

Managed Judicial Discretion: An Institutional Framework for Addressing Legal Uncertainty

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Abstract

This article examines the relationship between judicial discretion and legal uncertainty from a socio-legal and comparative perspective. While conventional legal theory often treats legal uncertainty as a deficiency of the legal system, this article argues that uncertainty is an inherent consequence of adjudication, arising from the open-textured nature of legal norms, legal pluralism, and institutional constraints. Employing a conceptual legal research design supported by comparative analysis of selected jurisdictions, the study explores how judicial discretion operates within different legal and institutional settings. The analysis demonstrates that legal uncertainty is not merely the product of normative ambiguity, but also emerges from the interaction between interpretative practices, institutional capacity, and competing sources of legal authority. To address this challenge, the article develops the concept of managed judicial discretion as a theoretical framework for balancing flexibility and legal certainty. This framework emphasizes the importance of interpretative guidelines, consistency in the use of precedent, transparency in judicial reasoning, and judicial oversight as institutional mechanisms for structuring judicial discretion. The article concludes that legal certainty is better understood as an institutional achievement rather than a product of rigid legal rules. Accordingly, effective judicial reform should focus not on eliminating discretion, but on improving its governance through accountable and coherent institutional arrangements.

Keywords: Judicial Discretion; Legal Uncertainty; Legal Pluralism; Judicial Governance; Comparative Law.

Abstrak

Artikel ini mengkaji hubungan antara diskresi yudisial dan ketidakpastian hukum dari perspektif socio-legal dan komparatif. Sementara teori hukum konvensional sering memandang ketidakpastian hukum sebagai kelemahan sistem hukum, artikel ini berargumen bahwa ketidakpastian merupakan konsekuensi inheren dari proses adjudikasi yang muncul akibat sifat norma hukum yang terbuka terhadap berbagai penafsiran (open-textured), pluralisme hukum, dan keterbatasan kelembagaan. Dengan menggunakan desain penelitian hukum konseptual yang didukung oleh analisis komparatif terhadap beberapa yurisdiksi terpilih, penelitian ini mengeksplorasi bagaimana diskresi yudisial beroperasi dalam berbagai konteks hukum dan kelembagaan. Analisis menunjukkan bahwa ketidakpastian hukum tidak semata-mata merupakan hasil dari ambiguitas normatif, melainkan juga muncul dari interaksi antara praktik interpretasi,

kapasitas institusional, dan berbagai sumber otoritas hukum yang saling bersaing. Untuk menjawab tantangan tersebut, artikel ini mengembangkan konsep managed judicial discretion sebagai kerangka teoretis untuk menyeimbangkan fleksibilitas dan kepastian hukum. Kerangka ini menekankan pentingnya pedoman interpretasi, konsistensi dalam penggunaan preseden, transparansi dalam pertimbangan hukum, serta pengawasan yudisial sebagai mekanisme kelembagaan untuk menata pelaksanaan diskresi hakim. Artikel ini menyimpulkan bahwa kepastian hukum lebih tepat dipahami sebagai capaian kelembagaan daripada sekadar produk dari aturan hukum yang kaku. Oleh karena itu, reformasi peradilan yang efektif seharusnya tidak diarahkan pada penghapusan diskresi, melainkan pada peningkatan tata kelolanya melalui pengaturan kelembagaan yang akuntabel dan koheren.

Kata Kunci: Diskresi Yudisial; Ketidakpastian Hukum; Pluralisme Hukum; Tata Kelola Peradilan; Perbandingan Hukum.



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Introduction

The role of courts in contemporary legal systems has undergone a significant transformation. Rather than functioning solely as institutions that mechanically apply legal rules, courts increasingly operate as active interpreters of law within complex social, political, and institutional environments. This development reflects a broader shift in legal thought from formalistic conceptions of adjudication toward approaches that recognize the interpretative nature of judicial decision-making. Roscoe Pound argued that law must be understood as a social institution that continuously responds to changing societal needs (Pound, 1964), while H.L.A. Hart emphasized that the open-textured character of legal language inevitably creates situations requiring judicial interpretation (Hart, 2012). As legal disputes become more complex and legal norms more indeterminate, judges are frequently called upon to exercise judgment beyond the literal application of statutory provisions.

Within this context, judicial discretion emerges as an inherent feature of adjudication rather than an exception to it. Hart maintained that no legal system can anticipate every factual circumstance that may arise in practice, thereby leaving judges with a degree of interpretative choice (Hart, 1961). Similarly, Ronald Dworkin rejected the notion that judges merely apply rules mechanically, arguing instead that adjudication involves the construction of legal meaning through principled reasoning (Dworkin, 1986a). Judicial discretion therefore reflects the practical necessity of adapting general legal norms to particular factual circumstances, especially when courts confront ambiguous statutory provisions, competing legal principles, or normative gaps.

