



Legal Uncertainty in Testing of Legislation Due to Weak Implementation of the Principle of Lex Superior Derogat Legi Inferiori

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Abstract

This study aims to examine the weak implementation of the principle of lex superior derogat legi inferiori and its implications for legal certainty within the Indonesian legal system. Using a normative juridical approach, the research applies statutory, conceptual, and case-based analysis to evaluate legislation and judicial decisions related to normative hierarchy. The findings reveal that the principle is not effectively operationalized due to systemic factors, including regulatory disharmony, procedural harmonization, overlapping judicial authority, low legislative quality, and formalistic administrative practices. These conditions result in persistent norm conflicts, delayed legal correction, and weakened predictability of legal outcomes. Unlike previous studies that focus primarily on doctrinal aspects, this research demonstrates that legal certainty depends on the interaction of multiple institutional dimensions. The study implies that strengthening preventive harmonization, improving legislative quality, and enhancing institutional coordination are essential to restoring the effectiveness of hierarchical principles. These findings contribute to the broader discourse on legal certainty, regulatory governance, and institutional reform in developing legal systems.

INTRODUCTION

Legal certainty constitutes one of the foundational pillars of the rule of law, functioning as a prerequisite for orderly governance, the protection of fundamental rights, and the predictability of legal outcomes. In modern constitutional systems, legal certainty is not merely an abstract ideal but a practical necessity that ensures the coherence, stability, and reliability of legal norms regulating public life. A legal system that fails to provide certainty risks generating normative ambiguity, arbitrary decision-making, and declining public trust in law as a regulatory instrument (Nadzirin et al., 2025; Fitria et al., 2025). Consequently, the existence of a structured hierarchy of norms, accompanied by effective mechanisms to maintain consistency

among legal instruments, becomes essential for preserving the integrity of the legal order. Within this framework, the principle of *lex superior derogat legi inferiori* plays a central role in ensuring that lower-level regulations remain subordinate to, and consistent with, higher-level norms.

The principle of *lex superior derogat legi inferiori* has strong roots in the theoretical framework of legal positivism, particularly, which views the legal system as a pyramid of norms, with each lower norm gaining validity from a higher norm (Kammerhofer, 2023; Villa-Rosas, 2023). According to this hierarchy, the constitution is at the top as a source of legal validity, followed by the law and regulations. As such, the principle is not only a doctrinal rule, but also a structural device that guarantees normative consistency and avoids clashes within the legal order. It works both in a preventive fashion, directing lawmaking processes, and in a repressive sense, through the invalidation of inconsistent norms by the judicial system. Hence, the principle is crucial in preserving unity and harmony of the legal order.

Indonesia has institutionalised the principle of normative hierarchy in the form of constitutional provisions and laws regulating the enactment of rules and regulations. The hierarchy of laws as outlined in Law Number 12 of 2011, amended by Law Number 13 of 2022, mirrors Kelsen's theoretical model, with the 1945 Constitution at the top of the hierarchy. Moreover, the power of judicial review by the Constitutional Court and the Supreme Court is aimed at ensuring the conformity of legal norms with this hierarchy (Cammack, 2023; Phiau et al., 2025). These institutional structures suggest that Indonesia has formally embraced a strong system for maintaining legal certainty through the control of norms.

Yet, despite this formal acknowledgement, it turns out that the application of *lex superior derogat legi inferiori* in Indonesia is far from perfect. A plethora of lower-level norms, such as ministerial regulations, institutional rules and local bylaws, often clash with superior norms, thus disrupting legal harmony. Such contradictions are not merely accidental but symptomatic of deficiencies in legal drafting, regulatory coordination and inter-institutional coordination. As previously noted, regulatory disharmony has become a chronic problem in Indonesia's legal system, resulting in an overlap of legal norms, conflicting interpretations, and legal uncertainty (Karjoko et al., 2025; Malik et al., 2024). Such circumstances suggest a disconnect between the ideal and the real in Indonesia's legal system.

One of the critical issues underlying this phenomenon is the weak functioning of preventive harmonization mechanisms during the legislative drafting process. Although harmonization procedures are formally mandated, they are often implemented in a procedural and symbolic manner rather than as substantive processes aimed at ensuring normative consistency. As a result, regulations that are inconsistent with higher-level norms frequently pass through the legislative process without adequate scrutiny. This observation aligns with broader critiques of legislative governance in Indonesia, which emphasize the lack of rigorous regulatory impact assessment, insufficient inter-institutional coordination, and the influence of sectoral interests in shaping legal outputs (Arafiq et al., 2024; Araszkiwicz & Florczak-Wątor, 2025). Consequently, the drafting stage fails to function as an effective safeguard against normative inconsistency.

In addition to weaknesses in legislative processes, the enforcement of normative hierarchy is further complicated by the institutional structure of judicial review. The division of authority between the Constitutional Court and the Supreme Court, while constitutionally justified, introduces a dualism that may generate interpretative inconsistencies and jurisdictional ambiguity. Previous studies have noted that overlapping competencies and differences in interpretative approaches between these institutions can undermine the uniform application of hierarchical principles

(Mutiasi & Kristanto, 2025; Suratno, 2025). This institutional fragmentation reduces the effectiveness of judicial review as a coherent mechanism for maintaining normative consistency and may contribute to prolonged legal uncertainty.

The predominantly reactive nature of judicial review in Indonesia exacerbates the problem. The enforcement of *lex superior derogat legi inferiori* largely depends on ex post judicial intervention, meaning that inconsistent regulations often remain in force until they are formally challenged and annulled. During this period, such regulations continue to produce legal effects, shaping administrative practices and influencing individual behavior despite their questionable validity. This reactive approach contrasts with the ideal function of hierarchical principles as preventive safeguards and instead transforms them into corrective tools applied after legal uncertainty has already materialized (Doerfler & Moyn, 2024; Harefa, 2025). As a result, the principle loses much of its normative force in guiding legislative and administrative conduct.

The existing body of literature has extensively examined the principle of *lex superior derogat legi inferiori* from a doctrinal and theoretical perspective. Scholars such as AlNajdawi et al. (2025) and Karjoko et al. (2025) have emphasized its importance in maintaining the hierarchical integrity of legal norms, while administrative law scholars have linked it to the principle of legality in public administration (Suparto et al., 2024; Coerts, 2025). However, much of this scholarship remains conceptual and normative, with limited attention to how the principle operates in practice within judicial review processes and regulatory implementation. In particular, there is a lack of systematic analysis examining how weaknesses in the application of this principle concretely affect legal certainty in the Indonesian legal system.

