

## Exploitation of Legal Loopholes in the Regulatory System: A Justice and Legal Certainty Perspective

Basri

Universitas Borneo Tarakan, Indonesia

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Corresponding Author:

Author Name\*: Basri

E-mail\*: [basrifh@borneo.ac.id](mailto:basrifh@borneo.ac.id)

**Abstract:** *Legal loopholes are a phenomenon inherent in every regulatory system, arising from editorial imperfections, normative voids, interpretive ambiguities, and social developments that outpace the formation of laws and regulations. This study aims to analyze the exploitation of legal loopholes from the perspective of substantive justice and legal certainty, by evaluating their impact on the integrity of the Indonesian legal system. Using normative legal research methods with statutory, conceptual, and case approaches, this study finds that opportunistic exploitation of legal loopholes creates tension between formal legality and substantive justice, and threatens public trust in the rule of law. The results indicate that legal loopholes stem from four main factors: (1) weaknesses in legislative drafting; (2) technological and economic developments that outpace regulations; (3) inconsistencies in judicial interpretation; and (4) conflicts of norms between regulatory levels. This study concludes that there is a need for a reconstruction of the legal formation paradigm that is oriented towards preventing regulatory loopholes from the planning stage, accompanied by strengthening judicial review mechanisms and developing the doctrine of teleological interpretation.*

**Keywords:** *Legal Loopholes, Legal Certainty, Substantive Justice, Regulatory System, Legislative Reform.*

## INTRODUCTION

In any living and evolving legal system, the existence of legal loopholes is an inevitability that cannot be completely avoided. Even the most comprehensive regulatory system is not immune to the possibility of gaps or multiple interpretations that can be exploited by certain parties for personal or group gain.<sup>1</sup> Legal loopholes, or what is known in Anglo-Saxon literature as legal loopholes, are conditions in which a particular action is technically not prohibited by applicable law, even though the action is contrary to the purpose, spirit or values that the law in question is intended to uphold.<sup>2</sup>

The phenomenon of exploiting legal loopholes has become increasingly prominent in the contemporary era, along with the increasingly complex relationships between individuals, corporations, and the state. On the one hand, global economic dynamics, advances in information technology, and socio-cultural transformations present new realities that are often beyond the reach of existing legal norms. On the other

<sup>1</sup>Maria Farida Indrati, Ilmu Perundang-undangan: Jenis, Fungsi, dan Materi Muatan, edisi revisi (Yogyakarta: Kanisius, 2022), hlm. 45.

<sup>2</sup>Jimly Asshiddiqie, Perihal Undang-Undang (Jakarta: Rajawali Pers, 2022), hlm. 123–125.



hand, certain interests constantly seek to maximize their latitude within the framework of legal formalities.

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In Indonesian law, exploiting legal loopholes has become a serious issue, affecting various fields, from tax law, corporate law, environmental law, to criminal law. Numerous cases demonstrate how certain businesses and individuals have been able to escape legal action not because of substantive innocence, but because they have successfully identified and exploited loopholes in existing regulatory formulations.<sup>4</sup> One of the most striking examples is the debate surrounding the constitutionality of the Job Creation Law, which was declared conditionally unconstitutional by the Constitutional Court, which reflects how procedural weaknesses in the formation of laws can become exploitable loopholes.<sup>5</sup>

The exploitation of legal loopholes presents a profound dilemma in legal science. From the perspective of legal certainty (*rechtssicherheit*), everyone has the right to know precisely what is permitted and prohibited by law. If someone commits an act not explicitly prohibited by applicable norms, then they cannot be formally blamed. However, from the perspective of substantive justice (*gerechtigheid*), the exploitation of legal loopholes to avoid legal obligations or responsibilities clearly contradicts society's sense of justice and denies the purpose of law itself. The concept of legal loopholes has long been a concern for philosophers and jurists. Aristotle, in his *Nicomachean Ethics*, warned that general law cannot always encompass all particular cases, necessitating *epieikeia* (justice beyond the text) as a correction to the rigidity of written law. This idea was later adopted in the modern legal tradition through the concept of equity in common law systems and the principle of balance in civil law systems, both of which recognize that blind adherence to legal texts does not always produce justice.<sup>6</sup>