Although judicial discretion is indispensable for ensuring the adaptability of law, it simultaneously generates tension with the principle of legal certainty. Fuller associated legal certainty with predictability, consistency, and the ability of legal rules to guide human conduct effectively (Markov, 2022; Selznick & Fuller, 1965). However, legal certainty should not be

understood solely as the product of rigid rule application. Braithwaite argues that certainty is achieved through the coherent interaction of rules, principles, and institutional practices that enable legal actors to anticipate legal consequences with a reasonable degree of confidence (Braithwaite, 2005). Judicial discretion therefore presents a continuing challenge, as the flexibility necessary to achieve substantive justice may also create variations in interpretation and adjudicative outcomes.

The challenge becomes particularly significant in legally plural societies. Griffiths defines legal pluralism as the coexistence of multiple normative orders within the same social field, while Merry emphasizes that state law frequently interacts with customary, religious, and informal normative systems (Griffiths, 1986; Merry, 2009). In such contexts, judges are required not only to interpret statutory law but also to navigate competing sources of normative authority that possess different forms of social legitimacy. Tamanaha further argues that legal pluralism complicates judicial decision-making because courts must constantly negotiate between formal legal rules and socially embedded normative expectations (Tamanaha, 2010). Consequently, legal pluralism expands the interpretative space available to judges while increasing the potential for divergent judicial outcomes.

The experiences of Indonesia and China illustrate these dynamics in distinct but comparable ways. In Indonesia, legal pluralism manifests through the interaction of state law, customary (adat) norms, and religious legal traditions, particularly in disputes concerning land rights, family relations, and community interests. Lukito notes that Indonesian courts frequently operate at the intersection of multiple normative frameworks, requiring judges to reconcile competing legal claims (Lukito, 2012). In China, although the legal system is formally centralized, judicial decision-making continues to involve substantial interpretative discretion. Liebman observes that Chinese courts often balance statutory interpretation with broader governance objectives and institutional considerations, thereby expanding the practical significance of judicial discretion (Liebman, 2014).

Under these conditions, legal uncertainty should not be understood merely as a deficiency of the legal system. Berman argues that uncertainty is often a structural consequence of the interaction between multiple legal orders, while Tamanaha emphasizes that legal systems undergoing institutional transformation inevitably experience varying degrees of normative indeterminacy (Berman, 2018; Tamanaha, 2021b). Variations in judicial outcomes frequently arise not only from ambiguities within legal texts but also from differences in interpretative practices, institutional capacity, and competing sources of legal authority. Legal uncertainty therefore emerges as a product of both normative and institutional conditions.

The implications of legal uncertainty extend beyond judicial practice itself. Research on legal institutions suggests that predictability in legal interpretation contributes significantly to public confidence, institutional legitimacy, and effective dispute resolution (Tyler, 2003; Voigt, 2016). Where judicial outcomes are perceived as inconsistent or unpredictable, individuals and organizations may encounter difficulties in assessing legal risks and anticipating the consequences of their actions. The governance of judicial discretion therefore carries implications not only for legal theory but also for broader questions of institutional trust and social stability.

Despite extensive scholarship on judicial discretion and legal uncertainty, these concepts are frequently examined as separate phenomena. Studies of judicial discretion primarily focus on the interpretative autonomy of judges, whereas analyses of legal uncertainty tend to emphasize normative ambiguity, institutional deficiencies, or challenges to the rule of law. Less attention has been devoted to examining how judicial discretion and legal uncertainty interact within legally plural and institutionally evolving jurisdictions such as Indonesia and China. Consequently, the question of how judicial discretion can be institutionally structured without undermining its adaptive function remains insufficiently explored within existing scholarship.

Against this background, this article examines the relationship between judicial discretion and legal uncertainty through a comparative socio-legal analysis of Indonesia and China. Drawing upon legal pluralism, legal realism, and contemporary theories of adjudication, the article argues that judicial discretion and legal uncertainty should not be understood as opposing concepts but as mutually constitutive dimensions of judicial practice. Building upon this analysis, the article develops the concept of managed judicial discretion as a framework for understanding how discretion may be guided through interpretative guidelines, precedent practices, transparency, and oversight mechanisms. The central argument advanced is that legal certainty is not merely the product of rigid legal rules but an institutional achievement that depends upon the effective governance of judicial discretion.

Methodology

This study employs a conceptual legal research design combined with a comparative socio-legal approach to examine the relationship between judicial discretion and legal uncertainty. Conceptual legal research is not limited to describing positive law but seeks to critically evaluate and reconstruct legal concepts within broader theoretical frameworks (Van Hoecke, 2011). Accordingly, this study focuses on judicial discretion and legal uncertainty as interconnected dimensions of adjudicative practice rather than as isolated legal phenomena. In addition, socio-legal scholarship emphasizes that legal concepts should be understood not only as doctrinal

constructs but also as institutional and social practices shaped by broader normative environments (Berman, 2018, 2020).

