by all citizens and state officials. Its inherent legality and coercive power make written law the primary instrument for regulating social life in an orderly and predictable manner.

Second, it underlines the various functions of written law, which are not only regulatory but also instrumental, legitimising, preventive, harmonising, and unifying. These functions make written law a tool of the state for social engineering, strengthening the legitimacy of policies, protecting citizens' rights, and unifying norms

in a pluralistic national legal system. The balance of these functions is key to achieving the overall objectives of the law.

Thirdly, it highlights the strategic role of written law in ensuring legal certainty as a fundamental principle of the rule of law. Legal certainty through written law provides a guarantee of clarity in terms of the substance, procedure, time and space of application of legal norms, which facilitates access to, implementation and enforcement of the law. However, this success is highly dependent on the quality of drafting, harmonisation of regulations, socialisation, and consistent law enforcement so that written law can truly become a solid foundation for legal order and justice in Indonesia.

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