Moreover, while previous studies have pointed to problems such as regulatory inconsistency, poor legislative quality and institutional fragmentation, such analyses are often disjointed and fail to link these issues with the issue of legal certainty as a whole. The collective effect of these structural issues particularly the interplay between legislative weakness, judicial fragmentation and the administration has yet to be well understood. This is important, given that legal certainty is not just an abstract idea but also a necessary condition for good governance, human rights, and economic prosperity.

In this context, this research aims to offer a more holistic perspective on the poor enforcement of *lex superior derogat legi inferiori* in Indonesia. This study is different from prior research that is mostly doctrinal in nature because it integrates normative and judicial analysis to determine how hierarchical inconsistencies are present in regulatory practices. It further examines the structural, institutional, and procedural aspects that lead to these inconsistencies, as well as their social-legal consequences for the rule of law. To this end, our study has three goals. First, it seeks to detect and analyse the various forms of weak implementation of the *lex superior derogat legi inferiori* principle in the drafting of laws, harmonisation of regulations, and judicial review. Second, it aims to explore the determinants (both structural and institutional) of these weaknesses. Third, it assesses the consequences of these weaknesses on legal certainty, especially in terms of norm conflicts, administration of government, and the role of judicial review.

The uniqueness of this research is its interdisciplinary nature, which seeks to connect theoretical doctrinal legal principles with empirical judicial practices through hierarchical analysis of legal regulations. In this way, this research offers a more holistic view of the role of normative hierarchy in the Indonesian legal system, and underscores the need to improve preventive harmonization, quality of legislation, and coordination of institutions. Finally, this study seeks to strengthen the position of *lex superior derogat legi inferiori* as a substantive and procedural principle that

promotes legal certainty and enhances the integrity of the legal system. To provide a clearer analytical structure, this study proposes a conceptual framework that illustrates the relationship between structural factors, weak implementation of normative hierarchy, and its implications for legal certainty, as presented in Figure 1.

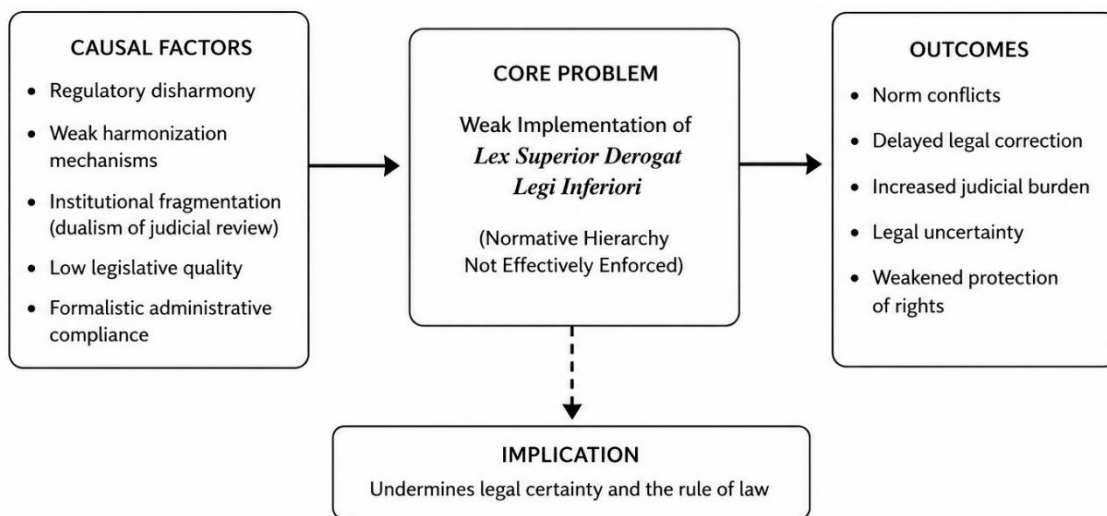


Figure 1. Simple Conceptual Framework of the Weak Implementation of Lex Superior Derogat Legi Inferiori and Its Implications for Legal Certainty

Source: Developed by the author based on relevant legal theory and literature

Figure 1 presents a simplified conceptual framework of the study. It illustrates that the weak implementation of *lex superior derogat legi inferiori* is influenced by legislative weaknesses, institutional fragmentation, and administrative compliance issues. These factors contribute to regulatory disharmony and ineffective normative hierarchy. As a result, the system produces norm conflicts, delayed legal correction, and increased legal uncertainty. The framework highlights that legal certainty depends not only on formal hierarchical structures but also on their effective implementation in practice.

METHODS

Research Design

This study adopts a normative juridical research design to examine the weak implementation of the principle of *lex superior derogat legi inferiori* and its implications for legal certainty within the Indonesian legal system. Normative legal research is particularly appropriate for this study because the primary focus lies on the analysis of legal norms, principles, and judicial reasoning rather than on empirical social behavior. As widely acknowledged in legal scholarship, normative research treats law as a prescriptive system that can be analyzed through doctrinal interpretation, systematic reasoning, and conceptual clarification (IRAC-based and doctrinal approaches).

This design enables the study to critically assess the internal coherence of legal norms, the consistency of hierarchical structures, and the alignment between theoretical principles and their practical application. By focusing on statutory provisions and judicial decisions, the research seeks to uncover normative inconsistencies and structural weaknesses that undermine legal certainty. In this context, the study positions law not merely as a set of rules but as an integrated system that must function coherently to uphold the rule of law.

Research Context and Legal Framework

The research is situated within the Indonesian legal system, which formally adopts a hierarchical structure of legislation grounded in the 1945 Constitution. The primary legal framework analyzed in this study includes the Constitution, Law Number 12 of 2011 concerning the Formation of Laws and Regulations (as amended by Law Number 13 of 2022), and relevant implementing regulations. This framework reflects the theoretical model of normative hierarchy articulated by Hans Kelsen, in which lower-level norms derive their validity from higher-level norms.

In addition, the study examines the institutional context of judicial review in Indonesia, which is characterized by a dual system involving the Constitutional Court and the Supreme Court. The Constitutional Court is authorized to review statutes against the Constitution, while the Supreme Court reviews regulations below statutes. This institutional arrangement forms a critical part of the research context, as it directly influences how the principle of *lex superior derogat legi inferiori* is enforced in practice. By situating the analysis within this legal and institutional framework, the study provides a comprehensive understanding of both the normative structure and its operational dynamics.