The research adopts a qualitative and analytical–interpretative methodology. The analysis relies primarily on secondary sources, including judicial decisions, jurisprudential literature, academic books, and peer-reviewed journal articles. These materials are not treated as empirical evidence in a strict methodological sense; rather, they serve as sources for conceptual clarification, theoretical evaluation, and comparative interpretation. As Van Hoecke argues, legal scholarship can generate theoretical knowledge through systematic engagement with legal materials and scholarly discourse (Van Hoecke, 2011).

A comparative dimension is incorporated through the examination of Indonesia and China. Indonesia represents a legally plural jurisdiction in which statutory law continuously interacts with customary (adat) norms and religious legal traditions. Lukito observes that such interaction frequently requires judges to reconcile competing normative frameworks when resolving disputes involving land rights, family relations, and community interests (Lukito, 2012). By contrast, China represents a more centralized legal system in which judicial discretion operates within a distinct institutional and governance structure. According to Liebman, Chinese courts often exercise interpretative flexibility while simultaneously responding to broader policy objectives and institutional expectations (Liebman, 2014). Although these jurisdictions differ significantly in their legal structures, both provide valuable contexts for examining how judicial discretion contributes to legal uncertainty under conditions of legal and institutional transformation.

Data collection was conducted through library research involving a systematic review of primary and secondary legal materials. Primary materials consist of judicial decisions, statutory instruments, and other relevant legal documents. Secondary materials include academic books, peer-reviewed journal articles, and scholarly reports addressing judicial discretion, legal certainty, legal pluralism, adjudication, and judicial governance. The selection of materials was guided by their relevance to the research problem and their contribution to the study's analytical framework.

The analysis proceeds through three interconnected stages. First, conceptual analysis is employed to identify the principal characteristics of judicial discretion and legal uncertainty within contemporary jurisprudential debates. Second, thematic analysis is undertaken to classify recurring issues emerging from the literature, including interpretative practices, institutional constraints, legal pluralism, and judicial accountability. Third, comparative analysis is conducted to identify similarities and differences in the operation of judicial discretion within Indonesia and China. This approach follows Samuel's comparative legal methodology, which emphasizes understanding legal

phenomena within their respective institutional and social contexts rather than merely comparing formal legal rules (Samuel, 2014).

To strengthen analytical rigor, the study continuously cross-references legal materials with socio-legal and jurisprudential scholarship. The analysis draws upon legal pluralism theory developed by Tamanaha, which explains the coexistence of multiple normative orders within a single social field (Tamanaha, 2021b), interpretative theories associated with Dworkin that emphasize the constructive role of judicial reasoning (Dworkin, 1986a), and legal realist perspectives discussed by Leiter, which highlight the influence of institutional and contextual factors on judicial decision-making (Leiter, 2012). Although the study does not rely on primary fieldwork, its contribution lies in the systematic reconstruction of legal concepts and the development of a theoretically grounded framework for understanding the relationship between judicial discretion and legal uncertainty.

Findings and Discussion

Judicial Discretion as a Structural Feature of Adjudication

Judicial discretion in contemporary adjudication should not be understood as a deviation from legality but rather as an inherent structural feature of the judicial process. The traditional conception of judges as mere mechanical appliers of legal rules has increasingly been challenged by modern jurisprudence, which recognizes that adjudication inevitably involves interpretation, evaluation, and judgment. Legal norms are frequently expressed through general and open-textured language, requiring judges to determine their meaning in concrete disputes. Consequently, adjudication is not simply an exercise in rule application but also a process of legal interpretation and construction through which judges shape the practical operation of legal norms in concrete cases (Riesthuis, 2023).

The structural character of judicial discretion becomes particularly visible when examining the stages of adjudication at which judicial judgment is exercised. Discretion arises not only at the final stage of deciding a case but throughout the adjudicative process. Judges exercise discretion when interpreting ambiguous statutory provisions, determining the relevance and weight of evidence, characterizing facts, selecting applicable legal principles, and balancing competing legal values. In situations where legislation contains vague concepts such as “reasonableness,” “justice,” “public interest,” or “good faith,” judicial decision-making necessarily involves interpretative choices that cannot be entirely predetermined by legal texts (Hart, 2012). The existence of such interpretative space demonstrates that discretion is embedded within the institutional architecture of adjudication itself.

This phenomenon explains why judicial discretion persists across different legal traditions. Even within common law systems, where precedent is regarded as a central mechanism for ensuring consistency, judges retain considerable authority to distinguish cases, reinterpret existing precedents, and develop legal doctrines in response to new circumstances (Duxbury, 2008). Similarly, in civil law systems, judges frequently engage in purposive and systematic interpretation to address statutory gaps and normative ambiguities. Judicial discretion therefore reflects neither institutional weakness nor judicial activism alone; rather, it constitutes a necessary mechanism through which legal systems adapt general norms to specific social realities.

