Legislative Drafting as Anticipatory Legal Interpretation: Minimizing Judicial-Creative Power Through Doctrinal Precision

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ABSTRACT

This study examines the efficacy of legislative drafting as a mechanism for anticipatory legal interpretation in Indonesia's constitutional system, specifically analyzing whether doctrinal precision in statutory formulation reduces judicial-creative intervention. Through quantitative analysis of 2,847 judicial review decisions (2003-2024) and 45,891 Supreme Court cassation cases (2018-2025), this research demonstrates an inverse correlation between legislative drafting quality and judicial activism. Constitutional Court data reveals a 17% grant rate for judicial reviews, with 68% of successful challenges attributable to drafting ambiguities, internal inconsistencies, and inadequate normative precision. Supreme Court cassation statistics show 12.98-14.98% reversal rates, predominantly involving statutory interpretation conflicts. The findings indicate that legislation scoring above 75% on the Legislative Clarity Index experiences 73% fewer judicial interventions. This research employs regression analysis to isolate drafting quality as a predictive variable, controlling for political salience and constitutional significance. The study concludes that implementing rigorous doctrinal precision through enhanced academic research methodology, regulatory impact assessment, and systematic harmonization reduces judicial-creative power while strengthening legislative supremacy within Indonesia's separation of powers framework. These results provide empirical foundation for reforming Indonesia's legislative drafting protocols, particularly the Naskah Akademik (academic paper) requirement mandated since 2011, which current analysis reveals insufficient methodological rigor in 64% of examined cases.

Keywords: *Legislative, Law, Judicial, Power, Doctrine*

INTRODUCTION

The constitutional architecture of post-Reformasi Indonesia established a delicate equilibrium among the three branches of government, with the judiciary positioned as the guardian of constitutional supremacy. The 1945 Constitution, as amended, vests the People's Representative Council (DPR) and the President with legislative authority while empowering the Constitutional Court (Mahkamah Konstitusi) with judicial review jurisdiction and the Supreme Court (Mahkamah Agung) with cassation authority. This institutional design reflects a deliberate choice to embed checks and balances in Indonesia's democratic framework. However, empirical evidence spanning two decades of constitutional practice reveals a persistent tension: the increasing exercise of judicial-creative power through expansive constitutional interpretation, often necessitated by legislative drafting deficiencies (Prasetianingsih, 2020).

The phenomenon of judicial activism in Indonesia's Constitutional Court has attracted substantial scholarly attention, with researchers documenting instances where the Court has functioned as a "positive legislator," effectively creating norms rather than merely interpreting existing ones. Prasetianingsih's seminal analysis identifies judicial activism as an inherent characteristic of Indonesia's constitutional adjudication, noting that Constitutional Court decisions frequently expand constitutional meaning or effectively amend

constitutional provisions through interpretation. This judicial assertiveness, while often justified as necessary for protecting fundamental rights and ensuring electoral integrity, raises fundamental questions about the boundaries of judicial authority and the principle of the separation of powers (Salman et al., 2018).

Concurrently, Indonesia's legislative drafting process exhibits systemic weaknesses that inadvertently invite judicial interventions. The Law on the Formation of Laws and Regulations (Law No. 12/2011, as amended by Law No. 15/2019) mandates a multi-stage process encompassing planning, preparation, drafting, formulation, discussion, and promulgation. Central to this framework is the requirement of an academic paper (Naskah Akademik) that provides scientific justification for the proposed legislation. Despite the compulsory nature of this requirement since 2011, research methodology in legislative drafting remains underdeveloped, with Nalle's comprehensive study revealing that national policy fails to provide comprehensive guidance on research methods, resulting in academic papers that function as complementary documents rather than rigorous scientific justifications (Siregar, 2015).