In Indonesia, the issue of legal loopholes has become increasingly prominent with the increasing complexity of post-reform regulations. Since the amendments to the 1945 Constitution and the establishment of various new state institutions, Indonesia has produced thousands of laws and regulations at various hierarchical levels. The National Legal Development Agency recorded that as of 2023, there were more than 42,000 active regulations at the central and regional levels, a condition some legal experts have called hyper-regulation, or excessive regulation, which paradoxically creates more loopholes and inconsistencies in norms.<sup>7</sup> From the perspective of legal sociology, Eugen Ehrlich emphasized that living law in society is

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<sup>3</sup>Satjipto Rahardjo, *Hukum dan Perubahan Sosial: Suatu Tinjauan Teoretis serta Pengalaman-Pengalaman di Indonesia* (Yogyakarta: Genta Publishing, 2021), hlm. 78.

<sup>4</sup>Yusril Ihza Mahendra, 'Celah Hukum dan Penegakan Hukum di Indonesia', *Jurnal Hukum Nasional*, Vol. 12, No. 2 (2022), hlm. 34–50.

<sup>5</sup>Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 91/PUU-XVIII/2020 tentang Pengujian Undang-Undang Cipta Kerja, Jakarta, 25 November 2021.

<sup>6</sup>Aristoteles, *Nicomachean Ethics*, terjemahan W.D. Ross, revisi J.O. Urmson (Princeton: Princeton University Press, 2021), hlm. 98–101; Lihat juga Satjipto Rahardjo, *Membedah Hukum Progresif* (Jakarta: Kompas, 2022), hlm. 34–37.

<sup>7</sup>Badan Pembinaan Hukum Nasional (BPHN), *Laporan Inventarisasi dan Evaluasi Regulasi Nasional Tahun 2023* (Jakarta: BPHN, 2023), hlm. 5–8; Bandingkan dengan Hikmahanto Juwana, 'Masalah Regulasi di Indonesia', *Jurnal Hukum Bisnis*, Vol. 41, No. 1 (2022), hlm. 10–15.

always richer and more complex than just law written in regulatory texts.<sup>8</sup> When there is too great a gap between the law on the books and the law in action, legal loopholes become not just a theoretical possibility, but a practical inevitability that will continue to be exploited by those with the knowledge and resources to do so. This situation is highly relevant to the reality of Indonesian law, where there is a significant gap between written norms and their implementation in practice.<sup>9</sup>

Comparatively, countries with more established legal systems also face similar issues. In the United States, the phenomenon of tax shelters and regulatory arbitrage in the financial industry has demonstrated that legal loopholes are not simply a matter of drafting quality, but also a consequence of the dynamic relationship between regulation and innovation. The American experience following the 2008 financial crisis taught us that massively exploited loopholes in banking regulations can have systemic impacts that devastate the global economy. This lesson underscores the urgency of examining legal loopholes not merely as an academic issue but as a governance issue with real implications for public safety and well-being.<sup>10</sup>

In a state based on law (*rechtsstaat*), the existence of legal loopholes raises fundamental questions about the relationship between legality and legitimacy.<sup>11</sup> In his pure legal theory, Hans Kelsen established a hierarchy of norms that requires vertical and horizontal coherence between levels of norms. If legal loopholes arise precisely because of incoherence within the normative system itself, then what is at stake is not simply the effectiveness of a particular regulation, but the legitimacy of the entire state legal system. This is what makes exploiting legal loopholes an issue that transcends mere legal technicalities and touches on deeper philosophical and political-legal dimensions.<sup>12</sup>

This research is structured as follows: after the introduction, the second section describes the research methodology used. The third section presents the results and discussion, divided into two main sub-topics: first, the concept, typology, and sources of legal loopholes in the regulatory system; and second, the impact of exploiting legal loopholes on justice and legal certainty, along with efforts to address them. The fourth section presents conclusions and recommendations. Thus, this research is expected to provide a comprehensive and systematic study of the issue of legal loopholes in order to contribute to national legal reform that is more just and effective.

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<sup>8</sup> Zarianto, Ahmad Auri Aji, and Nadhira Wahyu Adityarani. "Eksistensi Sosiologi Hukum pada Masyarakat Indonesia (Literature Review atas Teori Living Law Eugen Ehrlich)." *Juridische: Jurnal Penelitian Hukum* 2.3 (2025): 203-219. <https://doi.org/10.65945/juridische.v2i3.89>

<sup>9</sup>Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, terjemahan Walter L. Moll (New Brunswick: Transaction Publishers, 2022 reprint), pp. 493–502; Lihat juga Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence)* (Jakarta: Kencana, 2022), hlm. 200–205.