The significance of judicial discretion becomes even more pronounced in jurisdictions characterized by legal pluralism and institutional transformation. In such contexts, judges often operate within overlapping normative orders that include state law, customary norms, religious principles, and administrative regulations (Griffiths, 1986; Tamanaha, 2010). Adjudication consequently requires judges to mediate among competing sources of authority while maintaining coherence within the legal system. Under these circumstances, discretion functions as an institutional mechanism for managing normative complexity rather than merely filling legal gaps.

Indonesia provides a clear illustration of how judicial discretion operates within a legally plural environment. The Indonesian legal system combines statutory law with customary (adat) norms and religious legal principles, creating multiple sources of normative authority that frequently intersect in judicial proceedings. In disputes concerning indigenous land rights (hak ulayat), judges are frequently required to reconcile the Basic Agrarian Law with customary claims whose legal status and territorial scope are not comprehensively regulated by statutory provisions (Kadaryanto et al., 2025). Such cases necessitate interpretative choices regarding the recognition, scope, and legal status of indigenous rights. Scholarship on Indonesian judicial practice suggests that courts frequently employ contextual and purposive reasoning to accommodate local normative realities while remaining within the framework of national law (Bedner & Van Huis, 2010; Lukito, 2012). Judicial discretion thus functions as a bridge between formal legal norms and socially embedded legal practices.

A comparable yet institutionally distinct pattern can be observed in China. Although the Chinese legal system formally emphasizes statutory law and centralized legal authority, judicial decision-making continues to involve substantial discretionary judgment. Local judges frequently encounter situations in which statutory provisions are broad or insufficiently detailed to resolve complex disputes. Discretion is commonly exercised in determining the relevance of guiding cases, interpreting broadly framed statutory provisions, and balancing legal considerations against policy objectives associated with social stability and economic governance. In response, courts often rely

on interpretative guidance, policy considerations, and the guiding cases system developed by the Supreme People's Court (Liebman, 2014). Research on Chinese judicial practice indicates that judges frequently adapt legal reasoning to accommodate concerns relating to social stability, economic development, and administrative governance. Consequently, judicial discretion in China serves not only legal functions but also broader institutional objectives associated with governance and social order (Chan, 2024; Islam & Xin, 2020; Ji, 2022).

These experiences demonstrate why judicial discretion should be regarded as a structural rather than exceptional feature of adjudication. Courts do not merely permit discretion; the adjudicative process itself requires judges to exercise judgment whenever legal norms are incomplete, ambiguous, or contested. The persistence of discretion across diverse legal traditions suggests that it is an indispensable component of judicial decision-making. At the same time, the breadth of discretionary authority may generate variations in legal interpretation and judicial outcomes, particularly in jurisdictions where interpretative guidance, precedent practices, or institutional safeguards remain insufficiently developed. The experiences of Indonesia and China illustrate how different institutional settings may shape both the scope and consequences of judicial discretion. Judicial discretion therefore occupies a dual position within contemporary legal systems: it is both a necessary mechanism for ensuring legal adaptability and a potential source of legal uncertainty (Levi et al., 2009; Tyler, 2003).

Accordingly, the central challenge is not whether judicial discretion should exist, but how it can be managed within an institutional framework capable of preserving consistency, accountability, and legitimacy. The question is therefore transformed from one of eliminating discretion to one of governing discretion. This insight provides the foundation for the concept of managed judicial discretion developed in the following discussion.

Legal Uncertainty as a Product of Legal Pluralism and Institutional Dynamics

Legal uncertainty cannot be reduced to mere normative deficiencies or institutional failure; rather, it constitutes a systemic phenomenon arising from the interaction between legal structures, social dynamics, and processes of institutional transformation (Tamanaha, 2011, 2021a). In many developing jurisdictions, law does not operate within a unified framework, but within a plural and often poorly coordinated normative landscape.

From a rule of law perspective, legal certainty is frequently positioned as a key indicator of the quality of a legal system. However, in practice, the pursuit of certainty often conflicts with the need for flexibility and responsiveness to social realities (Cane, 2012; Jalil & Kunci, 2021; Selznick

& Fuller, 1965). Scholarship on judicial institutions suggests that this tension is often more visible in jurisdictions undergoing legal and institutional transformation, where regulatory coherence and institutional consolidation remain evolving processes (Krygier, 2011).

One of the primary sources of legal uncertainty lies in the deeply rooted legal pluralism that characterizes many Global South societies. In contexts where state law coexists with customary law and religious norms, judges are confronted with multiple sources of normative legitimacy that do not always align (Tamanaha, 2010; Tegan, 2016). This condition expands the scope for interpretation while simultaneously increasing the potential for inconsistency in judicial decisions.