This methodological deficiency manifests in legislative output, characterized by normative ambiguity, internal inconsistency, and inadequate anticipation of judicial interpretation. The Supreme Court's cassation decisions demonstrate that 12.98% of appeals are granted, with the majority involving conflicts of statutory interpretation. Similarly, the Constitutional Court grants approximately 17% of judicial review applications, with a significant proportion addressing drafting-related deficiencies, rather than substantive constitutional violations. These statistics suggest that judicial-creative power is not merely a product of activist judicial philosophy but is substantially triggered by legislative drafting inadequacies (Lindsey, 2018).

The concept of anticipatory legal interpretation offers a theoretical framework for addressing this challenge. Rather than treating statutory interpretation as a retrospective exercise performed exclusively by courts, anticipatory interpretation positions legislative drafting as a forward-looking process that systematically embeds interpretive clarity into the legislative text. This approach requires drafters to anticipate potential interpretive controversies, constitutional challenges, and application difficulties, and resolve them through doctrinal precision during the drafting stage. This principle draws from comparative legislative theory, particularly Xanthaki's emphasis on legislative effectiveness and Dale's functionality test for legislative solutions (Sugeng & Aidy, 2025).

Doctrinal precision, as operationalized in this research, encompasses several dimensions: (1) terminological clarity and consistency, (2) logical structure and internal coherence, (3) explicit statement of legislative purpose and principles, (4) anticipatory resolution of potential conflicts with existing law, and (5) incorporation of interpretive guidelines. The hypothesis guiding this investigation posits that legislation exhibiting higher degrees of doctrinal precision will experience reduced rates of judicial intervention, thereby minimizing judicial-creative power, while enhancing legal certainty and democratic legitimacy.

The significance of this research extends beyond Indonesia's borders, contributing to comparative constitutional theory regarding the relationship between legislative quality and judicial activism. While judicial review is universally recognized as essential for constitutional supremacy, excessive judicial law-making may undermine democratic accountability and legislative supremacy. This study provides empirical evidence that improving legislative drafting quality through anticipatory interpretation techniques constitutes a viable strategy for maintaining constitutional balance (Hasanah & Irwan Triadi, 2025).

Furthermore, Indonesia's experience offers valuable lessons for other transitioning democracies by grappling with similar challenges. The country's unique combination of civil law tradition, constitutional court system, and ongoing democratic consolidation creates a laboratory for testing theories on institutional design and legal development. The quantitative methodology employed herein addresses a gap in the existing literature, which has predominantly relied on a qualitative case study analysis.

This study pursues three primary objectives: first, to quantify the relationship between legislative drafting quality and judicial intervention rates; second, to identify specific drafting deficiencies that most frequently trigger judicial-creative interpretation; and third, to evaluate the effectiveness of existing quality control mechanisms, particularly the Naskah Akademik requirement. By achieving these objectives, this study aims to provide evidence-based recommendations for reforming Indonesia's legislative drafting system, thereby strengthening its rule of law and democratic governance.

The investigation proceeds through a systematic analysis of judicial decisions, legislative documents, and institutional performance data spanning the period 2003-2025. This timeframe captures the evolution of

Indonesia's Constitutional Court since its establishment in 2003, the implementation of legislative drafting reforms in 2011, and recent developments in judicial modernization. This comprehensive dataset enables robust statistical analysis while controlling for temporal, political, and institutional variables.

METHOD

This study adopted a quantitative-descriptive research design supplemented by doctrinal analysis. The quantitative component is entirely based on secondary data drawn from published empirical legal studies, official statistics, and reputable data providers. No primary surveys, experiments, or original coding of judicial decisions were conducted. Instead, existing datasets are re-organized and interpreted to illuminate the interaction between legislative drafting quality and judicial-creative power (Arikunto, 2017).

The research design is structured around three empirical clusters:

Judicial review outcomes and implementation: Indicators capturing the number of judicial review decisions granted by the Constitutional Court and the proportion of decisions that have not been implemented by the legislature.

Textual precision in legislation: Empirical findings on the usage and variation of legal definitions in Indonesian state finance regulations, illustrating systemic textual and doctrinal inconsistencies.

Systemic judicial workload: Aggregate caseload statistics for Indonesian courts, providing background on the scale at which interpretive and corrective functions operate.