<sup>10</sup>Michael Lewis, *The Big Short: Inside the Doomsday Machine* (New York: W.W. Norton, 2022 reprint), pp. 11–25; Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report* (Washington D.C.: U.S. Government Printing Office, 2011), pp. xv–xxviii; Lihat analisis komparatifnya dalam Denny Indrayana, *Sistem Hukum Indonesia: Antara Realitas dan Cita-Cita* (Jakarta: Ghalia Indonesia, 2022), hlm. 110–115.

<sup>11</sup> Ujung, Pendi, et al. "Keterkaitan Antara Negara Hukum Dan Kekuasaan." *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4.2 (2026): 1206-1215. <https://doi.org/10.61104/alz.v4i2.4418>

<sup>12</sup>Hans Kelsen, *Pure Theory of Law*, terjemahan Max Knight (Clark, NJ: Lawbook Exchange, 2021 reprint), pp. 193–220; Lihat juga Feri Amsari, *Perubahan UUD 1945: Perubahan Konstitusi Negara Kesatuan Republik Indonesia* (Jakarta: RajaGrafindo Persada, 2022), hlm. 30–35.

## METHODOLOGY

This research uses a normative legal research method which focuses on the analysis of primary, secondary and tertiary legal materials.<sup>13</sup> Normative legal research was chosen because the problems studied are conceptual and related to positive legal rules and legal doctrines, not empirical problems that require field data collection.<sup>14</sup> The approaches used in this research include: (1) Statute approach, namely examining all laws and regulations related to the main problem; (2) Conceptual approach, namely starting from the views and doctrines that have developed in legal science; and (3) Case approach, namely studying the application of legal norms or rules carried out in legal practice, especially through court decisions related to legal loopholes.<sup>15</sup>

The legal materials used consist of primary legal materials in the form of laws and regulations, Constitutional Court decisions, and Supreme Court decisions; secondary legal materials in the form of textbooks, scientific journals, dissertations, and relevant legal articles; and tertiary legal materials in the form of legal dictionaries, legal encyclopedias, and other reference sources.<sup>16</sup> The legal material collection technique is carried out through systematic and comprehensive library research. The legal material analysis is conducted prescriptively using legal interpretation methods (grammatical, systematic, historical, teleological, and comparative) to identify relevant legal principles and formulate solutions to the legal problems studied. The analytical framework integrates legal theories from the civil law and common law traditions to produce a comprehensive and contextual study.

## RESULTS AND DISCUSSION

### *Concepts, Typologies, and Sources of Legal Gaps in the Regulatory System*

Legal loopholes etymologically come from the English phrase legal loopholes which refers to an empty space, ambiguity, or weakness in the legal system that allows a person or entity to avoid legal obligations or consequences that should apply. Richard Posner in the framework of legal economic analysis describes legal loopholes as regulatory inefficiencies that arise when the costs of law enforcement exceed the benefits obtained from such enforcement.<sup>17</sup> Lon Fuller, in his theory of internal legal morality, asserts that good law must fulfill eight principles, including: general, announced to the public, prospective, clear, non-contradictory, enforceable, stable, and consistently applied.<sup>18</sup> Legal loopholes are essentially deviations from these principles, particularly clarity and consistency. When legal norms are unclear or contradictory, there is ample room for legal loopholes to emerge.

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<sup>13</sup>Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, cetakan ke-17 (Jakarta: Rajawali Pers, 2021), hlm. 12–15.

<sup>14</sup>Peter Mahmud Marzuki, *Penelitian Hukum*, edisi revisi (Jakarta: Kencana Prenada Media, 2022), hlm. 55–60.

<sup>15</sup>Zainuddin Ali, *Metode Penelitian Hukum*, cetakan ke-8 (Jakarta: Sinar Grafika, 2021), hlm. 105–107.

<sup>16</sup>Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2022), hlm. 295.

<sup>17</sup>Richard A. Posner, *Economic Analysis of Law*, 9th ed. (New York: Wolters Kluwer, 2022), pp. 18–24.

<sup>18</sup>Lon L. Fuller, *The Morality of Law*, revised edition (New Haven: Yale University Press, 2021 reprint), pp. 46–53.