Empirical research demonstrates that judicial discretion is often exercised through the incorporation of social norms and locally embedded values into legal reasoning. In Indonesia, for example, courts dealing with indigenous land disputes have frequently considered customary (adat) norms concerning communal land ownership and ulayat rights, even when such norms are only partially recognized within statutory frameworks. Judicial efforts to accommodate customary understandings of land tenure often influence the interpretation and application of national agrarian law, particularly in cases involving conflicts between indigenous communities and commercial land users. Similarly, in China, local courts have been shown to adapt legal reasoning in accordance with broader social stability objectives and community expectations, especially in disputes involving family relations, land use, and local governance. In both jurisdictions, judges frequently move beyond strictly textual interpretation and rely upon contextual reasoning that incorporates socially embedded norms, community expectations, and practical governance considerations. While such approaches may enhance the social legitimacy and practical acceptability of judicial outcomes, they also contribute to variations in adjudication and may increase legal uncertainty when similar cases are resolved through different interpretative frameworks (Bedner & Van Huis, 2010; Liebman, 2014; Lukito, 2012).

In addition to pluralism, legal uncertainty is further shaped by processes of legal transplants that are not always accompanied by adequate contextual adaptation (Lukito, 2025; Zoppolato & Farah, 2025). Many jurisdictions have adopted legal institutions and doctrines derived from Western legal traditions without fully accommodating local social structures, customary practices, or existing normative frameworks. As a result, formal legal rules may fail to provide effective guidance for resolving disputes that are deeply embedded in local social realities. In such circumstances, judges are frequently required to interpret transplanted legal norms in ways that reconcile statutory provisions with prevailing social practices and community expectations. This interpretative necessity expands the scope of judicial discretion because courts must determine

how far formal legal rules can be adapted to local contexts while maintaining legal coherence and institutional legitimacy.

The greater the distance between transplanted legal rules and locally embedded social practices, the greater the need for judicial interpretation to bridge that gap. In Indonesia, for example, judges addressing disputes involving customary land rights often confront tensions between state-based property regulations and indigenous understandings of communal ownership. Similarly, in China, courts have frequently adapted statutory provisions to accommodate local governance needs and social stability concerns. These situations demonstrate how the gap between transplanted legal norms and social realities creates additional space for judicial interpretation and discretionary judgment (Liebman, 2014; Lukito, 2012; Tamanaha, 2011). Efforts to reduce such uncertainty often involve the development of institutional mechanisms designed to promote consistency in adjudication, including the adoption of precedent-like practices and judicial guidance systems.

In the case of China, efforts to address interpretative inconsistencies have led to the development of a precedent-like mechanism through the Guiding Cases system established by the Supreme People's Court. The system was designed to promote greater uniformity in judicial reasoning and reduce disparities in adjudicative outcomes across different regions. However, studies indicate that guiding cases do not possess the same binding force as precedents in common law jurisdictions, leaving judges with considerable discretion in determining their relevance and application (Liebman, 2014; Zoppolato & Farah, 2025). Consequently, similar disputes may still be resolved differently depending on how judges interpret the relationship between statutory provisions, guiding cases, and local circumstances. This demonstrates that institutional mechanisms intended to enhance consistency can moderate, but not entirely eliminate, the discretionary space inherent in adjudication. Accordingly, the institutionalization of precedent-like practices does not automatically resolve legal uncertainty, particularly where judicial interpretation remains central to the application of law.

The consequences of legal uncertainty extend beyond the judicial sphere and significantly affect economic activity. Predictability in the application and enforcement of law is widely regarded as a fundamental condition for investment, commercial transactions, and long-term economic planning. When parties are unable to anticipate how courts will interpret contractual provisions or resolve disputes, they face increased legal risks and higher compliance costs. Under such conditions, businesses often allocate additional resources to risk management, dispute prevention, and legal representation, thereby increasing overall transaction costs (Lee et al., 2022). In this

respect, legal uncertainty becomes not only a jurisprudential concern but also an institutional factor shaping economic behaviour.

The relationship between judicial discretion and economic uncertainty is particularly evident in commercial litigation and contract enforcement. Where judicial outcomes vary substantially across similar cases, economic actors may find it difficult to assess the legal consequences of their actions. For example, inconsistent judicial interpretations of contractual obligations, property rights, or regulatory requirements can reduce confidence in the enforceability of legal agreements. As a result, investors may delay investment decisions, demand higher risk premiums, or avoid jurisdictions perceived as having unpredictable legal environments.