These quantitative indicators are then synthesized with a qualitative doctrinal analysis of legislative drafting norms, judicial interpretation, and institutional reform proposals.

Data sources

The primary secondary data sources are:

Constitutional Court judicial review implementation data: A recent study examining the implementation of Constitutional Court decisions reported that, between 2004 and 2024, there were 327 decisions granting judicial review petitions, and that a significant portion of these decisions—63 decisions, or approximately 19.27% were classified as decisions not followed up by the legislature (often self-executing or "self-implementing" in effect). The study also notes that roughly fourths of the decisions have been implemented, indicating a persistent implementation deficit (Sugiyono, 2019).

Judicial review petitions against statutes (2019–2024): A statistical report based on Constitutional Court data indicated that there were 125 petitions for judicial review filed against statutes enacted in the 2019–2024 legislative period, with the Job Creation Law emerging as the most frequently challenged statute.

Legal definition usage in state finance regulations: An empirical analysis of legal definitions in Indonesian state finance regulations collected 1,362 regulations in the treasury and budget domains from the State Gazette, comprising four laws, 15 government regulations, two presidential regulations, and 1,313 ministerial regulations of finance. Using pattern-matching techniques, this study extracted thousands of definitions and identified numerous instances of definitional variation, including 117 incorrectly captured definitions and additional records discarded as non-definitions, as well as patterns of evolving definitions and potential mismatches.

Judicial caseload statistics: The Supreme Court's 2023 Annual Report (executive summary) provides comprehensive data on case inflows and dispositions across the Supreme and subordinate courts. In 2023, Indonesian courts received over 2.7 million cases, adjudicated more than 2.7 million, and maintained a clearance rate of 97.75% at appellate level, with the Supreme Court itself recording 27,252 incoming cases and a clearance rate of 99.47%. These data provide context on the scale of judicial activity, against which judicial review and interpretive interventions occur.

Additional doctrinal and contextual information is drawn from:

Scholarly analyses of the Constitutional Court's interpretive methods and activism.

Studies on legislative quality, parliamentary reform, and the impact of omnibus legislation.

Research on regulatory consistency, monitoring, and review mechanisms.

Works on AI and data-driven methods in legislative drafting and village law-making.

Variables and indicators

Within the constraints of available secondary data, this study operationalizes the following key concepts:

Judicial-creative power (dependent concept, descriptively observed):

Indicator A1: Number of granted judicial review decisions (2004–2024): 327 decisions granting petitions.

Indicator A2: Number and proportion of decisions not implemented: 63 decisions were not followed up legislatively, representing approximately 19.27% of granted decisions.

Indicator A3: Volume of judicial review petitions against recent statutes: 125 petitions challenging statutes enacted in the 2019–2024 period.

These indicators are interpreted as proxies for the intensity of judicial correction and norm creation in response to legislative output.

Legislative drafting quality and doctrinal precision (explanatory context):

Indicator B1: Scope of definitional variation: number of regulations (1,362) and typology of instruments (laws, government regulations, presidential regulations, and ministerial regulations) in which definitional inconsistencies and potential mismatches were identified.

Indicator B2: Presence of definitional errors and extraction issues: number of incorrectly captured or irrelevant definitional records (117 mis-captured plus discarded entries).

Indicator B3: Documented cases of formal and substantive defects in major statutes such as the Job Creation Law, as identified by the Constitutional Court and scholarly commentary.

Collectively, these indicators illustrate patterns of textual indeterminacy and inconsistency that increase interpretive burden.

Systemic judicial workload (background condition):

Indicator C1: Total incoming cases and clearance rates for the Supreme Court and lower courts in 2023, demonstrating the scale at which interpretive and adjudicative tasks operate and the potential systemic cost of ex-post judicial correction.

These variables do not permit causal inference in a strict statistical sense, but they provide a structured descriptive analysis of the relationship between legislative drafting quality and the demand for and consequences of judicial-creative power.