From a comparative perspective, Jansen and Michaels observe that legal loopholes are a universal phenomenon found across various legal systems, both civil law and common law. The difference lies in the mechanisms for addressing them: civil law systems tend to rely on legislative reform, while common law systems rely more on dynamic judicial interpretation.<sup>19</sup> Based on a study of Indonesian legal literature and legal practice, legal loopholes can be classified into several typologies as follows:

First, Normative Gaps. Normative gaps occur when a factual situation is not regulated by existing regulations. This condition is commonly called *lacuna legis*, or legal vacuum. In the Indonesian legal system, judges are prohibited from rejecting cases on the grounds that the law is absent or unclear. Therefore, judges are required to fill the legal vacuum through legal discovery (*rechtsvinding*).<sup>20</sup> Second, Definitional Loopholes. This type of loophole arises when the definition or scope of a legal norm is too narrow, resulting in behavior substantially similar to the prohibited norm but not covered by the prohibition. Real-world examples are found in tax regulations and criminal acts in the digital corporate sector.<sup>21</sup> Third, Procedural Loopholes. Procedural loopholes arise from weaknesses in procedural provisions or legal procedures, not from the substance of the norm itself. In practice, procedural loopholes are often exploited to dismiss charges or lawsuits on the basis of formal flaws, even though the defendant or accused is clearly guilty.<sup>22</sup> Fourth, Interpretive Loopholes. This loophole arises from the ambiguity of regulatory language, which allows for more than one interpretation. Those skilled in legal argument can exploit wording ambiguities for their own benefit. Achmad Ali refers to this phenomenon as "interpretive loopholes," which are frequently encountered in court.<sup>23</sup>

Weaknesses in the legislative drafting process. A rushed legislative process, minimal meaningful public participation, and low technical capacity in legal drafting have resulted in regulations that are prone to loopholes. A 2023 Supreme Court report noted that the majority of normative disputes brought to court stem from unclear wording of regulations.<sup>24</sup> Economic and technological developments are outpacing regulatory capacity. The emergence of the digital economy, cross-jurisdictional transactions, and innovative business models presents realities that are not yet addressed by existing regulatory frameworks. In taxation, for example, transfer pricing schemes and cross-border tax optimization exploit loopholes in double taxation avoidance agreements and domestic regulations that do not yet accommodate the digital economy.<sup>25</sup>

Inconsistency in judicial interpretation. When courts provide differing interpretations of the same norm, legal uncertainty is created, which can then be exploited as a loophole. The principle of legality in criminal

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<sup>19</sup>Nils Jansen dan Ralf Michaels, 'Private Law and the State: Comparative Perceptions and Historical Observations', *Rabels Zeitschrift für ausländisches und internationales Privatrecht*, Vol. 86 (2022), pp. 102–134.

<sup>20</sup>Romli Atmasasmita, *Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan* (Bandung: Alumni, 2022), hlm. 67.

<sup>21</sup>Indriyanto Seno Adji, 'Perkembangan Hukum Pidana dan Celah Regulasi di Era Digital', *Jurnal Hukum dan Peradilan*, Vol. 11, No. 1 (2022), hlm. 19–38.

<sup>22</sup>Denny Indrayana, *Sistem Hukum Indonesia: Antara Realitas dan Cita-Cita* (Jakarta: Ghalia Indonesia, 2022), hlm. 90–95.

<sup>23</sup>Achmad Ali, *Menguak Tabir Hukum*, edisi ke-3 (Jakarta: Kencana, 2023), hlm. 113.

<sup>24</sup>Mahkamah Agung Republik Indonesia, *Laporan Tahunan 2023: Reformasi Peradilan dan Kepastian Hukum* (Jakarta: MA RI, 2023), hlm. 44.

<sup>25</sup>Harkristuti Harkrisnowo, 'Celah Hukum dalam Kebijakan Fiskal: Analisis Peraturan Perpajakan Indonesia', *Jurnal Ilmu Hukum*, Vol. 15, No. 1 (2023), hlm. 56–72.

law, which requires that criminal acts be defined clearly and unequivocally, is often eroded by extensive interpretations that go beyond the grammatical boundaries of the norm.<sup>26</sup> Conflicts between regulatory levels. Indonesia's hierarchical and multi-level legal system is prone to overlapping and contradictory norms. Conflicts between laws and government regulations, or between regional regulations and national sectoral regulations, create gray areas that are fertile ground for legal loopholes.<sup>27</sup> In addition to the four typologies mentioned above, technological loopholes are also recognized in contemporary legal developments, namely gaps that arise due to the failure to accommodate new technologies within the existing regulatory framework. This phenomenon is particularly evident in the context of Indonesia's digital economy. Regulations regarding digital platforms, cryptocurrency transactions, artificial intelligence, and technology-based financial services (fintech) are still in a state of transition and vulnerable to exploitation of loopholes. The Financial Services Authority (OJK) itself acknowledges that the speed of financial technology innovation has outpaced existing regulatory capacity, resulting in many practices that have the potential to harm consumers or threaten the stability of the financial system being technically unaddressed by existing regulations.<sup>28</sup>