These challenges are especially significant in developing countries, where institutional capacity, judicial consistency, and legal infrastructure may still be evolving. In Indonesia, concerns regarding inconsistent judicial decisions in commercial and land-related disputes have frequently been identified as factors influencing perceptions of legal certainty among domestic and foreign investors. Similarly, in China, despite substantial judicial reforms and the development of guiding cases, regional variations in judicial practice continue to generate concerns regarding the predictability of legal enforcement. Consequently, legal uncertainty not only affects individual litigants but also influences broader patterns of economic development, market confidence, and institutional trust. Over time, persistent uncertainty may contribute to unequal access to justice, as parties with greater financial and legal resources are often better positioned to navigate unpredictable legal environments than weaker social and economic actors (Ginsburg, 2009; Liebman, 2014; Voigt, 2016).

Furthermore, legal uncertainty is closely linked to the institutional capacity of the judiciary. High caseloads, limited resources, uneven judicial training, and the absence of clear interpretative standards may contribute to variations in judicial decision-making (Dakolias, 1999; Heise, 2002; Voigt, 2016). Under such conditions, judicial discretion functions not only as an interpretative tool but also as an adaptive mechanism that enables courts to respond to systemic constraints while maintaining the operation of the legal system.

Taken together, the preceding discussion demonstrates that legal uncertainty is a multidimensional phenomenon shaped by the interaction of legal pluralism, legal transplants, institutional capacity, precedent practices, and broader socio-political conditions. The relative significance of these factors differs between Indonesia and China, producing distinct patterns of judicial discretion and adjudicative outcomes. To illustrate these differences, Table 1 provides a comparative overview of the principal determinants of legal uncertainty in the two jurisdictions.

Table 1. Key Determinants of Legal Uncertainty in Indonesia and China

Determinant	Indonesia	China
Legal Pluralism	High (customary and religious norms)	Moderate (state-centered legal system)
Precedent System	Weak	Emerging (<i>guiding cases</i>)
Consistency of Decisions	Highly variable	Moderately variable
Socio-Cultural Influence	High	Moderate
Level of Legal Uncertainty	High	Moderate to high

Source: Adapted from Brian Z. Tamanaha (2011); Sally Engle Merry (1988); Benjamin L. Liebman (2014); Jiwon Lee et al. (2023), with analytical reconstruction by the author.

The table above indicates that the level of legal uncertainty is significantly shaped by the interplay between legal pluralism, the strength of precedent practices, and institutional capacity. Indonesia, characterized by a high degree of legal pluralism and a relatively weak reliance on precedent, tends to exhibit a higher level of legal uncertainty. China occupies a comparatively intermediate position, as judicial reforms and the development of the Guiding Cases system have improved consistency in adjudication, although regional and institutional variations in judicial practice remain. These differences suggest that legal uncertainty is not solely determined by the content of legal rules, but also by broader institutional and socio-legal conditions.

These findings confirm that legal uncertainty is not a singular or isolated phenomenon, but rather the product of multiple interacting structural factors that simultaneously shape the scope and operation of judicial discretion. Accordingly, approaches that focus solely on normative reform are insufficient to address the issue. Instead, a more comprehensive framework is required one that incorporates the social, institutional, and political dimensions of legal systems (Bourdieu, 1987; de Sousa Santos, 1987; Kabir, 2019).

In this light, legal uncertainty should be understood as an inherent feature of legal systems undergoing institutional and normative transformation. Rather than being viewed solely as a deficiency, it may also create space for legal adaptation by enabling courts to respond to complex social realities and competing normative demands. However, where institutional safeguards, interpretative guidance, and accountability mechanisms remain insufficiently developed, legal uncertainty may undermine the consistency, legitimacy, and effectiveness of judicial decision-making. These conditions highlight the importance of developing institutional frameworks capable of managing judicial discretion while preserving an appropriate balance between flexibility and legal certainty.

Managing Judicial Discretion: Toward Institutional Balance

Judicial discretion constitutes an inherent element of adjudicative practice that cannot be eliminated, but can be effectively managed through appropriate institutional mechanisms. In this context, the primary challenge lies not in reducing discretion, but in ensuring that its exercise operates within a framework that is transparent, consistent, and accountable (Dworkin, 1986c, 1986b). This approach reflects a shift from viewing discretion primarily as a problem of legal constraint toward understanding it as a question of institutional governance within judicial systems.

The concept of managed judicial discretion builds upon institutional approaches to adjudication, which emphasize that consistency in judicial decision-making is achieved not solely through legal rules but also through the institutional arrangements that guide and constrain judicial behaviour. Consistent with Fuller's conception of legal certainty and Braithwaite's analysis of the relationship between rules, principles, and certainty, the framework proposed in this article positions discretion as an institutional resource that should be structured rather than eliminated (Braithwaite, 2005; Selznick & Fuller, 1965). Accordingly, legal certainty is understood as the product of coherent interpretative practices supported by appropriate institutional mechanisms.