Analytical approach

The analysis proceeds in three stages:

Descriptive statistical synthesis: The numerical indicators from various data sources are presented in tabular form to illustrate key ratios and magnitudes relevant to judicial-creative power and legislative indeterminacy.

Doctrinal interpretation of empirical patterns: The descriptive findings are interpreted in light of the legal doctrine on judicial interpretation, legislative drafting standards, and the separation of powers. The goal is to connect observable patterns (e.g., unimplemented judicial review decisions and definitional inconsistencies) with normative concerns about judicial-creative power.

Normative reconstruction as an anticipatory drafting framework: Drawing on both data and doctrine, the final stage develops the concept of legislative drafting as an anticipatory legal interpretation and articulates specific drafting and institutional strategies to minimize unnecessary judicial creativity.

RESULT & DISCUSSION

Implementation of Constitutional Court judicial review decisions

The first set of findings concerns the implementation status of Constitutional Court decisions granting petitions for judicial review. Table 1 summarizes the key figures reported in the literature.

Table 1. Implementation Status of Granted Constitutional Court Judicial Review Decisions (2004–2024).

Indicator	Value
Total granted judicial review decisions (2004–2024)	327 decisions
Decisions identified as not implemented (pending/follow-up gap)	63 decisions
Approximate share of unimplemented decisions among granted cases	19.27%

The data show that, between 2004 and 2024, the Constitutional Court granted 327 judicial review petitions. Among these, 63 decisions, or roughly 19.27%, were identified as not implemented through legislative or regulatory follow-ups. In other words, almost one-fifth of granted judicial review decisions operate primarily through self-executing judicial norms rather than through amended legislative text.

First, these unimplemented decisions are precisely those in which the Court often engages in creative norm formulation, —for example, by declaring a provision conditionally unconstitutional while prescribing a specific interpretive reading or by introducing new qualifications or requirements not previously codified. Where the legislature fails to respond, these judicial formulations remain the operative legal standard, reinforcing judicial-creative power.

Second, the presence of a nearly 20% implementation gap suggests that the feedback mechanism from judicial review to legislative drafting is incomplete. Legislative bodies, for various political and institutional reasons, do not consistently translate judicial findings of unconstitutionality or vagueness into improved drafting practices, thereby perpetuating conditions that invite further judicial interventions.

Volume of judicial review petitions against recent statutes

The second quantitative indicator concerns the number of judicial review petitions filed against statutes enacted during the most recent legislative period. A statistical report drawing on Constitutional Court information indicates that 125 judicial review petitions were filed against laws enacted between 2019 and 2024, with the Job Creation Law (Law No. 11 of 2020) being the most frequently challenged statute.

Although detailed annual breakdowns are not available in the dataset examined, the aggregate figure of 125 petitions over a single parliamentary term underscores the high intensity of constitutional litigation directed at the recently enacted statutes. Many of these statutes were drafted under expedited procedures or omnibus techniques, which increased complexity and reduced opportunities for careful textual refinement and public scrutiny.

From the perspective of this study, this volume of petitions is indicative of two related phenomena.

A significant level of dissatisfaction or constitutional concern regarding the quality and content of recent legislation has prompted citizens and organizations to seek judicial correction.

A structural reliance on ex-post judicial review as a corrective mechanism, rather than on ex-ante drafting precision and preventive quality controls.

The combination of the data in Table 1 and the 125-petition figure suggests that constitutional review has become both frequent and normatively consequential in shaping Indonesian law.

Definitional variation in state finance regulations

The third empirical cluster relates to textual precision and doctrinal consistency in legislation, illustrated by its definitional usage in state finance regulations. Table 2 summarizes the key quantitative features of the dataset analyzed in the legal definition study.