Approaches to Legal Analysis

To achieve the research objectives, this study employs three complementary approaches: the statutory approach, the conceptual approach, and the case approach. The statutory approach involves a systematic examination of legal provisions governing the hierarchy and formation of laws and regulations. Through this approach, the study evaluates whether subordinate regulations conform to superior norms and identifies inconsistencies within the regulatory framework.

The conceptual approach is used to analyze the theoretical foundations of the principle of *lex superior derogat legi inferiori* and its relationship with broader legal concepts such as legal certainty and the rule of law. This approach draws on classical and contemporary legal theories, including of normative hierarchy and conception of legal certainty as a fundamental value of law. By integrating these theoretical perspectives, the study establishes a normative benchmark against which the Indonesian legal system can be evaluated.

The case approach focuses on judicial decisions issued by the Constitutional Court and the Supreme Court concerning the review of legislation and subordinate regulations. These decisions are analyzed to identify patterns of judicial reasoning, inconsistencies in the application of hierarchical principles, and institutional constraints affecting norm control. The use of multiple approaches allows for a more comprehensive and nuanced analysis, combining doctrinal clarity with practical insights.

Data Collection Techniques and Legal Materials

The data used in this study consist exclusively of legal materials, which are categorized into primary, secondary, and tertiary sources. Primary legal materials include constitutional provisions, statutory laws, and judicial decisions relevant to the hierarchy of norms and judicial review mechanisms. Key sources include decisions of the Constitutional Court and the Supreme Court that address conflicts between legal norms and the application of hierarchical principles.

Secondary legal materials comprise scholarly books, peer-reviewed journal articles, and academic commentaries that discuss legal hierarchy, judicial review, and legal certainty. These materials provide analytical and theoretical support for the study and help contextualize the findings within broader legal discourse. Tertiary

materials, such as legal dictionaries and encyclopedias, are used to ensure conceptual clarity and precision.

Data collection is conducted through systematic document analysis, which involves identifying, selecting, and reviewing relevant legal texts and scholarly sources. This technique is widely used in normative legal research to extract meaningful insights from legal documents and to construct coherent legal arguments. The selection of materials is guided by relevance, authority, and recency to ensure the reliability and validity of the analysis.

Unit of Analysis and Sampling Strategy

The unit of analysis in this study consists of legal norms and judicial decisions that reflect the application of the principle of *lex superior derogat legi inferiori*. Rather than employing statistical sampling, the study uses purposive sampling to select representative legal materials that are most relevant to the research objectives. This includes landmark judicial decisions that illustrate normative conflicts, such as cases involving ministerial regulations, regional bylaws, and statutory provisions.

The purposive selection of cases allows the study to focus on instances where hierarchical inconsistencies are most evident and where judicial reasoning provides valuable insights into the operation of the principle. This approach is consistent with qualitative legal research methodologies, which prioritize depth of analysis over breadth of coverage. By analyzing carefully selected cases, the study is able to identify recurring patterns and systemic issues within the legal system.

Data Analysis Techniques

Data analysis in this study is conducted qualitatively through doctrinal and interpretative methods. The analysis involves several stages, including classification of legal materials, interpretation of legal norms, comparison of regulatory provisions, and evaluation of judicial reasoning. The interpretative process is guided by established methods of legal reasoning, such as grammatical, systematic, and teleological interpretation.

In addition, the study employs a comparative analytical framework to examine the relationship between higher and lower-level norms and to identify inconsistencies within the hierarchy. Judicial decisions are analyzed to assess how courts interpret and apply the principle of *lex superior derogat legi inferiori*, as well as to evaluate the effectiveness of judicial review mechanisms in resolving normative conflicts.

To enhance analytical clarity, the findings are systematically organized into thematic categories, such as regulatory disharmony, institutional fragmentation, and legislative quality. These categories are presented in tabular form to facilitate comparison and to highlight key patterns identified in the analysis.

Table 1. Analytical Framework of Weak Implementation of Normative Hierarchy

Dimension	Indicator	Analytical Focus
Regulatory Structure	Norm inconsistency	Alignment between higher and lower norms
Institutional Aspect	Overlapping authority	Coordination between judicial institutions
Procedural Mechanism	Passive control	Timing and effectiveness of judicial review
Legislative Quality	Ambiguity of norms	Clarity and precision in drafting

Source: Author's analytical framework, 2026

As shown in Table 1, the analytical framework provides a structured basis for examining the various dimensions of weak implementation and their implications for legal certainty.

Validity and Reliability

Ensuring the validity and reliability of normative legal research requires methodological rigor and transparency in the selection and analysis of legal materials. In this study, validity is achieved through the use of authoritative and credible sources, including official legal documents and peer-reviewed academic publications. Triangulation is applied by cross-referencing multiple sources of legal materials and scholarly interpretations to ensure consistency and accuracy of findings.

Reliability is maintained through a systematic and replicable analytical process, in which legal materials are examined using consistent interpretative methods. The use of established legal theories as analytical frameworks further strengthens the reliability of the study by providing clear normative benchmarks. In addition, careful documentation of sources and analytical procedures ensures that the study can be reviewed and replicated by other researchers.

RESULTS AND DISCUSSION

This section presents the empirical findings of the study concerning the weak implementation of the principle of *lex superior derogat legi inferiori* within the Indonesian legal system. The results are organized systematically to highlight the key dimensions through which hierarchical inconsistency manifests in regulatory practice. Specifically, the analysis focuses on five interrelated aspects: (1) the general pattern of weak implementation of normative hierarchy, (2) the occurrence of regulatory disharmony in subordinate legislation, (3) the limitations of preventive harmonization mechanisms, (4) the effects of institutional fragmentation and overlapping judicial authority, and (5) the role of legislative quality and administrative compliance in sustaining normative inconsistencies.

Each subsection presents the findings derived from statutory analysis and judicial decisions, emphasizing recurring patterns, structural weaknesses, and institutional dynamics. Tables are used to synthesize and clarify the empirical patterns identified in the analysis, and each is accompanied by a detailed explanation in the text. The presentation remains focused on reporting the findings in a structured and analytical manner, while broader interpretation and theoretical discussion are reserved for the subsequent section

Overview of the Weak Implementation of Normative Hierarchy

The results of this study reveal that the principle of *lex superior derogat legi inferiori* has not been effectively operationalized within the Indonesian legal system, despite its explicit recognition in constitutional and statutory frameworks. The analysis of statutory provisions and judicial decisions demonstrates a persistent gap between normative expectations and institutional practice. In theory, the hierarchical structure of legislation should ensure that lower-level regulations conform strictly to higher-level norms. However, empirical findings indicate that this hierarchy often functions merely as a formal structure rather than as a substantively enforced system of legal control.