One of the principal mechanisms for managing discretion is the strengthening of interpretative guidelines. Such guidelines function as a referential framework that constrains interpretative space without eliminating judicial flexibility (Sunstein, 1995; Tamanaha, 2011). From an institutional perspective, clear interpretative guidance contributes to greater consistency in legal reasoning by providing judges with common reference points for resolving similar disputes. Although such mechanisms do not eliminate judicial discretion, they can reduce unnecessary variations in adjudication and promote greater predictability in the application of law.

In addition, consistency in the use of precedent plays a critical role. Although civil law systems have traditionally not adhered to binding precedent, contemporary practice reveals a growing tendency to adopt the principle of persuasive precedent (Bell, 2018; Duxbury, 2008; Lasser, 2004). In this context, precedent serves not merely as a reference point, but as a mechanism for promoting coherence in legal reasoning and reducing unjustified disparities in judicial decisions.

Transparency in judicial reasoning constitutes another key element in managing discretion. Judges are expected not only to deliver decisions but also to provide reasoned justifications that clearly articulate the legal and factual bases of their rulings (Dakolias, 1999; Huchhanavar, 2023; Lasser, 2004). Such transparency enables both public and academic scrutiny of judicial decisions, thereby enhancing accountability within the judiciary.

The strengthening of judicial oversight mechanisms is equally important in ensuring the responsible exercise of discretion. Appellate and cassation systems function as corrective

instruments against potential misuse of discretion (Ginsburg, 2003; Voigt, 2008). However, the effectiveness of these mechanisms largely depends on the independence and institutional capacity of the judiciary itself.

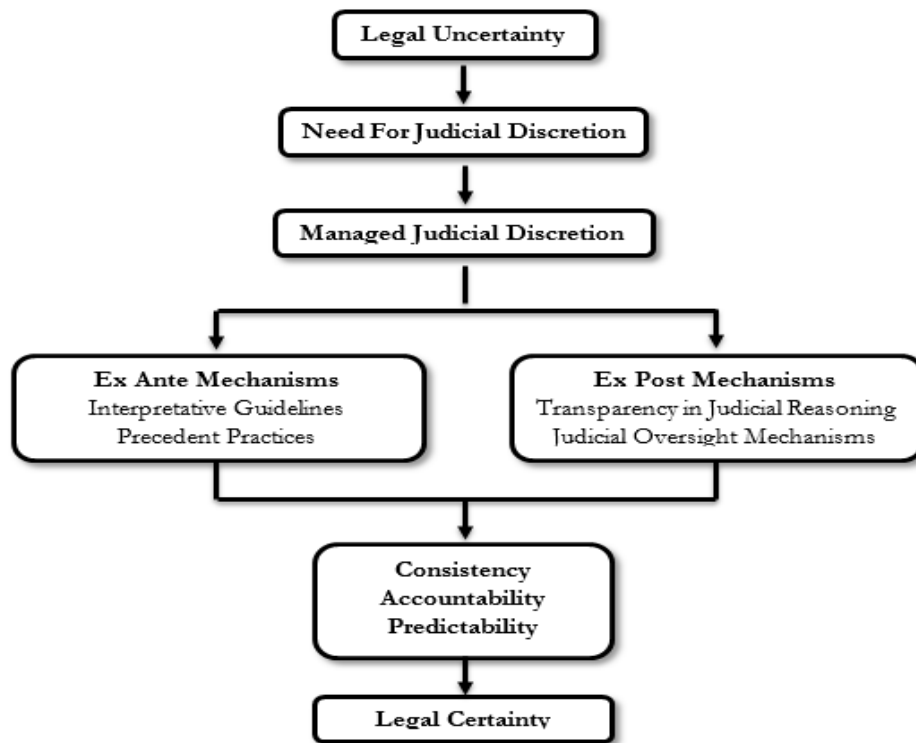
From a comparative perspective, jurisdictions with more institutionalized systems of judicial governance demonstrate that discretion is not managed through strict limitation, but through a combination of interpretative guidance, consistency in precedent, and transparency in judicial reasoning (Bell, 2006; Duxbury, 2008; Lasser, 2004). This suggests that institutional strengthening is more effective than rigid normative approaches.

Furthermore, the management of judicial discretion is closely linked to the legitimacy of the legal system. In jurisdictions undergoing legal and institutional transformation, where public trust in legal institutions may remain fragile, the ability to demonstrate consistency, transparency, and rationality in judicial decision-making becomes a crucial factor in building institutional legitimacy (Clark & Shapiro, 1983; Tyler, 2003). Properly managed discretion, therefore, can enhance rather than undermine the legitimacy of the judiciary.

The preceding discussion suggests that neither strict rule-based approaches nor unrestricted judicial discretion can adequately address legal uncertainty. Existing scholarship generally treats legal certainty and judicial discretion as competing values, often emphasizing one at the expense of the other. However, the comparative analysis of Indonesia and China demonstrates that the central challenge lies not in choosing between flexibility and certainty, but in developing institutional mechanisms capable of balancing both objectives.