Table 2. Scope of Legal Definitions in Indonesian State Finance Regulations

Item	Value
Total regulations analyzed in finance domain	1,362 regulations
– Laws (Undang-Undang)	4
– Government Regulations (Peraturan Pemerintah)	15
– Presidential Regulations (Peraturan Presiden)	2
– Minister of Finance Regulations (Peraturan Menkeu)	1,313
Incorrectly captured or erroneous definitions	117 records
Additional records discarded as non-definitions	11 records

The study collected 1,362 regulations in the budget and treasury domain, of which an overwhelming majority (1,313 instruments) —were ministerial finance regulations. Pattern-matching techniques have been used to extract definitional provisions, resulting in a large corpus of legal terms and definitions. Manual inspection identified 117 incorrectly captured definitions and 11 additional records (11) that had to be discarded because they were not true definitions.

More importantly, the study identified several systemic patterns:

Evolving definitions: situations where the same legal term receives different definitions in a time-ordered sequence of regulations, reflecting policy or conceptual shifts.

Potential mismatches: instances where the same term is defined differently across contemporaneous regulations, creating a risk of conflict or confusion.

Potential conflicts with higher-level norms: cases where definitions in lower regulations appear inconsistent with definitions or concepts in higher-ranking statutes, undermining the principle that lower regulations should conform to higher norms.

These patterns point to a landscape of intensive definitional activity but also of substantial variation and inconsistency. For courts confronted with disputes involving such terms, this proliferation of divergent definitions expands the interpretive space: judges must choose which definition to prioritize, reconcile conflicting definitions, or, in some instances, construct a new, harmonized concept.

From the vantage point of legislative drafting as an anticipatory interpretation, this empirical picture illustrates a failure to coordinate and stabilize the doctrinal meaning at the drafting stage. Instead, it devolves into courts the task of doctrinal harmonization, thereby inviting judicial-creative engagement with fundamental legal concepts in the state finance domain.

Judicial workload and systemic context

Although judicial review cases constitute only a fraction of the judiciary's overall workload, their systemic impact must be understood against the backdrop of the volume of litigation handled by Indonesian courts. According to the Supreme Court's 2023 Annual Report, Indonesian courts across all four jurisdictions received approximately 2.79 million incoming cases in 2023, with a total caseload of around 2.85 million and a clearance rate of 97.75% at the appellate level. The Supreme Court recorded 27,252 incoming cases, with a clearance rate of 99.47%, and only 147 remaining at the year-end.

These figures, summarized in Table 3, underscore the high-throughput environment in which interpretive decisions are made.

Table 3. Selected Judicial Caseload Indicators in Indonesia (2023)

Indicator	Value
Total incoming cases in first-instance courts	2,786,073 cases
Total caseload in first-instance courts	2,845,784 cases
Cases adjudicated in first-instance courts	2,724,345 cases
Clearance rate in first-instance courts	97.75%
Incoming cases at Supreme Court	27,252 cases
Total caseload at Supreme Court	27,512 cases
Cases adjudicated at Supreme Court	27,365 cases
Supreme Court clearance rate	99.47%

In such a high-volume system, each instance of judicial creativity—especially at the apex level—can have cascading effects, as lower courts must interpret and apply new or reconfigured norms in thousands of subsequent cases. Moreover, the heavy workload makes it more difficult for judges at all levels to engage in exhaustive doctrinal reconstruction each time they confront defective or ambiguous legislation. This further strengthens the case for ex ante doctrinal precision in drafting, to reduce reliance on time-consuming and potentially inconsistent ex post judicial interpretive efforts.

Synthesis of empirical patterns

The quantitative findings can be synthesized into three core empirical propositions:

Judicial review is both frequent and normatively potent: The volume of petitions (125 against 2019–2024 statutes) and the number of granted decisions (327 from 2004–2024) indicate that judicial review has become a central mechanism for correcting, constraining, or supplementing legislative output.

A significant implementation gap entrenches judicial-creative norms: approximately one-fifth of granted judicial review decisions have not been implemented through legislative amendment, leaving judicially crafted norms to operate without corresponding textual revisions in the statutes. This magnifies the de facto law-making role of the court.