The data show that inconsistencies between different levels of regulation are not isolated incidents but rather recurring patterns across various sectors of governance. These inconsistencies manifest in the form of contradictory provisions, excessive delegation of authority, and reinterpretation of statutory mandates at the

subordinate level. As a result, the principle of normative hierarchy is weakened in practice, reducing its effectiveness as a mechanism for ensuring legal certainty.

To systematically present these findings, the study identifies several dominant forms of weak implementation, as summarized in Table 2.

Table 2. Forms of Weak Implementation of the Principle of Lex Superior Derogat Legi Inferiori

Form of Weakness	Description of Findings	Impact on Legal System
Regulatory disharmony	Lower-level regulations contradict higher norms	Norm conflicts
Overlapping authority	Institutional overlap in regulatory formation	Legal ambiguity
Passive norm control	Dependence on judicial review	Delayed correction
Low administrative compliance	Continued use of flawed regulations	Implementation uncertainty
Poor legislative quality	Ambiguous and inconsistent norms	Legal inconsistency

Source: Author's analysis, 2026

As shown in Table 1, regulatory disharmony and overlapping authority emerge as the most dominant forms of weakness. These findings indicate that the problem is not limited to isolated drafting errors but reflects systemic deficiencies in the regulatory framework and institutional coordination.

Regulatory Disharmony and Weak Preventive Harmonization Mechanisms

The continuity of the hierarchical inconsistency is not isolable of structural and procedural shortcomings of the lawmaking process. This paper lists a number of the interdependent causes of the poor application of normative hierarchy in Indonesia. To begin with, the harmonization mechanisms in terms of regulations are more procedural than substantive. In reality, harmonization has been viewed as a formal administrative need, which involves completing documents instead of determining the coherence and compatibility of legal norms. This leads to discrepancies in regulations often going through the legislative system without sufficient review.

Second, the quality of legislative drafting is still relatively low, especially because of the lack of systematic analysis of the impact of regulations. The systematic review of legal, social and institutional implications is usually not included in drafting processes, resulting in ambiguous, overlapping, or inconsistent norms with higher-level regulations. This shortfall undermines the ability of legislation to act as a consistent element of the wider legal framework.

Third, the interests of sectors play a major role in the regulation development. Institutional priorities or political considerations often influence legislative outputs in that they are not influenced by the necessity to preserve normative consistency. This sectoralism generates a highly non-unified regulatory environment, in which individual institutions pursue their own interests without giving enough attention to ranking.

Fourth, the issue is also aggravated by institutional fragmentation. The judicial power of the Constitutional Court and the Supreme Court creates such a dualism that produces overlapping competencies in the framework of the regulation review, which in turn adds to the legal ambiguity. This disintegration is indicative of the wider disorganization of state institutions that are supposed to uphold the integrity of the legal system. Lastly, the lack of severe punishments when normative hierarchy is breached enables inconsistencies in regulation to exist. In spite of formal

recognition of the principle of hierarchical supremacy, there is a lack of effective enforcement mechanisms to implement this principle in the drafting stage. This means that violations are hardly addressed until they are questioned by the judiciary review.

The results of these studies indicate that ineffective harmonization processes and low quality of legislations are key contributors to regulatory disharmony. When harmonization procedures are handled as formal administrative procedures, they do not serve as effective safeguards of normative inconsistency. Concurrently, institutional fragmentation and sectoral interests also hamper the attempts to uphold legal coherence by focusing political and bureaucratic goals at the expense of systematic legal alignment.

The analysis further reveals that regulatory disharmony within the Indonesian legal system is not incidental, but rather a direct and systemic consequence of weak preventive harmonization mechanisms in the legislative drafting process. Although Indonesian law formally mandates harmonization and synchronization of draft regulations, these requirements are frequently implemented in a procedural and symbolic manner rather than as substantive processes aimed at ensuring normative consistency (Arafiq et al., 2024; Malik et al., 2024). Consequently, the drafting stage fails to function as an effective gatekeeping mechanism for hierarchical compliance. This observation is consistent with earlier scholarly critiques that characterize Indonesian legislative harmonization as largely formalistic, lacking analytical depth and corrective capacity (Karjoko et al., 2025; Meitasari et al., 2025).

From a normative perspective, institutions tasked with regulatory harmonization often lack binding authority to enforce compliance with hierarchical principles. Their role tends to be advisory, allowing legislative drafters to disregard harmonization recommendations without significant legal consequences. In practice, harmonization outcomes are frequently subordinated to sectoral interests, bureaucratic priorities, or short-term political considerations. This institutional limitation enables regulations that are substantively inconsistent with higher-level norms to proceed through the legislative process and acquire formal validity despite their defects.

The weakness of preventive harmonization is also reflected in judicial review decisions examined in this study. Courts repeatedly identify deficiencies that should have been detected and corrected during the drafting phase, including vague delegations of authority, ambiguous normative formulations, and excessive discretionary provisions. These recurring deficiencies indicate not merely technical drafting issues, but a deeper failure to internalize hierarchical discipline within the legislative process. The consistency of such findings across different cases and regulatory sectors suggests that regulatory disharmony is systemic rather than incidental (Robb et al., 2023; Morelli, 2023).

These findings align with broader critiques of legislative governance that emphasize the absence of rigorous legal reasoning and comprehensive regulatory impact assessment in the formation of laws. As argued by Hadjon (2017), the lack of substantive evaluation during the lawmaking process results in norms that are formally valid yet materially inconsistent with the broader legal order. Without systematic analysis of hierarchical positioning and legal consequences, regulations are often drafted in isolation, increasing the likelihood of conflict with superior norms and undermining the coherence of the legal system (Khan, 2022; Sytch & Kallapur, 2025; Araszkiwicz & Florczak-Wątor, 2025).

As a consequence, the failure of preventive harmonization mechanisms shifts the burden of resolving normative conflicts to judicial institutions. Courts are compelled to address inconsistencies that should have been resolved *ex ante* during the drafting stage. This condition reinforces the reactive application of the principle *lex superior*

derogat legi inferiori, where hierarchical supremacy operates only after legal conflicts have materialized. Such a reactive approach diminishes the preventive function of the principle and weakens its role as a structural safeguard of legal certainty and normative coherence. Instead of guiding legislative behavior from the outset, hierarchical supremacy is applied retrospectively, thereby allowing regulatory disharmony to persist within the legal system.