To address this gap, this article proposes the concept of managed judicial discretion as a conceptual framework for understanding how judicial discretion can be institutionally structured without undermining its adaptive function. Rather than limiting judicial autonomy, this framework seeks to reconcile judicial independence with institutional safeguards that promote coherent and accountable decision-making. The framework assumes that discretion is an inevitable feature of adjudication but that its consequences depend largely on the institutional environment within which it operates. Accordingly, interpretative guidelines, precedent practices, transparency in judicial reasoning, and oversight mechanisms are conceptualized as complementary instruments that channel discretion toward greater consistency, accountability, and predictability while preserving judicial flexibility.

Figure 1. Managed Judicial Discretion: Institutional Mechanisms and Expected Outcomes



Source: Author's conceptualization based on the comparative and socio-legal analysis presented in this study

Figure 1 illustrates that judicial discretion can be governed through a combination of complementary institutional mechanisms rather than through rigid restrictions on judicial authority. The framework distinguishes between ex ante mechanisms, which guide judicial reasoning before decisions are rendered, and ex post mechanisms, which promote accountability after decisions have been made. Interpretative guidelines and precedent practices provide judges with common reference points that help reduce unnecessary variations in legal interpretation, while transparency and oversight mechanisms ensure that discretionary decisions remain open to evaluation and institutional scrutiny. Together, these mechanisms aim to preserve the adaptive function of judicial discretion while reducing unjustified interpretative variation and enhancing consistency, accountability, and predictability in adjudication.

Beyond their technical function, this combination of mechanisms reflects an institutional design aimed at internalizing the principles of consistency and accountability within adjudicative practice. In this context, discretion is no longer viewed as an unrestricted sphere of judicial authority, but as an authority structured within an institutional framework that enables continuous monitoring, evaluation, and correction. This is essential to prevent excessive disparities in judicial

decisions without undermining the capacity of judges to respond to the complexity of individual cases.

The framework further underscores that legal certainty is not achieved through the elimination of discretion, but through the systematic management of the interpretative space available to judges. In other words, legal certainty is institutional rather than purely normative in nature. The predictability of legal outcomes depends not only on the precision of legal rules but also on the existence of institutional mechanisms that guide, monitor, and justify judicial interpretation. Consequently, judicial reform efforts that focus solely on the proliferation of detailed rules are unlikely to be effective unless accompanied by the strengthening of institutions governing adjudicative practice.

In the contexts examined in this study, particularly Indonesia and China, the managed judicial discretion approach provides a useful framework for addressing challenges arising from legal pluralism, normative ambiguity, and institutional constraints. Rather than treating judicial discretion solely as a source of legal uncertainty, the framework recognizes discretion as an inevitable feature of adjudication whose effects depend largely on the institutional environment within which it operates. By emphasizing interpretative guidance, consistency in legal reasoning, transparency, and oversight, the framework offers a context-sensitive model for balancing flexibility and legal certainty. The contribution of this framework lies in shifting the focus of legal reform from controlling judicial discretion toward improving the institutional conditions through which discretion is exercised, evaluated, and justified.

Conclusion

This article has examined the relationship between judicial discretion and legal uncertainty through a comparative analysis of Indonesia and China. The discussion demonstrates that legal uncertainty is not solely the result of ambiguous legal rules but also emerges from the interaction between legal pluralism, interpretative practices, and institutional constraints. In both jurisdictions, judicial discretion functions as an inherent component of adjudication, enabling judges to address normative gaps, reconcile competing sources of authority, and adapt legal rules to complex social realities.

The analysis further shows that judicial discretion does not necessarily undermine legal certainty. Rather, the degree of legal uncertainty depends on the institutional conditions within which discretion is exercised. Variations in adjudicative outcomes are influenced not only by the content of legal norms but also by the availability of interpretative guidance, the consistency of precedent practices, the transparency of judicial reasoning, and the effectiveness of oversight mechanisms.

Based on these findings, this article develops the concept of *managed judicial discretion* as a framework for understanding how discretion can be institutionally structured without eliminating its adaptive function. The framework emphasizes that judicial discretion should be guided through a combination of interpretative guidelines, precedent practices, transparency, and judicial oversight. These mechanisms do not remove discretion from adjudication; rather, they help channel its exercise toward greater consistency, accountability, and predictability.

Accordingly, legal certainty should be understood not merely as a product of rigid legal rules but as an institutional achievement resulting from the effective governance of judicial discretion. Future judicial reforms should therefore focus on strengthening the institutional mechanisms that support consistent and accountable decision-making while preserving the flexibility necessary to respond to evolving legal and social challenges.

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