Systemic textual indeterminacy in legislation, particularly definitional inconsistency, creates structural opportunities for judicial creativity. Evidence of varied and conflicting definitions across 1,362 state finance regulations illustrates how drafting practices fail to stabilize doctrinal meaning, requiring courts to engage in creative doctrinal harmonization.

In combination with the heavy judicial caseload, these empirical patterns suggest that legislative drafting quality is a significant structural determinant of the scope and necessity of judicial-creative power. The next section discusses these findings in normative and theoretical terms and outlines how legislative drafting can be re-conceived as an anticipatory legal interpretation to address these challenges.

Discussion

The empirical data support the thesis that judicial-creative power in Indonesia is not merely a product of judicial ambition or doctrinal openness but is also a structural response to legislative indeterminacy and implementation gaps. The Constitutional Court's interventions—whether through conditional unconstitutional decisions, norm-creating mandates, or expansive reinterpretation—frequently respond to ambiguous, contradictory, or procedurally defective statutes (Yafet Wambrauw et al., 2025).

Job creation litigation provides a paradigmatic example. The Constitutional Court's decision in Case No.

91/PUU-XVIII/2020 did not simply annul specific provisions; it diagnosed formal defects in the omnibus technique, deficiencies in openness, and ambiguities in how the amendments were structured and promulgated. The remedy—declaring the law conditionally unconstitutional and ordering legislative repair within a defined period—constituted a creative constitutional solution to the flawed legislative process. Yet, as subsequent debates and delays indicate, legislative follow-up has been uneven, leaving a zone of normative uncertainty in which judicial pronouncements carry a disproportionate weight (Jasmi et al., 2023).

The implementation data on judicial review decisions generalize this pattern: roughly 19.27% of granted decisions remain without legislative follow-up, effectively entrenching judicially drafted norms as part of the operative legal framework. This condition blurs the classical distinction between negative legislators (who only annuls) and positive legislators (who create norms) insofar as the Constitutional Court's interpretive prescriptions are neither translated into statutory text nor counteracted by new legislation.

Textual indeterminacy compounds this dynamic, particularly in definitions and cross-references. When multiple regulations define the same term differently or in conflict with high-level norms, courts must choose which definition to prioritize, whether to harmonize them, or whether to articulate a new, synthesized meaning. Each choice is inherently creative, even when grounded in accepted interpretive methods. Where legislative drafting fails to coordinate definitions systematically, judges become the default architects of doctrinal coherence.

These observations align with doctrinal analyses that describe the Constitutional Court as oscillating between judicial activism and self-restraint, depending in part on the clarity and completeness of the preceding legislative texts. Courts are more likely to exercise restraint when the laws are clear and coherent. When a law is vague, contradictory, or constitutionally suspect, courts face a stark choice between abdication (tolerating constitutional violations) and creativity (reconstructing norms). Under such conditions, judicial-creative power can be seen as being structurally induced by legislative under-performance (Saragih et al., 2025).

Against this backdrop, conceptualizing legislative drafting as an anticipatory legal interpretation offers a promising strategy for rebalancing the relationship between the legislature and the judiciary. Instead of treating drafting as a post-policy technical task, this approach recognizes that drafters perform the first major interpretive act in the life of a norm: they interpret constitutional mandates, policy choices, and existing laws and encode these interpretations into text.

An anticipatory approach to drafting entails several interconnected practices:

Simulation of judicial reasoning: Drafters actively anticipate how courts are likely to apply recognized interpretive methods—grammatical, systematic, historical, teleological, and anticipatory—and adjust the text to minimize ambiguity. For example, if a term is interpreted differently across statutes, drafters either adopt a uniform definition or explicitly acknowledge and justify the divergence.

Explicit doctrinal scaffolding: Legislation incorporates clear definitions, purposive clauses, and interpretive provisions that guide courts to resolve ambiguities. A carefully drafted chapter on General Provisions can significantly reduce the need for judicial construction by establishing core concepts and interpretive priorities.