Institutional Fragmentation and Overlapping Judicial Authority

Judicial review plays a central role in enforcing the principle of normative hierarchy. However, the dualism between the Constitutional Court and the Supreme Court creates institutional complexity and uncertainty in the application of *lex superior derogat legi inferiori*.

Table 3. Examples of Normative Conflicts in Indonesian Judicial Review

Institution	Case Number	Object of Review	Form of Conflict	Legal Outcome
Constitutional Court	Decision No. 46/PUU-XIV/2016	Law on Marriage	Conflict with constitutional rights (children's civil status)	Partially granted
Constitutional Court	Decision No. 91/PUU-XVIII/2020	Job Creation Law	Procedural and substantive inconsistency with the Constitution	Conditionally unconstitutional
Constitutional Court	Decision No. 137/PUU-XIII/2015	Regional Government Law	Overlapping authority between central and local government	Partially granted
Supreme Court	Decision No. 56 P/HUM/2019	Ministerial Regulation	Exceeds delegated authority from higher law	Annulled
Supreme Court	Decision No. 38 P/HUM/2017	Regional Regulation (Perda)	Contradiction with statutory provisions	Annulled
Supreme Court	Decision No. 15 P/HUM/2020	Government Regulation	Norm exceeds legislative mandate	Annulled

Source: Author's compilation of judicial decisions, 2026

The cases in Table 3 illustrate recurring patterns of conflict, including the exceeding of delegated authority and inconsistencies with constitutional norms. These findings confirm that judicial review functions primarily as a reactive mechanism, addressing regulatory conflicts only after they have generated legal consequences.

Table 4. Pattern of Judicial Reasoning in Norm Conflict Cases

Institution	Legal Reasoning Pattern	Description	Implication
Constitutional Court	Constitutional supremacy	Laws must conform to the 1945 Constitution	Strengthens constitutional hierarchy
Constitutional Court	Protection of fundamental rights	Judicial review prioritizes rights protection	Expands constitutional interpretation

Supreme Court	Legality principle	Subordinate regulations must not exceed authority	Reinforces administrative legality
Supreme Court	Ultra vires doctrine	Regulations invalid if beyond delegated power	Limits executive overreach
Both	Norm hierarchy enforcement	Lower norms must align with higher norms	Ensures legal consistency

Source: Author's compilation of judicial decisions, 2026

As shown in Table 3, the Constitutional Court emphasizes constitutional supremacy and the protection of fundamental rights, while the Supreme Court focuses on the legality principle and the ultra vires doctrine. Although both institutions aim to uphold normative hierarchy, differences in interpretative approaches may lead to inconsistency and legal uncertainty.

Another significant result of this study concerns the impact of institutional fragmentation on the enforcement of hierarchical principles within the Indonesian legal system. The division of judicial review authority between the Constitutional Court and the Supreme Court, while constitutionally justified, generates substantial practical challenges in ensuring the consistent application of *lex superior derogat legi inferiori*. Although this dual system was designed to distribute constitutional and administrative review functions, in practice it has produced overlapping jurisdictions and interpretative uncertainty. Indonesian constitutional scholars have long identified this institutional dualism as a structural source of legal uncertainty rather than a complementary system of norm control (Suratno, 2025; Mutiasi & Kristanto, 2025).

Case analysis conducted in this study demonstrates that uncertainty frequently arises regarding the appropriate judicial forum for reviewing certain types of regulations, particularly those that do not fall clearly within traditional classifications of legislation. Hybrid regulatory instruments, delegated regulations, and quasi-legislative norms often occupy ambiguous positions within the hierarchy, complicating jurisdictional determinations. This ambiguity can delay judicial intervention or deter potential applicants from initiating review proceedings, allowing hierarchically defective regulations to remain operative and continue producing legal effects (De La Osa & Remolina, 2024; Remolina & Socol de la Osa, 2024; Sytch & Kallapur, 2025).

The prolonged operation of such regulations undermines the effectiveness of judicial review as a mechanism for maintaining normative hierarchy. When legal actors are uncertain about where and how to challenge defective norms, judicial review loses its accessibility and predictability. This condition weakens legal certainty by permitting inferior norms to govern administrative practice despite their questionable conformity with superior laws. As a result, the hierarchical principle functions unevenly, depending more on procedural contingencies than on substantive legality.

The findings reveal that differences in interpretative approaches between the Constitutional Court and the Supreme Court contribute to inconsistent reasoning regarding hierarchical conformity. Although both institutions formally affirm the supremacy of higher norms, variations in doctrinal emphasis, interpretative methodology, and institutional mandate may lead to divergent outcomes in similar cases. From a theoretical standpoint, such inconsistency conflicts with Kelsen's conception of a coherent normative system, in which hierarchical validity requires uniform interpretative standards to ensure systemic unity (Kelsen, 1961).

Ultimately, institutional fragmentation reduces the capacity of judicial review to function as a coherent and reliable guarantor of normative hierarchy. Without effective coordination mechanisms, clear jurisdictional boundaries, and harmonized interpretative standards, the enforcement of *lex superior derogat legi inferiori* remains uneven and unpredictable. This condition contributes to sustained legal uncertainty and weakens the rule of law by undermining confidence in judicial institutions as consistent arbiters of normative supremacy.

Low Legislative Quality and Administrative Compliance

The findings also indicate that low legislative quality is a significant structural factor contributing to the weak application of *lex superior derogat legi inferiori* within the Indonesian legal system. Normative analysis reveals that many conflicting regulations originate from inadequate drafting techniques, ambiguous normative formulations, and insufficient engagement with existing legal frameworks. These deficiencies suggest that regulatory drafters often fail to internalize hierarchical discipline as a substantive requirement of lawmaking. As noted in Indonesian legislative studies, weaknesses in legislative technique undermine the coherence of the regulatory system and facilitate the production of norms that are formally valid yet substantively inconsistent with superior laws (Karjoko et al., 2025; Hakiki et al., 2026).

A critical source of low legislative quality is the limited use of comprehensive regulatory impact assessments during the drafting process. Regulations are frequently enacted without systematic evaluation of their hierarchical position, legal implications, or interaction with existing norms. This omission reflects a procedural approach to legislation that prioritizes speed and sectoral objectives over normative coherence. Such practices contradict the rational-legislative ideal, which holds that lawmaking should be grounded in careful analysis, structured reasoning, and anticipation of legal consequences in order to ensure legal certainty and justice (Irwan et al., 2025).