In the civil law tradition adopted by Indonesia, there is a principle that judges are obliged to uphold the law and justice even if written law does not or has not yet regulated a particular situation (Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power).<sup>29</sup> This obligation positions judges as legal innovators (*rechtvinder*), not merely mouthpieces of the law. However, excessive judicial discretion in filling normative gaps can also create legal uncertainty if not based on a clear and consistent interpretative methodology. The Supreme Court, through Supreme Court Circular Letter (SEMA) Number 7 of 2012, has attempted to provide guidelines for judges regarding legal gaps, but its implementation remains inconsistent across all levels of the courts.<sup>30</sup>

The institutional dimension of legal loopholes also requires serious attention. Legal loopholes stem not only from weaknesses in regulatory texts, but also from the fragmentation of oversight and law enforcement institutions. In Indonesia, overlapping authority between various state institutions such as the Corruption Eradication Commission (KPK), the Prosecutor's Office (AGO), the Police, the Financial Transaction Reports and Analysis Center (PPATK), and various sectoral authorities creates enforcement gaps, which in turn create legal loopholes for perpetrators.<sup>31</sup> When two or more institutions share authority but do not

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<sup>26</sup>Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana*, edisi revisi (Yogyakarta: Cahaya Atma Pustaka, 2023), hlm. 200.

<sup>27</sup>Hikmahanto Juwana, *Hukum Internasional dalam Perspektif Indonesia sebagai Negara Berkembang* (Jakarta: Yarsif Watampone, 2022), hlm. 34–38.

<sup>28</sup>Otoritas Jasa Keuangan, *Roadmap Pengembangan dan Penguatan Industri Fintech Indonesia 2023–2028* (Jakarta: OJK, 2023), hlm. 22–28; Indriyanto Seno Adji, 'Perkembangan Hukum Pidana dan Celah Regulasi di Era Digital', *Jurnal Hukum dan Peradilan*, Vol. 11, No. 1 (2022), hlm. 19–38.

<sup>29</sup>Hidayat, Agi Attaubah, et al. "Penemuan Hukum oleh Hakim di Indonesia: Dasar, Metode, serta Implikasinya terhadap Kepastian dan Keadilan Hukum." *Legalite: Jurnal Perundang Undangan Dan Hukum Pidana Islam* 10.1 (2025): 123-140. <https://doi.org/10.32505/legalite.v10i1.9770>

<sup>30</sup>Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman, Pasal 5 ayat (1); Surat Edaran Mahkamah Agung (SEMA) Nomor 7 Tahun 2012 tentang Rumusan Hukum Hasil Pleno Kamar Mahkamah Agung; Lihat juga M. Yahya Harahap, *Hukum Acara Perdata*, edisi revisi (Jakarta: Sinar Grafika, 2022), hlm. 841–845.

<sup>31</sup>Lestari, Ditha, and Metha Dian Puspa Nasawida. "Legal Enforcement and the Recovery of State Financial Losses in Corruption Crimes: A Normative and Institutional Review." *Sanskara Hukum dan HAM* 4.01 (2025): 197-205. <https://doi.org/10.58812/shh.v4i01.589>

coordinate effectively, there is room for perpetrators to maneuver between the jurisdictions of those institutions and avoid proper accountability.<sup>32</sup>

Comparative legal studies provide valuable perspectives on how different legal systems respond to legal loopholes. In Germany, the doctrine of *Treu und Glauben* (good faith) in the German Civil Code (BGB) serves as a general clause that can be used to prevent the exploitation of legal loopholes that are contrary to principles of justice. In the UK, equity jurisprudence and the doctrine of abuse of rights authorize courts to dismiss claims that are technically valid but contrary to substantive justice. This comparative experience demonstrates that effectively addressing legal loopholes requires a combination of legislative, judicial, and doctrinal instruments.<sup>33</sup>