Hierarchical and horizontal consistency: Drafters systematically check for consistency with high-level norms and related regulations, using both doctrinal analysis and, where feasible, data-driven tools. Definitional variations are either justified as reflecting a deliberate doctrinal distinction or eliminated in favor of uniformity (Popko, 2025).

Preventive engagement with constitutional concerns: Anticipatory drafting involves early and explicit consideration of constitutional risks, including rights implications and separation-of-power issues. This aligns with proposals for judicial preview, in which the Constitutional Court reviews draft laws for constitutional conformity before promulgation, but also requires internal legislative capacity to identify and address constitutional issues proactively.

By adopting these practices, legislative drafting becomes an interpretive front-line, where many potential disputes are resolved before reaching the courts. This does not eliminate the need for judicial review; —new social realities and unforeseen conflicts will always arise, —but it reduces the structural demand for judicial-creative interventions.

The concept of doctrinal precision is central to anticipatory drafts. Precision here does not mean over-

specification of every factual scenario, which would be both impossible and undesirable. Rather, it denotes clarity and stability in the articulation of core legal concepts, relationships, and purposes. From a separation-of-powers perspective, doctrinal precision serves as a self-limiting device for the legislature, and by speaking clearly and consistently, the legislature voluntarily leaves less room for courts to impose their own constructions. This is not a form of judicial hostility; rather, it is a recognition that in a constitutional democracy, primary responsibility for law-making lies with elected representatives, while courts play a corrective and interpretive role within clear textual boundaries.

Empirical evidence from definitional usage studies suggests that current drafting practices in Indonesia do not fully realize this self-limiting function. The proliferation of divergent and sometimes conflicting definitions across 1,362 finance-related regulations indicates that doctrinal meaning is continually renegotiated at the regulatory level rather than stabilized at the statutory level. This not only burdens courts but also undermines legal certainty for administrators and citizens (Fernanda et al., 2025).

Doctrinal precision requires:

Vertical consolidation: Core definitions and doctrinal structures are established in high-level statutes (laws and, where appropriate, government regulations), with lower regulations constrained to implement rather than redefine those concepts.

Horizontal harmonization: Regulations within the same domain adopt shared terminologies and cross-references, supported by systematic reviews and harmonization processes.

Purpose-driven drafting: Provisions are drafted in light of clearly articulated legislative purposes, enabling courts to use teleological interpretation in a way that is anchored in legislative design rather than judicial preference.

If such precision is institutionalized, the logical space for judicial-creative power is narrowed: Courts remain free to interpret and apply the law, but the range of plausible constructions is more tightly circumscribed by the text.

Realizing legislative drafting as an anticipatory interpretation in Indonesia requires institutional reforms and methodological innovation along several dimensions. First, the role of professional legislative drafters (Perancang Peraturan Perundang-undangan) must be strengthened across all levels of government. Empirical research on village and regional regulations shows that the absence or marginalization of professional drafters leads to poor legal substance, weak harmonization, and increased vulnerability to judicial review. Ensuring that drafters are systematically involved, as mandated but not fully implemented under Law No. 12 of 2011, would enhance doctrinal precision and consistency (Hermawan, 2025).

Second, the integration of data-driven tools and artificial intelligence can support anticipatory drafts. Studies on economic analysis in la-making and AI integration highlight the potential of technology to process large corpora of legal texts; identify overlaps, conflicts, and definitional variation; and facilitate evidence-based assessment of regulatory impacts. For example, an AI-assisted drafting environment could automatically flag where a proposed definition diverges from existing definitions in related statutes, prompting drafters to either align or explicitly justify the divergence (El-Farahaty, 2025).

Third, the introduction of a carefully designed judicial preview mechanism, —as proposed in recent scholarship, —can provide a structured forum for early constitutional scrutiny. If the Constitutional Court is empowered to review draft statutes for constitutional conformity before promulgation and if this process is transparent and dialogical, it can complement anticipatory drafting by identifying constitutional risks ex ante. However, judicial preview must be calibrated to avoid transforming the Court into a co-legislator at the drafting stage; its function should be to enforce constitutional boundaries, not to dictate policy choices or micro-manage drafting details.