The absence of rigorous analytical foundations in legislative drafting also leads to excessive delegation of authority and overly broad regulatory discretion. Norms are often framed in vague or open-ended language, enabling administrative bodies to interpret and implement regulations in ways that exceed statutory mandates. This condition not only weakens hierarchical control but also increases the risk of arbitrary governance, as administrative action becomes detached from clearly defined legislative intent. From a hierarchical perspective, such ambiguity erodes the vertical coherence of the legal system.

Administrative practice further intensifies these structural weaknesses. The analysis demonstrates that administrative officials frequently continue to apply hierarchically flawed regulations until they are formally annulled by judicial decisions. This practice reflects a formalistic compliance culture that equates legal validity with procedural enactment rather than substantive conformity with superior norms. As a result, administrative action is guided by inferior regulations even when their hierarchical legitimacy is doubtful, contradicting the principle of *wetmatigheid van bestuur*, which requires that all administrative action be grounded in lawful and hierarchically valid norms (Hadjon, 2017).

Consequently, *lex superior derogat legi inferiori* loses much of its normative force at the administrative level and operates primarily as a retrospective standard invoked after judicial intervention. Instead of guiding legislative drafting and administrative conduct proactively, the principle is applied only once legal disputes have arisen and uncertainty has already materialized. This diminishes its effectiveness as an instrument for ensuring legal certainty and regulatory discipline, reinforcing the

systemic weaknesses that undermine hierarchical coherence in the Indonesian legal system.

Weak Operationalization of Lex Superior Derogat Legi Inferiori and Its Implications for Legal Certainty

The findings of this study reveal a fundamental discrepancy between the formal recognition of the principle of *lex superior derogat legi inferiori* and its practical implementation within the Indonesian legal system. While the hierarchical structure of norms is clearly established in constitutional and statutory frameworks, its operationalization remains inconsistent and fragmented. This condition indicates that normative hierarchy functions more as a formal-structural doctrine than as an effective regulatory mechanism. From a theoretical standpoint, this contradicts Hans Kelsen's Stufenbau theory, which emphasizes that the validity and coherence of legal norms depend on strict hierarchical conformity (Hernández, 2022; Kammerhofer, 2023). Instead, the Indonesian experience demonstrates that hierarchical principles require not only formal recognition but also strong institutional enforcement and procedural integration.

This finding is consistent with broader critiques in contemporary legal scholarship, which argue that modern regulatory systems often struggle to maintain coherence due to increasing complexity and institutional overlap. Doerfler and Moyn (2024) highlight that statutory systems tend to rely on corrective judicial mechanisms rather than preventive coherence, while Robb et al. (2023) identify regulatory overlap as a key source of inconsistency in governance systems. The present study confirms these observations by showing that regulatory disharmony in Indonesia is systemic rather than incidental, arising from weaknesses across multiple stages of the legal process. However, unlike previous studies that focus primarily on doctrinal or structural aspects, this research provides an integrative analysis that connects legislative drafting, judicial review, and administrative practice as interdependent factors shaping the effectiveness of normative hierarchy.

A critical dimension of this problem lies in the failure of preventive harmonization mechanisms. Although harmonization procedures are formally mandated, they are largely implemented as administrative formalities rather than substantive evaluations of normative consistency. This finding supports earlier studies (Arafiq et al., 2024; Malik et al., 2024) that characterize Indonesian legislative harmonization as procedural and symbolic. In contrast, international scholarship emphasizes that effective harmonization requires rigorous analytical processes, including regulatory impact assessment and systematic evaluation of legal coherence (Araszkiwicz & Florczak-Wątor, 2025). The absence of such substantive mechanisms in Indonesia allows inconsistent norms to pass through the legislative process, thereby weakening the preventive function of *lex superior derogat legi inferiori*.

Another important aspect concerns institutional fragmentation in judicial review. The dualism between the Constitutional Court and the Supreme Court creates overlapping authority and interpretative inconsistency, which undermines the uniform enforcement of hierarchical principles. This finding aligns with previous research (Mutiasi & Kristanto, 2025; Suratno, 2025) that identifies judicial dualism as a source of legal uncertainty. From a comparative perspective, fragmented review systems are often associated with coordination problems and inconsistent jurisprudence (Devaney, 2023). The present study extends this understanding by demonstrating how institutional fragmentation not only complicates jurisdictional clarity but also delays the correction of normative inconsistencies, thereby allowing defective regulations to remain operative.

The study highlights the reactive nature of judicial review in Indonesia. Judicial mechanisms primarily function as ex post corrective tools rather than ex ante

safeguards, meaning that hierarchical violations are addressed only after they have produced legal consequences. This condition is consistent with Hadjon's (2017) critique that judicial review cannot substitute for effective preventive control. The reliance on reactive enforcement diminishes the normative force of *lex superior derogat legi inferiori*, transforming it from a guiding principle of lawmaking into a remedial doctrine invoked after legal uncertainty has already emerged. This finding contributes to ongoing theoretical debates regarding the limits of judicial review as a mechanism for maintaining systemic coherence.

In addition to institutional factors, the study identifies low legislative quality as a structural contributor to normative inconsistency. Consistent with prior studies (Karjoko et al., 2025; Hakiki et al., 2026), the findings show that ambiguous drafting, excessive delegation, and the absence of comprehensive regulatory impact assessment lead to norms that are open to multiple interpretations and prone to conflict. From a theoretical perspective, this reflects a deviation from the rational-legislative model, which requires systematic analysis and clarity to ensure legal certainty (Irwan et al., 2025). The present study extends this argument by demonstrating that deficiencies in legislative quality are not merely technical issues but fundamental obstacles to the effective operation of hierarchical principles.

Administrative practice plays a crucial role in sustaining these weaknesses. The tendency of administrative officials to prioritize formal validity over substantive conformity reflects a compliance culture that is inconsistent with the principle of *wetmatigheid van bestuur* (Suparto et al., 2024). This finding highlights an important divergence between normative expectations and administrative realities. While hierarchical principles require that lower norms conform to higher ones, administrative practice often treats formally enacted regulations as valid regardless of their hierarchical consistency. As a result, *lex superior derogat legi inferiori* is not internalized as a guiding principle in everyday governance, further weakening its effectiveness.