Theoretically, R. Dworkin distinguishes between rules and principles in a legal system. Rules are all-or-nothing, while principles have a weighty dimension that allows for the exercise of judicial discretion. Dworkin's thinking is relevant in the context of legal gaps: when explicit rules are absent or unclear, judges and other legal officials must turn to the principles that underpin the legal system. In the Indonesian context, the principles of Pancasila and the values embodied in the 1945 Constitution should be the primary reference in filling legal gaps, so that the results of filling these gaps remain rooted in the nation's fundamental values.<sup>34</sup>

### *The Impact of Exploiting Legal Loopholes on Justice and Legal Certainty*

Legal certainty is a fundamental value in a state governed by the rule of law. Legal certainty requires that legal norms be clear, consistent, and predictable, allowing every legal subject to plan their actions with confidence regarding the legal consequences. Within this framework, someone who exploits a legal loophole is actually acting within the bounds of formal legality, engaging in activities not explicitly prohibited by law.<sup>35</sup> However, legal certainty alone is not enough to legitimize any form of exploitation of legal loopholes. Substantive justice demands that the law be not only procedurally correct but also substantively just. Mudzakkir argues that national legal reform must bridge the gap between formal certainty and substantive justice by formulating norms that are more responsive to social realities.<sup>36</sup>

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<sup>32</sup>Romli Atmasasmita, *Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan* (Bandung: Alumni, 2022), hlm. 100–110; Lihat juga Komisi Pemberantasan Korupsi, *Laporan Tahunan KPK 2023: Kolaborasi Pemberantasan Korupsi* (Jakarta: KPK RI, 2023), hlm. 18–22.

<sup>33</sup>Hein Kötz dan Axel Flessner, *European Contract Law*, terjemahan Tony Weir (Oxford: Oxford University Press, 2021), pp. 45–52; Hikmahanto Juwana, 'Studi Perbandingan Hukum: Urgensi dan Metodologi', *Jurnal Hukum Internasional*, Vol. 19, No. 2 (2022), hlm. 120–135.

<sup>34</sup>Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 2021 reprint), pp. 22–44; Lihat juga Kaelan, *Filsafat Pancasila: Pandangan Hidup Bangsa Indonesia* (Yogyakarta: Paradigma, 2022), hlm. 77–82.

<sup>35</sup>Mahkamah Konstitusi Republik Indonesia, *Putusan Nomor 79/PUU-XX/2022 tentang Pengujian Undang-Undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi*, Jakarta, 31 Mei 2023.

<sup>36</sup>Mudzakkir, 'Reformasi Hukum Nasional dan Penanggulangan Celah Regulasi', dalam *Bunga Rampai Pembaruan Hukum Indonesia* (Jakarta: Badan Pembinaan Hukum Nasional, 2023), hlm. 78–99.

The tension between these two values is most evident in cases of aggressive taxation and corporate liability avoidance schemes. On the one hand, taxpayers or corporations exploiting regulatory loopholes can argue that they are simply doing what is legally permitted. On the other hand, the state and society are harmed by these practices, both fiscally and in terms of the equality of social burdens.<sup>37</sup> The massive and opportunistic exploitation of legal loopholes has a serious impact on the integrity of the entire legal system. This erodes public trust. When the public witnesses parties with resources and access to legal expertise able to escape legal obligations that should equally apply, confidence in the justice and effectiveness of the legal system will plummet. Bivitri Susanti suspects that low legislative transparency is a factor that fosters legal loopholes and triggers the delegitimization of the law in the public eye.<sup>38</sup>

Competition distortion and social inequality. Access to expertise in identifying and exploiting legal loopholes is unequal among members of society. Large corporations and high-net-worth individuals have the resources to hire top legal counsel to identify regulatory loopholes, while small businesses and ordinary citizens lack such luxury.<sup>39</sup> This unequal access widens the gap between social and economic inequality. Regulatory inefficiencies and social costs are exacerbated. Efforts to close legal loopholes through repeated amendments, the issuance of additional implementing regulations, and lengthy litigation impose high transaction costs on both the state and businesses. The 2023 Judicial Commission report noted that disputes stemming from regulatory ambiguity contribute significantly to the caseload at various court levels.<sup>40</sup> There are several approaches to addressing legal loopholes. From a democratic legal perspective, Hendra Nurtjahjo emphasizes that the legitimacy of regulations is determined not only by the procedures for their creation, but also by the extent to which they reflect the will and interests of all citizens.<sup>41</sup>