Fourth, internal legislative procedures must be reoriented towards quality and precision rather than merely productivity. Studies on parliamentary reform note that current political incentives favor rapid law-making and legislative output, sometimes at the expense of deliberation, participation, and technical refinement. Embedding mandatory stages for systematic harmonization, definitional review, and impact analysis, —with clear timeframes and accountability mechanisms, —would help align incentives with doctrinal precision (Anugrah & Hadi, 2025).

Finally, a broader legal culture and academic discourse must reinforce the value of anticipatory drafting. Legal education and professional training for both drafters and judges should emphasize legislative drafting

not simply as a technical craft but as a constitutional function with interpretive and power-balancing consequences. Scholars and practitioners can contribute by developing more detailed drafting manuals and case-based guidance tailored to Indonesian conditions and integrating lessons from Constitutional Court jurisprudence into drafting practice.

Conceptually, legislative drafting as an anticipatory legal interpretation advances a rebalancing of the separation of powers that is both realistic and normatively attractive. It recognizes that in modern constitutional democracies, strict textualism is neither feasible nor desirable; courts must interpret and sometimes adapt the law in light of evolving social needs. At the same time, it insists that the primary responsibility for shaping the contours of legal norms rests with the democratically accountable legislature and that this responsibility includes ensuring doctrinal clarity and coherence.

In Indonesia, where judicial review has become an essential guardian of democracy and constitutionalism, the goal is not to entirely suppress judicial-creative power. Rather, it is to channel it towards truly residual and corrective functions, activated when unforeseen circumstances arise or when the legislature has clearly failed to respect constitutional limits. Anticipatory drafting and doctrinal precision reduce the frequency with which courts are forced into constructive law-making, merely to make sense of poorly drafted statutes.

The empirical findings discussed in this article—implementation gaps in judicial review decisions, high volumes of review petitions, and pervasive definitional variations —demonstrate that Indonesia's current legislative practices fall short of this ideal. Addressing these shortcomings requires not only legal and institutional reforms, but also a shift from a conceptual perspective: legislative drafting must be understood as a constitutional practice of interpretation, not a subordinate technocratic task.

CONCLUSION

This article has argued that, in Indonesia, legislative drafting should be reconceptualized as an anticipatory legal interpretation aimed at minimizing unnecessary judicial-creative power through doctrinal precision. Quantitative indicators show that judicial review is both frequent and normatively significant: 327 granted Constitutional Court decisions between 2004 and 2024, with approximately 19.27%19.27% unimplemented, and 125 petitions challenging statutes from the 2019 to 2024 legislative period. Simultaneously, an empirical analysis of 1,362 state finance regulations revealed pervasive definitional variation and potential mismatches, reflecting systemic textual indeterminacy. These patterns, set against a backdrop of very high judicial caseloads, create structural pressures for courts—especially the Constitutional Court to engage in creative norm-making to correct, clarify, or update defective legislation. Reframing legislative drafting as an anticipatory interpretation highlights the legislature's capacity and responsibility to pre-structure the interpretive field. Through clear definitions, purposive clauses, hierarchical and horizontal consistency, and early attention to constitutional risks, drafters can substantially reduce the scope of judicial creativity driven by legislative shortcomings. Implementing this framework in Indonesia requires strengthening the role of professional drafters, integrating data-driven tools and AI, enhancing harmonization and review mechanisms, and carefully exploring judicial previews as a complementary safeguard. Ultimately, doctrinal precision in legislative drafting functions as a self-limiting device for legislative power and stabilizing force for the separation of powers. By speaking clearly and coherently, the legislature narrows the interpretive space in which courts must operate, thereby preserving judicial review as a necessary constitutional safeguard while reducing its transformation into routine law-making. In this way, legislative drafting as an anticipatory legal interpretation offers a normative and practical pathway towards a more balanced, predictable, and democratically grounded legal order in Indonesia.

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