The theoretical contribution of this study lies in its integrative framework, which conceptualizes the weak implementation of normative hierarchy as a systemic phenomenon resulting from the interaction of legislative, judicial, and administrative factors. This approach differs from existing literature that tends to analyze these dimensions in isolation. By demonstrating how these elements interact to produce regulatory inconsistency, the study offers a more comprehensive understanding of the structural conditions that undermine legal certainty. The novelty of this research therefore lies in bridging the gap between doctrinal theory and practical implementation, providing a holistic analysis of normative hierarchy within a complex legal system.

From a practical perspective, the findings have several important implications. First, they underscore the need to strengthen preventive harmonization mechanisms by transforming them into substantive processes supported by binding authority and analytical tools. Second, they highlight the importance of institutional reform to improve coordination between judicial bodies and to clarify jurisdictional boundaries. Third, improving legislative quality through enhanced drafting standards and regulatory impact assessment is essential to prevent normative inconsistency. Finally, fostering a culture of substantive compliance within administrative institutions is necessary to ensure that hierarchical principles are applied in practice.

The broader implications of this study extend to the relationship between legal certainty and governance. As emphasized in regulatory governance literature, legal certainty is a key determinant of institutional legitimacy and economic stability (Morelli, 2023). The persistence of regulatory disharmony in Indonesia therefore has

implications not only for legal theory but also for public trust and economic development. This finding reinforces the argument that normative hierarchy must be operationalized effectively to support both legal and socio-economic objectives.

This study has several limitations. As a normative juridical analysis, it relies primarily on legal texts and judicial decisions, without incorporating empirical data from practitioners or policymakers. This limitation suggests that future research should adopt a mixed-method approach to capture the perspectives of actors involved in the regulatory process. In addition, the study focuses on selected cases and may not fully represent the diversity of regulatory conflicts within the Indonesian legal system. Future studies could expand the dataset and employ comparative approaches to examine how other jurisdictions address similar challenges. Future research directions may also include the exploration of technological innovations in legislative drafting and harmonization. Emerging tools such as artificial intelligence have the potential to improve consistency, clarity, and efficiency in legal texts (Araszkievicz & Florczak-Wątor, 2025). Investigating the applicability of such technologies in the Indonesian context could provide valuable insights into how normative hierarchy can be strengthened in practice.

CONCLUSION

This study concludes that the principle of *lex superior derogat legi inferiori*, despite its formal entrenchment within Indonesia's constitutional and statutory framework, has not been effectively operationalized in practice. The findings demonstrate that regulatory disharmony, weak preventive harmonization mechanisms, institutional fragmentation in judicial review, low legislative quality, and formalistic administrative compliance collectively undermine the hierarchical integrity of the legal system. As a result, the principle functions primarily as a reactive judicial tool rather than a preventive normative safeguard, thereby weakening legal certainty.

Theoretically, this study contributes by advancing an integrative framework that links normative hierarchy with legislative, judicial, and administrative dimensions, highlighting that hierarchical validity depends on systemic coherence rather than formal recognition alone. Practically, the findings underscore the need to strengthen substantive harmonization processes, improve legislative drafting standards, clarify judicial coordination, and promote a culture of substantive administrative compliance. However, this study is limited by its reliance on normative legal analysis and selected judicial decisions, without incorporating empirical perspectives from legal practitioners. Future research is therefore encouraged to adopt mixed-method approaches, expand comparative analysis across jurisdictions, and explore the use of technological tools to enhance legislative consistency and regulatory harmonization.

REFERENCES

- AlNajdawi, M. H., AlDabbagh, T., Raafat, R., & Aburayya, A. (2025). The Role of Administrative Governance in Enhancing Integrity and Transparency and Reducing Administrative Corruption in Public Institutions: An Analytical Study. *International Journal of Industrial Engineering*, 36(3), 93-106. <https://doi.org/10.22068/ijiepr.36.3.2460>
- Arafiq, F., Sukmariningsih, R. M., & Tumangkar, T. (2024). Legal Harmonization in Regional Development Planning: A Pathway to Good Governance. *Library of Progress-Library Science, Information Technology & Computer*, 44(3). <https://doi.org/10.48165/bapas.2024.44.2.1>
- Araszkievicz, M., & Florczak-Wątor, M. (2025). AI and the principles of proper legislation: enhancing quality, understandability, and consistency in legal

- texts. *The Theory and Practice of Legislation*, 13(3), 353-382. <https://doi.org/10.1080/20508840.2025.2559165>
- Balarabe, K. (2025). Rethinking institutional legitimacy and the future of responsive governance. *Jindal Global Law Review*, 1-26. <https://doi.org/10.1007/s41020-025-00282-2>
- Belof, M., & Kryczka, P. (2025). Challenges in outsourcing local spatial planning in Poland: is legal procedure the last remaining safeguard in the democratic decision-making process?. *Planning Practice & Research*, 1-27. <https://doi.org/10.1080/02697459.2025.2528252>
- Cammack, M. (2023). Legal Certainty in the Indonesian Constitutional Court: A Critique and Friendly Suggestion. *Constitutional Democracy in Indonesia* (Oxford University Press, 2023). <https://doi.org/10.15294/jils.v10i1.13494>
- Coerts, M. (2025). The Consequences of Administrative Decisions in Regulating Markets with Public Interests: The Effects of Open Norms in Administrative Law. In *Empirical Legal Studies in the Netherlands: Towards a Jurisprudence of Consequences?* (pp. 113-132). Boom Publishers.
- De La Osa, D. U. S., & Remolina, N. (2024). Artificial intelligence at the bench: Legal and ethical challenges of informing—or misinforming—judicial decision-making through generative AI. *Data & Policy*, 6, e59. <https://doi.org/10.1017/dap.2024.53>
- Devaney, J. G. (2023). A coherence framework for fact-finding before the International Court of Justice. *Leiden Journal of International Law*, 36(4), 1073-1094. <https://doi.org/10.1017/S0922156523000286>
- Doerfler, R. D., & Moyn, S. (2024). After courts: Democratizing statutory law. *Mich. L. Rev.*, 123, 867. <https://doi.org/10.36644/mlr.123.5.after>
- Fatahillah, Z., Muhajir, M., & Hasanah, U. (2025). Normative Disharmony Regarding the Duration of Marital Conflict in Divorce Law and Its Impact on the Protection of Women. *MAQASIDI: Jurnal Syariah dan Hukum*, 232-244. <https://doi.org/10.47498/maqasidi.v5i2.5878>
- Fitria, F., Nuriyatman, E., Amir, L., & Saraya, S. (2025). Administrative law and the efficiency of local government budgeting. *As-Siyasi: Journal of Constitutional Law*, 5(1), 147-161. <https://doi.org/10.24042/as-siyasi.v5i1.27598>
- Hadjon, P. M. (2017). *Pengantar hukum administrasi Indonesia* (Revised ed.). Yogyakarta: Gadjah Mada University Press.
- Hakiki, M. R., Angkasa, A., & Semendawai, A. H. (2026). Reformulation of the Legal Politics of Restorative Justice in Handling Minor Criminal Offenses under Law Number 1 of 2023 on the Criminal Code. *Interdisciplinary Journal and Hummunity (INJURITY)*, 5(2), 75-91. <https://doi.org/10.58631/injury.v5i2.1519>
- Harefa, S. (2025). The Integration of Governance Theory in the Development of Equitable Legal Policies. *Journal Governance Society*, 2(3), 134-148. <https://doi.org/10.69812/jgs.v2i3.188>
- Hernández, G. (2022). Law's determinability: indeterminacy, interpretative authority, and the international legal system. *Netherlands International Law Review*, 69(2), 191-219. <https://doi.org/10.1007/s40802-022-00222-0>
- Irwan, M., Rahman, A., & Amaliyah, A. (2025). Judicial Law-Finding in the Criminal Justice System: Harmonizing Legal Certainty and Substantive Justice. *SIGn Jurnal Hukum*, 7(2), 647-663. <https://doi.org/10.37276/sjh.v7i2.502>