The 2023 National Legal Development Agency (BPHN) analysis recommends the application of a comprehensive regulatory impact assessment methodology at every stage of regulatory development, including a specific analysis of potential gaps that may arise.<sup>42</sup> This preventive approach is considered more efficient than a curative approach that simply closes loopholes after their impacts have already manifested. From the perspective of legal pluralism, Sulistyowati Irianto offers a more inclusive approach to lawmaking, in which marginalized groups and communities most vulnerable to the impacts of legal loopholes are given substantive participation in the legislative process.<sup>43</sup> At the judicial level, the development of teleological and functional interpretation doctrines is key. Judges are not merely mouthpieces of the law, but play an active role in filling gaps and ambiguities in norms by referring to the purpose of legal formation (*ratio legis*). Anthon F. Susanto, through his legal semiotic approach, emphasizes

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<sup>37</sup>Rifqi S. Assegaf, 'Akses terhadap Keadilan dan Celah Hukum di Indonesia', *Jurnal Kajian Hukum*, Vol. 8, No. 2 (2022), hlm. 110–130.

<sup>38</sup>Bivitri Susanti, 'Transparansi Legislasi dan Celah Perundang-undangan di Indonesia', *Jurnal Konstitusi*, Vol. 20, No. 1 (2023), hlm. 25–48.

<sup>39</sup>Feri Amsari, *Perubahan UUD 1945: Perubahan Konstitusi Negara Kesatuan Republik Indonesia* (Jakarta: RajaGrafindo Persada, 2022), hlm. 57–62.

<sup>40</sup>Komisi Yudisial Republik Indonesia, *Laporan Tahunan 2023: Menjaga Integritas Hakim dan Kepastian Hukum* (Jakarta: KY RI, 2023), hlm. 30.

<sup>41</sup>Hendra Nurtjahjo, *Filsafat Demokrasi* (Jakarta: Bumi Aksara, 2021), hlm. 145–148.

<sup>42</sup>Badan Pembinaan Hukum Nasional (BPHN), *Analisis dan Evaluasi Hukum tentang Celah Regulasi dalam Peraturan Perundang-undangan Indonesia* (Jakarta: BPHN, 2023), hlm. 22–30.

<sup>43</sup>Sulistyowati Irianto, *Pluralisme Hukum dan Akses Keadilan* (Jakarta: Yayasan Pustaka Obor Indonesia, 2022), hlm. 88–94.

the importance of reading legal texts holistically and contextually to prevent interpretations that deviate from the spirit of the regulation.<sup>44</sup>

Procedural justice is also significantly impacted by the exploitation of legal loopholes. John Rawls, in his theory of justice as fairness, emphasized that fair procedures are a prerequisite for fair outcomes. When legal loopholes are exploited to circumvent existing legal procedures, for example through jurisdictional manipulation, strategic forum selection (forum shopping), or manipulation of procedural procedures, procedural justice is eroded. In the Indonesian context, the practice of forum shopping between general courts, religious courts, and state administrative courts is a clear manifestation of the exploitation of procedural loopholes, which disadvantages parties unable to access the necessary legal expertise.<sup>45</sup>

The systemic impact of exploiting legal loopholes on corporate governance also requires in-depth examination. Various corporate scandals in Indonesia, ranging from financial statement manipulation to acquisition schemes that obscure true ownership, demonstrate how loopholes in corporate and capital market regulations can be exploited to the detriment of minority shareholders, creditors, and the wider public. In its 2023 supervisory report, the Financial Services Authority (OJK) noted an increase in cases exploiting loopholes in information disclosure and affiliated transactions, indicating that existing regulatory enforcement is insufficient to prevent the exploitation of loopholes in the financial sector.<sup>46</sup>

From the perspective of state administrative law, the exploitation of legal loopholes by government agencies themselves is an equally worrying phenomenon. Loopholes in the provisions on delegation of authority, the scope of administrative discretion, and public decision-making procedures are often exploited to create policies that benefit certain parties without being able to be legally challenged. SF Marbun identified that one of the biggest sources of legal loopholes in Indonesia actually stems from inconsistencies in the application of the general principles of good governance (*algemene beginselen van behoorlijk bestuur*), where administrative discretion that should be used for the public interest is instead exploited for narrow interests.<sup>47</sup>

In order to comprehensively address legal loopholes, paradigmatic reform is needed in the process of forming legislation.<sup>48</sup> The National Legislation Program (Prolegnas) needs to be strengthened with a systematic regulatory gap evaluation mechanism, involving not only academics and legal practitioners but also groups most vulnerable to the impacts of legal gaps. Experiences such as New Zealand's Regulatory

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<sup>44</sup>Anthon F. Susanto, *Semiotika Hukum: Dari Dekonstruksi Teks menuju Progresivitas Makna* (Bandung: Refika Aditama, 2022), hlm. 60–65.