- Kammerhofer, J. (2023). The Pure Theory's Nomomechanics and the Structural Analysis of International Law. *Kelsen's Global Legacy: Essays on the Legal and Political Philosophy* (Oxford: Hart), Forthcoming. <https://doi.org/10.5040/9781509965830.ch-007>
- Karjoko, L., Jaelani, A. K., & Danendra, R. (2025). Legal Inconsistency on the Right to Build: Investment, Agrarian Rights, and Constitution. *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 3(2), 324-346. <https://doi.org/10.53955/jsderi.v3i2.106>
- Kelsen, H. (1961). *General theory of law and state*. New York, NY: Russell & Russell.
- Khan, M. N. I. (2022). A Systematic Review of Legal Technology Adoption In Contract Management, Data Governance, And Compliance Monitoring. *American Journal of Interdisciplinary Studies*, 3(01), 01-30. <https://doi.org/10.63125/caangg06>
- Malik, D. A., Gusela, M. D., Azfa, S. H., Fauziansah, S., & Rosidin, U. (2024). Navigating the Labyrinth: A Normative Juridical Analysis of Legal Politics and Policy Formulation in Indonesia. *Enigma in Law*, 2(1), 75-86. <http://dx.doi.org/10.2139/ssrn.5392170>
- Meitasari, I., Suratno, S., & Yuniwati, Y. (2025). Normative Approach to Law and Economics in Developing Countries: Challenges in Establishing Efficient and Just Market Regulations. *Journal of Law and Economics*, 4(2), 237-249. <https://doi.org/10.56347/jle.v4i2.373>
- Mohammed, I. J. (2022). Guarantees of Legitimacy of State Authority. *Al-Hikmah: International Journal Of Islamic Studies And Human Sciences*, 5(2), 1-24. <https://doi.org/10.46722/hikmah.v5i2.247>
- Morelli, M. (2023). Managing Relative Regulatory Inefficiencies in Complex Financial Systems. *U. Pa. J. Bus. L.*, 25, 705. <https://doi.org/10.58112/JBL.25-3.3>
- Mutiasi, N., & Kristanto, B. (2025). The Paradox of the Sovereignty of the Constitutional Court in the Context of Protecting Democracy and the Constitution in Indonesia. *Al-'Adl*, 18(1), 11-23. <https://doi.org/10.31332/aladl.v18i1.8475>
- Nadzirin, A., Sukmariningsih, R. M., & Mashari, M. (2025). Does the State Civil Apparatus Violate Neutrality During Elections?. *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 3(2), 400-433. <https://doi.org/10.53955/jsderi.v3i2.112>
- Phiau, B. J., Rifai, A., & Latif, A. (2025). Legal Certainty In The Implementation of Judicial Review Decisions By The Constitutional Court In Indonesia. *Asian Journal of Social and Humanities*, 3(5), 913-921. <https://doi.org/10.59888/ajosh.v3i5.497>
- Radbruch, G. (2006). Statutory lawlessness and supra-statutory law. *Oxford Journal of Legal Studies*, 26(1), 1-11. <https://doi.org/10.1093/ojls/gqi041>
- Remolina, N., & Socol de la Osa, D. (2024). AI at the bench: Legal and ethical challenges of informing-or misinforming-judicial decision-making through generative AI. *Singapore Management University School of Law Research Paper Forthcoming*. <https://doi.org/10.1017/dap.2024.53>
- Robb, L., Candy, T., & Deane, F. (2023). Regulatory overlap: A systematic quantitative literature review. *Regulation & Governance*, 17(4), 1131-1151. <https://doi.org/10.1111/regg.12504>

- Siddiq, N., & Salam, R. (2025). Enhancing Legal Certainty through Legal Reform in Indonesia: Problems and Efforts to Strengthen Legal Institutions. *Strata Law Review*, 3(1), 1-14. <https://doi.org/10.59631/slr.v3i1.62>
- Song, E. Y. (2021). Protect to damage? Institutional work, unintended consequences and institutional dynamics. *Organization Studies*, 42(3), 495-517. <https://doi.org/10.1177/0170840618814564>
- Suparto, S., Adinda, F. A., Esanov, A. E., & Normurotovna, Z. E. (2024). Administrative Discretion in Indonesia & Netherland Administrative Court: Authorities and Regulations. *Journal of Human Rights, Culture and Legal System*, 4(1), 75-100. <https://doi.org/10.53955/jhcls.v4i1.189>
- Suratno, U. (2025). Constitutional Law and Social Change: A Global Perspective. *Journal of Law and Social Politics*, 3(2), 71-79. <https://doi.org/10.46799/jlsp.v3i1.61>
- Sytch, M., & Kallapur, A. (2025). Legal and Regulatory Entrepreneurship: A Review of Organizational Tactics and Their Consequences for Organizations and the Law. *Academy of Management Annals*. <http://dx.doi.org/10.2139/ssrn.5468127>
- Villa-Rosas, G. (2023). Merkl's Stufenbaulehre in the History of the Theory of Legal Power. In *Legal Power and Legal Competence: Meaning, Normativity, Officials and Theories* (pp. 289-303). Cham: Springer International Publishing. https://doi.org/10.1007/978-3-031-28555-4_14