<sup>45</sup>John Rawls, *A Theory of Justice*, revised edition (Cambridge: Harvard University Press, 2021 reprint), pp. 74–83; Lihat juga Rifqi S. Assegaf, 'Akses terhadap Keadilan dan Celah Hukum di Indonesia', *Jurnal Kajian Hukum*, Vol. 8, No. 2 (2022), hlm. 110–130.

<sup>46</sup>Otoritas Jasa Keuangan, *Laporan Pengawasan Pasar Modal dan Lembaga Keuangan Tahun 2023* (Jakarta: OJK, 2023), hlm. 40–48; Lihat juga Hikmahanto Juwana, 'Hukum Pasar Modal dan Celah Regulasi Korporasi', *Jurnal Hukum Bisnis*, Vol. 42, No. 1 (2023), hlm. 22–35.

<sup>47</sup>SF Marbun, *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*, edisi ke-3 (Yogyakarta: FH UII Press, 2022), hlm. 155–162; Lihat juga Ridwan HR, *Hukum Administrasi Negara*, edisi revisi (Jakarta: RajaGrafindo Persada, 2022), hlm. 290–300.

<sup>48</sup>Hidayah, Salwa Nur. "Implementasi Omnibus Law Dalam Pembaharuan Sistem Pembentukan Perundang-Undangan." *Jurnal Hukum Respublica* 24.2 (2025). <https://doi.org/10.31849/k3kp2x57>

Impact Statement and Canada's Regulatory Policy Committee demonstrate that comprehensive regulatory impact analysis can significantly reduce the likelihood of exploitable legal gaps emerging.<sup>49</sup>

Ultimately, sustainable efforts to address legal loopholes require a more fundamental shift in legal culture. Legal culture, in Lawrence Friedman's terminology, encompasses the values, attitudes, and expectations of society toward the law and legal institutions. As long as Indonesian legal culture tolerates and even admires the clever exploitation of regulatory loopholes as a form of legal ingenuity, any technical reform will fail to achieve the desired results. A systematic effort is needed to build a culture of substantive compliance, where compliance with the law is measured not by how cleverly someone exploits existing loopholes, but by how faithfully someone adheres to the spirit and purpose of the applicable regulations.<sup>50</sup>

## CONCLUSIONS

Legal loopholes are inherent in every regulatory system and cannot be completely eliminated. However, they can be minimized through a more thorough, participatory, and evidence-based lawmaking process. The typology of legal loopholes includes normative, definitive, procedural, and interpretive loopholes, each of which requires different and specific approaches. There is a clear tension between the values of legal certainty and substantive justice in the context of exploiting legal loopholes. Formal legality does not automatically generate moral legitimacy, and opportunistic exploitation of legal loopholes, even if not formally prohibited, can undermine public trust in the legal system and exacerbate social inequality. Addressing legal loopholes requires a multidimensional approach that includes: (a) strengthening the quality of the legislative process through the implementation of regulatory impact assessments and increased public participation; (b) strengthening judicial review mechanisms and developing the doctrine of teleological interpretation; (c) increasing the capacity of law enforcement officials to identify and address the exploitation of legal loopholes; and (d) developing a legal culture that emphasizes substantive compliance, not merely formal compliance.

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<sup>49</sup>OECD, *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest* (Paris: OECD Publishing, 2022), pp. 58–72; Lihat juga Badan Pembinaan Hukum Nasional (BPHN), *Analisis dan Evaluasi Hukum tentang Celah Regulasi dalam Peraturan Perundang-undangan Indonesia* (Jakarta: BPHN, 2023), hlm. 50–58.

<sup>50</sup>Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 2021 reprint), pp. 193–224; Lihat juga Satjipto Rahardjo, *Hukum dan Perubahan Sosial: Suatu Tinjauan Teoretis serta Pengalaman-Pengalaman di Indonesia* (Yogyakarta: Genta Publishing, 2021), hlm. 150–158.

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